

THE INCOME TAX ORDER, 1975

(Title amended A.11/1985.)

(Order No. 21 of 1975)

• Order • Subsidiary Legislation •

ORDER

Date of Commencement: 1st July, 1975.

Date of Assent: 8th July, 1975.

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PART I
GENERAL

1. Short title.

This Order may be cited as the Income Tax Order, 1975. (Amended A.11/1985.)

2. Interpretation.

In this Order, unless the context otherwise requires —

“agent” includes a person appointed by the Commissioner under section 49 and also any partnership, company, or any other body of persons whether incorporated or not, which is acting as an agent;

“amateur sporting association” means an association whose sole or main object is to foster or control any athletic sport or game and whose members consist only of amateur sports persons or affiliated associations, the members of which consist only of amateur sports persons; (Added A.7/2007.)

“approved bursary scheme” means a bursary scheme operated by an employer which is registered with the Commissioner and approved by him in respect of the year of assessment in question upon the following terms and conditions and such others as he may determine —

- (a) that the bursaries under the scheme are awarded on merit according to need to enable students to pursue secondary or high school education at public educational institutions;
- (b) that the children of all employees of the employer are eligible for such bursaries;
- (c) that a bursary awarded to any recipient shall not exceed four thousand five hundred Emalangeni per annum; and (Amended A.7/1992; A.5/2004; A.4/2008.)
- (d) that a bursary scheme is governed by properly defined rules which, together with and amendments thereto, are approved by the Commissioner. (Added A.5/1988.)

“approved company in the handicraft and cottage industry sector” means a company approved by and registered by the Commissioner in consultation with the Ministry of Commerce, Industry and Tourism for the relevant year of assessment; (Added A.7/1989.)

“approved export promotion expenditure” means any expenditure incurred by an approved company in the handicraft and cottage industry sector for the purpose of expanding exports which have been approved by the Commissioner in consultation with the Ministry of Commerce, Industry and Tourism; (Added A.7/1989.)

“approved export trading house” means a company engaged in the export of products of other companies in the handicraft and cottage industry sector and which is approved and registered by the Commissioner in consultation with the Ministry of Commerce, Industry and Tourism for the relevant year of assessment; (Added A.7/1989.)

“assessment” means (Deleted A.11/2011.)

"assessment" means the determination by the Commissioner, by way of a notice of assessment (including a notice of assessment in electronic form) served in a manner contemplated in section 67(2) —

- (a) of an amount upon which any tax leviable under this Order is chargeable; or
- (b) of the amount of any tax payable; or
- (c) of any loss ranking for set-off,

by a taxpayer for a year of assessment under this Order, including a deemed assessment under section 33*ter* and, for the purposes of Part VI, includes any determination by the Commissioner in respect of any of the reductions referred to in section 8, and any decision of the Commissioner which is in terms of this Order subject to objection and appeal; (Added A.11/2011.)

"assistant Commissioner" (Deleted A.6/2000.)

"benefit fund" means —

any fund (other than a pension fund, provident fund or retirement annuity fund) which, in respect of the year of assessment in question, the Commissioner is satisfied is a permanent fund *bona fide* established for the purpose of providing sickness, accident or unemployment benefits for its members or for providing benefits for the widow, children, dependants or nominees of deceased members and includes any fund which would, but for the fact that it does not provide for payment of annuities on the retirement of its members, be approved under the definition of "pension fund" in this section;

"associate" means any person, not being an employee, who acts or is likely to act in accordance with the directions, requests, suggestions, or wishes of another person whether or not they are in a business relationship and whether those directions, requests, suggestions or wishes are communicated to the first-mentioned person, including —

- (a) a relative of the person, unless the Commissioner is satisfied that neither person acts in accordance with the directions, requests, suggestions, or wishes of the other person;
- (b) a partner of the person, unless the Commissioner is satisfied that neither person acts in accordance with the directions, requests, suggestions, or wishes of the other person;
- (c) a partnership in which the person is a partner where the person, either alone or together with an associate or associates controls fifty per cent or more of the rights to income or capital of the partnership either directly or through one or more interposed companies, partnerships, or trusts; or
- (d) the trustee of a trust under which the person or an associate benefits or may benefit;
- (e) a company in which the person, either alone or together with an associate or associates, controls fifty per cent or more of the voting power in the company either directly or through one or more interposed companies, partnerships, or trusts;
- (f) where the person is a partnership, a partner in the partnership who, either alone or together with an associate or associates, controls fifty per cent or more of the rights to income or capital of the partnership either directly or through one or more interposed companies, partnerships, or trusts;
- (g) where the person is the trustee of a trust, any other person or an associate of such other person who benefits or may benefit under the trust;

- (h) where the person is a company —
- (i) a person who, either alone or together with an associate or associates, controls fifty per cent or more of the voting power in the company, either directly or through one or more interposed companies, partnerships, or trusts; or
 - (ii) another company in which the person referred to in subparagraph (i), either alone or together with an associate or associates, controls fifty per cent or more of the voting power in that other company, either directly or through one or more interposed companies, partnerships, or trusts;

(Added A. 11/2011.)

“branch” means a place where a person carries on business, and includes —

- (a) a place where a person is carrying on business through an agent, other than a general agent of independent status acting in the ordinary course of business as such; or
- (b) a place where a person has, is using or is installing substantial equipment or substantial machinery; or
- (c) a place where a person is engaged in a construction, assembly, or installation project, including a place where a person is conducting supervisory activities in relation to such a project; (Added A.7/2007.)

“child” means —

any child, step-child or adopted child of the taxpayer of whom he has the custody and whom he wholly maintains, provided that in the case of an adopted child such child shall have been adopted by the taxpayer — (Replaced A.11/1982.)

- (a) under the Adoption of Children Act, No. 64 of 1952;
- (b) in accordance with Swazi customary law, provided that proof of such adoption is supported by a certificate under the signature of a person appointed in writing and gazetted by the Minister for Home Affairs either generally or specially for such purpose; or (Amended A.11/1982.)
- (c) under the law of any country other than Swaziland, provided that the Commissioner is satisfied that the adopted child is under such law accorded the status of a legitimate child of the adoptive parent and the adoption was made at a time when the taxpayer was resident in such country;

“Commissioner” means — the Commissioner of Taxes appointed under section 3;

“company” includes —

- (a) any association incorporated by or under any law in Swaziland;
- (b) any association which is incorporated outside Swaziland but carries on business or has an office or place of business in Swaziland; or
- (c) any body corporate incorporated by any law in force in Swaziland or by any law in force in any country outside Swaziland but carrying on business in Swaziland;

“court” means —

a court of competent jurisdiction, save that for the purposes of Part VI it means the High Court of Swaziland;

“Deputy Commissioner” means a Deputy Commissioner appointed under section 3; (Added A.6/2000.)

“dividend” means —

any amount distributed by a company (other than a building society or any institution which is a mutual loan association) to its shareholders, and for this purpose “amount distributed” includes — (Amended K.O-I-C. 2/2003.)

- (a) in relation to a company that is being wound up or liquidated, any profits distributed, whether in cash or otherwise, other than those of a capital nature, earned before or during the winding up or liquidation;
- (b) in relation to a company that is not being wound up or liquidated, any profits distributed, whether in cash or otherwise, and whether of a capital nature or not, including an amount equal to the nominal value of any debentures or securities awarded to the shareholders; (Amended A.10/1991.)
- (c) in the event of the partial reduction of the capital of a company, any cash or the value of any asset which is given to a shareholder in excess of the cash equivalent of the nominal value by which the shares of that shareholder are reduced; and
- (d) in the event of the reconstruction of a company, any cash or the value of any asset which is given to a shareholder in excess of the nominal value of the shares held by him before the reconstruction:

Provided that for the purposes of this or in definition an asset shall be deemed to have been given to a shareholder of a company if any asset or interest, benefit or advantage measurable in terms of money is given or transferred to such shareholder or if the shareholder is relieved of any obligation measurable in terms of money;

“employee share acquisition scheme” means an agreement or arrangement under which —

- (a) a company is required to issue shares in the company to employees of the company or of an associated company; or
- (b) a company is required to issue shares to a trustee of a trust and under the trust deed the trustee is required to transfer the shares to employees of the company or of an associated company;

(Added A.7/2007.)

“executor” means —

any person to whom letters of administration have been granted in respect of the estate of a deceased person under any law relating to the administration of estates, and includes any person acting or authorised to act under letters of administration granted outside Swaziland and signed and sealed by the Master in accordance with the relevant provisions of the Administration of Estates Act, No. 28 of 1902 for use in Swaziland, or, in the case of where the estate is not required to be administered under the supervision of any court, the person administering the estate;

“exempt organisation” means an organisation —

- (a) which is —
 - (i) an amateur sporting association; (Amended A.7/2007.)

- (ii) an ecclesiastical, charitable, or educational institution of a public character; or
 - (iii) a trade union, employees' association, an association of employers registered under the Industrial Relations Act, or a chamber of commerce and industry;
- (b) which the Commissioner is satisfied that it is a genuine exempt organisation; and
- (c) none of the income or assets of which confers or may confer, a private benefit on any person;

(Added A.5/2004.)

"financial year" —

in relation to a company, means —

- (a) the period, whether of twelve months or not, commencing upon the date of the formation of such company and ending upon the last day of June immediately succeeding such date or upon such other date as the Commissioner, having regard to the circumstances of the case, may approve; or
- (b) any period subsequent to the period referred to in paragraph (a) commencing immediately on the day following the last day of the immediately preceding year of assessment of that company and ending after the expiration of twelve months from such date or any other period ending on such date as the Commissioner, having regard to the circumstances of the case, may approve; (Added A.11/1985.)

"gross income" — has the meaning assigned to it under section 7;

"income" means —

the amount remaining of the gross income of any person for any year or period of assessment after deducting therefrom any amounts exempt from income tax in the hands of such person;

"industrial building" means any building —

- (a) which contains and is used solely or mainly for the purpose of operating machinery worked by steam, electricity, water or other mechanical power;
- (b) which is on the same premises as any other building mentioned in paragraph (a), and which, in the opinion of the Commissioner, suffers depreciation by reason of the operation of machinery installed in such other building;
- (c) which, in the opinion of the Commissioner, suffers depreciation by reason of the use of chemicals, corrosives, furnaces of any description or any other agent directly utilised in the particular trade or industry of which the building forms an integral and essential part;
- (d) erected and used for the purpose of carrying out industrial research or scientific experiments into improved or new methods of manufacture;
- (e) which, by reason of the trade carried on by the taxpayer is, in the opinion of the Commissioner, used for industrial purposes;

"insurance business" means the business of issuing or undertaking liability under life policies or policies to make good or indemnify the insured against any loss or damage, including liability to pay damages or compensation contingent upon the happening of a specified event; (Added A. 11/2011.)

"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; (Added A.6/2000.)

"married" (Deleted A.10/1991.)

"married person" means any person who during —

- (a) any portion of the period in respect of which the assessment was made was married or was a widower or a widow; or
- (b) the whole of such period was separated under a judicial order or written agreement; (Amended A.11/1982.)

"mining operations" and "mining" include — every method or process by which any mineral is won from the soil or from any substance or constituent thereof;

"Minister" means — the Minister for Finance and Economic Planning;

"mortgage interest" means interest paid plus fringe benefit value of any soft loan concession on a bond financing the purchase of a property as the principal private residence of the taxpayer; (Added A.5/2004.)

"non-resident tax" means the non-resident shareholders tax or the non-residents tax on interest, as the case may be, provided for in Part III;

"normal tax" means the tax payable in terms of section 6(1);

"official rate of interest", in relation to a year of assessment, means the Central Bank of Swaziland discount rate as at the commencement of the year of assessment; (Added A.5/2004.)

"pension fund" means a superannuation, pension, provident, or widows' and orphans' fund established by law and any such fund other than a benefit fund, provident fund or retirement annuity fund not established by law which is approved by the Commissioner in respect of the year of assessment in question:

Provided that the Commissioner may approve a fund subject to such limitations or conditions as he may determine, but shall not approve a fund unless, in respect of the year of assessment in question, he is satisfied that

—

- (a) the fund is a permanent fund *bona fide* established for the purpose of providing annuities for employees on retirement from employment, or mainly for such purpose, and also for the purpose of providing benefits other than annuities for employees or benefit for widows, children, dependants or nominees of deceased employees; and
- (b) the rules of the fund provide —
 - (i) that all annual contributions of a recurrent nature to the fund shall be in accordance with specified scales; (Amended K.O-I-C. 39/1975.)
 - (ii) that membership of the fund throughout the period of the employment shall be a condition of employment by the employer of all persons of the class specified therein who enter his employment on or after the date upon which the fund comes into operation; (Amended K.O-I-C. 1/1976.)
 - (iii) that any person who immediately prior to such date was employed by the employer and who on such date falls within such class may, on application made within a period of not more than twelve months as from such date, be

permitted to become a member of the fund on such conditions as may be specified in the rules;

- (iv) that not more than one-third of the total value of the annuity to which any employee becomes entitled may be commuted for a single payment, except where the annual amount of such annuity does not exceed one thousand five hundred Emalangeni; (Amended A.7/1992; A.5/2004.)
- (v) for the administration of the fund in such a manner as to preclude the employer from controlling the management or assets of the fund or from deriving any monetary advantage from moneys paid into or out of the fund; and
- (vi) that the Commissioner shall be notified of any amendment of any of the rules; and

(c) the rules of the fund have been complied with;

"pensionable salary" means a member's basic salary and excludes any allowance which has not been specifically designated as pensionable;

(Added A.11/2011.)

"person" includes any company, a body of persons whether incorporated or not, an insolvent estate, the estate of a deceased person and any trust; (Amended A.11/1985; A.6/2000.)

"provident fund" means a fund other than a pension fund, benefit fund or retirement annuity fund, which is approved by the Commissioner in respect of the year of assessment in question: (Replaced A.9/1979.)

Provided that the Commissioner may approve a fund subject to such limitations or conditions as he may determine but shall not approve a fund unless, in respect of the year of assessment in question he is satisfied that —

- (a) the fund is a permanent fund *bona fide* established solely for —
 - (i) the purpose of providing benefits for employees on retirement from employment, or
 - (ii) the purpose of providing benefits for widows, children, dependants or nominees of deceased employees, or
 - (iii) a combination of those purposes;
- (b) the rules of the fund contain provisions similar in all respects to those required to be included in the rules of a pension fund as provided for in paragraph (b) to the proviso of the definition of "pension fund", save that sub-paragraph (iv) thereof be omitted from such rules for the purpose of this paragraph; (Amended K.O-I-C. 1/1976.)
- (c) the rules of the fund have been complied with;

"public officer" in relation to a company means the person appointed under section 51;

"public servant" means the holder of any public office or emolument in the civil service of the Government of Swaziland and includes a person appointed to act in such public office;

"representative taxpayer" has the meaning assigned to it in section 44;

"retirement annuity fund " means any fund (other than a pension fund, provident fund or benefit fund) which is approved by the Commissioner in respect of the year of assessment in question:

Provided that the Commissioner may approve a fund subject to such limitations or conditions as he may determine, but shall not approve any fund

in respect of any year of assessment unless he is in respect of that year of assessment satisfied that —

- (a) the fund is a permanent fund *bona fide* established for the sole purpose of providing life annuities for the members of the fund or annuities for the widows, children, dependants or nominees of deceased members; and
- (b) the rules of the fund provide —
 - (i) for periodical contributions by the members;
 - (ii) that not more than one-third of the total value of any annuities to which any person becomes entitled, may be commuted for a single payment, except if the annual amount of such annuities does not exceed one thousand five hundred Emalangi; (Amended K.O-I-C. 2/2003; A.7/1992; A.5/2004.)
 - (iii) that no portion of any annuity payable to the widow, child, dependant and nominees of a deceased member may be commuted later than six months from the date of the death of such member;
 - (iv) adequate security to safeguard the interests of persons who may become entitled to annuities;
 - (v) that no member shall first become entitled to the payment of any annuity after he reaches the age of seventy years or, except in the case of a member who becomes permanently incapable through infirmity of mind or body of carrying on his occupation, before he reaches the age of fifty-five years;
 - (vi) that if a member dies before he becomes entitled to the payment of an annuity, the benefits shall not exceed a refund to his estate or to his widow, children, dependants or nominees of the sum of the amounts (with or without reason-able interest thereon) contributed by him and an annuity or annuities to his widow, children, dependants or nominees;
 - (vii) that if a member dies after he has become entitled to an annuity no further benefit shall be payable other than an annuity or annuities to his widow, children, dependants or nominees;
 - (viii) that the sum of the annuities payable to the widow, children, dependants and nominees of a deceased member who was in receipt of an annuity at the time of his death shall not exceed the amount of such annuity;
 - (ix) that a member's contributions shall cease not later than the day before his birthday following the date on which he first becomes entitled to the payment of any annuity;
 - (x) that a member who discontinues his contributions prematurely shall be entitled either to an annuity (payable from the date on which he would have become entitled to the payment of an annuity if he had continued his contributions) determined in relation to his actual contributions or to be reinstated as a full member under conditions prescribed in the rules of the fund;
 - (xi) that upon the winding up of the fund a member's interest therein must either be used to purchase a policy of insurance which the Commissioner is satisfied provides benefits similar to those provided by such fund or be paid

for the member's benefit into another approved retirement annuity fund;

(xii) that save as is contemplated in sub-paragraph (ii) no member's rights to benefits shall be capable of surrender, commutation or assignment or of being pledged as security for any loan;

(xiii) that the Commissioner shall be notified of all amendments of the rules; and

(d) the rules have been complied with;

"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); (Added A.6/2000.)

"shareholder", in relation to any company, means the registered shareholder in respect of any share, except that if some person other than the registered shareholder is entitled, whether by virtue of any provision in the memorandum or articles of association of the company or under the terms of any agreement or testamentary disposition or otherwise to all or part of the benefits of the rights of participation in the profits or income attaching to the shares so registered, such other person to the extent that he is entitled to such benefits shall also be deemed to be a shareholder;

"steamer" includes any means of public and fare-charging transport by sea; (Added A.6/2000.)

"tax" or "taxation" means any tax or duty leviable under this Order or any previous income tax law, as the case may be;

"taxable income" means the amount remaining after deducting from the income of any person all the amounts allowed to be deducted or set off in Part II;

"taxpayer" means any person chargeable with any tax or duty leviable under this Order and, for the purposes of any provision relating to any return, includes every person required by this Order to furnish such return;

"trade" includes every profession, trade, business, employment, calling, occupation or venture, including the letting of any property;

"trading stock" includes —

- (a) anything —
 - (i) produced, manufactured, constructed, assembled, purchased or otherwise acquired for the purposes of manufacture, sale or exchange ;or
 - (ii) the proceeds from the disposal of which forms or will form part of gross income; or
- (b) any consumable stores and spare parts acquired by him to be used or consumed in the course of his trade; and
- (c) in the definition of "exempt organisation", by replacing the words "amateur sporting organisation" with the words "amateur sporting association; (Added A.7/2007.)

"trustee" includes in addition to every person appointed or constituted as such by act of parties, by will, by order or declaration of Court or by operation of law, an executor or administrator, tutor or curator, and any person having the administration or control of any property subject to a trust, usufruct, *fidei commissum* or other limited interest, or acting in any fiduciary capacity, or having, either in a private or an official capacity, the possession, direction, control or management of any property of any person under legal disability;

"this Act" includes any regulations made thereunder;

"wife's employment income" (Added A.11/1985; deleted A.10/1991.)

"year of assessment" means any year or other period in respect of which any tax or duty leviable under this Order is chargeable:

Provided that, in the case of a company, any reference to a year of assessment commencing the first day of July shall be construed to mean the financial year of that company, commencing in the calendar year in question. (Added A.11/1985; Amended K.O-I-C. 2/2003.)

3. Appointment of officers.

(1) For the administration of this Order the Minister may designate a public servant as Commissioner of Taxes and public servants as Deputy Commissioners of Taxes. (Amended A.6/2000.)

(2) A Deputy Commissioner shall perform such general official duties as he is required to perform by this Order or by the Commissioner under the control of the Commissioner, and shall, in case of illness, absence or temporary incapacity of the Commissioner, act in his name and on his behalf and while so acting shall have and may exercise all the powers conferred and shall perform the duties imposed upon the Commissioner under this Order. (Amended A.6/2000.)

(3) Any office under this Order may be held in conjunction with any other office in the civil service.

4. Delegation of functions.

The Commissioner may with the approval of the Minister delegate to any public servant any duties, powers and functions by this Order conferred or imposed upon him other than such power of delegation.

5. Preservation of secrecy.

(1) Subject to this section, every person appointed under, or employed in carrying out the provisions of this Order shall preserve and aid in the preservation of secrecy with regard to all information or documents which may come to the knowledge of that person in connection with the performance of the duties of that person under this Order, and shall not communicate any such information or the contents of such

documents to any person other than the taxpayer or the lawful representative of that person not suffer any such person to have access to any documents in the possession or custody of the Commissioner except in the performance of the duties of the Commissioner under this Order or by order of a court.

(2) Subject to subsection (3) and (4), subsection (1) does not prohibit the disclosure of information or documents to —

- (a) the Attorney-General or any legal practitioner acting on behalf of the Commissioner for the purpose of seeking the advice of, or instructing, that person; or
- (b) the Auditor-General or any officer duly authorised by him in the performance of his duties under the Finance and Audit Act;
- (c) the Director of Statistics in relation to any person as may be required by the Director of Statistics for the performance of his powers and duties under the Statistics Act;
- (d) the Commissioner of Customs and Excise, as are required for the performance of his duties under the Sales Tax Act;
- (e) the Commissioner for Human Rights and Public Administration to the extent necessary for performing the functions and exercising the powers of the Commission on Human Rights and Public Administration;
- (f) the Commissioner of the Anti-Corruption Commission acting under the Prevention of Corruption Act, to the extent necessary for performing the functions and exercising the powers of the Anti-Corruption Commission;
- (g) a Director of the Financial Intelligence Unit as may be required for purposes of exercising any power or performing any function or duty under the money laundering and financing of terrorism (prevention) law;
- (h) the Director of Public Prosecutions as may be relevant to the prosecution of any offence committed in terms of this Order or any other Act administered by the Commissioner;
- (i) any person being a consultant to or an officer employed by the Government who is approved by the Minister to receive such confidential information; or
- (j) the competent authority of the Government of a country with which an agreement for the avoidance of double taxation or for the exchange of information exists, to the extent permitted under that agreement.

(3) The information obtained by the Commissioner in the performance of the powers and duties of the Commissioner under this Order or any previous law relating to income tax may be used by the Commissioner for the purposes of any other fiscal law administered by the Commissioner.

(4) The Commissioner shall disclose to the Minister of Finance information in respect of any taxpayer or any other class of taxpayers, to the extent necessary for the purposes of tax policy design or revenue estimation.

(5) Every person appointed or employed in carrying out the provisions of this Order and every person to whom confidential information is disclosed under subsection (2) (b) to (i), shall make an oath or declaration of secrecy in such manner and form as may be prescribed.

(6) Subject to subsection (7), a person shall not in any manner publish or make known to any other person (not being an officer carrying out his duties under the control, direction or supervision of the Commissioner) the contents or tenor of any instruction or communication given or made by the Commissioner or any such officer in the performance of his duties under this Order for or concerning the examination or investigation of the affairs of any taxpayer or class of taxpayers or the fact that such instruction or communication has been given or made, or information concerning the tax matters of a taxpayer or class of taxpayers.

- (7) The provisions of this subsection shall not be construed —
- (a) as preventing any taxpayer or his representative who is or may be affected by any such examination, investigation or furnishing of information from publishing or making known information concerning his own tax matters; or
 - (b) subject to the provisions of subsection (1), as in any way limiting the duties or powers of the Commissioner or any such officer; or
 - (c) as preventing any person from publishing or making known anything which has been published or made known by the taxpayer or his representative as contemplated in paragraph (a) or by the Commissioner or any such officer in the exercise of his duties or powers.

(8) Every person who, in contravention of the true intent of the oath of confidentiality or secrecy taken by him and without lawful excuse, reveals any matter or thing which has come to his knowledge in his official capacity, commits an offence and shall be liable on conviction to fine not exceeding ten thousand emalangeni, or to imprisonment for a term not exceeding two years, or to both such fine and term of imprisonment.

(9) If any person acts in the execution of his office before he has taken the prescribed oath commits an offence and shall be liable on conviction to a fine not exceeding one thousand emalangeni.

(10) A taxpayer may waive, expressly or by implication, any right which he may have under this Order to secrecy or any matter relating to him or his affairs. (Replaced A.11/2011.)

PART II NORMAL TAX

6. Levy of normal tax and rates thereof. (Third Schedule)

(1) There shall be charged, levied and paid an income tax, known as "normal tax", in respect of the taxable income, received by or accrued to or in favour of any person during the year of assessment commencing the first day of July 1975, and each succeeding year of assessment thereafter. (Amended A.11/1985.)

(2) Notwithstanding the provisions of subsection (1), where the taxable income of any person who is in continuous employment with the same employer for any year of assessment, is derived solely from remuneration and the employees' tax required to be deducted or withheld from such remuneration under the Second Schedule, has been deducted or withheld from such remuneration, the normal tax payable by him in respect of such year shall be an amount equal to the sum of the amount deducted or withheld from such remuneration as employees' tax. (Added A.6/1994.)

(3) The rates to be levied as set out in the Third Schedule shall be fixed annually by the Minister having regard to any factors having a bearing to the adequate raising of revenue, but the rates so fixed for any year shall be deemed to continue in force until the next such annual determination. (Amended A.6/1994; A.4/2008.)

7. Meaning of gross income.

"Gross income" means the total amount whether in cash or otherwise received by or accrued to or in favour of any person, excluding such receipts or accruals of a capital nature as are not receipts or accruals referred to in paragraphs (a) to (r) herein in any year or period assessable under this Part from any source within Swaziland or deemed to be within Swaziland, and includes the following —(Amended A.9/1979; A.5/2004; A.11/2011.)

- (a) any amount so received or accrued by way of annuity;

- (aa) the full value of any debt (other than debt of a capital nature) which accrues in the year of assessment but becomes payable after the end of that year of assessment; (Added A.10/1991; amended A.7/1992.)
- (b) any amount, including any voluntary award, so received or accrued in respect of services rendered or to be rendered; (Amended A.7/1989; A.6/2000.)
- (c) any amount, including any voluntary award, so received or accrued —
 - (i) in commutation of amounts due under any contract of employment or service;
 - (ii) in respect of the relinquishment, termination, loss, repudiation, cancellation or variation of any office or employment or of any appointment (or right or claim to be appointed) to any office or employment;

(Replaced K.O-I-C. 2/2003.)

- (d) any amount so received or accrued from another person as premium or like consideration paid by such other person for —
 - (i) the use or occupation or the right of use or occupation of land or buildings; or
 - (ii) the use or right of use of plant, machinery, equipment or vehicles; or
 - (iii) the use or right of use of any motion picture film or any film or video tape or disc for use in connection with television or any sound recording or advertising matter connected with such motion picture film, film or video tape or disc; or
 - (iv) the use or right of use of any patent, design, trade mark, copyright, or any model, pattern, plan, formula, or process or any property or right of a similar nature; or
 - (v) the imparting of or the undertaking to impart any scientific, technical, industrial, or commercial knowledge or information for use in Swaziland, or the rendering of or the undertaking to render any assistance or service in connection with the application or utilisation of such knowledge or information;

(Replaced A.9/1979.)

- (e) if in the case of any person to whom, in terms of any agreement relating to the grant to any other person of the right of use or occupation of land or buildings, or by the cession of any rights under such agreement, there has accrued in any such year or period the right to have improvements effected on the land or to the buildings by any other person —
 - (i) the amount stipulated in the agreement as the value of the improvements or as the amount to be expended on the improvements; or
 - (ii) if no amount is so stipulated, an amount representing in the opinion of the Commissioner, the fair and reasonable value of the improvements;
- (f) the annual value of any benefit or advantage accruing by way of employment, including that of any quarters, board or residence:
 - Provided that in calculating the gross income of any person —
 - (i) the value of any free medical attention or cash allowances for medical expenses provided for or paid to any employee or the holder of an office or appointment shall not be included;

- (ii) any free passage by rail, steamer or air provided for an employee or the holder of an office or appointment at the commencement of such employment, office or appointment shall not be included if the duration of such employment, office or appointment is two years or more or where it is less than two years, if such employment, office or appointment is not subject to renewal; (Amended A.6/2000.)
- (iii) any free passage by rail, road, 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 place of recruitment; (Added A.6/2000.)
- (iv) fifty per cent of the total amount paid by an employer during any year of assessment directly or indirectly, by way of contribution to any approved bursary scheme for the benefit or educational assistance of the children of any employee or dependants of such employee shall not be included. (Added A.4/2008.)

(Replaced A.6/1991.)

(ff) for the purposes of paragraph (f), a taxable benefit shall be deemed to have been granted by an employer to his employee in respect of the employment contract between the employer and the employee, if —

- (a) a loan has been granted to the employee, whether by the employer or by any other person by arrangement with the employer, and either no interest is payable by the employee on such loan or interest is payable by him thereon at a rate lower than the official rate of interest; or
- (b) the employer has paid any subsidy in respect of the amount of interest or capital repayments payable by the employee in terms of the loan; or
- (c) the employer has in respect of any loan granted to the employee by any lender, paid to such lender any subsidy, being an amount which, together with any interest payable by the employee on such loan, exceeds the amount of the interest which, if calculated at the official rate of interest, would have been payable on such loan;
- (d) (Added A.6/1994; repealed A.5/2004.)

(g) (i) any amount by which recoups of capital expenditure which has been deducted under section 14(1)(m) or the corresponding provision of; previous income tax law, exceeds the residual value of such capital expenditure calculated in terms of section 14(1)(m);

(ii) for the purposes of this subsection —

“residual value” means the difference between the cost of capital expenditure incurred in mining operations less the total of the allowances granted in terms of section 14(1)(m) in respect of such capital expenditure;

(Replaced A.9/1988.)

(h) all amounts allowed to be deducted or set off under the provisions of section 14(1) (except paragraphs (e), (j) and (u) thereof) or section 14(2) or the corresponding provisions of any previous income tax law, whether in the current or any previous year of assessment, which have been recovered or recouped during the current year of assessment:

Provided that all amounts which in terms of this section are required to be included in the taxpayer’s income shall be deemed to have been received by or to have accrued to the taxpayer from a source within Swaziland notwithstanding that such amounts may have been recovered or recouped outside Swaziland;

- (i) any amount so received or accrued by way of alimony or allowance or maintenance under any judicial order or written agreement of separation or any order of divorce;
- (j) any amount so received or accrued by way of dividends or interest on debentures or debenture stock;
- (k) any amount by way of allowance received by or accrued to a public servant, a Member of Parliament, a Minister, or a member of a statutory or other similar body, but excluding reimbursive allowances for appropriate official purposes; (Replaced A.9/1979; A.11/1985; A.5/2004.)
- (l) any amount received by or accrued to any person as compensation for any restraint of trade imposed on such person; (Added A.5/2004.)
- (m) fifty percent of the amount by which the value of shares issued to an employee under an employee share acquisition scheme at the date of issue exceeds the consideration, if any, given by the employee for the shares, including any amount given as consideration for the grant of a right or option to acquire the shares; (Added A.7/2007.)
- (n) an amount of any gain derived by an employee on disposal of a right or option to acquire shares under an employee share acquisition scheme; (Added A.7/2007.)
- (o) any amount received by or accrued to any person as compensation in respect of trading stock under a policy of insurance or contract for indemnity against loss of profits; (Added A.11/2011.)
- (p) any amount received by or accrued to any person by way of recovery or reimbursement of —
 - (i) any expenditure or loss;
 - (ii) any bad or doubtful debt which has been allowed as a deduction under section 14. (Added A.11/2011.)
- (q) the value of gifts provided by a person in the course of, or by virtue of, a past, present, or prospective business relationship; (Added A.11/2011.)
- (r) an amount of any gain derived by an employee on disposal of a right or option to acquire shares under an employee share acquisition scheme. (Added A.9/1979; amended A.5/2004; A.7/2007; A.11/2011.)

8. Normal tax rebate.

(1) In the case of a natural person the tax payable in terms of section 6 shall, save as is otherwise provided in this Order, be reduced by —

- (a) an amount not exceeding the sum specified in the Third Schedule in any year of assessment:

provided that no reduction shall be made under this subsection if the tax payable in terms of section 6 is subject to the rates of tax prescribed in Part III of the Third Schedule; (Amended A.9/1988; A.6/1991; repealed A.10/1991; replaced A.7/2007; A.4/2008.)
- (b) an amount equal to ten percent of the amount paid for each Lilangeni or part thereof in respect of —
 - (i) any amount paid by way of a mortgage interest during the year of assessment:

Provided that the amount to be allowed as a reduction under this subparagraph shall not exceed two thousand four hundred Emalangeni;

- (ii) the premium paid by a person during the year of assessment upon a policy under which that person, the spouse or child of that person is insured against death or sickness:

Provided that no reduction shall be made in respect of insurance under a policy if the amount paid as premium for such policy has been allowed as a reduction from the income of the taxpayer under section 14, or has been allowed in respect of income or similar tax paid by him in a foreign country;

- (iii) the fee or subscription paid by a person during the year of assessment to a benefit fund or provident fund;
- (iv) the contribution made by a person during the year of assessment as an employee to a fund established under any law relating to unemployment insurance:

Provided that the total amount to be allowed as a reduction under paragraph (b)(ii), (iii), and (iv) shall not exceed three hundred and sixty Emalangeni.

(2) If the period of assessment is less than twelve months, the reductions under subsection (1)(a) shall be such amounts as bears to the full amount of the respective reduction provided for thereunder the same ratio as the period assessed bears to twelve months.

(Amended A.11/1985; A.6/1987; A.7/1989; A.6/1991; A.7/1992; A.6/1994; replaced A.5/2004.)

9. Capitalised or credited income.

Income shall be deemed to have accrued to a person notwithstanding that such income has been invested, accumulated or otherwise capitalised by him or that such income has not been actually paid over to him but has been credited in account or reinvested or accumulated or capitalised or otherwise dealt with in his name or on his behalf, and a complete statement of all such income shall be included by any person in the returns rendered by him under this Order.

9bis. Compensation receipts.

A compensation payment derived by a person takes the character of the item that is compensated. (Added A.11/2011.)

10. Taxation of income derived from farming. (First Schedule)

The taxable income of any person carrying on pastoral, agricultural, plantation or other farming operations shall, in so far as it is derived from such operations, be determined in accordance with this Order, but subject to the First Schedule. (Added K.O-I-C. 2/1977; amended A.11/1985.)

11. Circumstances where certain amounts are deemed to be income in Swaziland.

(1) An amount shall be deemed to have accrued to any person from a source in Swaziland notwithstanding that it may have been recovered or recouped outside Swaziland whenever it has been received by or has accrued to or in favour of such person by virtue of —

- (a) any agreement made by such person in Swaziland for the sale of goods, whether such goods have been delivered or are to be delivered in or out of Swaziland;
- (b) any service rendered or work or labour done by such person in the carrying on in Swaziland of any trade, whether the payment for such service or work or labour is made or is to be made by a person resident in or out of Swaziland;

- (c) any service rendered by such person to, or work or labour done by, such person for or on behalf of the Government and in accordance with an agreement of employment with the Government notwithstanding that such service is rendered or that such work or labour is done outside Swaziland;
- (d) any pension or annuity granted to such person in respect of services performed in Swaziland wheresoever payment of such pension or annuity is made and wheresoever the funds from which payment is made are situate:

Provided that if any pension or annuity is granted in respect of services performed partly in Swaziland and partly elsewhere only that part which bears to the whole amount of such pension or annuity the same ratio as the period of service in Swaziland bears to the total period of service in respect of which such pension or annuity was granted shall be deemed to have accrued from a source within Swaziland;

- (e) any business carried on by such person (being a person who is ordinarily resident in Swaziland, or a company which is incorporated, managed or controlled in Swaziland) as owner or charterer of any aircraft, wheresoever such aircraft may be operated;
- (f) any service rendered or work or labour done by such person, being a person ordinarily resident in Swaziland, as an officer or a member of the crew of any aircraft referred to in paragraph (e), notwithstanding that such service is rendered or such work or labour is done outside Swaziland, and wheresoever payment for such service or work or labour is made or is to be made;
- (g) the use or right of use in Swaziland of, or the grant of permission to use in Swaziland —
 - (i) any patent design, trade mark, copyright, model, pattern, plan, formula, or process or any other property or right of a similar nature; or
 - (ii) any motion picture film, or any film, or video tape or disc for use in connection with television, or any sound recording or advertising matter used or intended to be used in connection with such motion picture film, film or video tape or disc;
 - (iii) any video or audio material transmitted by satellite, cable, optic fibre, or similar technology for use in connection with television or radio broadcasting, (Added A.6/2000.)

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; (Added A.9/1979; amended A.6/2000.)

- (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; (Added A.6/2000.)
- (h) the imparting of or the undertaking to impart any scientific, technical, industrial or commercial knowledge or information for use in Swaziland, or the rendering of or the undertaking to render, any assistance or service in connection with the application or utilization of such knowledge or information, wheresoever such knowledge or information has been obtained or such knowledge or information has been imparted or is to be imparted or such assistance or service has been rendered or is to be rendered or any such undertaking has been given, and whether payment for such knowledge, information, assistance, service or undertaking has been made or is to be made by a person resident in or out of Swaziland; (Added A.9/1979.)

- (i) a judicial order, written agreement of separation or an order of divorce, if the taxable income of such person's spouse or former spouse has been reduced by such amount in terms of section 14(1)(x), wheresoever such judicial order or order of divorce was granted or such agreement was made or such amount is paid or payable and whether such person's spouse or former spouse is resident in or out of Swaziland;(Added A.11/1982.)
- (j) a management charge paid by any person ordinarily resident or carrying on business in Swaziland; (Added A.6/2000.)
- (k) any interest where —
 - (i) the debt is secured by immovable property located, or movable property used, in Swaziland;
 - (ii) the borrower is a person ordinarily resident in Swaziland; or
 - (iii) the borrowing relates to a business carried on in Swaziland.(Added A.5/2004.)

(2) (Deleted A.10/1991.)

(2)(bis) (Added A.11/1985; amended A.5/1988; A.7/1989; A.6/1991; deleted A.10/1991.)

(3) Any income shall be deemed to have been received by the parent of any minor child, if by reason of any donation, settlement or other disposition made by such parent of such child —

- (a) it has been received by or accrued to or in favour of or has been deemed to have been received by or accrued to or in favour of such child or has been expended for the maintenance, education or benefit of such child; or
- (b) it has been accumulated for the benefit of such child.

(4) Any income received by or accrued to or in favour of or deemed to have been received by or accrued to or in favour of any minor child of any person, by reason of any donation, settlement or other disposition made by any other person, shall be deemed to be the income of the parent of such minor child if such parent or his spouse has made a donation, settlement or other disposition or given some other consideration in favour directly or indirectly of such other person or his family.

(5) If any person has made in any deed of donation, settlement or other disposition, a stipulation to the effect that the beneficiaries thereof, or some of them, shall not receive the income thereunder, or some portions of such income, until the happening of some event, whether fixed or contingent, so much of any income as would, in consequence of the donation, settlement or other disposition but for such stipulation, be received by or accrued to or in favour of or be deemed to be received by or accrued to or in favour of the beneficiaries, shall until the happening of such event, or the death of such person, whichever takes place first, be deemed to be the income of such person.

(6) If any deed of donation, settlement or other disposition contains any stipulation that the right to receive any income thereby conferred may, under powers retained by the person by whom such right is conferred, be revoked or conferred upon another, so much of any income as, in consequence of donation, settlement or other disposition, is received by or accrues to or in favour of or is deemed to be received by or to accrue to or in favour of the person on whom such right is conferred, shall be deemed to be the income of the person by whom it is conferred, so long as he retains those powers.

(7) Any amount received by or accrued to or in favour of any person ordinarily resident in Swaziland by way of interest upon any stocks or securities issued by any Government other than the Government of Swaziland, shall if such amount is not chargeable with income tax in such country of origin, by reason of the recipient not being domiciled or resident therein, be deemed to be income derived from a source within Swaziland:

Provided that in the case of a person who was not ordinarily resident in Swaziland throughout the year of assessment, there shall not be added any such interest so received by or accrued to or in favour of any such person during such portion of such year as he was not so ordinarily resident.

(8) So much of any amount, which has been paid by any person as an allowance or advance to a director, manager, employee or other person in respect of expenses of travelling, entertainment or other service, as the Commissioner is not satisfied was actually expended by the recipient on such travelling, entertainment or in the performance of such service, shall be deemed to be part of the taxable income of the recipient.

(9) Any interest which has been received by, or has accrued to, a person who is ordinarily resident in Swaziland in respect of a loan to, or deposit in a building society other than the building society registered under the provisions of the Building Societies Act, No. 1 of 1962, and carrying on business in Swaziland, or any dividend or share of profits distributed by such society which has been received by or has accrued to a person ordinarily resident in Swaziland, shall be deemed to have been derived from a source within Swaziland.

(9A) It is further provided that —

- (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; (Replaced A.5/2004.)
- (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 perion 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 paragraph (b) is limited to the Swaziland tax payable in respect of the interest income. (Added A.6/2000.)

(10) So much of any amount which has been paid by a company to or otherwise made available for the personal use of a shareholder or director of such company from the company's undistributed profits, reserves or other assets by way of loan, and which amount was not repaid to the company within the year such loan or advantage was obtained, shall be deemed to be part of the taxable income of such shareholder or director for that year:

Provided that this subsection shall not apply to a loan paid to or otherwise made available for use by a shareholder or director which in the opinion of the Commissioner, was made for a purpose directly connected with the business of the company. (Added A.9/1979.)

(11) (Added A.11/1982; amended A.11/1985; repealed A.7/2007.)

11bis. Trading stock.

(1) There shall be taken into account, in the determination of the taxable income derived by any person, during any year of assessment, from carrying on any trade (other than farming), the value of all trading stock held and not disposed of by him (hereinafter referred to as "the value of trading stock held") at the beginning and end of each year of assessment.

(2) The cost of trading stock disposed of during the year of assessment is determined by adding to the opening value of trading stock the cost of trading stock acquired in the year, and subtracting the closing value of trading stock.

(3) The value of trading stock held by any person at the beginning of any year of assessment shall be deemed to be —

- (a) where the person carried on trade on the last day of the previous year of assessment, the value of trading stock held on that date; or
- (b) where the person commenced the trade during the year of assessment, the cost to the person of any stock acquired prior to the commencement of the trade.

(4) The value of trading stock held at the end of a year of assessment shall be deemed to be the lower of cost or market value to the person carrying on the trade.

(5) For the purposes of this subsection, the cost of any trading stock in relation to any date shall be —

- (a) the cost incurred in acquiring such trading stock; and
 - (b) any further costs incurred up to such date in getting such trading stock into its then existing condition or location.
- (6) Where any trading stock has been acquired by any person —
- (a) for a consideration which cannot be valued; or
 - (b) otherwise than by way of a transaction at arm's length,

such trading stock shall be deemed to have been acquired at a cost equal to the price which, in the opinion of the Commissioner, was the current market price of such trading stock on the date of acquisition.

(7) Where particular items of trading stock are not readily identifiable, a person may account for that trading stock on the first-in-first-out method or the average-cost method but, once chosen, a stock valuation method may be changed only with the written permission of the Commissioner.

(Added A.7/2007.)

12. Exemptions from normal tax.

- (1) There shall be exempt from normal tax —
- (a) the receipts and accruals of —
 - (i) a pension fund, a retirement annuity fund, a benefit fund or a provident fund;
 - (ii) any company, society or other association of persons, whether or not registered under any law, the profits or gains of which, other than profits or gains from investments, are derived solely from transactions with or on behalf of its individual members, and the constitution of which does not admit of the distribution of its profits or gains to any persons other than the members with whom or on whose behalf the transactions took place, and does not confer upon any person any benefit other than benefits accruing to that person from transactions with or on behalf of such person, except as regards any receipts or accruals from investments by any such company, society, or association of persons; and
 - (iii) any exempt organisation other than business income that is not related to the function constituting the basis for the existence of the organisation.

(Amended A.11/1985; A.6/1994; A.6/2000; A.5/2004; replaced A.11/2011.)

- (b) the income of any person entitled to privileges under the Diplomatic Privileges Act No. 18 of 1968 to the extent provided in such Act;
- (c) the salaries and emoluments of any person in respect of services rendered to the Government of any country other than Swaziland if that person is not ordinarily resident in Swaziland or is ordinarily resident solely for the purpose of performing such services;

- (d) war pensions or gratuities;
- (e) dividends received by or accrued to or in favour of —
 - (i) any person not ordinarily resident or carrying on business in Swaziland;
 - (ii) the estate of any deceased person who at the date of his death was not ordinarily resident or carrying on business in Swaziland, if, but for this exemption, such estate would have been liable for normal tax in respect of such dividend; and
 - (iii) any company;
- (ee) (Added A.6/1991; amended A.10/1991; deleted K.O-I-C. 2/2003.)
- (f) so much of any amount received by or accrued to any person as is proved to the satisfaction of the Commissioner to be a *bona fide* bursary granted to enable or assist such person to study at a recognised educational or research institution;
- (g) any amount received by or accrued to any employee on *bona fide* termination of employment by reason of a written agreement of employment or of any law in force in Swaziland, by way of bonus or gratuity specified in such written agreement in respect of services rendered or performed prior to 1 July 2001: (Amended A.6/2000.)

Provided that —

- (i) the period of the agreement of employment is not less than two years; or
- (ii) if the period of the agreement is less than two years, the employee shall not enter into another agreement of employment with the same employer after the termination of his employment; and

Provided further that such amount shall not exceed twenty-five per centum of the total amount of the actual salary received by the employee reckoned from the date of such written agreement in respect of and during the period of such employment:

Provided further that the payment of such amount in respect of services rendered or performed prior to 1st July, 2000 shall not be subject to normal tax notwithstanding that such payment is made prior to the *bona fide* termination of such written agreement. (Added A.6/2000.)

(Replaced A.10/1991.)

- (h) any interest received by or accrued to any person neither ordinarily resident nor carrying on business in Swaziland from stock or securities issued by the Government or any local authority in Swaziland, the Swaziland Railway Board, the Swaziland Electricity Board or any other parastatal or statutory corporation approved by the Minister:

Provided that, if in the case of any such stock or securities issued in respect of a loan raised in a country outside Swaziland the Minister has given a written undertaking that the interest therefrom received by or accruing to any person not ordinarily resident in Swaziland shall be exempt from tax in Swaziland, the interest received by or accruing to such person from any such stock or securities acquired by him outside Swaziland shall be exempt from that tax, notwithstanding that he carries on business in Swaziland;

- (i) any interest received by or accruing to any person not ordinarily resident in Swaziland from any loan made to the Ngwenyama in trust for the Swazi Nation;

- (j) any amount received by or accruing to an employee on *bona fide* termination of employment in respect of —
- (i) commutation of a pension payable from a pension fund;
 - (ii) amounts due from a provident fund or benefit fund;
 - (iii) any amount payable, as determined in terms of the provisions of the Employment Act, as severance allowance or notice pay; (Added A.11/1985; amended A.10/1991; replaced A.6/1996; K.O-I-C. 2/2003.)
 - (iv) the first sixty thousand Emalangeneni of a lump sum amount referred to in section 7(c) of the meaning of "gross income" payable by reason of —
 - (A) the termination or impending termination of the employee's services due to the employer having ceased carrying on the business in respect of which the employee was employed;
 - (B) the employee having become redundant in consequence of the employer having effected a general reduction or a reduction of a particular class of employees; or
 - (C) the employee having reached the retiring age or the termination of employment of such employee is due to ill health or infirmity:

Provided that any lump sum amount in excess of thirty thousand Emalangeneni shall be charged tax under section 6;

(Added K.O-I-C. 2/2003. Amended A.4/2008.)
- (jj) (Added A.6/1996; deleted K.O-I-C. 2/2003.)
- (k) any amount received in commutation of a retirement annuity;
- (l) any amount (other than his actual salary) received by or accrued to a public servant which the Government has undertaken shall be exempt from normal tax by the terms of its written agreement with such servant and any amount from whatsoever cause arising received by or accrued to a public servant which the Government has undertaken shall be exempt from normal tax by the terms of its written agreement with the Government of another state;
- (m) any amount received by or accrued to any person in respect of services rendered in Swaziland which the Government has undertaken shall be exempt from normal tax by the terms of its written agreement with the Government of another state or with an international or world organisation or body;
- (n) any allowances additional to salary payable to any public servant or representative of the Government in respect of his appointment or office if such allowances are payable and his duties are performed outside Swaziland;
- (o) any amount, other than the actual salary and benefits received by, or accrued to, an expatriate lecturer whom the Government has undertaken shall be exempt from normal tax in terms of a written agreement with the University of Swaziland, or an approved college or institution of higher learning; (Deleted A.6/2000; inserted A.4/2008)
- (p) (Amended K.O-I-C. 1/1976; A.9/1979; A.11/1982; A.11/1985; A.6/1991; deleted A.6/2000.)
- (q) (Amended A.11/1982; A.11/1985; deleted A.6/2000.)

(qq) interest or dividends received by accrued to, or in favour of, any natural person in any year of assessment not exceeding twenty-thousand Emalangeni —

- (i) in respect of any subscription share in a building society registered under the Building Societies Act, 1962, and carrying on business in Swaziland;
- (ii) from permanent or fixed period shares in a building society Registered under the Building Societies Act, 1964, and carrying on business in Swaziland;
- (iii) on society shares from savings with a mutual loan association or co-operative society carrying on business in Swaziland;
- (iv) from deposits in a financial institution or a building society or the Swaziland Development and Savings Bank established under the Swaziland Development and Savings Bank Order, 1973 and carrying business in Swaziland; or
- (v) from deposits in a unit trust company carrying on business in Swaziland.

(Added A.6/1991; amended A.6/2000; replaced K.O-I-C. 2/2003; amended A.4/2008.)

- (r) any interest and other charges on any loan which the Government has in terms of a written undertaking concluded subsequent to the 1st December, 1977 exempted or undertaken to exempt from tax to the extent specified in such undertaking; (Added K.O-I-C. 6/1978.)
- (s) (Added A.11/1985; deleted K.O-I-C. 2/2003.)
- (t) gross income received by or accrued to any person not ordinarily resident in Swaziland where such gross income is liable to non-residents' tax on entertainment and sports chargeable under section 32A of this Order; (Added A.11/1985.)
- (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 to tax under section 32B of this Order; (Added A.6/2000.)
- (v) dividends received by or accrued to or in favour of any person ordinarily resident or carrying on business in Swaziland which is subject to tax under section 32D of this Order. (Added A.6/2000; replaced K.O-I-C. 2/2003.)

(2) The exemptions provided by subsection (1)(a)(i) to (vii) inclusive shall not extend to the salaries, wages, allowances or pensions of persons employed by any such society, institution, company, board or business although they may be paid wholly or in part out of the income, revenue or funds thereof. (Amended A.6/1994; A.5/2004.)

(3) (Amended A.11/1982; A.7/1989; A.6/1991; replaced A.10/1991; A.7/1992; A.6/1994; repealed A.5/2004.)

(4) (Replaced A.11/1982; amended A.11/1985; A.7/1989; A.6/1991; repealed A.10/1991.)

(5) (Added A.11/1985; amended A.9/1988; repealed A.5/2004.)

(6) (Repealed A.5/2004.)

12bis. Prohibition of a double exemption.

Where an amount qualifies or has qualified for an exemption under more than one provision of this Order, an exemption in respect of such amount or any portion thereof shall not be allowed more than once in the determination of taxable income of any person. (Added A.5/2004.)

12ter. Repeal of exemption of public enterprises.

(1) Notwithstanding anything contained in any other law, with effect from the 1st day of July, 2001, no public enterprise shall be exempt from taxation, except as provided for in this Act.

(2) For the purposes of this section, the term "public enterprise" shall have the meaning assigned to it in the Public Enterprises (Control and Monitoring) Act, 1989.

(Added A.5/2004.)

13. Business extending beyond Swaziland.

(1) In the case of persons whose business extends to any other country, the taxable income shall be the sum which bears the same proportion to the whole net profits as his assets in Swaziland bear to the total assets of such person:

Provided that if the Commissioner or the taxpayer deems such method of estimating the income for taxation to be inequitable or inexpedient, either of them may claim the right to an assessment on the actual profits derived from sources in Swaziland.

(2) For the purpose of subsection (1) assets means those "assets" actually employed to produce income the profits from which are to be apportioned.

14. Determination of taxable income.

(1) For the purpose of ascertaining the taxable income of any person there shall be deducted from the income of such person —

- (a) expenditure and loss actually incurred in Swaziland by the taxpayer in the production of his income, including such expenses incurred outside Swaziland in the production of the taxable income as the Commissioner may allow, provided that such expenditure or loss are not of a capital nature; (Amended A.11/1985.)
- (b) expenditure actually incurred by the taxpayer during the year of assessment for the repairs of property occupied for the purpose of trade or in respect of which income is receivable and sums so expended for the repair of machinery, implements, utensils and articles employed by the taxpayer for the purposes of his trade;
- (c) such sum as the Commissioner may think just and reasonable as representing the diminished value by reason of wear and tear during the year of assessment of any plant, machinery, implements, utensils and articles used by the taxpayer for the purposes of his trade:

Provided that the value of any machinery or plant used by the taxpayer for the purposes of his business shall be reduced by the amount of deduction which may be made under paragraph (e)(i); (Added K.O-I-C. 19/1976; replaced A.7/1989; A.5/2004.)

- (d) an amount equal to four per centum of the cost to the taxpayer of any industrial building and any improvements thereto (other than repairs) and other than buildings provided for in section 16(4)(a): (Replaced A.9/1988.)

Provided that the aggregate of the deductions under this paragraph and the corresponding provisions of the repealed enactments together with any deduction under paragraph (f) shall not exceed the cost to the taxpayer of such industrial building and improvements; (Commenced: 1st July, 1990.)

- (e) in respect of —
 - (i) machinery or plant which was brought into use by the taxpayer for the first time for the purposes of his business for use by him directly

in the process of manufacture, or brought into use by a taxpayer engaged in the hotel industry, an allowance (to be called "machinery initial allowance") for the year of assessment during which such machinery or plant is first used equal to fifty percent of the cost thereof incurred by the taxpayer on or after the first day of July, 1985: (Amended A.9/1979; A.9/1988; A.5/2004.)

Provided that where such plant and machinery is brought into use by a taxpayer engaged in the hotel industry, the initial allowance shall apply with effect from 1st July, 1988; (Added A.9/1988.)

- (ii) infrastructural machinery, plant or facilities, including transmission equipment, lines and pipes used in the provision of infrastructural services which was brought into use by the taxpayer for the first time for the purposes of the taxpayer's business, an allowance (to be known as "infrastructural initial allowance") for the year of assessment during which such infrastructural machinery, plant or facilities is first used equal to fifty percent of the cost incurred by the taxpayer on or after the 1st July, 2000:

Provided that the amount equivalent to the amount of any outstanding balance of any loans procured for the provision of such infrastructural assets as at the date of coming into operation of this provision shall be deemed to be the value of such assets brought into use by the taxpayer for the first time; (Added A.6/2000.)

- (iii) a building other than hotel buildings and improvements brought into use after 1st July, 1988, if such a building was wholly or mainly used by the taxpayer for the purpose of housing machinery or plant referred to in subparagraph (i), or if such building was let by the taxpayer to an occupier who so used it for purposes of the occupier's business, an allowance (to be called a "building initial allowance") for the year of assessment during which such building is first used equal to fifty percent of the actual cost thereof incurred by the taxpayer on or after the first day of July, 1985: (Amended K.O-I-C. 19/1976; A.9/1979; A.9/1988.)

Provided that in the case of machinery or plant which at the time of installation is not new or unused, the allowance shall only be deducted if the machinery or plant is installed in a building referred to in subparagraph (iii), does not replace other machinery or plant and has not previously been used in Swaziland, in which case such allowance shall be calculated on an amount which in the opinion of the Commissioner represents the depreciated value of the machinery or plant based on its original actual cost: (Amended A.5/2004.)

Provided further that in the case of a building, referred to in subparagraph (iii), the allowance shall only be deducted if the building is so used for the purpose of housing machinery or plant which at the time of installation, is new or unused or has not previously been used in Swaziland and which does not replace other machinery or plant; (Amended A.5/2004.)

- (iv) for the purpose of this paragraph, the expression —
 - (A) "machinery or plant" does not include motor vehicles intended or adapted for use or capable of being used on roads; and
 - (B) "infrastructural services" means the provision of electricity, water, sewer, rail facilities or telecommunications by a parastatal or statutory corporation whose main business is to provide services; (Added A.9/1979; amended A.6/2000; replaced A.5/2004.)
- (v) the allowances referred in subparagraphs (i), (ii) and (iii) shall not be given if the taxpayer elects otherwise; (Replaced A.11/1985; amended A.6/2000; replaced A.5/2004.)

- (f) an allowance in respect of any machinery, implements, utensils and articles used by the taxpayer for the purpose of his trade which have been scrapped by such taxpayer during the year of assessment, such allowance to be the difference between the original cost to such taxpayer of such machinery, implements, utensils or articles and the total amount arrived at by adding all the allowances made in respect thereof under paragraphs (c) and (e) to any amount or the value of any advantage accruing to the taxpayer in respect of the sale or other disposal of such machinery, implements, utensils and articles; (Replaced A.11/1985.)
- (g) in the case of a taxpayer (excluding a taxpayer who derives income from the sale of immovable property to persons who are not employed by him) who, during any year of assessment, incurs expenditure in connection with the erection of any dwelling and who satisfies the Commissioner that such dwelling will be occupied exclusively by persons, or the household of persons, who are his employees (other than employees engaged in a managerial or supervisory capacity) and are employed by him for the purposes of his own business in a process of manufacture, an allowance in respect of the first year during which such expenditure was incurred equal to twenty per centum of such expenditure and thereafter for the next succeeding eight years an allowance during each year of assessment of ten per centum thereof: Provided that —
- (i) such allowance in respect of any one dwelling shall not exceed the sum of twelve thousand Emalangeni for the first year and the sum of six thousand Emalangeni in respect of each of the succeeding eight years; and (Amended A.7/1989; A.7/1992.)
 - (ii) the expenditure on which such allowance is made shall not include the cost of the land on which such dwelling is erected; (Replaced A.11/1985.)
- (h) in the case of a taxpayer who, incurs any capital expenditure in connection with the erection by him of a new hotel or the effecting of any beneficial improvements to the amenities of an existing hotel, a hotel initial allowance for the year of assessment during which such new hotel or the beneficial improvements into an existing hotel are first used, equal to fifty per centum of the actual cost incurred by the taxpayer on or after the 1st of July, 1988, together with an annual allowance of four per centum of such expenditure in respect of that year and each of the succeeding years, so that the total allowances for all years of assessment given under this paragraph and under the corresponding provisions of the repealed enactments in respect of such expenditure incurred in any year of assessment shall not exceed the expenditure so incurred: (Replaced A.9/1988.)

Provided that —

- (i) any expenditure in respect of which an allowance in terms of this paragraph has been made shall not qualify for an allowance under any other provision of this Order; and (Amended A.9/1988; A.4/2008.)
 - (ii) in so far as the effecting of improvements is concerned, the Commissioner shall on completion of the improvements, by certificate issued under his hand, have certified them as being beneficial improvements; (Replaced A.11/1985; amended A.4/2008.)
- (i) so much of the total current contributions to any retirement annuity fund made during the year of assessment by any person as a member of the fund as does not, in the case of that person, exceed fifteen percent of taxable income accruing to that person in respect of trade carried out by that person:

Provided that the total amount allowed as a deduction under this paragraph shall be reduced by any contributions made by the taxpayer to a pension fund; (Amended A.5/2004; A.4/2008.)

(Replaced A.11/1985; amended A.7/1989; A.10/1991.)

- (j) so much of the total current contributions to any retirement annuity fund made during the year of assessment by any person as a member of the fund as does not in the case of the taxpayer exceed the greatest of —
- (i) fifteen per centum of the taxable income accruing to the taxpayer in respect of trade carried out by the taxpayer; provided that the maximum allowable deductions in each case shall not exceed an amount of twelve thousand Emalangeni; or (Amended A.5/2004.)
 - (ii) an amount of seven thousand five hundred Emalangeni less contributions made by the taxpayer to a pensions fund; or (Amended A.5/2004.)
 - (iii) an amount of six thousand Emalangeni; (Amended A.5/2004.)

(Replaced A.11/1985; amended A.7/1989; replaced A.10/1991.)

- (k) any sum contributed by the employer less the employees contribution during the year of assessment to any pension fund, provided fund or benefit fund established for the benefit of the employees of that employer as does not exceed twenty per centum: (Amended A.6/1991.)

Provided that —

- (i) if the contributions including any lump sum payments made by the employer in respect of an employee during the year of assessment to such funds exceeds twenty per centum and the Commissioner is satisfied that the aggregate of such contributions and the total remunerations accruing to that employee during the year of assessment in respect of his employment by such employer is excessive or unjustifiable in relation to the value of the services rendered by him, and having regard to other benefits, if any, derived by him from his employment by the employer only so much of such contributions as appear to the Commissioner to be reasonable, but not less than an amount equal to twenty per centum of the total remuneration accruing to that employee during the year of assessment in respect of his employment as the Commissioner considers to be fair and reasonable in relation to the value of the services rendered by him and having regard to other benefits, if any, derived by him from his employment by the employer shall be allowed to be deducted under this paragraph; (Replaced A.6/1991.)
- (ii) in respect of a lump sum contribution, the Commissioner may determine that such sum shall be deducted in a series of annual instalments, so that only a portion thereof is deducted in the year of assessment in which it is contributed, and the residue in such subsequent year of assessment, and such proportions as the Commissioner may determine, until the contributions are extinguished;

(Replaced A.11/1985.)

- (l) any amount paid by way of annuity during the year of assessment by any taxpayer —
- (i) to a former employee who has retired from the taxpayer's employ on grounds of old age, ill-health or infirmity; or
 - (ii) to any person who is dependent for his maintenance upon a former employee or where such former employee is deceased, was so dependent immediately prior to his death:

Provided that such deduction shall not exceed in respect of the person so dependant on any one retired or deceased employee the sum of twelve thousand Emalangeni; (Amended A.7/1989; A.5/2004.)

(Replaced A.11/1985.)

- (m) in respect of income from mining operations an amount to be ascertained under section 16 in lieu of the allowances in paragraphs (c), (e), (f), (g), and (n);

(Replaced A.11/1985; A.9/1988.)

- (n) an allowance in respect of any premium or consideration the nature of a premium paid by any taxpayer for the right of use or occupation of land or buildings, or for the right of use of any plant or machinery, or of any patent, design, trade mark or copyright or any other property which, in the opinion of the Commissioner, is of a similar nature, if the property is used or occupied for the production of income or income is derived therefrom:

Provided that —

- (i) such allowance shall not exceed for any one year such portion of the amount of the premium or consideration so paid as is equal to such amount divided by the number of years for which the taxpayer is entitled to the use or occupation, or one twenty-fifth of such amount, whichever is the greater; and
- (ii) if the taxpayer is entitled to such use or occupation for an indefinite period he shall be deemed, for the purposes of this paragraph, to be entitled to such use or occupation for such period as, in the opinion of the Commissioner, represents the probable duration of such use or occupation;

(Replaced A.11/1985.)

- (o) an allowance in respect of any expenditure actually incurred by the taxpayer in pursuance of an obligation to effect improvements on land or to buildings incurred under an agreement whereby the right of use or occupation of the land or buildings is granted by any other persons, if the land or buildings are used or occupied for the production of income or income is derived there-from:

Provided that —

- (i) the aggregate of the allowance under this paragraph shall not exceed any amount stipulated in the agreement as the value of the improvements or as the amount to be expended on the improvements or, if no amount is so stipulated, an amount representing, in the opinion of the Commissioner, the fair and reasonable value of the improvements;
- (ii) any such allowance shall not exceed for any one year such portion of the aggregate of the allowances under this paragraph as is equal to such aggregate divided by the number of years (calculated from the date on which the improvements are completed) for which the taxpayer is entitled to the use or occupation, or one twenty-fifth of the said aggregate, whichever is the greater; and
- (iii) if the taxpayer is entitled to such use or occupation for an indefinite period he shall be deemed, for the purpose of this paragraph to be entitled to such use or occupation for such period as, in the opinion of the Commissioner, represents the probable duration of such use or occupation;

(Replaced A.11/1985.)

- (p) such allowance in respect of any amounts included in the taxpayer's gross income under section 7(d) or (e), as the Commissioner may deem reasonable, having regard to any special circumstances of the case, and in case of an amount so included under section 7(e) to the original period for which the right of use or occupation was granted;

(Replaced A.11/1985.)

- (q) the amount of any debts due to the taxpayer to the extent to which they are proved to the satisfaction of the Commissioner, to be bad, provided such amount is included in the current year of assessment or was included in previous years of assessment in the taxpayer's income;

(Replaced A.11/1985.)

- (r) such an allowance as may be made each year by the Commissioner in respect of such debts due to the taxpayer as he considers to be doubtful:

Provided that such allowance shall be included in the income of the taxpayer in the following year of assessment;

(Replaced A.11/1985.)

- (s) any interest payable on loans made to the taxpayer, including interest on debentures or debenture stock if the Commissioner is satisfied that the loan was employed in production of income or for the purposes of the trade of the taxpayer:

Provided that the Commissioner shall, if the rate of interest is, in his opinion excessive, determine the deduction to be allowed in accordance with such rate of interest as he considers just and reasonable in the circumstances;

(Replaced A.11/1985.)

- (t) expenditure incurred during the year of assessment by any taxpayer —

- (i) for the purpose of scientific research undertaken by him for the development of his business, if such expenditure is not of a capital nature; or
- (ii) by way of contribution to any association, institute, college or university, to be used in scientific research relating to the taxpayer's own business if the Commissioner is satisfied that such contribution will be used in such research;
- (iii) by way of contributions, grants or donations to any of his employees to assist such employee in further training in his particular professional field at the University College of Swaziland, or at any other approved University or institution for the purpose of securing a recognised qualification;
- (iv) by way of contributions to an improved scheme; (Added A.5/1988.)
- (v) by way of contributions, grants or donations not exceeding E50 000, made to a professional body, established by law, for educational or training purposes and which the Commissioner is satisfied were paid during the year of assessment; (Added A.5/1988; amended A.7/1992; A.5/2004.)

(Added A.11/1985.)

- (u) any contribution or donation or grant or gift made by any person during the year of assessment to an amateur sporting association, charity or educational institution of a public character within the definition of "exempt organisation":

Provided that the amount of deduction allowed under this paragraph for a year of assessment shall not exceed 5 per centum of the person's taxable income calculated before taking into account the deduction under this section.

For the purpose of this paragraph, the value of a gift of property is the lesser between —

- (a) the value of the property at the time of the making of the gift; or,
- (b) the consideration paid by the person for the property;

(Amended A.9/1979; replaced A.11/1985; amended A.6/1987; A.7/1989; repealed A.10/1991; replaced A.7/2007.)

- (v) any grant made to the Government for the purpose of erecting school or hospital buildings:

Provided that there shall be deducted in the year of assessment in which such grant is made such portion and in subsequent years of assessment such other portions of the residue, as the Commissioner may determine;

(Added A.11/1985.)

- (vv) any grant made to an educational institution, school or hospital which is registered with the appropriate Ministry, for undertaking capital projects in the form of buildings, fittings, furniture as well as other items associated with capital assets is needed for the development of such educational institutions or school or hospital:

Provided that there shall be deducted in the year of assessment such other portions of the residue as the Commissioner may determine;

(Added A.10/199; replaced A.5/2004.)

- (w) any amount paid by way of alimony or allowance under any judicial order or written agreement of separation or under any order of divorce:

Provided that if the law applying to any such order or agreement is the law of a country other than Swaziland the deduction under this paragraph shall be reduced by the amount of any income of the taxpayer which is not subject to tax in Swaziland;

(Added A.11/1985.)

- (x) expenditure incurred during the year of assessment by a taxpayer for appropriate training of a citizen of Swaziland, other than an associate of the employer, who is employed in a business, the income of which is subject to tax; (Added A.11/1985; replaced A.5/2004; A.11/2011.)

- (y) in addition to any amount otherwise deductible under this section, an amount equal to —

- (i) thirty-three per centum of the approved export promotion expenditure incurred during the year preceding the year of assessment by an approved company in the handicraft and cottage industry sector; or

- (ii) fifty per centum of the approved export promotion expenditure incurred during the year preceding the year of assessment by an approved trading house:

Provided that no such deduction shall be allowed unless the Commissioner has been satisfied by proof in such manner as he may prescribe that there has been an increase in the volume of export of the products of such approved company or trading house in respect of the year following the year in which the expenditure was incurred;

(Added A.7/1989; Amended A.7/1992.)

- (z) any contribution, whether in cash or in kind, made by a taxpayer and actually paid or transferred during the year of assessment to any national disaster scheme or national emergency body established by the Government:

Provided that contributions made to the National Emergency Response Council on HIV and AIDS (hereinafter referred to as "NERCHA") either for a specific project or to provide financial and material assistance to orphans and vulnerable children such contributions shall only be deductible if the project or assistance has been approved by NERCHA.

(Added A.7/1992; replaced A.5/2004; A.7/2007.)

(2) There shall be set off —

(a) any balance of assessed loss incurred by the taxpayer in any previous year which has been carried forward from the preceding year of assessment:

Provided that —

- (i) no person whose estate has been voluntarily or compulsorily sequestrated shall, unless the order of sequestration has been set aside, be entitled to carry forward any assessed loss incurred prior to the date of sequestration;
 - (ii) the balance of assessed loss shall be reduced by the amount or value of any benefit received by or accruing to a person resulting from a concession granted by or a compromise made with his creditors whereby his liabilities to them have been reduced or extinguished, provided such liabilities arose in the ordinary course of trade;
- (b) any assessed loss incurred by the taxpayer during the same year of assessment in carrying on in Swaziland any other trade either alone or in partnership with others, otherwise than as a member of a company the capital whereof is divided into shares:

Provided that —

- (i) where the property income of a taxpayer who is a natural person for a year of assessment is exceeded by deductions relating to the production of that income, the amount of the excess (referred to as an "assessed property loss") may not be deducted against any other income of the taxpayer for the year of assessment, but shall be carried forward and deducted in determining the taxable property income of the taxpayer in subsequent years of assessment until the assessed property loss is exhausted;
- (ii) where the farming income of a taxpayer who is a natural person for a year of assessment is exceeded by deductions relating to the production of that income, the amount of the excess (referred to as an "assessed farming loss") may not be deducted against any other income of the taxpayer for the year of assessment, but shall be carried forward and deducted in determining the taxable farming income of the taxpayer in subsequent years of assessment until the assessed farming loss is exhausted;
- (iii) where the business income of a taxpayer who is a natural person for a year of assessment is exceeded by deductions relating to the production of that income, the amount of the excess (referred to as an "assessed business loss") may not be deducted against any other income of the taxpayer for the year of assessment, but shall be carried forward and deducted in determining the taxable business income of the taxpayer in subsequent years of assessment until the assessed business loss is exhausted; and

(Added A.5/2004.)

(c) where a taxpayer has more than one class of loss, the reduction in paragraph (a)(ii) shall be applied rateably to each class of loss.(Added A.5/2004.)

(3) For the purpose of subsection (2) "assessed loss" means any amount, as established to the satisfaction of the Commissioner, by which the deductions admissible under this section exceed the income in respect of which they are so admissible.

(4) Subsection (1)(a) and (2)(b) shall, subject to subsection (5) hereof, *mutatis mutandis* apply in relation to any income derived by any person in the form of dividends.

(5) In respect of expenditure and losses not of a capital nature incurred by any person, other than a company, in the production of his income from dividends, the amount to be deducted under subsections (1)(a) and (2)(b) as applied by subsection (4) hereof shall be an amount which bears to the expenditure and losses, which but for this subsection would have been allowed to be deducted, the same ratio as the amount of such dividends as calculated after allowing the deduction under subsection (6) bears to the amount of such dividends as calculated before allowing such deduction.

(6) In respect of listing fees payable in the year of assessment by a company in connection with the floatation of its shares on the Swaziland Stock Exchange to a Stock Broking Company licensed under the Financial Institutions (Consolidation) Order 1975, so much of the total amount of such listing fees does not exceed one third of the total fees in the year in which such listing fees become payable and the balance over the next two years succeeding the year in which such listing fees become payable. (Replaced A.6/1991.)

14A. (Repealed A.5/2004.)

14bis. Prohibition of a double deduction.

Where an amount qualifies or has qualified for a deduction under more than one provision of this Order or qualifies for rebate under section 8, a deduction in respect of such amount or any portion thereof shall not be allowed more than once in the determination of taxable income of any person. (Added A.5/2004.)

15. Deductions not allowable.

- (1) A deduction shall not be allowed for —
- (a) any expenditure or loss actually incurred by a taxpayer to the extent to which it is of a domestic or private nature;
 - (b) except as otherwise provided in this Order, any expenditure or loss of a capital nature;
 - (c) any expenditure or loss which is recoverable under any insurance contract or indemnity;
 - (d) any income carried to a reserve fund or capitalised in any way;
 - (e) normal tax or levy and any interest or penalty payable in consequence of the late payment of any tax or levy payable under any Act administered by the Commissioner;
 - (f) any expenditure incurred in respect of any amounts received or accrued which are not included in income;
 - (g) as regards income derived from any trade —
 - (i) any money to the extent to which such money was not laid out or expended for the purpose of trade;
 - (ii) the rent or value or cost of repairs to any premises not occupied for the purposes of trade, or of any dwelling-house or domestic premises except such part thereof as may be occupied for such purposes;

- (iii) any interest which might have been made on any capital employed in trade.
- (h) except in the case of a depreciation or amortisation deduction, an amount that is included in the cost base of an asset;
- (i) a fine or similar penalty paid to a government for breach of any law;
- (j) the cost of a gift made directly or indirectly to a natural person where the gift is not included in the income of a natural person subject to tax.

(2) In this section, expenditure of a domestic or private nature actually incurred by a taxpayer include —

- (a) the cost incurred in the maintenance of the taxpayer and the family or residence of the taxpayer;
- (b) the cost of commuting between the residence and work of a taxpayer;
- (c) the cost of clothing worn to work, except clothing which is not suitable for wearing outside of work;
- (d) the cost of education not directly relevant to the employment or business of the taxpayer;
- (e) except as otherwise provided in this Order, the cost of education leading to a degree or diploma, whether or not is directly relevant to the employment or business of the taxpayer.

(Amended A.4/2008; replaced A.11/2011.)

16. Calculation of capital expenditure allowance in connection with mining operations.

(1) Excepting in cases where the taxpayer and the Government have, in writing, agreed otherwise, the amount to be deducted each year, under section 14(1)(m) in respect of income from mining operations, shall be the capital expenditure incurred in the year of assessment after subtracting therefrom any recoupments received during the year from capital expenditure (irrespective of the date when such capital expenditure was originally incurred).

(2) If separate and distinct mining operations are carried on in mines that are not contiguous, the allowance for capital expenditure shall be computed separately for each mine.

(3) The amount of capital expenditure determined under subsection (1) in respect of any year of assessment in relation to any one mine shall not exceed the taxable income (as determined before the deduction of any amount allowable under section 14(1)(m)) derived by the taxpayer from mining on that mine and any amount by which such capital expenditure would, but for the provisions of this subsection have exceeded such taxable income as so determined, shall be carried forward and be deemed to be an amount of capital expenditure incurred during the next succeeding year of assessment in respect of that mine.

(4) For the purposes of this section and section 17 "capital expenditure" means expenditure on —

- (a) shaft sinking, building, works or equipment including any renewals or replacements of equipment;
- (b) development, general administration and management (including any interest payable on loans utilised for mining purposes) prior to the commencement of production or during any period of non-production but excluding the cost of acquiring mineral rights;
- (c) "expenditure" means net expenditure after taking into account any rebates, recoupments or returns of expenditure;

(d) "expenditure on shaft sinking" includes the expenditure on sumps, pump chambers, stations and/or bins, accessory to a shaft;

(5) Subsections (1) to (4) are deemed to have come into effect from 1st July, 1983.

(Replaced A.9/1988.)

17. Calculation of capital expenditure on change of ownership of a mining property.

(1) If any change of ownership in mining property takes place the Commissioner shall allow the effective value to the new owner, at the time the change of ownership takes place, of the preliminary surveys, boreholes, shafts, development and equipment included in the assets passing by such change of ownership to rank as capital expenditure for redemption by such new owner:

Provided that if, in a case in which consideration is given, the effective value of the assets so passing exceeds the consideration, the amount allowed to rank for redemption by the new owner shall be such proportion of the consideration as such effective values of the preliminary surveys, boreholes, shafts, development and equipment bears to the effective value of all the assets passing.

(2) The amount allowed to rank as capital expenditure for redemption by the new owner shall for the purposes of section 7(g) be deemed to be a recoupment of capital expenditure by the person from whom ownership was acquired.

(3) If the value of the consideration given or of the property passing if no consideration is given is in dispute, the value shall be fixed by the Commissioner if the new owner consents thereto, and failing such consent the provisions of section 4(f) and (g) of the Transfer Duty Act, No. 8 of 1902 shall *mutatis mutandis* apply.

(4) The effective value of the assets passing as at the time the change of ownership takes place shall be determined by the Director of Geological Survey and Mines.

18. (Repealed A.5/2004.)

19. Income of beneficiaries and estates of deceased persons.

(1) Any income received by or accrued to or in favour of any person as the executor of a deceased person and any amount so received or accrued which would have been income in the hands of the deceased person had it been received by or accrued to or in favour of such deceased person during his lifetime, shall, to the extent that the Commissioner is satisfied that such income or amount has been derived for the immediate or future benefit of any ascertained heir or legatee of such deceased person, be deemed to be income received by or accrued to such heir or legatee, and shall, to the extent that the Commissioner is not so satisfied, be deemed to be income of the estate of such deceased person.

(2) So much of the amount of any expenditure incurred by or on behalf of the estate of any deceased person during any year of assessment as in the opinion of the Commissioner relates to any amount of income deemed to be income received by or accrued to an heir or legatee of such deceased person in terms of subsection (1) shall —

(a) not be taken into account in the determination of the taxable income of such estate; and

(b) be deemed to be expenditure incurred by such heir or legatee during such year, and shall, to the extent that the deduction of expenditure or the nature of the expenditure in question is authorised by this Order, be taken into account in the determination of the taxable income of such heir or legatee.

(3) Nothing in subsection (1) shall be construed as imposing liability for tax in respect of the same amount both in the hands of the estate or heir or legatee of a deceased person and in the hands of such deceased person.

(4) The decision of the Commissioner in the exercise of his discretion under sub-section (1) or (2) shall be subject to objection and appeal.

Date of commencement of section 19: 12th July, 1985. (L.N.80/1985.)

19bis. Income of trusts and beneficiaries.

(1) Any income received by or accrued to or in favour of any person during the year of assessment in his capacity as a trustee of a trust, shall to the extent that such income has been derived for the immediate or future benefit of any ascertained beneficiary with a vested right to such income be included in the gross income of the beneficiary.

(2) Subsection (1) does not apply to —

- (a) income which has been subject to withholding tax on payment into the trust and, if it had been received by or accrued directly to the beneficiary, the withholding tax would be a final tax;
- (b) an incapacitated person's trust, in case subsection (5) applies; or
- (c) a beneficiary who is above 60 years.

(3) Where a beneficiary has acquired a vested right to any income referred to in subsection (1) as a result of the exercise by the trustee of a discretion vested in the trustee under a deed of trust, arrangement, or will of a deceased person, such income is deemed to have been derived for the benefit of a beneficiary.

(4) A beneficiary shall be allowed a deduction in accordance with this Order for any expenditure or losses incurred by the trustee in deriving the income included in the gross income of the beneficiary under subsection (1).

(5) A trustee is liable for tax on the taxable income of a trust.

(6) The taxable income of a trust is so much of the income of the trust as is not included in the gross income of a beneficiary under subsection (1) or exempted under subsection (2)(a), less all deductions allowed in accordance with this Order for expenditure or losses incurred in deriving that income.

(7) Trustees are jointly and severally liable for a tax liability arising in respect of taxable income of a trust that is not satisfied from trust assets; but any trustee required to meet such liability is entitled to a contribution from each of the other trustees.

(Added A.7/2007.)

20. Hire purchase or other instalment sale agreements.

If any taxpayer has entered into any agreement with any other person in respect of any property the effect of which is that, in the case of movable property, the ownership shall pass, or, in the case of immovable property, transfer shall be passed, from the taxpayer to such other person, upon or after the receipt by the taxpayer of the whole or a certain portion of the amount payable to the taxpayer under the agreement, the whole of such amount shall, for the purpose of this Order, be deemed to have accrued to the taxpayer on the day on which the agreement was entered into:

Provided that the Commissioner, taking into consideration any allowance he has made under section 14(1)(s), may make such further allowance, as under the special circumstances of the trade of the taxpayer seems to him reasonable, in respect of all amounts which are deemed to have accrued under such agreements but which have not been received at the close of the taxpayer's accounting period:

Provided further that any allowance so made shall be included as income in his returns for the following year of assessment and shall form part of the income of the taxpayer.

20bis. Finance leases.

(1) Where a lessor leases property to a lessee under a finance lease, for all purposes of this Order —

- (a) the lessee is treated as the owner of the property; and
- (b) the lessor is treated as having made a loan to the lessee, in respect of which the payments of interest and principal are made equal in amount to the rental payable by the lessee.

(2) The interest component of each payment under the loan is considered as interest expense for the lessee and interest income for the lessor.

(3) A lease of property is a finance lease if—

- (a) the lease transfers substantially all the risks and rewards to ownership of an asset; or
- (b) the lessee has an option to purchase the property for a fixed or determinable price at the expiration of the lease.

(4) A finance lease entered into before the commencement of this section, which has been dealt with for purposes of the determination of taxable income other than in accordance with the provisions of subsection (1), shall be dealt with for purposes of determining taxable income in each subsequent year of assessment, on the same basis as applied in the previous years of assessment in respect of that lease until the expiry of the term of the lease.

(5) Any amount received or accrued arising from the disposal of an asset which was acquired in terms of a lease which lease has been dealt with for purposes of the determination of taxable income other than in accordance with the provisions of subsection (1), shall be included into taxable income.

(Added A.5/2004.)

PART III NON-RESIDENT TAX

DIVISION I SHAREHOLDERS

21. Levy of non-resident shareholders tax.

(1) There shall be charged, levied and paid a tax (hereinafter referred to as a non-resident shareholders tax) in respect of the amounts specified in section 22.

(2) The rate of the tax shall be fifteen per centum of the amount of any dividend:

Provided that in the event of such dividend being paid or payable to a company incorporated or registered as such in Botswana, Lesotho, Namibia or the Republic of South Africa and provided that it is neither a subsidiary nor a branch of a company incorporated or registered outside any of such countries, the rate of tax for which such first-mentioned company shall be liable shall be twelve and one half per centum. (Amended A.6/2000.)

22. Income subject to tax.

(1) The non-resident shareholders tax shall be paid in respect of the amount of any dividend if the shareholder to whom the dividend has been paid or is payable is —

- (a) a person, other than a company, not ordinarily resident or carrying on business in Swaziland;
- (b) the estate of any deceased person referred to in section 12(1)(e)(ii) and such dividend is in terms thereof exempt from normal tax;
- (c) a company which has its place of effective management outside Swaziland; (Replaced A.7/1993.)
- (d) the holder of bearer scrip, irrespective of whether he is resident within or outside Swaziland;

and was a shareholder as at the date of declaration of the dividend or, if some date other than the date of declaration of the dividend is specified as the date at which a shareholder is required to be registered to be entitled to the dividend, as at such other date.

- (2) The non-resident shareholders tax shall not be payable in respect of —
 - (a) dividends 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; (Amended A.6/2000.)
 - (b) dividends accruing to any ecclesiastical, charitable or educational institution of a public character, whether or not supported wholly or partly by grants from public revenue.
 - (c) dividends accruing to a non-resident shareholder, which the Government has, in terms of a written undertaking, exempted from tax to the extent specified in such undertaking. (Added A.9/1988.)

23. Person liable for tax.

The person liable for the tax shall be the person to whom or in whose favour the amounts described in section 22 accrue.

24. Recovery of tax.

(1) Notwithstanding section 23, the tax shall be payable by and recoverable from the persons set out hereunder, namely —

- (a) in the case of dividends distributable by any company to any person whose address appearing in the share register of the company is outside Swaziland or to any holder of bearer scrip, the company by which the dividend is declared; or,
- (b) in the case of dividends received by any agent in Swaziland on behalf of any shareholder referred to in section 22, the agent so receiving the dividend.

(2) For the purpose of this section, a person shall be deemed to be the agent of a shareholder referred to in section 22 and to have received a dividend on behalf of such shareholder if the address of such person appears in the share register of the company as the registered address of the shareholder and the dividend warrant or cheque in payment of the dividend distributable to the shareholder is delivered at that address:

Provided that any person so deemed to be the agent of any shareholder shall, as regards such shareholder and in respect of any income received by or accruing to him or in his favour, have and exercise all the powers, duties and responsibilities of an agent for a taxpayer absent from Swaziland.

(3) Nothing in subsection (2) shall be construed as relieving any company by which a dividend is declared from the duties and responsibilities imposed upon it by section 48 as the agent of any shareholder or member absent from Swaziland.

(4) Any tax payable in terms of this section by any company or agent for any share-holder may be recovered by such company or such agent, as the case may be, from the shareholder concerned.

25. Determination of tax if company operates outside Swaziland.

If any amount specified in section 22 has been received from a company which derives income from sources within and outside Swaziland, the tax payable in respect of that amount shall be calculated upon an amount which bears to that amount the same ratio as the sum of the net profits of the company derived from sources within Swaziland bears to the total sum of its net profits derived from all sources as last determined by the Commissioner for the purposes of this Act, or, in cases in which there has been no previous determination by the Commissioner, as estimated by the Commissioner according to such information as is available to him. (Replaced A.11/1982.)

26. Date of payment of tax.

(1) The company which, in terms of section 24(1)(a), is required to pay the tax on any dividend shall pay the Commissioner the tax due on such dividend within thirty days of the date on which the dividend is payable, or within such further period as may be approved by the Commissioner, and shall furnish him with a return showing the names and addresses of the persons (with the amount in each case) to whom the dividend accrues and, in the case of dividends payable in respect of bearer scrip, the total dividends distributable to holders of such scrip.

(2) The agent in Swaziland by whom the tax is payable in terms of section 24(1)(b) shall, within thirty days of the date of delivery of the dividend warrant or cheque in payment of the dividend at his address, or within such further period as may be approved by the Commissioner, pay the tax to the Commissioner and furnish him with a return showing the amount of the dividend and the name and address of the person to whom it has accrued.

(3) Subsections (1) and (2) shall not prevent the Commissioner from recovering any tax from the person liable for such tax and which has not been paid and which the Commissioner may ascertain to be due, after the dates specified therein.

DIVISION II INTEREST

27. Levy of non-residents tax on interest.

If any amount of interest accrues to or in favour of —

- (a) any person, other than a company, not ordinarily resident in Swaziland;
- (b) the estate of any deceased person who, at the date of his death, was not ordinarily resident in Swaziland; or
- (c) a company not registered in Swaziland;

and the debtor in respect of such amount is ordinarily resident or carries on business in Swazi-land, there shall be levied and paid a tax (in this Part referred to as non-residents tax on interest) equal to ten per centum of such amount.

28. Application of provisions.

For the purpose of this Part —

- (a) if interest is payable or is credited to any person having an address outside Swaziland such interest shall, until the contrary is proved, be deemed to have accrued to any person, estate or company, as the case may be, referred to in section 27;

- (b) if the debtor in respect of any amount of interest referred to in section 27 is the estate of any deceased person, such estate shall be deemed to be ordinarily resident or to be carrying on business in Swaziland, if such person, at the date of his death, was ordinarily resident or was carrying on business in Swaziland;
- (c) if the debtor in respect of any amount of interest referred to in section 27 is a company, such company shall be deemed to be ordinarily resident in Swaziland if it is registered, managed or controlled in Swaziland; and
- (d) any amount accruing to any shareholder in a building society out of the profits of such society shall be deemed to be interest.

29. Exemptions.

The non-residents tax on interest shall not be payable in respect of —

- (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; (Amended A.6/2000.)
- (b) interest accruing to any ecclesiastical, charitable or educational institution of a public character, whether or not supported wholly or partly by grants from public revenue;
- (c) any interest accruing from a debtor to any person during any period of twelve months ending on the thirtieth day of June in any calendar year which together with any other amounts of interest accruing from the debtor to such person during such period, amounts to twenty Emalangeneni or less;
- (d) interest on any bill of exchange or on any promissory note to the extent that such interest is payable in respect of the purchase price of goods imported into Swaziland if such bill or note is handled through a recognised banking institution registered under the Financial Institutions Order, 1973 or any similar banking institutions approved by the Commissioner and such bank or institution has certified on such bill or note that a bill of lading or other document covering the importation of such goods has been exhibited to it;
- (e) (Amended A.9/1979; deleted A.6/2000.)
- (f) the interest on any loan which the Government has in terms of a written undertaking exempted from tax to the extent specified in such undertaking. (Amended A.9/1979.)
- (g) (Added A.9/1979; deleted A.6/2000.)

30. Persons liable for non-residents tax on interest.

The person liable for the non-residents tax on interest shall be the person, estate, or company to whom or in whose favour, the amount of interest referred to in section 27 accrues.

31. Deduction or withholding of non-residents tax on interest.

(1) Notwithstanding section 30, any debtor, in respect of any amount of interest referred to in section 30 for any person who receives payment of such amount on behalf of or in trust for the person to whom such amount accrues, shall, on behalf of the person, estate or company liable for the non-residents tax on interest, pay the Commissioner the amount of such tax payable in respect of such amount of interest under section 30:

Provided that if the Commissioner is satisfied that the tax payment required to be made in terms of this paragraph in respect of such amount of interest has been or will be made by any person, the Commissioner may direct that any other person who

is, in terms of this paragraph, required to make a tax payment in respect of such amount of interest, shall be relieved of the duty to make such tax payment.

(2) Any person making a payment to the Commissioner in terms of subsection (1) shall, notwithstanding any agreement to the contrary, be entitled to deduct or withhold the amount of such payment from the amount of interest which he is liable to pay to such other person, or to recover the amount so paid from such other person, or to retain out of any money that may be in his possession or may come to him, as the agent of such other person, an amount equal to the amount of such payment.

(3) A taxpayer on whose behalf a payment has been made to the Commissioner in terms of subsection (1) shall not be entitled to recover the amount of such payment from the person, who, under subsection (2) deducts, withholds or retains the amount of such payment, and shall, for the purpose of this Order, be deemed to have received the amount so deducted, withheld or retained.

(4) Every person who is required to make a payment to the Commissioner in terms of subsection (1) shall be personally liable for making such payment, and the amount so payable shall, for the purposes of this section, be deemed to be a tax due by such person and shall be recoverable from him in the manner prescribed in section 61.

32. When non-residents tax on interest is payable.

(1) The non-residents tax on interest shall be payable within fourteen days after the date of accrual of the amount of interest referred to in section 27 or within such further time as the Commissioner may approve.

(2) The person paying the tax shall, at the time of payment, submit to the Commissioner a return showing the names and addresses of the persons to whom the interest accrues and the gross amount of interest payable to each.

(3) If the income of any person subject to normal tax includes an amount of interest referred to in section 27 the non-residents tax on interest paid shall be deducted from the amount of normal tax payable after any reductions provided for in section 8:

Provided that the deduction under this section shall not exceed so much of such normal tax as the Commissioner determines to be attributable to the inclusion of such amount in the income of such person.

DIVISION III ENTERTAINERS AND SPORTSMEN (Added A.11/1985.)

32A. Levy of non-residents' tax on entertainment and sports.

(1) The remuneration of a public entertainer or sportsman not ordinarily resident in Swaziland, and the gross receipts of any theatrical, musical, sports or other group of public entertainers or sportsmen from outside Swaziland derived from any performance in Swaziland (whether such performance is conducted for the joint account of all or some of the members of the group or not) shall be charged to tax at the rate of fifteen per cent of the gross remuneration or gross receipts received or accrued to such persons:

Provided that where tax is imposed under this section on any group, but subject to the proviso to subsection (5), the individual members shall not be liable to tax.

(2) Any person who makes any payment to any other person referred to in subsection (1) shall deduct non-residents' entertainers tax at the rate of fifteen per cent of the gross amount and shall issue a statement to such other person showing the gross amount of payment due and the rate and amount of tax deducted.

(3) Every person who makes a deduction in accordance with subsection (2) shall, within fifteen days from the date of payment, as provided for in subsection (1), remit to the Commissioner, the amount of tax so deducted.

(4) Where any person who is required by subsection (2) to deduct tax in accordance with that subsection from any payment made by him, fails to deduct such tax or having deducted such tax fails to remit such tax to the Commissioner, as required by subsection (3), he shall be personally liable to pay to the Commissioner the amount of tax as if it was tax due and payable by him under Part VII of this Order.

(5) Where a group of theatrical, musical, sporting or other group of public entertainers from outside Swaziland perform in Swaziland without the intervention of a local agent, promoter or any other person, every member of the group shall jointly and severally be liable for the payment of the tax due under subsection (1) and tax shall be remitted to the Commissioner within a period not exceeding seven days following every performance:

Provided that the Commissioner may recover the tax due from any individual member of the group at any time where circumstances warrant it.

DIVISION IV
ROYALTY AND MANAGEMENT CHARGE

(Added A.6/2000.)

32B. Levying of tax Royalties and Management Charge paid to non-resident persons.

(1) It is provided that —

- (a) there shall, separately and cumulatively 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:

Provided that the tax on royalties shall not be payable in respect of royalties accruing to any ecclesiastical, charitable or educational institution of a public character, whether or not supported wholly or partly by grants from public revenue. (Added A.5/2004.)

(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 may be, 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 may be, 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, 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; and

- (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.
- (c) (Added A.6/2000; repealed A.5/2004.)

DIVISION V
INTEREST PAID TO RESIDENTS
(Added A.6/2000; replaced A.11/2011.)

32C. Withholding tax from payments of interest made to persons ordinarily resident in Swaziland.

(1) Every financial institution, unit trust company, building society, mutual loan association or co-operative society, which makes a payment of interest or dividend on society shares to any person, other than a company, a person or institution exempt in terms of sections 12(1)(a)(viii) and (ix), ordinarily resident in Swaziland shall withhold tax at the rate of ten per cent of the gross amount of the payment.

(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 within fifteen days from the end of the month in which the interest was paid remit to the Commissioner the amount of tax so withheld.

(4) 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 person,

and such record shall be kept for the period specified under section 35*bis* for examination by the Commissioner as and when required.

(5) The deduction of tax under this section shall not relieve the 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.

(6) A person who fails to withhold any tax under subsection (1) or having withheld such tax fails to remit to the Commissioner, as required under subsection (3), shall, in addition to any penalty for which he may be liable under section 40*bis* or section 66, be personally liable to pay the Commissioner that amount of tax as if it were tax due and payable by such person under Part VII of this Order.

(Repealed A.4/2008; replaced A.11/2011.)

DIVISION VI
DIVIDENDS PAID TO RESIDENTS

32D. Levying of tax on dividends paid to resident persons.

(1) There shall be charged, levied and paid a tax in respect of the amount of any dividend if the shareholder to whom the dividend has been paid or is payable is a person, other than a company, ordinarily resident or carrying on business in Swaziland.

(2) Every person who being a resident company makes any payment of dividend to a person ordinarily resident or carrying on business in Swaziland shall withhold tax at the rate of ten percent of the gross amount of the dividend.

(3) The tax withheld under subsection (2) shall be a final tax and —

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

(4) Every person who has withheld any tax in accordance with subsection (2) shall, within fifteen days from the date of payment of such dividend remit to the Commissioner, the amount of tax so withheld.

(5) Every person making payment to which this section applies shall maintain a record showing in relation to each dividend —

- (a) the payment of dividend 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) Where any person fails to withhold any tax in accordance with subsection (2) or having withheld such tax fails to remit such tax to the Commissioner, as required by subsection (4), 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 such person under Part VII of this Order.

(7) 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.

(8) (Deleted A.5/2004.)

(Added K.O-I-C. 2/2003.)

DIVISION VII BRANCH PROFITS TAX

32E. Levy of branch profits tax on repatriated income.

(1) There shall be charged, in addition to any normal tax chargeable under this Order, a tax to be known as branch profits tax at the rate of fifteen percent on the deemed repatriated income of the branch of a non-resident company carrying on business in Swaziland for any year of assessment:

Provided that in the event of such branch profits tax being paid or payable to a company incorporated or registered as such in a neighbouring country and that it is neither a subsidiary nor a branch of a company incorporated or registered outside a neighbouring country, the rate of tax for which such first mentioned company shall be liable, shall be twelve and one-half percent.

(2) The deemed repatriated income of a branch for a year of assessment is calculated according to the formula:

$$A - B$$

Where:

A is the taxable income of the branch for the year of assessment; and

B is the Swaziland tax payable on that taxable income of the branch for the year of assessment.

(3) The tax imposed under subsection (1) is treated as normal tax for all purposes of the Order.

(4) In this section, "neighbouring country" means Botswana, Lesotho, Mozambique, Namibia or the Republic of South Africa.

(Added K.O-I-C. 2/2003.)

DIVISION VIII RENTAL PAYMENTS

32F. Withholding tax from rental payments

(1) Every person, other than a natural person, who —

- (a) makes a payment to a lessor (excepting a company) for the use or occupation or the right of use or occupation of land or buildings; or
- (b) collects such rent for or on behalf of the lessor,

shall withhold tax at the rate of ten percent of the gross amount.

(2) The tax withheld under subsection (1) shall be on account of the liability to tax of the lessor on the profits derived from the letting of the property.

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

- (a) within fifteen days from the date of payment remit to the Commissioner the amount of tax so withheld; and
- (b) furnish within thirty days after the end of the year of assessment to the person to whom the payment is made a certificate, showing the amount of the payment made and the tax withheld during the year of assessment.

(4) Every person making any payment (of rent) to which this section applies shall maintain a record showing in relation to each year of assessment —

- (a) the payment of rent made to the lessor; and
- (b) the tax withheld from such payment,

and such record shall be kept for the period specified under section 35*bis*(3) for examination by the Commissioner as and when required.

(5) The deduction of tax under this section shall not relieve the lessor 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.

(6) A person who fails to withhold any tax under subsection (1) or having withheld such tax fails to remit such tax to the Commissioner, as required under subsection (3)(a), 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 such person under Part VII of this Order.

(Added A.7/2007.)

DIVISION IX PAYMENTS TO BENEFICIARIES OF TRUSTS

32G. Withholding tax on payment to beneficiaries of trusts

(1) Every trustee who makes any payment from trust income to a beneficiary who has a vested right to such income shall withhold tax at the rate of thirty-three percent of the gross amount.

(2) The tax withheld under subsection (1) shall be on account of the liability to tax of such beneficiary on the income derived from the trust.

- (3) Every trustee who has withheld any tax under subsection (1) shall —
- (a) within fifteen days from the date of payment remit to the Commissioner the amount of tax so withheld; and
 - (b) furnish within thirty days after the end of the year of assessment to the beneficiary to whom the payment is made a certificate, showing the amount of the payment made and the tax withheld during the year of assessment.

(4) Every trustee making any payment to which this section applies shall maintain a record showing in relation to each year of assessment —

- (a) the payment made to each beneficiary; and
- (b) the tax withheld from such payment,

and such record shall be kept for the period specified under section 35*bis*(3) for examination by the Commissioner as and when required.

(5) The deduction of tax under this section shall not relieve a beneficiary 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.

(6) A trustee who fails to withhold any tax under subsection (1) or having withheld such tax fails to remit such tax to the Commissioner, as required under subsection (3)(a), 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 such person under Part VII of this Order.

(Added A.7/2007.)

PART IV RETURNS AND ASSESSMENTS

33. Notice requiring returns and manner of furnishing returns.

(1) The Commissioner shall annually give public notice that all persons liable to taxation, whether personally or in any representative capacity, are required to furnish within thirty days after the date of such notice or within such further time as the Commissioner may for good cause allow, returns for assessment of the tax.

(2) Such notice shall state the places at which the approved forms may be obtained and it shall be the duty of all such persons and all persons required by this Order to furnish such returns, to apply for the approved forms of returns, and any such person failing to furnish such return shall not be relieved from any penalty by reason only of his having received no notice to furnish such return, or of the approved form not having been delivered to him; but the Commissioner may, if he deems it so advisable, cause forms to be delivered or sent by post to any person.

(3) For the purposes of subsection (1), any person liable to taxation shall be deemed to include —

- (i) any person, other than a company, whose gross income for the year of assessment under charge consisted of or included remuneration (as defined in paragraph 1 of the Second Schedule) exceeding in total an amount to be stated by the Commissioner in the notice referred to in subsection (1);
- (ii) any person, other than a company, whose gross income, for the year of assessment under charge, consisted of gross income other than remuneration (as defined in paragraph 1 of the Second Schedule) if such gross income exceeded an amount to be stated by the Commissioner in the said notice;
- (iii) any company;

- (iv) any person required by the Commissioner in writing to render a return of income in respect of the year of assessment under charge.

(Replaced A.11/1985.)

(4) If in any case the Commissioner has reason to believe that any tax payable may not be recovered, he may prior to the issue of any such annual notice, require any person by notice in writing to render interim accounts for any period he may designate in such notice and may proceed to make an assessment in respect of that period.

(5) Every person shall, on publication of the annual notice or on receipt of such written notice, prepare and deliver in the approved manner within the period mentioned in such notice to the person appointed to receive it, a return in the approved form signed by the taxpayer or by his duly authorised agent in that behalf, giving the particulars required and all other details in relation thereto which may be required.

(6) Every person shall, on receipt of such written notice, prepare and deliver in the approved manner within the period mentioned in such notice to the person appointed to receive it, a return in the approved form signed by the taxpayer or by his duly authorised agent in that behalf giving the particulars required and such other details in relation thereto as may be required.

(7) Any return furnished as contemplated in this section shall be signed by the taxpayer or by his agent duly authorized in that behalf, and any person signing any such return shall be deemed for all purposes in connection with this Order to be cognisant of all statements made therein. (Replaced A.6/1994.)

(8) Any return made or purporting to be made or signed by or on behalf of any person for the purposes of this Order shall be deemed to be duly made and signed by the person affected unless such person proves that such return was not made or signed by him or on his behalf.

(9) If any person fails to make a return, the Commissioner may appoint a person to make a return on behalf of such person, and the return made by the person so appointed shall for all purposes of this Order be deemed to be the return of the person liable to make the same. (Replaced A.6/1994.)

(10) The returns furnished by or on behalf of every person required to furnish returns under this Order shall contain such particulars, be in such form and be furnished to the Commissioner at such time as may be required by the Commissioner.

(11) The Commissioner may, when and as often as he thinks necessary require any person to make fuller or further returns respecting any matter of which a return is required or prescribed by this Order.

(12) Notwithstanding any other law any return required to be furnished under this Order shall be delivered at or sent by post to the prescribed address, and shall, if marked with the words "Income Tax" and "On His Majesty's Service", be carried and delivered free of postal or other charges by the Post Office.

(13) (Deleted A.11/2011.)

Provided that if it is established to the satisfaction of the Commissioner that the income of a person cannot be conveniently returned for such period, he may accept returns made up to a date agreed by him, but any such return shall be deemed for all purposes of this Order to be a return for the period covered by the year of assessment under charge:

(14) If any person when called upon to furnish a return of income under this Order is unable to furnish such return, the Commissioner may accept a return of estimated income for assessment and such assessment shall be adjusted by the Commissioner when an actual return of income is furnished.

(15) Persons carrying on any business in partnership shall be liable to make a joint return as partners in respect of such business together with such particulars as may from time to time be required and each such partner shall be separately and

individually liable for the rendering of the joint return but they shall be liable to tax only in their separate individual capacities.

(16) (Amended A.11/1985; A.6/1994; repealed A.5/2004.)

33bis. Cases where return of income not required.

Unless expressly requested by the Commissioner by service of a notice in writing or by public notice given in terms of section 33, no return of income shall be required from a natural person —

- (a) where the income tax payable on taxable income by the natural person for the year of assessment is equal to or less than the amount of the personal tax rebate allowed to such person; or
- (b) where gross income for the year of assessment, other than income subject to a final withholding tax under this Order, consists exclusively of remuneration derived from a single employer upon which tax has been withheld in accordance with section 58.

(2) Prior to the expiry of three years after such year of assessment, a person referred to in this section may apply to the Commissioner to be assessed, whether in connection with any claim for a refund of tax overpaid or otherwise, or the Commissioner considers an assessment to be necessary so as to arrive at the correct amount of the tax to be charged upon or to be payable by that person for such a year of assessment.

(Added A.6/1994; amended A.4/2008.)

33ter. Substituted year of assessment.

(1) The Commissioner may, on written application by a company, grant permission to the company to use as its year of assessment (referred to as a "substituted year of assessment") a twelve month period other than the normal year of assessment, provided the company has shown a compelling need to do so and subject to any conditions prescribed by the Commissioner.

(2) The Commissioner may, by notice in writing, withdraw the permission to use a substituted year of assessment granted to a company under subsection (1).

(3) A notice issued by the Commissioner under subsection (2) takes effect at the end of the taxpayer's substituted year of assessment in which the notice is issued.

(4) Where the year of assessment for a taxpayer changes as a result of subsection (1) or (2), the period between the last full year of assessment prior to the change and the date on which the changed year of assessment commences is treated as a separate year of assessment, to be known as the "transitional year of assessment".

(5) In this Order, a reference to a particular year of assessment includes a substituted year of assessment or a transitional year of assessment commencing during the year of assessment.

(6) In this section, "normal year of assessment" means the period of twelve months ending on 30 June.

(Added A.11/2011.)

33quat. Registration as a taxpayer.

(1) Every person who at any time becomes liable for any normal tax or who becomes liable to submit any return contemplated in section 33 must, within sixty days after so becoming a taxpayer, apply to the Commissioner to be registered as a taxpayer.

(2) If a person's address which is normally used by the Commissioner for any correspondence with that taxpayer at any time changes, that person must, within sixty

days after the change, inform the Commissioner of the new address for correspondence.

(3) Subsection (1) does not apply in respect of any person whose income, not exceeding E120,000 in any year of assessment, is derived solely from employment which subject to the final deduction system under the Second Schedule.

(Added A.11/2011.)

34. Duty of persons submitting accounts in support of returns or preparing accounts for others.

(1) If any person in support of any return furnished by him under this Order, submits any balance sheet, statement of assets and liabilities or account prepared by any other person, he shall, if the Commissioner so requires, submit a certificate or statement by such other person recording the extent of the examination by such other person of the books of account and of the documents from which the books of account were written up and recording in so far as may be ascertained by such examination, whether or not the entries in such books and documents disclose the true nature of any transaction, receipt, accrual, payment or debit.

(2) Any person who has prepared any balance sheet, statement of assets and liabilities or account for any other person shall at the request of such other person furnish him with the certificate or statement required under subsection (1).

34bis. Financial statements to be audited by a registered auditor.

(1) Where a taxpayer's financial statements are required to be audited in terms of the Companies Act or in terms of the taxpayer's constitution, then such financial statements submitted in support of any return of income or provisional return of income shall be deemed not to have been submitted unless the financial statements have been audited by a registered auditor.

(2) For the purpose of this section, registered auditor, shall have the meaning assigned to it in the Institute of Accountants Act of 1985.

(Added A.6/1994.)

34ter. Inquiry before assessment.

(1) For the purpose of making an assessment under this Order, the Commissioner may serve on any person who has made a return under section 33, a notice requiring such person, within thirty days after the date of such notice or within such further time as the Commissioner may for good cause allow, calling upon such person to —

- (i) produce such accounts or documents as the Commissioner may require;
- (ii) furnish in writing and verified in the prescribed manner information in such form on such points or matters (including a statement of assets and liabilities of the taxpayer whether included in the accounts or not) as the Commissioner may require.

(2) For the purpose of obtaining full information in respect of income or loss of a taxpayer, the Commissioner may make such enquiry as he considers necessary.

(3) The taxpayer, shall, except where the assessment has been made under section 39(1), be given an opportunity of being heard in respect of any material gathered on the basis of an enquiry under subsection (2) and proposed to be utilised for the purpose of assessment.

(Added A.6/1994.)

35. Production of documents and evidence on oath.

(1) For the purpose of obtaining full information in respect of any income of any taxpayer the Commissioner may require any person to produce for examination by the Commissioner or by any person appointed by him for such purpose at such time and place as may be appointed by the Commissioner any deeds, plans, instruments, books, accounts, trade lists, stock lists, or documents that may be deemed necessary for the purpose of this Order, and, if any such deeds, plans, instruments, books, accounts, lists or documents are not in English or siSwati, the Commissioner may by notice, in writing, require the taxpayer at the taxpayer's expense to produce at such time and place as may be appointed a translation in English or siSwati prepared and certified by a sworn translator or a person other than a sworn translator approved by the Commissioner. (Amended A.11/1985.)

(2) The Commissioner may, by written notice require any person entitled to or in receipt of any income (whether on his own behalf or as a public officer of a company or as an agent or trustee of any person), or any person whom the Commissioner may deem able to furnish information to attend at a time and place to be named by the Commissioner for the purpose of being examined on oath respecting the income of any person or any transactions or matters affecting the income of any person or any transactions or matters affecting them or any of them or any part thereof.

(3) The Commissioner shall allow any person any reasonable expenses necessarily incurred by such person in attending at the place named by the Commissioner in subsection (2).

(4) Any officer engaged in carrying out the provisions of this Order who has in relation to the affairs of a particular person been authorised thereto by the Commissioner in writing or by telegram, may for the purposes of this Order —

- (a) without any prior notice, have at all times full and free access to any premises whatsoever or place and on such premises or place search for any moneys, books, records, accounts, documents or computers; (Amended A.4/2008.)
- (b) in carrying out any such search, open or cause to be removed and opened, any article in which he suspects that any money, book, record, account or document is contained;
- (c) seize any such book, record, account or document as in his opinion may afford evidence which may be material in assessing the liability of any person for any tax;
- (d) retain any such book, record, account or document for as long as it may be required for any assessing or for any criminal or other proceedings under this Order;
- (e) make an extract or copy from any book, records, account, document or computer-stored information to which access is obtained under paragraph (a); or (Added A.4/2008.)
- (f) where a hard copy or computer disk of information stored on a computer is not provided, seize and retain the computer for as long as necessary to copy the information required. (Added A.4/2008.)

(5) The powers authorised by subsection (4) may be exercised only during ordinary business hours, unless the Commissioner determines in writing that the collection of tax is in jeopardy and that the exercise of powers outside ordinary business hours is necessary to ensure the collection of the tax. (Replaced A.4/2008.)

(6) Any officer who attempts to exercise a power under subsection (4) on behalf of the Commissioner is not entitled to enter or remain on any premises or place if, upon being requested by the occupier of the premises or place, the officer does not produce an authorisation in writing from the Commissioner to the effect that the officer is authorised to exercise that power under this section, including, in the case of an exercise outside ordinary business hours, a copy of the written determination described in subsection (5). (Inserted A.4/2008.)

(7) The owner, manager, or any other person on the premises or place entered or proposed to be entered under this section must provide all reasonable facilities and assistance for the effective exercise of power under this section. (Inserted A.4/2008.)

(8) The person to whose affairs any book, record, account or document seized under subsection (4) relates, shall be entitled to examine and make extracts therefrom during office hours under such supervision as the Commissioner may determine. (Amended A.4/2008.)

35bis. The keeping of business and other records.

(1) For the purposes of this section, the term "records" includes books of account (whether contained in a manual, mechanical, or electronic format) recording receipts or payments or income or expenditure, and also includes vouchers, ledgers, journals, bank statements, cash books, cheque books, deposit slips, paid cheques, invoices, receipts, deeds, plans, instruments, trade lists, stock lists, and such other documents as are necessary to verify the entries in any such books of account.

(2) Without limiting the generality of subsection (1) of this section the records required to be kept and retained, pursuant to subsection (3) of this section, in respect of any trade carried on during any year of assessment by any person, shall contain —

- (a) a record of the assets and liabilities of the person (in relation to that trade); and
- (b) a record of all entries from day to day of all sums of money received and expended by the person (in relation to that trade) and the matters in respect of which the receipt and expenditure takes place; and
- (c) where that trade involves dealing in goods —
 - (i) a record of goods purchased and of all goods sold in the carrying on of that trade showing the goods, and the sellers and buyers or, as the case may be, the agents of the sellers and buyers in sufficient detail to enable the goods and the sellers and buyers, and the said agents to be readily identified by the Commissioner; and all invoices relating thereto; and
 - (ii) statements (including quantities and values) of trading stock held by the person at the end of each year of assessment, and all records of stock takings from which any such statement of trading stock has been, or is to be, prepared; and
- (d) where that trade involves the provision of services, records of the services provided and all invoices relating thereto;
- (e) the charts and codes of accounts, the accounting instruction manuals, and the system and programme documentation which describes the accounting system used in each year of assessment in the carrying on of that trade; and
- (f) a fixed asset register recording all the tangible assets (excluding stock) of the business, showing the respective dates of acquisition and the cost thereof amounts of any revaluation and the dates of any disposals and the consideration thereof. (Replaced A.4/2008.)

(3) Subject to subsection (6) of this section, every person who —

- (a) carries on trade in Swaziland;
- (b) carries on any other activity (not being the carrying on of employment as an employee) in Swaziland in the production of income;
- (c) makes, holds, or disposes of, for the purpose of producing income, any investment,

shall keep in Swaziland at the place where the trade is carried on original records in the English or Siswati language (regard being had to the occupation of the person

concerned and the scale on which the trade is carried on) to enable the ascertainment readily by the Commissioner, or any other officer authorised by him in that behalf, of —

- (d) the taxable income derived by that person from, as the case may be, the carrying on of that trade, or the carrying on of that activity, or the making or holding or disposing of that investment; and
- (e) the deductions allowable in the calculating of that taxable income,

and shall retain in Swaziland all such records for a period at least five years after the end of the year of assessment to which they relate or as long as it remains material to the administration of this Order.

(4) Where a person who is required in terms of subsection (3) to retain records lodges an objection or appeal against an assessment, that person shall retain all records relevant to that objection or appeal until that assessment becomes final.

(5) The Commissioner may disallow a claim for a deduction if the taxpayer is unable without reasonable excuse to produce a receipt or other record of the transaction, or to produce evidence relating to the circumstances giving rise to the claim for deduction.

(6) This section shall not require the retention of any records —

- (a) in respect of which the Commissioner has given notice in writing that retention is not required;
- (b) of any company which has been wound up and finally dissolved.

(Added A.5/2004.)

36. Power of inspection.

(1) Notwithstanding anything contrary contained in any other provision of this Order, any officer engaged in the carrying out of the provisions of this Order relative to the affairs of a particular taxpayer, may enter any place at which a business or trade is carried on (whether such place be the principal place of the said business or trade or not) and require the taxpayer or public officer or any other person who may at that time and place be attending in any manner to or keeping in the carrying on of such business or trade to afford him —

- (a) the necessary facility to inspect such books of account or other documents as he may require and which may be available at the place;
- (b) the necessary facility to verify cash, stock or other valuable article or thing which may be found therein;
- (c) such information as he may require as to any matter which may be relevant to any proceeding under this Order.

(2) The officer acting under this section may enter any place of business or trade referred to in subsection (1) only during the hours at which such place is open for conduct of business or trade, and in the case of any other place, during normal business hours.

(3) The officer acting under this section may —

- (a) if he so deems necessary, place marks of identification on the books of account or other documents inspected by him or make or cause to be made extracts or copies therefrom;
- (b) make an inventory of any cash, stock or other valuable article or thing checked and verified by him;
- (c) record the statement of any person which may be relevant to any proceeding under the Order.

(4) Any officer exercising any power under this section shall not remove or cause to be removed from such place any books of account or other documents or any cash, stock or other valuable article or thing found therein.

(5) Any person obstructing or hindering an officer in the discharge of his duties, under this section shall be guilty of an offence under section 66(1) of the Order.

(Replaced A.11/1985; deleted A.10/1991; added A.6/1994.)

37. Duty to furnish information or returns.

(1) Every person shall, if required by the Commissioner, furnish to him, in such form and within such time as the Commissioner may require, returns showing —

- (a) the names and addresses of all or any particular class of persons employed by him, and the earnings, salary, wages, allowances or benefits or pensions, whether in money or otherwise, received by or accrued to or in favour of each such person in respect of such employment;
- (b) all amounts received by or accrued to or in favour of any person in respect of any share or interest in any business carried on by the person furnishing the return;
- (c) all moneys received by the person furnishing the return from any person for investment or on loan or on deposit with or without interest;
- (d) all interest or rent received by or accrued to or in favour of any person from the person furnishing the return or from any business carried on by the last-mentioned person in Swaziland;
- (e) all interest, rent or dividends collected for or on behalf of any person by the person furnishing the return;
- (f) all such other information in his possession with regard to the income received by or accrued to or in favour of any person as may be required by the Commissioner.

(2) In addition to the returns specified in subsection (1), every person shall, if required by the Commissioner —

- (a) furnish the Commissioner with information reflecting —
 - (i) the full name and address; and
 - (ii) in the case of —
 - (aa) any natural person, the identification number of such person;
or
 - (bb) any person other than a natural person, the tax number,in relation to the amounts received by or accrued to such person as contemplated in this section; and
- (b) supply such information and furnish such returns or such further or other returns as the Commissioner may require.

(3) Every person to whom a return or a written request for information is sent by the Commissioner shall complete the return or comply with the written request for information in accordance with the requirements of the Commissioner and shall return the completed form or furnish the information to the Commissioner at such time and place as the Commissioner may direct.

(Replaced A.5/2004.)

37bis. Compliance with certain provisions notwithstanding privilege or public interest.

Sections 34*ter*, 35, 36, 37, 38, 49 and 59B shall have effect notwithstanding anything contained in any other law to the contrary relating to privilege, confidentiality or the public interest in relation to the production of or access to documents or information or appointment of agent. (Inserted A.4/2008.)

38. Duty to furnish information on request.

Any person, whether liable for taxation under this Order or not, to whom any notice or request for information is sent by the Commissioner or by any officer acting under the authority of the Commissioner, shall comply with the terms of such notice or furnish the information so requested.

38bis. Self-assessment.

(1) Where a taxpayer has furnished a return of income for a year of assessment, the Commissioner is deemed to have made an assessment of the taxable income of the taxpayer and the tax payable on that taxable income for that year, being those respective amounts shown in the return.

(2) Where subsection (1) applies, the taxpayer's return of income is treated as a notice of an assessment served on the taxpayer by the Commissioner on the due date for furnishing of the return or on the actual date the return was furnished, whichever is later.

(3) Notwithstanding subsection (1), the Commissioner may raise an assessment under section 33 or section 39 on a taxpayer in any case in which the Commissioner considers necessary.

(4) Where the Commissioner raises an assessment in accordance with subsection (3), the Commissioner shall include with the assessment a statement of reasons as to why the Commissioner considered it necessary to make such an assessment.

(5) This section only applies to any taxpayer as declared by the Commissioner by notice published in the Gazette to be subject to this section.

(Added A.11/2011.)

39. Estimated assessments.

(1) In every case in which any taxpayer makes default in furnishing any return or information, or if the Commissioner is not satisfied with the return or information furnished by any taxpayer, the Commissioner may make an assessment in such sum as in the Commissioner's judgment ought to be charged in accordance with this Order, and thereupon shall give notice thereof to the taxpayer to be charged, and such taxpayer shall be liable to pay the tax upon such sum. (Replaced A.6/1994.)

(2) Any such assessment shall be subject to objection and appeal as provided in this Order.

(3) If it appears to the Commissioner that any person is unable from any cause to furnish an accurate return of his income, the Commissioner may agree with such person as to what shall be the taxable income of such person and any taxable income so agreed shall not be subject to any objection or appeal.

(4) Notwithstanding an agreement as contemplated in subsection (3), if the Commissioner is subsequently of the opinion that a person referred to in that subsection withheld vital information at the time an estimate of the taxable income was agreed, the Commissioner may increase the agreed estimate. (Added A.4/2008.)

40. Additional tax in case of default or omission.

(1) Subject to subsection (3), the Commissioner shall require a taxpayer to pay in addition to the tax chargeable in respect of his taxable income —

- (a) if he makes default in rendering a return in respect of any year of assessment, an amount equal to twice the tax chargeable in respect of his taxable income for such year of assessment;
- (b) if he omits from his return any amount which ought to have been included therein, an amount equal to twice the difference between the tax as calculated in respect of the taxable income returned by him and the tax properly chargeable in respect of his taxable income as finally determined after including the amount omitted; or
- (c) if he makes any incorrect statement in any return rendered by him which results or would if accepted result in the assessment of the normal tax at an amount which is less than the tax properly chargeable, an amount equal to twice the difference between the tax as assessed in accordance with the return made by him and the tax properly chargeable if the incorrect statement had not been made.

(2) The additional amounts of tax payable under this section may be chargeable whether the taxable income or any part thereof is estimated by the Commissioner in terms of section 39, or agreed with the taxpayer in terms of subsection (3) thereof, or such taxable income or any part thereof as is determined from accounts rendered by the taxpayer.

(3) (a) If the Commissioner is satisfied that the default in rendering the return was not due to any intent either to defraud the revenue or to postpone the payment by the taxpayer of the tax chargeable or that any such omission or incorrect statement was not due to any intent to evade taxation on the part of the taxpayer, he may waive or remit such part or all of such additional charge as he may think fit.

(b) In the event the Commissioner deciding not to remit the whole of the additional charge imposed under subsection (1), his decision shall be subject to objection and appeal.

(c) Notwithstanding the provisions of this subsection, the Commissioner may either before or after an assessment is issued agree with the taxpayer on the amount of the additional charge to be paid, and the amount so agreed upon shall not be subject to objection and appeal.

(Amended A.6/1994.)

(4) The powers conferred upon the Commissioner by this section shall be in addition to any right conferred upon him by this Order to take proceedings for the recovery of any penalties for evading or avoiding assessment of the payment of tax or attempting to do so.

(5) Any taxpayer, who in determining his taxable income as disclosed by his return, deducts or sets off any amount the deduction or set off whereof is not permissible under this Order or shows as an expenditure or loss any amount which he has in fact not expended or lost, shall be deemed for the purpose of this section to have omitted such amount from his return.

(6) Any taxpayer who wilfully fails to disclose in any return made by him any facts which should be disclosed and the disclosure of which would result in the taxation of the taxpayer's income on an amount which is higher than the amount upon which such income would be taxable on such return, shall be deemed, for the purpose of this section, to have omitted from his return the amount by which the former amount exceeds the latter.

(7) If in any year of assessment in which the determination of the taxable income of the taxpayer does not result in an assessed loss, he is entitled to the set-off of a balance of assessed loss from the previous year of assessment and such balance is less than it would have been had it been calculated on the basis of the returns rendered by him, he shall be deemed, for the purpose of this section, to have omitted from his return for the first-mentioned year of assessment an amount equal to the difference between the amount at which such balance is finally determined and the amount at which it would have been determined on such basis.

(8) A taxpayer who makes default in rendering a return in respect of any year of assessment in which the determination of the taxable income of the taxpayer results in an assessed loss shall, while such default continues, be liable to a penalty not exceeding twenty emalangeni for each day during which the default continues. (Added A.5/2004.)

40bis. Additional tax in relation to the withholding of taxes

(1) Every person liable to withhold tax as required under any provisions contained in this Order who fails to withhold tax is liable for additional tax of twenty percent of the amount of tax not withheld.

(2) Every person who fails to remit any tax withheld to the Commissioner shall be liable for additional tax of —

- (a) if the tax which that person has failed to pay to the Commissioner is paid within less than thirty days from the date on which the tax should have been paid, ten percent of the tax;
- (b) if the tax which that person has failed to pay to the Commissioner is paid thirty or more days after the date on which the tax should have been paid, but less than ninety days after the due date, fifteen percent of the tax;
- (c) if the tax to which that person has failed to pay to the Commissioner is paid ninety or more days after the date on which the tax should have been paid, but less than 180 days after the due date, twenty per cent of the tax; and
- (d) if the tax which that person has failed to pay to the Commissioner is paid one hundred and eighty or more days after the date on which the tax should have been paid,

twenty-five percent of the tax.

(3) Additional tax recoverable under subsection (1) or (2) is borne personally by the person on whom it is levied, and no part thereof is recoverable from the person who received the payment from which tax should have been withheld.

(Added A.5/2004.)

41. Additional assessments.

(1) Notwithstanding section 52(4) if at any time the Commissioner is satisfied that any amounts which should have been subject to tax have not been assessed to tax under this Order or any previous income tax law, or than any amount of tax which was chargeable and should have been assessed under this Order has not been assessed, he may raise assessments in respect of such amounts notwithstanding that assessments may have been made upon the person concerned in respect of the year or years of assessment in respect of which the amounts in question are assessable: (Amended A.6/1987.)

Provided that the Commissioner shall not raise any assessment under this subsection —

- (a) after the expiry of six years from the date of assessment in terms of which any amount which should have been assessed to tax under such assessment was not so assessed unless he is satisfied that the amount was not so assessed because of fraud or misrepresentation or non-disclosure of material facts;
- (b) if the amount which should have been subject to tax was not assessed to tax, in accordance with the practice generally prevailing at the time when the assessment was made; or
- (c) in respect of any amount, if any previous assessment made on the person concerned for the year of assessment in question has in respect of such amount been amended or reduced pursuant to any order of court unless

such order was obtained by fraud or misrepresentation or non-disclosure of material facts.

(2) Sections 39 and 40 shall apply to any assessment or additional assessments made by the Commissioner under the powers conferred by this section.

42. Assessments and the recording thereof.

(1) The particulars of every assessment and the amount of tax payable thereon shall be recorded or filed and kept in the office of the Commissioner.

(2) Upon recording or filing of the particulars of any assessment, the Commissioner shall give notice of the assessment to the taxpayer whose income has been assessed.

(3) Such notice shall be sent to the taxpayer by post or delivered to such person in such other manner as the Commissioner may consider necessary or convenient.

(4) The Commissioner shall in the notice of assessment give notice to the taxpayer that any objection to the assessment made must be sent to him within twenty one days after the date of such notice or within such further time as he or the court may for good cause allow.

43. Inspection of assessments.

Particulars of income tax assessments shall not be open to public inspection, but every taxpayer shall be entitled to copies certified by or on behalf of the Commissioner of such entries as relate to the assessment of his own income.

PART V REPRESENTATIVE TAXPAYERS

44. Representative taxpayers.

In this Order unless the context otherwise requires —

“representative taxpayer” means —

- (a) in respect of the income of any company, the public officer thereof;
- (b) in respect of the income of any person permanently or temporarily absent from or resident out of Swaziland, the agent of such person, and for the purpose of this paragraph every person in Swaziland having the receipt, management or control of any income on behalf of any person so absent or resident, or remitting or paying any income to or receiving any money for such person, shall be deemed to be the agent of such person;
- (c) in respect of the income of trust or any minor or mentally disabled and defective person or any other person under legal disability, the trustee, guardian, curator or other person entitled for the time being to the receipt, management, disposal or control of such income or remitting or paying to or receiving any money on behalf of such person under disability;
- (d) in respect of income paid under a decree or order of any court to any receiver or other person, such receiver or person, whoever may be entitled to the benefit of such income, and whether or not it accrues to any person on a contingency or any uncertain event;
- (e) in respect of the income received by or accrued to any deceased person during his lifetime and the income received by or accrued

to the estate of any deceased person, the executor or administrator of the estate of such deceased person:

Provided that this definition shall not be construed as relieving any person from any liability, responsibility or duty imposed upon him by this Order.

45. Liability of representative taxpayer.

Every representative taxpayer, as regards the income to which he is entitled in his representative capacity or of which in such capacity he has the management, receipt, disposal, remittance, payment or control, shall be chargeable with the taxation imposed by this Order and shall be subject in all respects to the same duties, responsibilities and liabilities as if the income were income received by or accruing to or in favour of him beneficially, except that no representative taxpayer (not being a public officer or a company) shall, save as provided by section 47, be personally liable for the payment of any tax beyond the amount of the income of which he has the management, receipt, disposal or control in such capacity:

Provided that nothing herein shall, if the representative taxpayer acts as an agent or trustee or in any other capacity for several persons, prevent him from claiming that each agency or trust or other capacity shall be treated separately for the purpose of claiming any exemption or deduction provided by this Order.

46. Right of representative taxpayer to indemnity.

Every representative taxpayer who, as such, pays any tax shall be entitled to recover it from the person on whose behalf it is paid or to retain out of any moneys that may be in his possession or may come to him in his representative capacity so much as is required to indemnify him in respect of such payment.

47. Personal liability of representative taxpayer.

Every representative taxpayer shall be personally liable for any tax payable in respect of any assessment made upon him in his representative capacity if, while it remains unpaid —

- (a) he alienates, charges or disposes of the income in respect of which the tax is chargeable; or
- (b) he disposes of or parts with any fund or money which is in his possession or comes to him after the tax is payable when from or out of such fund or money the tax could legally have been paid.

48. Absent shareholder.

If a shareholder or a member of a company is absent from Swaziland, such company shall, for the purpose of this Order, be deemed to be the agent for such shareholder or member, and shall, as regards such shareholder or member and in respect of any income received by or accruing to him or in his favour as shareholder or member, have and exercise all the powers, duties and responsibilities of an agent for a taxpayer absent from Swaziland.

49. Commissioner's power to appoint agents.

(1) The Commissioner may declare any person to be an agent of any other person and the person so declared an agent shall be the agent for the purpose of this Order and may be required to pay to the Commissioner any tax due from any money which —

- (a) is due or may become due to the person whose agent he has been declared;
- (b) the person holds or may subsequently hold for or on account of the person whose agent he has been declared; or

- (c) the person has authority from some other person to pay to the person whose agent he has been declared, within fifteen days of the date of service of the notice of declaration or, if on such date no money is due from him to, or is held by him for or on account of, that person, within fifteen days of the date on which such money becomes due to, or available for or on account of that person, the amount specified in such declaration, or, if such amount is less than the amount specified, the whole of the money due, held or available.

(2) Without prejudice to the liability of the taxpayer under this Order, if an agent after receipt of a notice parts with any money to which the notice relates, he shall be liable *pro tanto* for the tax due by such person.

(Replaced A.11/1982.)

50. Remedy against property.

The Commissioner or any person empowered under this Order shall have such and the like remedies against all property of any kind vested in or under the control or management of any agent or trustee as he would have against the property of any person liable to pay any tax and in as full and ample a manner.

51. Public officers of companies.

(1) Every company carrying on business or having office in Swaziland shall at all times be represented by an individual residing therein, who shall be known as the "public officer" of such company.

(2) The public officer of a company shall be appointed by the company or by an agent or attorney who has authority to make such appointment and shall be approved by the Commissioner.

(3) In the case of a company which commences business or which first has an office in Swaziland after the commencement of this Order, the public officer shall be appointed within one month after such commencement or having an office, and in default of any appointment the Commissioner may designate a managing director, director, secretary or other officer of the company as its public officer.

(4) Every company shall within the period prescribed by subsection (3) appoint a place within Swaziland at which any notices or other instruments under this Order affecting the company may be served or delivered or to which any such notices or documents may be sent.

(5) No appointment shall be deemed to have been made under subsections (3) or (4) until notice thereof specifying the name of the public officer and an address for service or delivery of notices and documents has been given to the Commissioner.

(6) Every company shall keep the office of public officer constantly filled and shall at all times maintain a place for the service or delivery of notices in accordance with sub-section (4).

(7) Every company shall notify the Commissioner of any change in the person of its public officer or of the place for the service or delivery of notices within fourteen days of such change taking place.

(8) Any company which fails to comply with subsections (3), (4), (6) or (7) and every person who acts within Swaziland as agent or manager or representative of such company shall, while such failure continues, be liable to a penalty not exceeding sixty Emalangenani for every day during which the fault continues and such penalty shall be recoverable by the Commissioner by action in any court. (Amended A.11/1985; A.5/2004.)

(9) Any notice, process or proceeding which may under this Order be given to, served upon, or taken against any company, may be given to, served upon or taken against its public officer and if at any time there is no public officer then any such notice, process or proceeding may be given to, served upon, or taken against any

officer or person acting or appearing to act in the management of the business or affairs of such company or as agent for such company.

(10) Every public officer shall —

- (a) within two months of the registration by the Registrar of Companies of the company of which he is the public officer file with the Commissioner a copy of the memorandum and articles of association of such company;
- (b) within thirty days of the registration by the Registrar of Companies of any prospectus proposed to be issued by such company file with the Commissioner a copy of such prospectus;
- (c) within two months of any amendment of the memorandum and articles of association of such company file with the Commissioner a certified copy of such amendment.

(11) Every public officer shall be answerable for doing of all such acts, matters or things as are required to be done under this Order by a taxpayer, and in case of default, shall be liable to the penalties provided in respect of defaults by a taxpayer.

(12) Everything done by any public officer which he is required to do in his representative capacity shall be deemed to have been done by the company which he represents.

(13) The absence or non-appointment of a public officer shall not exonerate any company from the necessity of complying with this Order, but the company shall in all respects be subject to and liable to comply with this Order as if there were no requirement to appoint such officer.

(14) Any public officer appointed under the Income Tax (Consolidation) Act, No. 84 of 1959 shall, unless the Commissioner disapproves of his appointment, be deemed to be appointed under this Order:

Provided that if the Commissioner so disapproves the company shall appoint another person in his stead as its public officer.

PART VI OBJECTIONS AND APPEALS

52. Time and manner of lodging objections.

(1) Any objection to any assessment made under this Order shall be made within twenty-one days after the date of the assessment notice or within such further time as the Commissioner may for good cause allow in the prescribed manner and under the prescribed terms by any taxpayer who is aggrieved by any assessment in which he is interested.

(2) Every objection shall be in writing and shall specify in detail the grounds upon which such objection is made.

Provided that the taxpayer, for the purpose of the objection, shall not be entitled to rely on any evidence whether oral or documentary, other than the evidence produced by him during the course of the assessment except in the following circumstances —

- (a) where the Commissioner has refused to admit evidence which ought to have been admitted;
- (b) where the taxpayer was prevented by sufficient cause from producing the evidence which he was called upon to produce; and
- (c) where the assessment was made without giving sufficient opportunity to the taxpayer to adduce evidence relevant to any ground of objection.

(Amended A.6/1994.)

(3) On receipt of a notice of objection to an assessment, the Commissioner may reduce or alter the assessment or may disallow the objection and shall send the taxpayer notice of such alteration, reduction or disallowance and shall record in the assessment register any alteration or reduction made in the assessment.

(4) If no objection is made to any assessment or if an objection has been allowed or withdrawn, such assessment or altered or reduced assessment, as the case may be, shall, subject to the right of appeal provided in this Part and subject to section 41(1), be final and conclusive.

53. Onus of proof as to exemptions, etc..

The burden of proof that any amount is exempt from or not liable to any tax chargeable under this Order or is subject to any deduction or set-off, shall be upon the person claiming such exemption, non-liability, deduction or set-off, and upon the hearing of any appeal from any decision of the Commissioner, the decision shall not be reversed or altered unless it is shown by the appellant that the decision is wrong.

54. Appeal against Commissioner's decision.

(1) Any taxpayer who is dissatisfied with any decision of the Commissioner as notified in the notice of alteration or reduction of an assessment or disallowance of an objection may appeal therefrom to the court:

Provided that no such notice of appeal shall be of any force and effect, unless it is lodged with the Commissioner within the period prescribed in subsection (2).

(2) Notice of such appeal shall be in writing and shall be lodged with the Commissioner within twenty-one days after the date of any notice of alteration, reduction or disallowance referred to in section 52(3), or within such further time as the Commissioner or the court may for good cause allow.

(3) On the hearing of any such appeal the taxpayer shall be limited to the grounds stated in his notice of objection.

(4) If the assessment has been altered or reduced, the assessment so altered or reduced shall be deemed to be the assessment against which the appeal is made.

(5) The Commissioner shall as soon as is practicable apply to the Registrar of the High Court in accordance with the High Court Rules for the appeal to be set down for hearing by the court:

Provided that such application shall be accompanied by a summary of the facts and questions of law, if any, in issue, a copy of the notice of assessment objected against, a copy of the taxpayer's objection thereto, a copy of the Commissioner's reply to such objection and a copy of the notice of appeal:

Provided further that if the Commissioner has failed to make such application within three months of the date upon which the taxpayer has lodged the notice of appeal in terms of subsection (2) the taxpayer may apply to the Registrar of the High Court for the appeal to be set down for such hearing and the Registrar shall immediately thereupon call upon the Commissioner to lodge with him a summary of the facts and questions of law, if any, in issue, a copy of the notice of assessment objected against, a copy of the taxpayer's objection thereto, a copy of the Commissioner's reply to such objection and a copy of the notice of appeal within ten days from the date of such request.

(6) At least twenty-one days before the date fixed for the hearing of the appeal the Registrar of the High Court shall send the Commissioner, the Attorney-General and the taxpayer or his duly authorised attorney or representative a written notice of the time and place appointed for the hearing of such appeal.

(7) The sittings of the court for the hearing of any appeal under this section shall not be public and the court shall at any time on the application of the appellant exclude any person whose attendance is not necessary for the hearing of the appeal under consideration from such sitting or require him to withdraw therefrom:

Provided that the court may authorise the publication of the whole or any part of its judgment in any law report or legal journal without mention of the name of the taxpayer concerned:

Provided further that this subsection shall not apply to an appeal to the Court of Appeal, except to such extent as the Court of Appeal may direct.

(8) The Commissioner or any person authorised by him may appear in support of the assessment on the hearing of any appeal and the appellant and any person who is interested in such appeal may appear in person or by his counsel, attorney or agent.

(9) The Court may alter or order the alteration of the assessment in accordance with the decision given on any appeal but may only make an order as to costs if the claim of the Commissioner is held to be unreasonable or the grounds of appeal are held to be frivolous.

(10) The Chief Justice may make rules of the High Court prescribing the procedure to be observed in the conduct of appeals under this Order before it.

55. Obligation to pay not suspended pending appeal.

The obligation to pay and the right to receive and recover any tax chargeable under this Order shall not, unless the Commissioner so directs, be suspended by any appeal or pending the decision of the court under section 56, but if any assessment is altered on appeal or in conformity with any such decision, a due adjustment shall be made, for which purpose any amount paid in excess shall be refunded and any amount shortpaid shall be recoverable.

56. Questions of law.

If a question of law arises with regard to any assessment or altered or reduced assessment under this Order, the Commissioner may, within thirty days after receipt of any notice of objection or any notice of appeal under this Order, of his own motion or at the request of the taxpayer concerned, state a case for the determination of such question by the court.

PART VII PAYMENT AND RECOVERY OF TAX

57. Appointment of day for payment of tax and interest on overdue payments.

(1) Any tax chargeable under this Order shall be paid on such days and at such places as notified by the Commissioner or as specified in this Order, and may be paid in one sum or, upon written application by the taxpayer, in instalments of equal or varying amounts as the Commissioner may determine having regard to the circumstances of the case.

Provided that —

- (a) where tax is permitted to be paid by instalments and there is default in payment of any instalment, the whole balance of the tax outstanding shall become immediately payable;
- (b) where permission is granted under subsection (1) to pay tax by instalments interest arising under subsection (2) shall be payable on the unpaid balance of the tax due.

(2) If the taxpayer fails to pay any tax in full within the period for payment notified by the Commissioner in the notice of assessment or within the period for payment as prescribed by this Order, he shall be liable for interest calculated at the rate of eighteen per centum per annum from the date on which the payment was due until the date on which payment is made:

Provided that the Minister may by notice in the Gazette reduce or increase the rate of such interest.

(3) Where the Commissioner has allowed for the payment in instalments of equal or varying amounts under subsection (1), interest shall be calculated upon the unpaid tax from the date the payment should have been made if not for the granting of an extension.

(4) Subject to section 58A, in the case of a taxpayer to whom section 38*bis* applies the tax payable under this Order is due and payable on the date on which the return of income is due under this Order. (Added A.11/2011.)

(Amended A.6/1987; A.10/1991; A6/1994; replaced A.5/2004.)

58. Payments of employees tax. (Second Schedule)

Payments in respect of the liability (whether or not such liability has been ascertained or determined at the date of any payment) of every employee, as defined in the Second Schedule, for any tax shall be made in accordance with the Second Schedule, and any such payment may be made at such place as may be notified by the Commissioner.

58A. Payment of provisional tax. (Fourth Schedule)

(1) Provisional tax shall be paid in accordance with the provisions of the Fourth Schedule at such place as may be notified by the Commissioner, and such payments which relate to a taxpayer shall, for the purposes of this Order, and subject to the provisions of paragraphs 14 and 15 of the said Schedule, be deemed to have been made in respect of his liability for taxes as defined in subsection (3), whether or not such an assessment has been made at the date of any payment.

(2) If any amount of provisional tax is not paid in full within the relevant period prescribed for payment of such amount by paragraphs 7, 8 or 9, interest shall be paid by the person liable to pay the amount in question at the rate prescribed in section 57(2) of this Order on so much of such amount as remains unpaid in respect of the period (reckoned from the end of the relevant period prescribed as aforesaid for payment of such amount) during which the amount underpaid remains unpaid.

(3) For the purposes of this section, "taxes" means the taxes as defined in section 2, excluding non-resident shareholders tax, non-resident tax on interest and non-resident tax on entertainers and sportsmen. (Added A.11/1985.)

59. Withholding of tax from payments to non-resident contractors. (Amended A.7/1989; A.6/2000.)

(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 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 have 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.

(Amended K.O-I-C. 1/1976; A.11/1985; A.7/1989; replaced A.6/2000.)

59A. Withholding tax on payments to non-resident persons.

(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 percent 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 percent 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 withheld under this section shall be on account of the liability to tax of the non-resident person on the profits derived from the contract —

- (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 the 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 deriving the income; and
- (d) no refund of tax shall be made in respect of the income.

(Amended A.4/2008.)

(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
- (b) 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;
- (b) the amounts of tax withheld; and
- (c) such other information as the Commissioner may, in writing, by notice or other means, require.

(8a) The deduction of tax under this section shall not relieve the person liable to taxation from the obligation to deliver a return for the assessment of the tax or any return as provided under section 33 or from any obligation imposed by this Order. (Inserted A.4/2008.)

(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.

(Added A.6/2000.)

59B. Issuance of a directive to withhold tax in certain cases of non-compliance.

(1) Where the Commissioner detects that there is non-compliance by any person or persons with the obligations imposed by this Order, the Commissioner may issue a directive to any person, or a directive of a general nature to all persons to withhold tax from any money which —

- (a) is due or may become due to the person or persons liable to taxation;
- (b) the person or persons hold or may subsequently hold for or on account of the person or persons liable to taxation; or
- (c) the person or persons has authority from some other person to pay to the person or persons liable to taxation,

at the rate specified under subsection (2).

(2) The amount of tax to be withheld in respect of a directive issued under subsection (1) shall be at the rate of ten per cent on the amount due as contemplated in subsection (1).

(3) Where, upon application by the person affected by a directive given under subsection (1), the Commissioner is satisfied that the tax directed to be deducted is excessive in relation to the tax likely to be charged upon assessment, the Commissioner may —

- (a) vary the amount to be deducted; or
- (b) cancel the directive and accept such security for payment as appears to him to be reasonable.

(4) Every person who has deducted any tax under subsection (2) shall —

- (a) furnish to such person from whom tax has been deducted a certificate showing the amount of the tax deducted;
- (b) remit to the Commissioner the amount of tax deducted within fifteen days of the date of service of the directive or, if on such date no money is due from him to, or is held by him for or on account of, that person, within fifteen days of the date on which such money becomes due to, or available for or on account of that person.

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

- (a) the amounts deducted, in respect of which a directive has been given; and
- (b) the amounts of tax deducted under such directive,

and such record shall be kept for the period specified under section 35*bis* (3) for examination by the Commissioner as and when required.

(6) The deduction of tax under this section shall not relieve the person or persons liable to taxation from the obligation to deliver a return for the assessment of the tax or any return as provided under section 33 or from any obligation imposed by this Order.

(7) Where the Commissioner has issued a directive of a general nature under subsection (1) the Commissioner shall on application made to him by any person to whom the withholding tax applies by reason of the provisions of subsection (1), issue to such person a certificate of exemption if the person satisfies the Commissioner that he has regularly complied with the obligations imposed on such person under the Order.

(8) Any person who fails to deduct tax in accordance with subsection (1), shall, in addition to any penalty for which he may be liable under section 66, be personally liable to pay the Commissioner the tax which he should have deducted as if it were tax due and payable by him under Part VII of this Order.

(Added A.5/2004; amended A.4/2008.)

59C. Notification to the Commissioner on agreements entered into with non-resident persons.

Every person who enters into an agreement with a non-resident person, as defined in section 59, for services to be performed or rendered in Swaziland under which payments (other than payments to which the Second Schedule applies) will be made to a non-resident person shall, within thirty days of the date of entering into such agreement, notify the Commissioner in writing of —

- (a) the nature of such agreement;
- (b) the commencement and likely duration of the agreement;
- (c) the total amount estimated to be payable under the agreement to the non-resident person; and
- (d) the name, postal and physical address of the non-resident person to whom payments under the agreement will accrue.

(Added A.7/2007.)

60. Persons by whom the tax is payable.

Subject to this Order, the taxes leviable shall be payable —

- (a) by the representative taxpayer in respect of any income received or controlled by him in his representative capacity;
- (b) in respect of every other income and in all other cases, but subject to section 59, by the person by whom the income is received or to whom or in whose favour it accrues or is deemed to accrue or who is legally entitled to the receipt thereof:

Provided that any person who is required under the Order to include in his income any income which has been received by or in favour of his minor child shall be entitled to recover from the funds held by or on behalf of such child such proportion of the taxation paid by him under this Order as is due to the inclusion in his income of the income of such child.

61. Recovery of tax.

(1) Any tax, (including any interest or penalty payable to the Commissioner under this Order) shall, when it becomes due or is payable, be deemed to be a debt due to the Government and shall be payable to the Commissioner in the manner and at the place prescribed.

(2) If any person fails to pay any tax when it becomes due or is payable by him, the Commissioner may file with the clerk or registrar of any court a statement certified by him as correct and setting forth the amount of the tax so due or payable by such person, and such statement shall thereupon have all the effects of, and any proceedings may be taken thereon, as if it were a civil judgment lawfully given in such court in favour of the Commissioner for a liquid debt of the amount specified in the statement.

(3) Notwithstanding anything in the Magistrate's Court Act, No. 66 of 1938 a statement for any amount whatsoever may be filed in terms of subsection (2) with the clerk of a Magistrate's Court having jurisdiction in respect of the person by whom such amount is payable in accordance with this Order.

(4) The Commissioner may institute proceedings for the sequestration of the estate of any taxpayer and shall for the purposes of such proceedings be deemed to be the creditor in respect of any tax due by such taxpayer and any interest payable by him. (Deleted A.6/1994; replaced A.7/2007.)

(5) So much of any tax payable by any person under this Order as is due to the inclusion in his income of any income deemed to have been received by him or to be his income, as the case may be, in terms of sections 11(3), (4), (5) or (6) may be recovered from the assets by which the income so included was produced.

(6) Notwithstanding the provisions of section 12, the Minister may remit, wholly or in part any tax payable by any person, in terms of this Order if he is satisfied that it will be just and equitable to do so. (Amended A.6/1996.)

61bis. Collection of taxes under agreements made under section 68.

(1) Where an international agreement provides for reciprocal assistance in the collection of taxes and the Commissioner has received a request from another country pursuant to that agreement for the collection from any person in Swaziland of an amount due by that person under the income tax laws of that other country, the Commissioner may by notice in writing require the person to pay the amount on the date specified in the notice to the Commissioner for transmission to the competent authority in that other country.

(2) If a person fails to comply with a notice issued under subsection (1), the amount in question may be recovered for transmission to the competent authority in that other country as if it were tax payable by the person under this Order.

(Added A.7/2007.)

62. Tax to be a liquid debt.

(1) Proceedings in any court for the recovery of any tax shall be deemed to be proceedings for the recovery of a liquid debt.

(2) It shall not be competent for any person in any proceedings in any court for the recovery of any tax to question the correctness of the assessment or any certified extract therefrom.

63. Conclusive evidence of making of assessment.

The production of any document under the hand of the Commissioner purporting to be a copy of or extract from any assessment shall be conclusive evidence of the making of the assessment and, except in the case of proceedings on appeal against the assessment, shall be conclusive evidence that the amount and all the particulars of such assessment appearing in such document are correct.

PART VIII MISCELLANEOUS

64. Refunds and set-off.

(1) Any amount paid by any person in terms of the provisions of this Order shall be refundable to the extent that such amount exceeds —

(a) in the case where the amount was paid in respect of assessment, the amount so assessed; or

(b) in any other case, the amount properly chargeable under this Order.

(2) The Commissioner shall not authorise a refund under subsection (1)(b), where —

(a) that amount was paid in accordance with the practice generally prevailing at the date of the payment; or

(b) the refund is claimed by that person —

(i) after a period of three years after the end of that year of assessment, in the case where —

(A) that amount constitutes an amount of employees' tax withheld during any year of assessment from the remuneration of that person under the provisions of the Second Schedule;

(B) that person's income for that year of assessment consisted solely of remuneration as defined in the Second Schedule; or

(C) that person was not required under any provision of this Order to furnish a return of income for that year of assessment and did not render such a return during the period of three years since the end of the year of assessment; or

(ii) in any other case, after a period of three years from the date of the official receipt acknowledging such payment or, where more than one such payment was made, the date of the official receipt acknowledging the latest of such payments.

(3) Where any refund contemplated in subsection (1) is due to any person who has failed to pay any amount of tax, additional tax, duty, levy, charge, interest or penalty levied or imposed under this Order or any other law administered by the Commissioner, within the period prescribed for payment of the amount, the Commissioner may set off against the amount which the person has failed to pay, any amount which has become refundable to the person under this section.

(Added A.7/2007.)

65. Transactions, operations or schemes for purposes of avoiding or postponing liability for or reducing amounts of taxes on income.

(1) If any transaction, operation or scheme (whether entered into or carried out before or after the commencement of this Order, including a transaction, operation or scheme involving the alienation of property) has been entered into or carried out which has the effect of avoiding or postponing liability for any tax, duty or levy on income (including any such tax, duty or levy imposed by any previous law), or of reducing the amount thereof, and which, in the opinion of the Commissioner, having regard to the circumstances under which the transaction, operation or scheme was entered into or carried out —

- (a) was entered into or carried out by means or in a manner which would not normally be employed in the entering into or carrying out of a transaction, operation or scheme of the nature of the transaction, operation or scheme in question; or
- (b) has created rights or obligations which would not normally be created between persons dealing at arm's length under any transaction, operation or scheme of the nature of the transaction, operation or scheme in question;

and the Commissioner is of the opinion that the avoidance or the postponement of such liability, or the reduction of the amount of such liability was the sole or one of the main purposes of the transaction, operation or scheme, the Commissioner shall determine the liability for any tax, duty or levy on income and the amount thereof as if the transaction, operation or scheme had not been entered into or carried out or in such manner as in the circumstances of the case he deems appropriate for the prevention or diminution of such avoidance, postponement or reduction.

(2) If the Commissioner is satisfied that any agreement or any change in the shareholding of a company, as a direct or indirect result of which income has been received by or has accrued to such company during any year of assessment, has, at any time before or after the commencement of this Order, been entered into or effected by any person solely or mainly for the purpose of utilising any assessed loss or any balance of assessed loss incurred by the company in order to avoid liability on the part of such company or any other person for the payment of any tax, duty or levy on income, or to reduce the amount thereof, the set-off of any such assessed loss or balance of assessed loss against any such income shall be disallowed.

(3) For the purposes of subsection (1), any transaction, operation or scheme, whether entered into or carried out before or after the commencement of this Order, whereby any person, other than a company, who is ordinarily resident or carrying on business in Swaziland, has disposed of shares held by such person or such company in any company registered or incorporated in Swaziland to any person, other than a company, not ordinarily resident nor carrying on business in Swaziland or to any company registered outside Swaziland, shall, unless it is proved to the satisfaction of the Commissioner that the parties are independent persons dealing at arm's length with each other, be deemed to be a transaction, an operation or a scheme entered into or carried out by means or in a manner not normally employed in the entering into or carrying out of such transaction, operation or scheme in question.

(4) Any decision of the Commissioner under subsection (1), (2) or (3) shall be subject to objection and appeal, and if in any proceedings relating thereto it is proved that the transaction, operation, scheme, agreement or change in shareholding in question would result in the avoidance or the postponement of liability for payment of any tax, duty or levy on income or in the reduction of the amount thereof, it shall be presumed, until the contrary is proved —

- (a) in the case of any such transaction, operation or scheme, that its sole or one of its main purposes was the avoidance or the postponement of such liability or the reduction of the amount of such liability; or
- (b) in the case of any such agreement or change in shareholding, that it has been entered into or effected solely or mainly for the purpose of utilising the assessed loss or balance of assessed loss in question in order to avoid or postpone such liability or to reduce the amount thereof.

65bis. Income splitting.

(1) Where a taxpayer attempts to split income with another person, the Commissioner may adjust the taxable income of the taxpayer and the other person to prevent any reduction in tax payable as a result of the income splitting.

(2) A taxpayer is treated as having attempted to split income where —

- (a) the taxpayer transfers income, directly or indirectly, to an associate; or
- (b) the taxpayer transfers property (including money), directly or indirectly, to an associate with the result that the associate receives or enjoys the income from that property,

where the reason or one of the reasons for the transfer is to lower the total tax payable upon the income of the transferor and transferee.

(3) In determining whether the taxpayer is seeking to split income, the Commissioner shall consider the value, if any, given by the associate for the transfer.

(Added A.11/2011.)

65ter. Dividend stripping

(1) Where a company takes part in a transaction in the nature of a dividend stripping and receives a dividend from a company ordinarily resident in Swaziland in the transaction, the company receiving the dividend shall include the dividend in gross income to the extent to which the Commissioner considers necessary to offset any decrease in the value of shares in respect of which the dividend is paid or in the value of any other property caused by the payment of the dividend.

(2) In any such transaction, the Commissioner may also reduce the amount of any deduction arising to the extent to which it represents the decrease in value of the shares or other property.

(Added A.11/2011.)

66. Offences.

(1) A person who —

- (a) fails or neglects to furnish, file or submit any return or document as and when required by or under this Order;
- (b) without just cause shown by him, refuses or neglects to —
 - (i) furnish, produce or make available any information or document;
 - (ii) reply to or answer truly and fully, any questions put to him;
 - (iii) produce any books or papers required of him by the Commissioner or any officer; or
 - (iv) attend and give evidence,

as when required in terms of this Order;

- (c) fails to show in any return made by him any portion of the gross income received by or accrued to or in favour of himself or fails to disclose to the

Commissioner when making such return any material facts which should have been disclosed;

- (d) fails to show in any return prepared or rendered by him on behalf of any other person any portion of the gross income received by or accrued to or in favour of such other person or fails to disclose to the Commissioner, when preparing or making such return, any facts which if so disclosed, might result in increased taxation;
- (e) obstructs or hinders any officer in the discharge of his duties under this Order;
- (f) holds himself out as an officer engaged in carrying out the provisions of this Order;
- (g) submits or furnishes a false certificate or statement under section 34;
- (h) fails to keep a proper record of his transactions as required by section 35*bis*;
- (i) without just cause fails to comply with the provisions of section 49, where that person has been declared to be the agent of any other person as contemplated in that section;
- (j) without just cause fails to comply with the provisions of section 34*ter*, 36 or 59C;
- (k) not being a person whose gross income consists solely of salary, wages or similar compensation for personal services, without just cause shown by him, fails to retain for a period of five years from the date of the last entry therein all ledgers, cash books, journals, cheque books, paid cheques, bank statements, invoices, stock list and all other books of account relating to any trade carried on by him and recording the details from which returns for the assessment of taxes under this Order were prepared; or
- (m) fails or neglects to apply to the Commissioner for registration as a taxpayer as required by section 33*quat* (1), or having so applied fails or neglects to notify the Commissioner of any change of his address, (Added A.11/2011.)

commits an offence and shall be liable on conviction to a fine not exceeding ten thousand emalangeni, or to imprisonment for a term not exceeding one year, or to both such fine and term of imprisonment.

(2) A person who —

- (a) fails to withhold, remit and account for any withholding tax imposed under this Order;
- (b) fails to comply with the provisions of section 32E; or
- (c) has in any manner, evaded or defeated, or attempted to evade or defeat, tax imposed by this Order, or the payment or collection of such tax,

commits an offence and, in addition to any penalty otherwise provided, shall be liable on conviction to a fine not exceeding fifty thousand emalangeni, or to imprisonment for a term not exceeding five years or to both such fine and term of imprisonment.

(3) A person who has been convicted under subsection (1) or subsection (2) of failing to furnish any return, information or reply who thereafter fails within any period deemed by the Commissioner to be reasonable and of which notice has been given to him by the Commissioner, to furnish the return, information or reply in respect of which the offence was committed, commits an offence and shall be liable, on conviction, to a fine of fifty Emalangeni for each day during which such default continues or to imprisonment without the option of a fine for a period not exceeding one year.

(4) A person who, with intent to evade or to assist any other person to evade assessment or taxation —

- (a) makes or causes or allows to be made any false statement of entry in any return rendered in terms of this Order or signs any statement or return so rendered without reasonable grounds for believing it to be true;
- (b) gives any false answer, whether orally or in writing, to any request for information made under this Order by the Commissioner or any person duly authorised by him or any officer referred to in section 4;
- (c) prepares or maintains or authorises the preparation or maintenance of any false books of account or other records or falsifies or authorises the falsification of any books of account or records; or
- (d) makes use of any fraud, art or contrivance whatsoever, or authorises the use of any such fraud, art or contrivance,

commits an offence and, in addition to any penalty otherwise provided, shall be liable on conviction to a fine not exceeding fifty thousand Emalangeni, or to imprisonment for a term not exceeding five years, or to both such fine and term of imprisonment.

(5) If, in any proceeding under this section it is proved that any false statement or entry is made in any return rendered under this Order by or on behalf of any taxpayer or in any books of account or other records of any taxpayer, such taxpayer shall be presumed, until the contrary is proved, to have made or to have caused or allowed to be made such false statement or entry with intent to evade assessment or taxation, and any other person who made any such false statement or entry shall be presumed, until the contrary is proved, to have made such false statement or entry with intent to assist the taxpayer to evade assessment or taxation.

(6) The Commissioner may transfer information or documents concerning any person to the Director of Public Prosecutions to enable the Director to bring charges against the person in respect of an offence set out in this section.

(Amended A.11/1985; A.7/1992; A.6/2000; A.5/2004; replaced A.7/2007.)

67. Authentication and service of documents.

(1) Every form, notice, demand or other document issued or given by or on behalf of the Commissioner or other officer under this Order shall be sufficiently authenticated if the name of the Commissioner or officer by whom it is issued or given is stamped or printed thereon.

(2) Any notice required or authorised under this Order to be served upon any person shall be sufficiently and effectively served —

- (a) if personally served upon him; or
- (b) if left at his usual or last place of abode or office or place of business in Swaziland; or
- (c) if sent in a registered letter addressed to such place of abode, office or place of business or to his usual or last known postal address: (Amended A.9/1988.)

Provided that in the case of a company, it shall be sufficiently and effectively served if personally served on the public officer of the company or delivered to him or left at the company's address for service under this Order, or, if the company has lodged no address for service as required by this Order, then if the notice is left at or sent in a registered letter by post addressed to any office of the company in Swaziland or any premises therein where it carries on business.

68. Double taxation agreements.

(1) The Minister may enter into an agreement on behalf of the Government of Swaziland with the Government of any other country with a view to the prevention,

mitigation or discontinuance of the levying under the laws of Swaziland and of the other country of tax on income in respect of the same income or to the rendering of reciprocal assistance in the administration of and in the collection of taxes under the tax laws of Swaziland and of the other country relating to income.

(2) As soon as practical after the conclusion of any such agreement the Minister shall by notice in the Gazette publish a copy thereof, whereupon the terms and conditions of such agreement shall as far as they relate to immunity, exemption or relief in respect of the Swaziland tax on income have effect as if enacted in this Order, but only if and for so long as such terms and conditions as far as they relate to immunity, exemption or relief in respect of such tax levied or leviable in the other country have the effect of law in such other country.

(3) The Minister may at any time revoke any notice under subsection (2) by a further notice in the Gazette, and the agreement notified in such earlier notice shall cease to have effect upon a date fixed in such later notice, but the revocation of any notice shall not affect the validity of anything previously done thereunder.

(4) This section shall apply to any agreement of the kind referred to in subsection (1) which was in force at the date of the commencement of this Order.

(5) Notwithstanding section 5, there may be disclosed to any authorised officer of the country mentioned in any notice issued in terms of subsection (2), the facts, knowledge of which is necessary to enable it to be determined whether immunity, exemption or relief ought to be given or which it is necessary to disclose or to render or receive any assistance in accordance with the arrangements notified in such notice.

68bis. Practic notes.

(1) To achieve consistency in the administration of this Order and to provide guidance to taxpayers and officers employed in carrying out the provisions of this Order, the Commissioner may issue practice notes setting out the Commissioner's interpretation of this Order.

(2) A practice note is binding on the Commissioner until revoked.

(3) A practice note is not binding on a taxpayer.

(Added A.11/2011.)

68ter. Private rulings.

(1) The Commissioner may, upon application in writing by a taxpayer, issue to the taxpayer a private ruling setting out the Commissioner's position regarding the application of this Order to a transaction proposed by the taxpayer.

(2) Provided the taxpayer has made a full and true disclosure of the nature of all aspects of the transaction relevant to the ruling and the transaction proceeds in all material respects as described in the taxpayer's application for the ruling, the ruling shall be binding on the Commissioner with respect to the application to the transaction of the law as it stood at the time of the ruling.

(3) Where there is any inconsistency between a practice note and a private ruling, priority is given to the terms of the private ruling.

(Added A.11/2011.)

69. Regulations.

(1) The Minister may make regulations for all or any of the following purposes —

(a) prescribing the duties of all persons engaged or employed in the administration of this Order;

(b) defining the limits of areas within which such persons are to act;

- (c) prescribing the nature of the accounts to be rendered by any taxpayer in support of any return rendered under this Order and the manner in which such accounts shall be authenticated;
- (d) providing that, to avoid duplicate payment in Swaziland in any case in respect of the same year or period, the Commissioner may make such allowance or refund as he shall deem just and in such manner as may be prescribed;
- (e) generally for giving effect to the purposes of this Order.

(2) (a) Notwithstanding any other provisions of this Order, where the Minister is satisfied that a new business is beneficial to the development of the economy, he may, with the prior consent of Cabinet, nominate such business as a development enterprise, and he may issue an order, known as "development approval order" in respect of such business, granting additional tax concessions to such business;

(b) (i) Any person seeking tax concession under this subsection shall, prior to the commencement of business, apply to the Minister in a manner prescribed by him;

(ii) The Minister may, upon examination of such application, grant or refuse to grant, in writing, a tax concession for the purposes of this subsection.

(iii) The Minister's decision under paragraph (ii) shall be final.

(c) A development approval order may be issued subject to such conditions, and for such period of time, as the Minister deems fit;

(d) The Minister shall, within twenty one days of the issue of a development order under paragraph (a), cause to be published, by notice in the Gazette, the name and address of the business nominated as a development enterprise under paragraph (a);

(e) The Minister may, at any time, with the concurrence of Cabinet, amend or revoke a development approval order issued in terms of this subsection:

Provided that where the Minister has cause to revoke a development approval order, he shall, within a period of twenty one days, cause such revocation to be published, by notice, in the Gazette.

(f) Paragraphs (a) to (e) are deemed to have come into effect from 1st July, 1984.

(Replaced A.9/1988.)

(3) (a) Notwithstanding any other provision contained in this Order or in any other law, the Minister may, by notice published in the Gazette, make regulations requiring persons to obtain a tax compliance certificate for the purposes mentioned in such regulations. (Amended A.11/2011.)

(b) Every notice, published under paragraph (a), shall be submitted for the approval of Parliament, within fifteen days of the notice being made and if Parliament is not meeting, within fifteen days after it next meets.

(c) If any such notice is not submitted to Parliament within the time specified in paragraph (b), or, if so submitted, is not approved by Parliament, the notice shall thereupon lapse but without detracting from the validity of such notice before it so lapsed.

(d) Subject to paragraph (f), a person requiring a tax compliance certificate shall apply for such certificate either by himself or through his representative or agent to the Commissioner and a certificate granted under this section shall state that no tax is outstanding against the person or that satisfactory arrangements have been made by such person with the Commissioner for the payment of outstanding tax. (Amended L.N.4/2008; A.11/2011.)

(Added A.11/1985.)

(e) The Commissioner shall not issue a tax certificate where —

- (i) tax is outstanding against such person and that person has not made satisfactory arrangements with the Commissioner for the payment of the outstanding tax; and
- (ii) in addition to any other reasons as the Commissioner may determine, the person has not rendered returns of income in respect of any year of assessment or part thereof.

(f) The Commissioner shall, on application made to him by any person to whom paragraph (d) applies by reason of the provisions of subsection (3)(a), issue to such person a tax compliance certificate if the person satisfies the Commissioner that he has regularly complied with the obligations imposed on such person under the Order. (Amended A.11/2011.)

(Added A.4/2008.)

69bis. Commissioner's annual report.

The Commissioner shall, not later than six months after the end of each financial year, prepare and submit to the Minister, an annual report setting out information relating to the operation of this Order during that financial year and such other information as the Minister may require (Added A.9/1979.)

69ter. Taxpayer identification number.

The Commissioner may require a taxpayer to include the taxpayer identification number issued by the Commissioner to that taxpayer or in the case of a natural person his or her personal identification number in any return, notice, or other document used for the purposes of this Order. (Added A.5/2004.)

69quat. Transitional.

(1) After 30 June 2004, 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 section (1) shall be made in writing to the Commissioner by 31 July 2004.

(Added A.5/2004.)

70. Repeal.

The Income Tax (Consolidation) Act, No. 84 of 1959, is hereby repealed:

Provided that any tax or other amount which but for such repeal would have been capable of being levied, assessed or recovered and which has not been levied, assessed or recovered at the commencement of this Order, and all notices and returns issued or published in connection therewith, may be levied, assessed, recovered, issued or published as if such repeal had not been effected:

Provided further that paragraphs 3, 4, 5 and 11(2) of the First Schedule to the repealed Act shall continue to apply to any farmer to whom paragraph 2 of the First Schedule hereto applies.

First Schedule

COMPUTATION OF TAXABLE INCOME DERIVED FROM PASTORAL, AGRICULTURAL,
PLANTATION OR OTHER FARMING OPERATIONS

(Under section 10)

1. For the purposes of this Schedule "farmer" means any person carrying on pastoral, agricultural, plantation or other farming operations.

2. (1) Every farmer who, in accordance with paragraph 2 of the First Schedule to the repealed Proclamation exercised an option not to have the values of livestock and produce held by him and not disposed of at the beginning and end of each year of assessment taken into account in the determination of the taxable income derived by him from farming shall, unless he elects otherwise, not have such values so taken into account.

(2) Every farmer (other than a company) who commences or recommences farming operations on or after 1st July, 1975 and who has not in respect of such farming operations previously exercised an option whether the values of livestock and produce held by him and not disposed of at the beginning and end of each year of assessment shall or shall not be taken into account in the determination of the taxable income derived by him from such farming operations shall be entitled to exercise such option and every such farmer shall, unless he elects otherwise, not have such values so taken into account.

(3) Paragraphs 3, 4, 5 and 11(2) of the First Schedule to the repealed Proclamation shall *mutatis mutandis* continue to apply to the determination of the taxable income derived from farming operations by any farmer who does not exercise his option under this paragraph and elect otherwise. (Amended K.O-I-C. 6/1977.)

3. Every farmer, other than a farmer to whom paragraph 2 applies shall include in his return rendered under section 33 the value of all livestock and produce held and not disposed of at the beginning and end of the year of assessment: (Amended K.O-I-C. 6/1977.)

Provided that the values of all livestock and produce held by him at the beginning of the year of assessment 1976 to be included in the return for that year shall be the values included in the assessment at the end of the preceding year of assessment. (Added K.O-I-C. 6/1977.)

4. Subject to paragraph 3, the standard values to be placed upon livestock (other than pedigree livestock acquired for breeding only) whether acquired by purchase or natural increase, held by any farmer at the beginning and end of a year of assessment shall be the standard values applicable to such livestock as are set out in the table hereunder.

<i>Description of livestock</i>		<i>Standard Value Emalangen</i>
Cattle:	Bulls	720
	Oxen	440
	Cows	440
	Tollies & heifers 2 year	280
	Tollies & heifers 1 year	200
	Calves under 1 year	120
Sheep:	Wether	60
	Rams	100
	Ewes	40
	Lambs	10
Goats:	Fully grown	40
	Kids under 1 year	10
Horses:	Stallions 4 years and over	600
	Mares 4 years and over	400
	Geldings 3 years and over	300
	Colts and fillies 3 years	300
	Colts and fillies 2 years	200

	Colts and fillies 1 year	150
	Foals under 1 year	60
Donkeys:	Jacks over 3 years	15
	Jacks under 3 years	10
	Jennies over 3 years	15
	Jennies over 3 years	10
	Foals under 1 year	5
Mules:	Over 4 years	300
	3 years to 4 years	200
	2 years to 3 years	150
	Under 2 years	60
Pigs:	Over 12 months	250
	Under 12 months	50
Poultry:	Over 9 months	5

(Amended K.O-I-C. 6/1997; replaced A.7/1992.)

5. Subject to paragraph 3, the values to be placed upon pedigree livestock acquired for breeding only and held by any farmer at the beginning and end of a year of assessment shall be —

- (i) in respect of pedigree livestock acquired after 30th June, 1975 for breeding only and at the date of purchase such livestock acquired during such year of assessment, the purchase price;
- (ii) in respect of other pedigree livestock acquired for breeding only and which is older than 4 years the purchase price less an amount calculated for each year of assessment during which such livestock has been held and has not been disposed of, equal to twenty per centum of the purchase price:

Provided that the aggregate of the amounts allowed under this sub-paragraph in respect of any one animal shall not exceed the purchase price of such animal.

(Amended K.O-I-C. 6/1977.)

5bis. If as a result of the application of the standard values fixed by paragraph 4 the taxable income of any farmer has been increased for the year of assessment ended 30th June, 1993 such increased taxable income is directly attributable to the standard values applicable as at the 30th June, 1993 shall be exempted from taxation: (Amended A.7/1992.)

Provided that if as a result of the application of the standard values fixed by paragraph 4 the assessed loss of any farmer is converted into a taxable income which is directly attributable to such increased standard values only so much of the increased taxable income as is in the excess of the assessed loss shall be exempted from taxation. (Added K.O-I-C. 6/1977.)

6. The value to be placed upon produce included in any return shall be such fair and reasonable value as the Commissioner may determine.

7. Livestock or produce donated or disposed of otherwise than by sale and livestock or produce acquired otherwise than by purchase or natural increase shall be brought into account at such values as the Commissioner may determine.

8. (1) Subject to sub-paragraphs (2), (3), (4), (5) and (6), there shall be allowable as deductions in the determination of the taxable income derived by any farmer, the expenditure incurred by him during the year of assessment in respect of —

- (a) dipping tanks;
- (b) dams, water-furrows, irrigation schemes, wells, boreholes and pumping plants;
- (c) fences;
- (d) the eradication of noxious plants;
- (e) the prevention of soil erosion;
- (f) the erection of buildings used in connection with farming operations other than those used for the domestic purposes of persons who are not employees of such farmer;
- (g) the planting of trees, shrubs or perennial plants for the production of fruits, nuts, hops, sugar, cotton, maize, vegetable oils or fibres, or any other similar agricultural produce, and the establishment of any area used for planting of such trees, shrubs or plants; (Amended K.O-I-C. 2/2003.)
- (h) the building of roads and bridges used in connection with farming operations;
- (i) the carrying of electric power from the main transmission lines to the farm apparatus, other than apparatus used for domestic purposes in any house not covered by item (f).

(2) No deduction under section 14(1)(c), (d) and (g) shall be allowed in respect of any machinery, articles or plant for which a deduction under sub-paragraph (1) hereof or the corresponding provisions of any previous income tax law has been allowed.

(3) The total amount allowable as deductions to any farmer under sub-paragraph (1) in any year of assessment shall not exceed an amount equal to thirty per cent of the gross income derived by him from farming operations during that year of assessment:

Provided that if in the year of assessment ended on the thirtieth day of June, 1975 or any year of assessment thereafter any amount has been disallowed under the corresponding provisions of the repealed Act or under this sub-paragraph such amount shall be carried forward and added to the expenditure to which this paragraph applies incurred in the succeeding year.

(4) For the purposes of this paragraph "employees" means in relation to any farmer, persons employed by such farmer in connection with his farming operations, but does not include his relatives or, if the farmer is a company, the shareholders (or the relatives of shareholders) in such company or in any company which is associated with it by virtue of shareholding, other than persons who held all their shares in such company solely because they are employed by it and who will in terms of its articles of association not be entitled to hold those shares after they cease to be so employed.

(5) The aggregate of all the deductions allowed under sub-paragraph (1)(f) to any farmer in respect of the erection of any buildings used for the domestic purposes of any one of his employees shall not exceed the sum of sixty thousand Emalangi. (Amended A.11/1985; A.7/1989; A.7/1992.)

(6) If in any year of assessment any building in relation to which a deduction has been allowed to any farmer under sub-paragraph (1)(f), whether in the current or any previous year of assessment, is used for the domestic purposes of any person other than an employee of such farmer, there shall be included in the income of such farmer, for the current year of assessment the amount of such deduction less one-tenth of such amount, in respect of each completed period of one year, but not exceeding ten years, during which such building was used by such farmer in connection with his farming operations, other than for the domestic purposes of persons who are not his employees.

9. (1) If it is proved to the satisfaction of the Commissioner —

- (a) that any farmer has in any year of assessment sold livestock on account of drought or stock disease; and
- (b) that such farmer has within two years after the close of such year of assessment purchased livestock to replace the livestock so sold;

the cost of the livestock so purchased shall, notwithstanding anything in this Schedule, be allowed, at the option of such farmer, as a deduction in the determination of his taxable income for such year of assessment:

Provided that the claim for such deduction is made within three years after the close of such year of assessment.

(2) The cost of livestock so allowed as a deduction shall not be allowed as a deduction in the year of assessment in which the purchases are made.

(3) Every farmer who desires to claim a deduction in terms of sub-paragraph (1) shall with his return of income for the year of assessment in which he sold livestock on account of conditions of drought or stock disease, notify the Commissioner accordingly and furnish full particulars in regard to the livestock so sold.

(4) Notwithstanding anything in this paragraph the Commissioner shall, until proof has been submitted to him as provided in sub-paragraph (1)(b), assess and recover any tax payable by a farmer in respect of any year of assessment in which livestock has been so sold as if the provision of such sub-paragraph had not been enacted:

Provided that if proof is submitted to the satisfaction of the Commissioner in terms of sub-paragraph (1), he shall revise the assessment concerned, and refund the farmer so much of the amount paid by him as exceeds the amount found to be payable after allowing the deduction referred to in such paragraph.

10. (1) Any amount received by or accrued to a farmer in respect of the disposal of a plantation shall, whether such plantation is disposed of separately or with the land on which it is growing, be deemed not to be a receipt or accrual of a capital nature and shall form part of such farmer's gross income.

(2) If a plantation is disposed of by a farmer with the land on which it is growing the amount of be included in such farmer's gross income in terms of sub-paragraph (1) shall —

- (a) if the amount representing the consideration payable in respect of the disposal of the plantation is agreed to between the parties to the transaction, be the amount so agreed to; or
- (b) if there is no such agreement between the parties, be such portion of the total consideration payable in respect of the disposal of the land and the plantation as in the opinion of the Commissioner represents the consideration payable for the plantation.

11. (1) In the determination of the taxable income of any farmer there shall be allowed as a deduction —

- (a) any expenditure incurred by such farmer during the year of assessment in respect of the establishment and maintenance of a plantation;
- (b) any expenditure incurred by such farmer prior to the first day of July, 1949, in respect of the establishment and maintenance of any plantation or the cost of acquisition of any plantation purchased by such farmer whether before or after the first day of July, 1949:

Provided that —

- (i) any deductions allowed under this item in respect of any plantation shall not in respect of any year of assessment exceed the gross income derived by such farmer in such year for such plantation;

- (ii) the aggregate of the deductions allowed in terms of this item or by virtue of any other provision of this or any previous law, in respect of plantations shall not exceed the amount of such expenditure or such cost of acquisition.

(2) For the purpose of calculating the cost of acquisition of any plantation the provisions of paragraph 10(2) shall apply *mutatis mutandis* in the case of a plantation acquired by any farmer with the land on which it is growing.

(3) For the purpose only of calculating the rates of normal tax payable in respect of any year of assessment by a farmer whose income for such year includes income derived from the disposal of a plantation or forest produce there shall (if the Commissioner is satisfied that such disposal forms part of the normal farming operations of the farmer concerned) be deducted from the taxable income of such farmer in the amount by which the taxable income derived by him in such year from the disposal of a plantation and forest produce exceeds the annual average taxable income derived by him from such source over the three years of assessment immediately preceding such year of assessment:

Provided that —

- (a) the Commissioner's determination as to what portion of a farmer's taxable income is derived from the disposal of plantation and forest produce shall be final and conclusive;
- (b) in no case shall the rate of tax be less than that applicable to the first Emalangeni of taxable income and that nothing in this paragraph shall be construed as relieving any farmer from liability for taxation under this Order upon any portion of his taxable income.

12. For the purposes of paragraphs 10 and 11 —

"forest produce" means anything which is derived from trees and includes trees, timber, wood, bark, leaves, seeds, gum, resin and sap;.

"plantation" means any forest of artificially established trees as ordinarily understood and includes any natural extension of such trees.

Second Schedule

AMOUNTS TO BE DEDUCTED OR WITHHELD BY EMPLOYERS IN RESPECT OF NORMAL TAX

(Amended A.7/1992; A.6/1994; A. 5/2004; A.7/2007; A.4/2008; A.11/2011.)

(Under section 58)

PART I

1. Interpretation.

In this Schedule unless the context otherwise requires —

"employee" (Amended A.5/2004; deleted A.11/2011.)

"employee" means any person (other than a company) who in respect of employment, receives remuneration from an employer or to whom remuneration accrues, including —

- (a) any former employee who receives remuneration which accrued before the termination of the contract of employment;
- (b) any person who receives any remuneration or to whom any remuneration accrues by reason of any services rendered by such person to or on behalf of a labour broker;
- (c) any labour broker;
- (d) any personal service company; and

- (e) any personal service trust;

(Added A.11/2011.)

“employees’ tax” means the tax which an employer is required or requested to deduct or withhold from remuneration paid or payable to an employee;

“employees’ tax certificate” means a certificate required to be issued by an employer in terms of paragraph 13;

“employer” means any authority or person (including any person acting in a fiduciary capacity or in his capacity as a trustee in an insolvent estate, an executor or an administrator of a benefit fund, pension fund, provident fund, retirement annuity fund or any other fund) who pays or is liable to pay to any person other than a company any amount by way of remuneration, and any company;

“employment” means —

- (a) the position of an individual in the employ of another person; or
- (b) a directorship of a company; or
- (c) a position entitling the holder to a fixed or ascertainable remuneration; or
- (d) a public office;

(Added A.11/2011.)

“labour broker” means any person who conducts or carries on any business whereby such person for reward provides a client of such business with other persons to render a service or perform work for such client, or to procure such other persons for the client, for which services or work such other persons are remunerated by such person; (Added A.11/2011.)

“personal service company” means any company (other than a company which is a labour broker), where any service rendered on behalf of such company to a client of such company is rendered personally by any person who is an associate in relation to such company, and —

- (a) such person would be regarded as an employee of such client if such service was rendered by such person directly to such client, other than on behalf of such company; or
- (b) such person or such company is subject to the control or supervision of such client as to the manner in which the duties are performed or are to be performed in rendering such service and must be mainly performed at the premises of the client; or
- (c) where more than eighty per cent of the income of such company during the year of assessment, from services rendered, consists of or is likely to consist of amounts received directly or indirectly from one client of such company, in relation to such client,

except where such trust throughout the year of assessment, employs three or more full-time employees who are on a full-time basis engaged in the business such trust of rendering any such service, other than any employee who is an associate in relation to such person or such trust; (Added A.11/2011.)

“remuneration” means any amount of income which is paid or is payable to any person by way of salary, leave pay, allowance, wage, overtime pay, bonus, gratuity, commission, fee, emolument, pension, superannuation allowance, honorarium, retiring allowance or stipend, whether in cash or otherwise and whether or not in respect of services rendered, including — (Amended A.5/1988; replaced A.4/2008.)

- (a) any amount referred to in paragraph (a), (b) and (c) of the definition of "gross income" in section 7 of this Order; (Amended A.5/1988; replaced A.4/2008.)
- (b) the annual value of such benefit or benefits referred to in paragraphs (f) and (h) of the definition of "gross income" in section 7 of this Order, as the Commissioner, may from time to time, determine in respect of a year of assessment; (Replaced A.4/2008.)
- (c) any allowance of advance, which must be included in the taxable income of that person in terms of section 11(8); (Replaced A.4/2008.)
- (d) any amount required to be included in such person's gross income under paragraphs (k), (l), (m) and (n) of that definition; and
- (e) fifty per cent of the total amount paid by an employer during any year of assessment directly or indirectly, by way of contribution to any approved bursary scheme for the benefit or educational assistance of the children of any employee or dependants of such employee.

but not including —

- (f) any annuity under an order of divorce or decree of judicial separation or under any agreement of separation;
- (g) any amount paid or payable to an employee wholly in reimbursement of expenditure actually incurred by such employee in the course of his employment; or
- (h) any amount paid or payable to any person in respect of services rendered or to be rendered by him as a domestic or private servant where the income tax payable on such taxable income for the year of assessment is equal to or less than the amount of the personal tax rebate allowed to such person;

(Replaced A.4/2008.)

"representative employer" means in the case of —

- (a) any company, the public officer of such company, or, in the event of such company being placed in liquidation or under judicial management, the liquidator or judicial manager, as the case may be;
- (b) any local authority or like authority or any body corporate or unincorporate (other than a company or a partnership) any manager, secretary, officer or other person responsible for paying remuneration on behalf of such council, board, authority or body;
- (c) a person under legal disability, any guardian, curator, administrator or other person having the management or control of the affairs of the person under legal disability; or
- (d) any employer who is not ordinarily resident in Swaziland, any agent of such employer having authority to pay remuneration:

Provided that nothing in this definition shall be construed as relieving any person from any liability, responsibility or duty imposed upon him by this Schedule.

PART II EMPLOYEES' TAX

EMPLOYERS TO DEDUCT TAX

2. (1) Every person (whether or not registered as an employer under paragraph 15) who pays or becomes liable to pay any amount by way of remuneration to any employee on or after the first day of March, 1967, shall, unless the Commissioner has granted authority to the contrary, deduct or withhold from such amount by way of employees' tax an amount which shall be determined as provided in paragraphs 9, 10, 11 or 12, as the case may be, in respect of the liability for normal tax of such employee, and shall pay the amount so deducted or withheld to the Commissioner within seven days after the end of the month during which the amount was deducted or withheld, or in the case of a person who ceases to be an employer, within seven days after the day after which he ceases to be an employer, or in either case within such further period as the Commissioner may approve. (Amended A.6/1994.)

(2) An employer may, at the written request of any employee, deduct or withhold from any amount of remuneration an amount by way of employees' tax greater than that required to be deducted or withheld in terms of sub-paragraph (1), and shall remit such amount to the Commissioner, and the provisions of this Schedule relating to employees' tax shall, *mutatis mutandis*, apply in respect of such amount.

(3) For the purposes of this paragraph, "month" means calendar month.

(4) An amount required to be deducted or withheld from any amount of remuneration under this Schedule by way of employees' tax shall be calculated on the balance of such amount of remuneration remaining after deducting any current contribution by the employee concerned to any pension fund (excluding so much of such contribution to a pension fund not established by law as is made at a rate exceeding the sum specified in section 14(1)(i)) which is calculated with reference to such amount of remuneration or to a portion of such amount or to the period in respect of which the amount of remuneration is paid or payable and which the employer is, *vis-a-vis* the employee concerned, entitled or required to deduct or withhold from such amount of remuneration. (Amended A.6/1991.)

3. (1) The liability of any employer to deduct or withhold any amount of employees' tax in terms of paragraph 2 shall not be reduced or extinguished by reason of the fact that the employer has a right or is otherwise than in terms of any law under an obligation to deduct or withhold any other amount from the employees' remuneration, and such right or obligation shall, notwithstanding anything in any other law, for all purposes be deemed to have reference only to the amount of the remuneration remaining after the amount of the employees' tax referred to in such paragraph has been deducted or withheld.

(2) Paragraph 2 shall apply in respect of all amounts payable by way of remuneration, notwithstanding any other law which provides that any such amount shall not be reduced or shall not be subject to attachment.

4. Any amount required to be deducted or withheld in terms of paragraph 2 shall be a debt due to the Government, and the employer concerned shall save as otherwise provided, be absolutely liable for the due payment thereof the Commissioner.

5. (1) Subject to sub-paragraph (6), any employer who fails to deduct or withhold the full amount of employees' tax as provided in paragraph 2 shall be personally liable for the payment to the Commissioner of the amount which he fails to deduct or withhold, and shall, subject to sub-paragraph (2) hereof, pay such amount to the Commissioner not later than the date on which payment should have been made if the employees' tax had in fact been deducted or withheld in terms of paragraph 2.

(2) If the employer has failed to deduct or withhold employees' tax in terms of paragraph 2 and the Commissioner is satisfied that the failure was not due to an intent to postpone payment of the tax or to evade the employer's obligations under this Schedule, the Commissioner may, if he is satisfied that there is a reasonable prospect of ultimately recovering the tax from the employee, absolve the employer from his liability under sub-paragraph (1).

(3) An employer who has not been absolved from liability as provided in sub-paragraph (2) shall have a right of recovery against the employee in respect of the amount paid by the employer in terms of sub-paragraph (1) in respect of such employee, and such amount may in addition to any other right of recovery be deducted from future remuneration which may become payable by the employer to such employee, in such manner as the Commissioner may determine.

(4) Until such time as an employee pays to his employer any amount which is due to the employer in terms of sub-paragraph (3), such employee shall not be entitled to receive from the employer an employees' tax certificate in respect of such amount.

(5) Any amount which an employer is required to pay in terms of sub-paragraph (1) and which he is entitled to recover from the employee in terms of sub-paragraph (3) shall, in so far as the employer only is concerned, be deemed to be a penalty due and payable by such employer.

(6) Sub-paragraph (1) shall not apply in respect of any amount or any portion of any amount of employees' tax which an employer has failed to deduct or withhold and in respect of which paragraph 17(3) applies.

6. (1) If an employer fails to pay any amount of employees' tax for which he is liable within the period allowed for payment thereof in terms of paragraph 2 he shall, in addition to any other penalty or charge for which he may be liable under this Order, pay a penalty equal to twenty per centum of such amount. (Amended A.7/1992.)

(2) The Commissioner may, if he is satisfied that the employer's failure to pay the amount of employees' tax was not due to an intent to postpone payment of such tax or otherwise evade his obligation under this Order and was not designed to enable the employee concerned to evade such employees' obligations under this Order, remit the whole or any part of the penalty imposed under sub-paragraph (1).

(3) The penalty imposed under sub-paragraph (1) shall be paid to the Commissioner when payment is made of the amount of employees' tax to which it refers or within such further period as the Commissioner may approve.

7. Any agreement between an employer and an employee whereby the employee undertakes not to deduct or withhold employees' tax shall be void.

8. An employee shall not be entitled to recover from an employer any amount deducted or withheld by the employer from the employees' remuneration in terms of paragraph 2.

9. Deduction tables.

(1) The Commissioner may from time to time, having regard to the rates of normal tax as fixed by law and to any other factors having a bearing upon the probable liability of taxpayers for those taxes prescribe deduction tables applicable to such classes of employees as he may determine, and the manner in which such tables shall be applied, and the amount of employees' tax to be deducted from any amount of remuneration shall, subject to sub-paragraph (3) and paragraphs 10, 11 and 12 of this Schedule, be determined in accordance with such tables, or, if sub-paragraph (3) is applicable, in accordance with such sub-paragraph. (Amended A.6/1994.)

(2) Any tables prescribed by the Commissioner in accordance with sub-paragraph (1) shall come into force on such date as may be notified by the Commissioner in the Gazette, and shall remain in force until withdrawn by the Commissioner.

(3) The amount to be deducted or withheld in respect of employee's tax from any lump sum to which paragraph (b) or (c) of the definition of "gross income" applies or any other lump sum to which the employee is entitled by virtue of the employee's agreement of employment or service, shall be ascertained by the employer from the Commissioner before paying out such lump sum, and the Commissioner's determination of the amount to be so deducted or withheld shall be final. (Amended A.10/1991; replaced A.5/2004.)

10. (1) If the Commissioner is satisfied that the circumstances warrant a variation of the basis provided in paragraph 9 for the determination of amounts of employees' tax to be deducted or withheld from remuneration of employees in the case of any employer, he may agree with such employer as to the basis of determination of such amounts to be applied by such employer, and the amounts to be deducted or withheld by such employer in terms of paragraph 2 shall, subject to paragraphs 11 and 12, be determined accordingly.

(2) Any agreement made in terms of sub-paragraph (1) shall remain in force indefinitely, but the Commissioner or the employer concerned may give notice of termination thereof and upon the expiry of a period of three months from the date of such notice such agreement shall terminate.

11. In order to alleviate hardship to an employee due to illness or other circumstances or to correct any error in regard to the calculation of employees' tax, whether arising from the furnishing to an employer by an employee of a false or incorrect return of personal particulars or otherwise, or if the employee has in terms of paragraph 12(2) applied to the Commissioner for the issue of a directive to his employer, to enable the employer to deduct or withhold the correct amount by way of employees' tax, the Commissioner may, having regard to the circumstances of the case, issue a directive to the employer concerned authorising the employer to refrain from deducting or withholding any amount under paragraph 2 by way of employees' tax from any remuneration due to the employee or to deduct or withhold by way of employees' tax a specified amount or an amount to be determined in accordance with a specified rate or scale, and the employer shall comply with such directive.

11A. (1) When, at the end of the tax year, there becomes known the amount of remuneration received by or accruing to any employee who was in continuous employment with the same employer in respect of such year of assessment, the employer concerned shall calculate and determine the amount of normal tax for which such employee is actually liable in respect of such year of assessment, and, subject to the provisions of paragraph 2(4) and to the applicable normal tax rates as prescribed, make the required adjustments to the amount of employees' tax deductible or withholdable in respect of such employee.

(2) (i) Where at the end of any tax year, the employees' tax actually deducted or withheld from any remuneration paid or payable by an employer to an employee during any tax year exceeds the amount required to be deducted or withheld in terms of subparagraph (1) above, the employer shall repay to such employee the amount of such excess.

(ii) Any amount of employees' tax which has been repaid by an employer to an employee under subparagraph (i) above may be deducted from any subsequent payment of employees' tax due by the employer.

(3) If the amount of employees' tax actually deducted or withheld from any remuneration paid or payable by an employer to an employee during any tax year is less than the amount required to be deducted or withheld in terms of subparagraph (1), then the employer shall pay the shortfall to the Commissioner and recover such amount from the employee.

(Added A.6/1994.)

12. Employees to furnish returns of personal particulars to employers.

(1) Subject to sub-paragraph (2), every employee shall furnish his employer with a return of personal particulars in such form as the Commissioner may prescribe, and shall furnish a fresh return within seven days of the date which any change in the particulars previously furnished occurs:

Provided that until a new return is received or a directive is received from the Commissioner in terms of paragraph 11, the employer shall regard the latest return submitted to him by the employee concerned as correct, and shall continue to

determine the amounts to be deducted or withheld by way of employees' tax in accordance with the particulars disclosed therein.

(2) If for any reason an employee does not wish to furnish the return referred to in sub-paragraph (1), he may instead apply to the Commissioner in such form as the Commissioner may prescribe for the issue of a directive to his employer and in such case the Commissioner may in his discretion issue a directive to the employer as provided in paragraph 11.

(3) If an employer has not at any time received any return of personal particulars whatsoever from an employee as required by sub-paragraph (1), or has not in respect of such employee received a directive from the Commissioner as provided in paragraph 11, he shall, until such return or directive is received, deduct or withhold employees' tax under paragraph 9 or 10, as the case may be, at the rate applicable to a person who is not a married person and who is not entitled to have any child taken into account in the determination of the amount of employees' tax to be deducted or withheld.

(4) If the latest return of personal particulars furnished by any employee to his employer in terms of sub-paragraph (1) discloses that the employee is a divorced person the employer shall, until he has in respect of such employee received a directive from the Commissioner issued under paragraph 11, deduct or withhold employees' tax under paragraph 9 or 10, as the case may be, at the rate applicable to a person who is not a married person and with due regard to the number of children of the employee disclosed by such return who will not have attained the age of eighteen years on the last day of the employees' year of assessment during which the employees' tax is deducted or withheld.

13. Furnishing and obtaining of employees' tax certificates.

(1) Subject to paragraphs 5 and 17 every person who during any year of assessment deducts or withholds any amount by way of employees' tax as required by paragraph 2 shall, within the time allowed by sub-paragraph (2) hereof, deliver to each employee or former employee to whom remuneration has during the period in question been paid or become due by such person, an employees' tax certificate, in such form as the Commissioner may prescribe or approve, which shall show the total remuneration of such employee or former employee and the sum of the amounts of employees' tax deducted or withheld by such person from such remuneration during such period, excluding any amount of remuneration or employees' tax included in any other employees' tax certificate issued by such person unless such other certificate has been surrendered to such person by the employee or former employee and has been cancelled by such person and dealt with by him as provided in sub-paragraph (10).

(2) The employees' tax certificate referred to in sub-paragraph (1) shall be delivered —

- (a) if the person who is required to deliver the certificate has not ceased to be an employer in relation to the employee concerned, within fourteen days after the end of the period to which the certificate relates;
- (b) if such person has ceased to be an employer in relation to the employee concerned but has continued to be an employer in relation to other employees within fourteen days of the date on which he has so ceased;
- (c) if such person has ceased to be an employer within seven days of the date on which he has so ceased; or
- (d) within such further period as the Commissioner may approve in any particular case.

(3) For the purposes of sub-paragraph (2), a person shall, if the Commissioner having regard to the circumstances of the case so directs, be deemed not to have ceased to be an employer in relation to any of his casual employees who is likely from time to time to be re-employed by such person.

(4) Notwithstanding sub-paragraphs (1) and (2), any person who has deducted or withheld employees' tax from remuneration of any employee shall as and when

required by the Commissioner deliver to such employee an employees' tax certificate, in such form as the Commissioner may approve, which shall show the total remuneration of such employee or former employee and the sum of the amounts of employees' tax deducted or withheld by such person from such remuneration during any period specified by the Commissioner, but excluding any amount of remuneration or employees' tax included in any other employees' tax certificate issued by such person unless such other certificate has been surrendered to such person by the employee or former employee and has been cancelled by such person and dealt with by him as provided in sub-paragraph (10).

(5) It shall be the duty of any employee or former employee who has not received an employees' tax certificate within the time allowed by sub-paragraph (2) forthwith to apply to the employer for such certificate.

(6) Every taxpayer shall, when rendering a return of income under section 33 attach to such return all employees' tax certificates in his possession which disclose information in respect of the year of assessment to which the return relates.

(7) It shall be sufficient compliance with sub-paragraph (1) or (4) in regard to the delivery of any employees' tax certificate to any employee or former employee if such certificate is delivered to the employees' authorised agent or the representative taxpayer in respect of the remuneration shown in such certificate or, if delivery cannot conveniently be effected by personal delivery, if such certificate is sent to the employee or former employee or such agent or representative taxpayer by registered post.

(8) An employer may at the request of the employee or former employee issue a duplicate employees' tax certificate, but any such duplicate shall be clearly marked as such and shall disclose full details of the original certificate.

(9) Unless authorised thereto by the Commissioner no duplicate employees' tax certificate may be issued by an employer otherwise than as provided in sub-paragraph (8).

(10) Any cancelled or spoiled employees' tax certificate shall not be destroyed by the employer concerned but shall be retained by him until the Commissioner requires it to be surrendered to him.

(11) The Commissioner shall control the issue to employers of stocks of unused employees' tax certificates and may prescribe conditions in regard to the manner in which such unused certificates may be used or as to the surrender of unused stocks of such certificates and every employer shall account to the Commissioner for used, unused, cancelled or spoiled certificates as and when required by the Commissioner.

(12) In the case of any employer who has a mechanised accounting system the Commissioner may, subject to such conditions as he may impose, approve the use by such employer of employees' tax certificates in a form other than the form prescribed for general use and, if any such employer fails to comply with the conditions imposed by the Commissioner, the Commissioner may withdraw his consent for the use of such certificates and the employer shall forthwith or from any date specified by the Commissioner cease to use such certificates, and shall within such period as the Commissioner may prescribe surrender to the Commissioner all unused stocks of such certificates.

(13) Every person who ceases to be an employer shall, unless the Commissioner otherwise directs, within fourteen days of his ceasing to be an employer surrender to the Commissioner all unused employees' tax certificates in his possession.

(14) If any person fails to surrender any unused employees' tax certificates as required by sub-paragraph (12) or (13), any officer engaged in carrying out his Order, who has in relation to such person been authorised thereto by the Commissioner by telegram or other writing, may, without previous notice, at any time during the day enter any premises whatsoever and on such premises search for and seize such certificates and, in carrying out such search, open or cause to be removed and open any article in which he suspects any such certificate to be contained.

(15) For the purposes of this Schedule any employees' tax certificate on which appears the name or any trade name of any employer shall, until the contrary is

proved, be deemed to have been issued by such employer if such certificate is in a form approved by the Commissioner for general use and was supplied by the Commissioner to such employer for use by him or is in a form approved by the Commissioner under sub-paragraph (12) for use by such employer.

14. Employers to keep records and furnish returns.

(1) Every employer shall in respect of each employee maintain a record showing the amounts of remuneration paid or due by him to such employee and the amount of employees' tax deducted or withheld from each such remuneration, and such record shall be retained by the employer and shall be available for scrutiny by the Commissioner.

(2) Every employer shall when making any payment of employees' tax submit to the Commissioner a declaration in such form as the Commissioner may approve showing, in addition to other information that may be required, the total amounts included in such payment in respect of employees resident in Swaziland and employees resident outside Swaziland.

(3) Every employer shall —

(a) in respect of each year of assessment;

(b) if he ceases to carry on any business or other undertaking in respect of which he has paid or become liable to pay remuneration to any employee or otherwise ceases to be an employer, in respect of the period from the first day of July immediately preceding the date on which he has ceased to carry on such business or other undertaking or to be an employer, as the case may be, to the date on which he has so ceased to carry on such business or undertaking or to be an employer, as the case may be,

within fourteen days after the end of the year of assessment or period in question, or within such longer time as the Commissioner may approve, render to the Commissioner a return, in such form as the Commissioner may approve, showing the names and addresses of all the persons who during such period were employees in relation to such employer and the total remuneration paid to or accrued to each employee in respect of such period and the total amount of employees' tax deducted or withheld from the remuneration of each such employee during such period.

(3A) Notwithstanding the provisions of paragraph 19(1)(i), any employer who fails to comply with the provisions of paragraph 14(3) shall, while such failure to comply continues, be liable to a penalty not exceeding thirty Emalangeneni for each day during which the failure continues. (Added A.9/1988; A.7/1992.)

(4) The Commissioner may call upon any employer to allow an auditor to examine his records to verify the accuracy with the employees' tax certificates.

15. Registration of employers.

(1) Every person who becomes an employer after the date of commencement of this Order or who, being an employer before such date has not applied for registration under paragraph 15 of the Second Schedule to the repealed Act shall apply for registration in such form as the Commissioner may require within fourteen days of becoming an employer or within fourteen days of the date of commencement of this Order, as the case may be, or in either case within such further period as the Commissioner may allow.

(2) Every person who has applied for registration under paragraph 15 of the Second Schedule to the repealed Act shall be deemed to be registered for the purpose of this paragraph.

(3) Every person who has applied for registration under sub-paragraph (1) shall, within fourteen days after changing his address or ceasing to be an employer, notify the Commissioner in writing of his new address or of the fact of his having ceased to be an employer, as the case may be.

16. Liability of representative employers and others.

(1) Every representative employer shall as regards the remuneration which he pays or is liable to pay to any employee in his representative capacity, be subject in all respects to the same duties, responsibilities and liabilities under this Schedule as if such remuneration was remuneration paid or liable to be paid by him in his personal capacity.

(2) Any employees' tax or interest on employees' tax or any penalty imposed under this Schedule shall be recoverable from the person who in terms of paragraph 11 is an employer by virtue of his having paid or become liable to pay remuneration in a fiduciary capacity, or in his capacity as a trustee in an insolvent estate, an executor, or an administrator of a benefit fund, pension fund, provident fund, retirement annuity fund or any other fund, or from the representative employer, but to the extent only of any assets belonging to the person, body, trust estate or fund represented or administered by him which may be in his possession or under his management, disposal or control, and sections 46 and 47 shall *mutatis mutandis* apply in the case of such first-mentioned person or representative employer, as if he were a representative taxpayer.

(3) The executor of the estate of any deceased employer or the trustee of the insolvent estate of any employer shall fulfil such obligations of the deceased or insolvent employer under paragraphs 13 and 14 as arise in consequence of that employer ceasing to be an employer because of his death or insolvency, or as have not been fulfilled by such employer before his death or insolvency.

PART III GENERAL

17. Employees' tax to be set off against tax liability.

(1) Subject to the provision of paragraph 11A, there shall be set off against the liability of the taxpayer, in respect of normal tax due by the taxpayer and payable under Part VII of this Order, the amounts of employees' tax deducted or withheld by the taxpayer's employer during any year of assessment for which the taxpayer's liability for normal tax has been assessed by the Commissioner, and if — (Amended A.6/1994.)

- (a) the sum of such amounts of employees' tax exceeds the amount of the taxpayer's total liability for such taxes, the excess amount shall be refunded to the taxpayer;
- (b) in the case of any taxpayer, the taxpayer's total liability for such tax exceeds the sum of such amounts of employees' tax, the amount of the excess shall be payable by the taxpayer to the Commissioner.

(2) The burden of proof that any amount of employees' tax has been deducted or withheld by his employer shall be upon the taxpayer and any employees' tax certificate shall be *prima facie* evidence that the amount of employees' tax reflected therein has been deducted by the employer.

(3) If the Commissioner is satisfied that the amount or any portion of the amount of employees' tax shown in any employees' tax certificate has not been deducted or withheld by the employer and the amount of employees' tax shown in such tax certificate has been applied as provided in sub-paragraph (1), the employer and the employee shall be jointly and severally liable to pay the Commissioner the amounts which should not have been so applied and such amount shall be recoverable under this Order as if it were tax.

(4) An employer who has, under sub-paragraph (3), paid the Commissioner an amount which has, but should not have, been applied under sub-paragraph (1), may, if the amount was shown or included in the certificate because of a *bona fide* error, recover it from the employee concerned, and in such case sub-paragraph 5(3) shall, *mutatis mutandis*, apply.

(5) No employees' tax certificate shall be issued by the employer in respect of any amount recovered by him from the employee in terms of sub-paragraph (4), nor shall any such amount be included in any return rendered in terms of paragraph 14(3).

(6) if the Commissioner is satisfied that the employee to whom an employees' tax certificate refers was directly or indirectly responsible for an incorrect amount being shown on such certificate, he may absolve the employer from the liability imposed upon him by sub-paragraph (3), and in such case the employee shall be solely liable under that sub-paragraph.

18. No refund of any amount or employees' tax shall be made to the taxpayer concerned otherwise than as provided in paragraph 17.

19. Offences.

(1) A person who —

- (a) makes or becomes liable to make any payment of remuneration and fails to deduct or withhold therefrom any amount of employees' tax or to pay such amount to the Commissioner as and when required by paragraph 2;
- (b) uses or applies any amount deducted or withheld by him by way of employees' tax for purposes other than the payment of such amount to the Commissioner,
- (c) makes or issues or causes to be made or issued or knowingly possesses or uses or causes to be used any employees' tax certificate which is false;
- (d) alters any employees' tax certificate made or issued by any other person or authority or falsely pretends to be the employee named in any employees' tax certificate or for his own advantage or benefit obtains credit with respect to or payment of the whole or any part of any amount of employees tax deducted or withheld from remuneration received by another person; or,
- (e) not being an employer and without being duly authorized by any person who is an employer, issues or causes to be issued any document purporting to be an employees' tax certificate,

commits an offence and, in addition to any penalty otherwise provided, shall be liable on conviction to a fine not exceeding fifty thousand emalangeni, or to imprisonment for a term not exceeding five years, or to both such fine and term of imprisonment.

(2) A person who —

- (a) without just cause shown by him, fails to comply with any directive issued to him by the Commissioner in terms of paragraph 9(3) and 11;
- (b) furnishes to his employer or the Commissioner a false or misleading return of personal particulars or gives any false information or misleads his employer in relation to any matter affecting the amount of employees' tax to be deducted in his case;
- (c) fails or neglects to deliver to any employee or former employee any employees' tax certificate as required by paragraph 13;
- (d) fails to comply with any conditions prescribed by the Commissioner in terms of paragraph 13(11) in regard to the manner in which employees' tax certificates may be used or as to be surrender of unused stocks of such certificates or to account for used, unused, or spoiled employees' tax certificates when required by the Commissioner under such paragraph or on ceasing to be an employer fails to surrender unused employees' tax certificates in his possession as required by subparagraph (13) of such paragraph;
- (e) fails to comply with any condition prescribed by the Commissioner by which he is bound in terms of paragraph 13(12);

- (f) fails or neglects to maintain any record as required by paragraph 14 or to retain such record for a period of five years from the date of the last entry therein or to furnish to the Commissioner any declaration as required by such paragraph; or
- (g) fails or neglects to apply to the Commissioner for registration as an employer as required for paragraph 15(1) or having so applied fails or neglects to notify the Commissioner of any change of address or the fact of his having ceased to be an employer as required by subparagraph (2) of such paragraph,

commits an offence and shall be liable on conviction to a fine of not more than ten thousand emalangeni, or to imprisonment for a term not exceeding one year, or to both such fine and term of imprisonment.”

(Amended A.7/1992; A.6/1994; replaced A.7/2007.)

20. Recovery of employees’ tax, penalty, additional tax and interest.

Any amount of employees’ tax, penalty or additional tax payable in terms of this Schedule, and any amount of interest payable in terms of section 58 shall, when it becomes due or is payable, be a debt due to the Government and may be recovered by the Commissioner in the manner prescribed in section 61 for the recovery of tax and interest due or payable under this Order.

Third Schedule

RATES OF NORMAL TAX

(Replaced A.9/1988; A.6/1991; A.6/2000; amended K.O-I-C. 2/2003; replaced A.4/2008; A.2/2011.)

PART I

(1) For the purposes of section 6(3) of the Order, the rates of tax to be levied for the year of assessment ending 30 June 2014 are as follows —

- (a) in the case of a company, for each Lilangeni of taxable income twenty-seven and half per cent;
- (b) in the case of a person, other than a company or trust, as prescribed in Part II of the Schedule and such rates of tax shall, in the case a natural person, be reduced by way of a rebate —
 - (i) of an amount not exceeding the sum of eight thousand two hundred emalangeni in any year of assessment; and
 - (ii) of an additional amount not exceeding two thousand seven hundred emalangeni if the person is over the age of sixty years on the last day of the year of assessment;
- (c) in the case of a trust, for each Lilangeni of taxable income, thirty-three per cent;
- (d) in the case of a natural person who, during the year of assessment, was ordinarily resident in Swaziland, for each Lilangeni of dividend income, ten per cent;
- (e) in the case of a natural person who, during the year of assessment, was ordinarily resident in Swaziland, for each Lilangeni of taxable interest income ten per cent;
- (f) in the case of a natural person who, during the year of assessment, was ordinarily resident in Swaziland, for each Lilangeni of taxable income received or accrued at the time of redundancy or retirement, as prescribed in Part III of the Schedule. In terms of section 8 no reduction by way of rebate shall be made if the tax payable in section 6 is subject to the rates of tax prescribed in Part III hereof.

(2) In the case of a person (other than a company or trust) 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 per cent of each Lilangeni of taxable income; and
- (ii) to three per cent of each Lilangeni of such part where any part of the taxable income consists of a pension.

PART II

Rates of normal tax in the case of persons other than companies or trust shall be as follows:

(Added A.11/1982; amended A.11/1985; A.7/1989; replaced A.7/1992; A.6/1994; A.6/2000; A.5/2004; A.7/2007; A.4/2008; A.11/2011.)

Taxable Income		Rate of tax
Exceeds	but does not exceed	
E	E	E
0	100 000	0 + 20% of the excess over 0
100 000	150 000	20 000 + 25% of the excess over 100 000
150 000	200 000	32 500 + 30% of the excess over 150 000
200 000		47 500 + 33% of the excess over 200 000

PART III

RATES OF NORMAL TAX IN THE CASE OF A REDUNDANT OR RETIRING INDIVIDUAL

(Added A.11/1982; amended A.11/1985; A.7/1989; replaced A.7/1992; A.6/1994; A.6/2000; K.O-I-C.2/2003; A.7/2007; A.4/2008.)

Taxable Income		Rate of tax
Exceeds	but does not exceed	
E	E	E
0	90 000	0 – 20% of the excess over 0
90 000	180 000	18 000 + 25% of the excess over 90 000
180 000	270 000	40 500 + 30% of the excess over 180 000
270 000		67 500 + 33% of the excess over 270 000

Fourth Schedule

PROVISIONAL PAYMENTS IN RESPECT OF NORMAL TAX

(Added A.11/1985.)

(Under Section 58A)

1. Definitions.

For the purposes of this Schedule, unless the context otherwise requires —

“provisional tax” means any payment required to be made in terms of paragraph 2;

“provisional taxpayer” means —

- (a) any person (other than a company or a person referred to in subparagraph (1) of paragraph 3) who derives by way of income any amount which does not constitute remuneration in terms of the definition of that expression as contained in the Second Schedule to this Order;
- (b) unless the Commissioner in a particular case otherwise directs, any director of a private company if such director is ordinarily

resident in Swaziland or such company is managed and controlled or has its registered office in Swaziland;

- (c) any company;
- (d) any person who is notified by the Commissioner that he is a provisional taxpayer.

2. Payment of provisional tax.

(1) Every provisional taxpayer shall, in the manner provided in this Part, make payments (called provisional tax) to the Commissioner in respect of his liability for normal tax in respect of every year of assessment.

(2) Where for the purpose of determining any amount of provisional tax required to be paid by any provisional taxpayer in respect of any year of assessment the liability of such taxpayer for normal tax is required to be estimated in respect of such year, such liability shall be deemed to be the amount of normal tax which, calculated at the relevant rate referred to in sub-paragraph (3), would be payable by the provisional taxpayer in respect of the amount of taxable income estimated by such taxpayer in terms of paragraph 4(1) during the period prescribed by this Schedule for the payment of the said amount of provisional tax, or any extension of such period granted in terms of paragraph 11(2), or if the amount so estimated has been increased by the Commissioner in terms of paragraph 4(3), the amount of normal tax which, calculated at the said rate, would be payable by the provisional taxpayer in respect of the amount of taxable income as so increased, or if the Commissioner has estimated the provisional taxpayer's taxable income in terms of paragraph 4(2) the amount of normal tax which, calculated at the said rate, would be payable by the provisional taxpayer in respect of the amount of taxable income so estimated.

(3) For the purposes of any calculation of normal tax under sub-paragraph (2), the rate at which such tax is to be calculated shall be the relevant rate which on the date of payment of the provisional tax in question is in force in respect of the year of assessment in respect of which such provisional tax is required to be paid under this Schedule, or if at the said date the rate has not been fixed, the relevant rate in respect of that year foreshadowed by the Minister in his budget statement, or if at that date the rate has not been so fixed or so foreshadowed, the relevant rate which is in force in respect of the latest preceding year of assessment.

(4) The Commissioner may from time to time, having regard to the prevailing rates of normal tax of foreshadowed by the Minister in his budget statement to the rebates applicable under section 8 of this Order, and to any other factors having bearing upon the probable liability of taxpayers for normal tax, prescribe tables for optional use by provisional taxpayers falling within any category specified by the Commissioner, or by provisional taxpayers generally for the purpose of estimating the liability of such taxpayers for normal tax, and the Commissioner may prescribe the manner in which such tables shall be applied.

(5) Any tables prescribed by the Commissioner in accordance with sub-paragraph (4) shall come into force on such date as may be notified by the Commissioner in the Gazette and shall remain in force until withdrawn by the Commissioner.

(6) Sub-paragraphs (2) and (3) shall not apply where the liability of a provisional taxpayer for normal tax is estimated in accordance with any tables prescribed for his use under sub-paragraph (4) and not withdrawn under sub-paragraph (5).

3. Exemptions.

There shall be exempt from payment of provisional tax in respect of any period in respect of which provisional tax would, but for this item, be payable; any person (other than a company or a director of a private company) who satisfies the Commissioner that apart from any taxable income which he may derive by way of remuneration, as defined in the Second Schedule to this Order, he will not during that period derive any taxable income in excess of one thousand Emalangeni.

4. Estimates of taxable income to be made by provisional taxpayers.

(1) (a) Every provisional taxpayer (other than a company) shall, during every period within which provisional tax is or may be payable by him as provided in this Part, or any extension of such period granted in terms of paragraph 11(2), submit to the Commissioner, in such form as the Commissioner may prescribe, an estimate of the total taxable income which will be derived by the taxpayer in respect of the year of assessment in respect of which provisional tax is or may be payable by him.

(b) Every company which is a provisional taxpayer shall, during every period within which provisional tax is or may be payable by it as provided in this Part or any extension of such period granted in terms of paragraph 11(2), submit to the Commissioner, in such form as the Commissioner may prescribe, estimates of the total taxable income which will be derived by the company in respect of its financial year.

(c) The amount of any estimate so submitted by a provisional taxpayer (other than a company) during the period referred to in paragraph 7(1)(a) or 8(1) any extension of such period granted in terms of paragraph 11(2), or by a company (as a provisional taxpayer) during the period referred to in paragraph 9(a)(i) or any extension of such period granted in terms of paragraph 11(2), shall, unless the Commissioner, having regard to the circumstances of the case, agrees to accept an estimate of a lower amount, not be less than the basic amount applicable to the estimate in question, as contemplated in item (d).

(d) The basic amount applicable to any estimate submitted by provisional taxpayer under this paragraph shall, for the purposes of this paragraph and paragraph 5, be deemed to be in respect of:

- (i) an estimate submitted by a provisional taxpayer (other than a company) under item (a), the taxable income of the taxpayer, as assessed by the Commissioner, for the latest preceding year of assessment in relation to such estimate; or
- (ii) as respects an estimate submitted by a company under item (b), the taxable income of the Company as assessed by the Commissioner, for the latest preceding year of assessment in relation to such an estimate.

(e) For the purposes of item (d), the latest preceding year of assessment in relation to any estimate under this paragraph shall be deemed to be the latest of the years of assessment —

- (i) preceding the year of assessment in respect of which the estimate is made; and
- (ii) in respect of which a notice of assessment relevant to the estimate has been issued by the Commissioner not less than twenty-one days before the date on which the estimate has been submitted to the Commissioner.

(2) If any provisional taxpayer fails to submit any estimate as required by sub-paragraph (1), the Commissioner may estimate the taxable income which is required to be estimated, and such estimate shall be final and conclusive.

(3) The Commissioner may call upon any provisional taxpayer to justify any estimate made by him in terms of sub-paragraph (1), or to furnish particulars of his income and expenditure or any other particulars that may be required and, if the Commissioner is dissatisfied with the said estimate he may increase the amount thereof to such an amount as he considers reasonable, and the estimate as increased shall be final and conclusive.

(4) Any estimate made by the Commissioner under sub-paragraph (2) or (3) shall be deemed to take effect in respect of the relevant period within which the provisional taxpayer is required to make any payment of provisional tax in terms of this Part, or within any extension of such period granted in terms of paragraph 11(2).

5. Additional tax in the event of taxable income being under-estimated.

(1) If the final or last estimate of his taxable income made in terms of paragraph 4(1)(a) or (b) by a provisional taxpayer in respect of any year of

assessment discloses an estimated amount of taxable income which is less than ninety percent of the amount of the actual taxable income in respect of which the estimate was made, as finally determined for that year under this Order, and which is also less than the basic amount applicable to the estimate in question, as contemplated in paragraph 4(1)(d), the taxpayer shall, subject to sub-paragraphs (2), (3) and (4) be required to pay to the Commissioner, in addition to the normal tax chargeable in respect of his taxable income for such year of assessment, an amount by way of additional tax equal to twenty percent of the difference between the amount of normal tax as calculated in respect of the amount of taxable income as so disclosed and the lesser of the following amounts, namely —

- (a) the amount of normal tax calculated, at the rates applicable in respect of the said year of assessment, in respect of a taxable income equal to ninety percent of the said actual taxable income; and
- (b) the amount of normal tax calculated in respect of a taxable income equal to the said basic amount, at the rates applicable in respect of that year.

(2) Where the Commissioner is satisfied that the amount of any estimate referred to in sub-paragraph (1) was not deliberately or negligently understated and was calculated with due regard to the factors having a bearing thereon, the Commissioner may in his discretion remit the additional tax or part thereof.

(3) Sub-paragraph (1) of this paragraph shall not apply in relation to any final or last estimate referred to in that sub-paragraph if the Commissioner has under the provisions of paragraph 4(3), increased such final or last estimate.

(4) Any decision of the Commissioner in the exercise of his discretion under sub-paragraph (2) shall be subject to objection and appeal.

6. Additional tax in the event of failure to submit an estimate of taxable income timeously.

(1) Subject to sub-paragraphs (2) and (3), where any provisional taxpayer is liable for the payment of normal tax in respect of any amount of taxable income derived by him during any year of assessment and he has not on or before the last day of that year or, if the period for the final or last payment of provisional tax by him in respect of such taxable income has under paragraph 11(2), been extended to a date later than the end of such year, on or before such date, submitted to the Commissioner an estimate of such taxable income as required by paragraph 4(1), the taxpayer shall, unless the Commissioner has estimated the said taxable income under paragraph 4(2), be required to pay to the Commissioner, in addition to the normal tax chargeable in respect of such taxable income, an amount by way of additional tax equal to twenty percent of the amount by which the normal tax payable by him in respect of such taxable income exceeds the sum of any amounts of provisional tax paid by him in respect of such taxable income within any period allowed for the payment of such provisional tax under this part or within any extension of such period under paragraph 11(2) and any amounts of employees tax deducted or withheld from his remuneration by his employer during such year. (Amended A.7/1992.)

(2) The Commissioner may, if he is satisfied that the provisional taxpayer's failure to submit such an estimate timeously was not due to an intent to evade or postpone the payment of provisional tax or normal tax, waive or remit the whole or any part of the additional tax imposed under sub-paragraph (1).

(3) Any decision of the Commissioner in the exercise of his discretion under sub-paragraph (2) shall be subject to objection and appeal.

7. Payments of provisional tax by provisional taxpayers (other than companies), whose income is not normally derived wholly or mainly from farming.

(1) Subject to sub-paragraph (2), provisional tax shall be paid by every provisional taxpayer (other than a company) in the following manner, namely —

- (a) within the period of six months, reckoned from the commencement of the year of assessment in question, one half of an amount equal to the total

estimated liability of such taxpayer (as determined in accordance with paragraph 2) for normal tax in respect of that year, less the total amount of any employee's tax deducted by the taxpayer's employer from the taxpayer's remuneration during such period; and

- (b) not later than the last day of the year of assessment in question, an amount equal to the total estimated liability of such taxpayer (as finally determined in accordance with paragraph 2 for normal tax in respect of that year, less the sum of any employee's tax deducted by the taxpayer's employer from the taxpayer's remuneration during such year and the amount paid in terms of item (a)).

(2) If the Commissioner has in terms of the proviso to section 33(13) of this Order agreed to accept accounts from any provisional taxpayer in respect of any year of assessment drawn to a date falling to a date before or after the end of such year, the period referred to in item (a) of sub-paragraph (1) shall, notwithstanding that sub-paragraph, be reckoned from such date as the Commissioner upon application of the taxpayer and having regard to the circumstances of the case may approve, and in such case the last day of such year of assessment shall for the purposes of item (b) of that sub-paragraph be deemed to be the day preceding the first anniversary of the said date.

(3) This paragraph shall not apply in the case of any provisional taxpayer in respect of whom the Commissioner has under item (a) of paragraph 12 directed that paragraph 8 shall apply.

8. Payment of provisional tax by provisional taxpayers (other than companies) whose income is normally derived wholly or mainly from farming.

(1) Every provisional taxpayer (other than a company) whose income is normally derived wholly or mainly from farming and in respect of whom the Commissioner has directed that this paragraph shall apply, shall not later than the last day of the year of assessment in question, pay by way of provisional tax an amount equal to the total estimated liability of such taxpayer (determined under paragraph 2) for normal tax in respect of that year, less the sum of the amounts of any employee's tax deducted by the taxpayer's employer from the taxpayer's remuneration during that year.

(2) If the Commissioner has in terms of the proviso to section 33(13) of this Order agreed to accept from any provisional taxpayer referred to in sub-paragraph (1) in respect of any year of assessment drawn to a date falling before or after the end of such year, the Commissioner may upon the application of the taxpayer direct that the last day of such year of assessment shall for the purposes of sub-paragraph (1) be deemed to be such day of the Commissioner having regard to the circumstances of the case fixes.

9. Provisional tax payments by companies.

Provisional tax shall be paid by every company which is a provisional taxpayer in respect of the liability of the company for normal tax on taxable income in the following manner —

- (i) within six months of the commencement of the financial year in question, one half of an amount equal to the total estimated liability of such company (as determined under paragraph 2) for normal tax in respect of that year on taxable income so derived; and
- (ii) not later than the last day of the financial year in question, an amount equal to the total estimated liability of such company (as determined under paragraph 2) for normal tax in respect of that year on taxable income so derived, less the amount paid in terms of sub-paragraph (i) of this paragraph;
- (iii) within the period ending six months after the last day of that year, an amount equal to the total estimated liability of such company (as finally so

determined) for normal tax in respect of that year less the sum of the amounts paid under subparagraphs (i) and (ii). (Added A.6/1994.)

9A. Phasing-in of provisional payments.

(1) Notwithstanding paragraphs 7 and 9, the provisional tax by provisional taxpayers (other than farmers) payable —

- (i) during the year ended thirtieth June 1986, shall be at the rate of one-tenth of the estimated liability as calculated under paragraph 2 for the first payment due under paragraphs 7(1)(a) and 9(i) at the rate of one-tenth of the estimated liability as calculated aforesaid for the second payment due under paragraphs 7(1)(b) and 9(ii); and
- (ii) during the year ended thirtieth June 1987, shall be at the rate of one fifth of the estimated liability, as calculated under paragraph 2 for the first payment due under paragraphs 7(1)(a) and 9(i) and at the rate of one-fifth of the estimated liability, as calculated aforesaid for the second payment due under paragraphs 7(1)(b) and 9(ii); and
- (iii) during the year ended thirtieth June 1988, shall be at the rate of three-tenths of the estimated liability, as calculated under paragraph 2 for the first payment due under paragraphs 7(1)(a) and 9(i), and at the rate of three-tenths of the estimated liability, as calculated aforesaid for the second payment due under paragraphs 7(1)(b) and 9(ii); and
- (iv) during the year ended thirtieth June 1989, shall be at the rate of two-fifths of the estimated liability, as calculated under paragraph 2 for the first payment due under paragraphs 7(1)(a) and 9(i), and at the rate of two-fifths of the estimated liability, as calculated aforesaid for the second payment due under paragraphs 7(1)(b) and 9(ii).

(Amended A.6/1987.)

(2) Notwithstanding paragraph 8, the payment of provisional tax by provisional taxpayers (other than companies) whose income is normally derived wholly or mainly from farming operations, payable —

- (i) during the year ended thirtieth June 1986 shall be at the rate of one-fifth of the estimated liability of the taxable income, as calculated under paragraph 4, for the payment due under paragraph 8(1); and
- (ii) during the year ended thirtieth June 1987, shall be at the rate of two-fifths of the estimated liability of the taxable income, as calculated under paragraph 4, for the payment due under paragraph 8(1); and
- (iii) during the year ended thirtieth June 1988, shall be at the rate of three-fifths of the estimated liability of the taxable income, as calculated under paragraph 4, for the payment due under paragraph 8(1); and
- (iv) during the year ended thirtieth June 1989, shall be at the rate of four-fifths of the estimated liability of the taxable income, as calculated under paragraph 4, for the payment due under paragraph 8(1).

10. Commissioner's discretion.

The Commissioner may absolve any provisional taxpayer from making payment of any amount of provisional tax payable in terms of paragraph 7(1)(a) or paragraph 8 or 9(i), if he is satisfied that the taxable income which may be derived by a taxpayer for the year of assessment in question cannot be estimated on the facts available at the time when payment of the amount in question has to be made.

11. Extension of time for payment of provisional tax.

(1) If after the end of any period within which provisional tax is payable in terms of this Schedule, the Commissioner has under paragraph 4(3) increased the

amount of any estimate of taxable income submitted by any provisional taxpayer during such period, any additional provisional tax payable as a result of the Commissioner having made such increase shall, notwithstanding paragraphs 7, 8 and 9 be payable within such period as the Commissioner may determine.

(2) The Commissioner may, having regard to the circumstances of the case, extend the period within which any amount of provisional tax is to be paid, or may agree to accept payment of any such amount in equal or varying amounts.

12. Certain matters to be decided by the Commissioner.

The Commissioner's decision or direction in regard to the following matters shall be final and conclusive, namely —

- (a) the question whether any provisional taxpayer (other than a company) should from time to time pay provisional tax in the manner provided in paragraphs 7 or 8;
- (b) the question as to what amount of provisional tax should for the purposes of paragraph 7 or 8 be payable by any spouse whose return is separately assessed in terms of section 36(2) of this Order.

13. Penalty on late payments of provisional tax.

(1) If any provisional taxpayer fails to pay any amount of provisional tax for which he is liable within the period allowed for payment thereof in terms of paragraphs 7, 8, 9, or 11(1) or within such extended time the Commissioner may allow in terms of paragraph 11(2) he shall, in addition to any other penalty or charge incurred by him under this Order, pay to the Commissioner a penalty equal to twenty per cent of the amount not paid. (Amended A.7/1992.)

(2) The Commissioner may, if he is satisfied that the provisional taxpayer's failure to pay the amount of provisional tax was not due to an intent to evade or postpone payment of the tax, or otherwise evade or postpone payment of the tax, or otherwise evade his obligations under this Order, waive or remit the whole or any part of the penalty imposed under sub-paragraph (1).

14. Set off of provisional tax against tax liability of persons.

(1) There shall be set off against the liability of the taxpayer in respect of any normal tax due under this Order by the taxpayer, during any year of assessment, the amounts of provisional tax paid by the taxpayer, and,

- (a) if, in the case of any provisional taxpayer, the said amount of provisional tax exceeds the total liability for the said taxes, the Commissioner shall not be required to make any refund of the excess amount (or any portion thereof) standing to the taxpayer's credit, unless the Commissioner is satisfied, having regard to the circumstances of the case, that a refund of such excess amount (or a portion thereof) is warranted, and any amount (after the deduction of such excess amount refunded to the taxpayer) standing to the taxpayer's credit shall be set off against the taxpayer's liability for normal tax for which he is subsequently assessed by the Commissioner or may be set off in whole or in part against any amount of provisional tax which the taxpayer is required to pay under this Schedule; and
- (b) if, in the case of any taxpayer, the taxpayer's total liability for the aforesaid taxes exceed the sum of the said amounts of provisional tax, the amount of the excess shall be payable by the taxpayer to the Commissioner.

(2) Sub-paragraph (1) shall not be construed as requiring any amount of provisional tax paid in respect of any year of assessment to be set off against any liability of the taxpayer before the taxpayer's liability for normal tax in respect of that year is determined by the Commissioner or, where such last mentioned liability has

not been determined by the Commissioner, before the expiration of the period determined by the Commissioner.

(3) If the Commissioner, purporting to act under this paragraph, pays to any person by way of refund any amount which was not properly payable to that person under those provisions or which was in excess of the amount due to such person by way of refund under those provisions, such amount or the excess, as the case may be, shall forthwith be repaid by the person concerned to the Commissioner and shall be recoverable by the Commissioner under this Order as if it were a tax.

15. Refund procedure compliance.

No refund of provisional tax shall be made to the taxpayer concerned otherwise than as provided for in paragraph 14.

16. Offences.

Any person who fails to submit to the Commissioner any estimate of his taxable income as required under paragraph 4 shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand Emalangeni or to imprisonment for a period not exceeding twelve months, or both. (Amended A.7/1992.)

17. Recovery of provisional tax.

Any amount of provisional tax, penalty or additional tax payable in terms of this Schedule, and any amount of interest payable in terms of section 58A of this Order shall, when it becomes due or is payable, be a debt due to the Government and may be recovered by the Commissioner in the manner prescribed in section 61 of this Order.

Fifth Schedule

TAXATION OF INCOME DERIVED FROM INSURANCE BUSINESS

(Added A.11/2011.)

(Under Section 7)

(1) Where taxable income of a taxpayer for year of assessment arising from carrying on insurance business is determined according to the following formula —

$$A - B$$

Where:

A is the gross income derived by the taxpayer for the year of assessment in carrying on insurance business in Swaziland as determined under paragraph 5; and

B is the total deductions allowed for the year of assessment in the production of income referred to in **A** as determined under paragraph 3.

(2) The gross income derived by a taxpayer for a year of assessment in carrying on insurance business in Swaziland is the sum of —

(a) premiums (including premiums or reinsurance) derived by the taxpayer during the year of assessment in carrying on such business of the insurance of any risk; and

(b) any other income or gains derived by the taxpayer during the year of assessment in carrying on such business; and

(c) the amount of any allowance deducted in the previous year of assessment under subparagraphs 3(d), (e), (f) and (g).

(3) The total deductions allowed for a year of assessment in the production of income from insurance business is the sum of —

- (a) the total amount of the liability incurred by the taxpayer during the year of assessment in respect of premiums on reinsurance; and
- (b) the total amount of the liability incurred by the taxpayer during the year of assessment in respect of any claims relating to that business, less the value of any claims recovered or recoverable under any contract of insurance, guarantee, security, or indemnity; and
- (c) the total amount of expenditures and losses incurred by the taxpayer during the year of assessment in carrying on that business which are allowable as a deduction under section 14, other than expenditures or losses referred to in paragraphs (a) and (b); and
- (d) an allowance of such amount as the Commissioner may approve in respect of unexpired risks at the end of the year of assessment; and
- (e) an allowance of such amount as the Commissioner may approve in respect of claims which have been intimated but not paid at the end of the year of assessment; and
- (f) an allowance of such amount as the Commissioner may approve in respect of claims which have not been intimated at the end of the year of assessment;
- (g) and allowance of such amount as the Commissioner may approve in respect of a contingency reserve.

(4) Where, for any year of assessment, the deductions allowed to a taxpayer under paragraph 3 exceed the income derived by the taxpayer as determined under paragraph 2, the excess may not be deducted against any other income of the taxpayer of the year of assessment, but shall be carried forward and deducted in determining the taxable income of the taxpayer arising from the carrying on of insurance business in the year of assessment.

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

1. The Income Tax (Approved Training Scheme) Regulations, 1986
2. The Income Tax (Clearance Certificates) Regulations, 1985
3. The Income Tax (Furnishing of Accounting Statements) Regulations, 1994
4. Income Tax — Double Taxation Agreement between the Kingdom of Swaziland and the Republic of Mauritius
5. Income Tax: Additional Tax in the Case of Default or Omission — Penalties
6. Income Tax: Issuance of Income Tax Clearance Certificates
7. Tax Treatment of Assets Acquired Under Financial Leases, Directive 2004
8. The Double Taxation Agreement between the Kingdom of Swaziland and the Republic of Seychelles Notice, 2012

The Income Tax (Approved Training Scheme) Regulations, 1986

(Under Section 18)

ARRANGEMENT OF REGULATIONS

1. Citation and commencement.
 2. Declaration of industries.
- Schedule
-

In exercise of the powers conferred by section 18 of the Income Tax Order, 1975 the Minister for Finance hereby makes the following Regulations —

1. Citation and commencement.

These Regulations may be cited as the Income Tax (Approved Training Scheme) Regulations, 1986 and shall be deemed to have come into effect on the 15th July, 1985.

2. Declaration of industries.

The activities specified in the Schedule hereto are hereby declared to be industries within the meaning of section 18(1)(a)(ii) of the Income Tax Order, 1975.

Schedule

Agriculture and Agricultural services

Forestry

Mining

Manufacturing

Wood Products

Paper Products

Chemical Products

Construction

Wholesale Trade

Retail Trade

Hotel and Restaurant

Transport and Storage

Financial Institutions

Real Estate

Business Services

The Income Tax (Clearance Certificates) Regulations, 1985

(Under Section 69)

ARRANGEMENT OF REGULATIONS

1. Citation.
 2. Transactions for which and persons from whom tax clearance certificates are required.
 3. Revocation of Legal Notice No. 141 of 1985.
- Schedule Transactions Requiring Income Tax Clearance Certificates and Persons from whom Income Tax Clearance Certificates Required
-

In exercise of the powers conferred by section 69 of the Income Tax Order, 1975 the Minister for Finance hereby makes the following Regulations:

1. Citation.

These Regulations may be cited as the Income Tax (Clearance Certificates) Regulations, 1988, and shall come into force on the 1st July, 1988.

2. Transactions for which and persons from whom tax clearance certificates are required.

The transactions requiring income tax clearance certificates and the persons from whom income tax clearance certificates shall be required shall be set out in the schedule hereto.

3. Revocation of Legal Notice No. 141 of 1985.

The Income Tax (Clearance Certificates) Regulations, 1985, are hereby revoked.

Schedule

TRANSACTIONS REQUIRING INCOME TAX CLEARANCE CERTIFICATES AND PERSONS FROM WHOM INCOME TAX CLEARANCE CERTIFICATES REQUIRED

<i>Type of transactions</i>	<i>Persons from whom Income Tax are required.</i>
(1) The issue, renewal, or transfer of any licence (other than renewal of motor vehicle licence), permit or similar document relating to any trade, business, profession or vocation.	Persons seeking issue, renewal or transfer of any licence, permit or similar document.
(2) The transfer of immovable property or any endorsement to any title deed having the effect of transferring immovable property.	The transferor, or any person in whose name the endorsement is to be made.
(3) The registration or deregistration of companies.	In the case of registration the persons whose names are to be registered as directors or subscribers; in the case of deregistration by the company to be deregistered.
(4) The registration of motor vehicles in Swaziland.	Persons in whose name the motor vehicle is to be registered.
<i>Type of transactions</i>	<i>Persons from whom Income Tax are required.</i>
(5) The tendering for the provision of goods and services to the Government and parastatal body, in excess of E5,000.	Persons tendering for provision of goods or services to government or parastatal body.

The Income Tax (Furnishing of Accounting Statements) Regulations, 1994

(Under Section 69)

ARRANGEMENT OF REGULATIONS

1. Citation and commencement.
2. Accounting statements.

In exercise of the powers conferred by Section 69 of the Income Tax Order, 1975, the Minister for Finance hereby issues the following Regulations —

1. Citation and commencement.

These Regulations may be cited as the Income Tax (furnishing of accounting statements) Regulations, 1994 and shall be deemed to have come into force on the 1st June, 1994.

2. Accounting statements.

Any return required to be rendered by the tax payer under the order shall be accompanied by all such balance sheets trading accounts, profit and loss accounts and other relevant schedules as are necessary to support the information contained in the return and all such documents shall be signed by the tax payer or the public officer.

Income Tax — Double Taxation Agreement between the Kingdom of Swaziland and the Republic of Mauritius

(Under section 68)

ARRANGEMENT OF ARTICLES

1. Personal scope.
2. Taxes Covered.
3. General definitions.
4. Resident.
5. Permanent establishment.
6. Income from immovable property.
7. Business profits.
8. Shipping and Air transport.
9. Associated enterprises.
10. Dividends.
11. Interest.
12. Royalties.
13. Capital gains.
14. Independent personal services.
15. Dependant personal services.
16. Director's fees.
17. Entertainment and sportsmen.
18. Pensions and annuities.
19. Government service.
20. Professors and teachers.
21. Students and business apprentices.
22. Other income.
23. Method for elimination of double taxation.
24. Non-discrimination.
25. Mutual agreement procedure.
26. Exchange of information.
27. Diplomatic agents and consular officers.
28. Entry into force.
29. Termination.

In terms of section 68(2) of the Income Tax Order, 1975 (Order No. 21 of 1975), I do hereby declare that the Convention set out in the schedule has, under section 68(1) of the said Order, been entered into between the Government of the Kingdom of Swaziland and the Government of the Republic of Mauritius for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

I.S. SHABANGU
Minister for Finance

MBABANE
17th August, 1994.

Schedule

Agreement between the government of the Kingdom of Swaziland and the Government of the Republic of Mauritius for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

The Government The Kingdom of Swaziland and the Government of the Republic of Mauritius desiring to promote and strengthen the economic relations between the two countries,

Have agreed as follows:

ARTICLE 1 PERSONAL SCOPE

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2 TAXES COVERED

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income.

3. The existing taxes to which this Agreement shall apply are in particular:

- (a) In Mauritius, the income tax,
(hereinafter referred to as "Mauritius tax");
- (b) In Swaziland:
 - (i) the normal tax;
 - (ii) the non-resident shareholders' tax;
 - (iii) the non-residents' tax on interest; and
 - (iv) the non-residents' tax on entertainments and sports, (hereinafter referred to as "Swaziland tax").

4. This Agreement shall also apply to any other taxes of a substantially similar character which are imposed by either Contracting State after the date of signature of this Agreement in addition to, or in place of, the existing taxes.

5. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws, and if it seems desirable to amend any Article of this Agreement, without affecting the general principles thereof, the necessary amendments may be made by mutual consent by means of an Exchange of Notes.

ARTICLE 3 GENERAL DEFINITIONS

1. In this Agreement, unless the context otherwise requires:

- (a) the term "Mauritius" means the Republic of Mauritius and includes:
 - (i) all the territories and islands which, in accordance with the laws of Mauritius, constitute the State of Mauritius;
 - (ii) the territorial sea of Mauritius; and
 - (iii) any area outside the territorial sea of Mauritius which in accordance with international law has been or may hereafter be designated, under the laws of Mauritius, as an area, including the Continental

Shelf, within which the rights of Mauritius with respect to the sea, the sea-bed and sub-soil and their natural resources may be exercised;

- (b) the term "Swaziland" means the Kingdom of Swaziland;
- (c) the term "a Contracting State" and "the other Contracting State" mean Mauritius or Swaziland as the context requires;
- (d) the term "company" means any body corporate or any entity which is treated as a company or body corporate for tax purposes;
- (e) the term "competent authority" means:
 - (i) in Mauritius, the Commissioner of Income Tax or his authorised representative; and
 - (ii) in Swaziland, the Commissioner of Taxes or his authorised representative;
- (f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except where the ship or aircraft is operated solely between places in the other Contracting State;
- (h) the term "national" means any individual having the citizenship of a Contracting State and any legal person, partnership, association or other entity deriving its status as such from the laws in force in a Contracting State;
- (i) the term "person" includes an individual, a company, a trust and any other body of persons which is treated as an entity for tax purposes; and
- (j) the term "tax" means Mauritius tax or Swaziland tax as the context requires.

2. In the application of the provisions of this Agreement by a Contracting State, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that State relating to the taxes which are the subject of this Agreement.

ARTICLE 4 RESIDENT

1. For the purposes of this Agreement, the term "resident of Contracting State" means any person, who under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him. If he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in

either State, he shall be deemed to be a resident of the State in which he has an habitual abode;

- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

ARTICLE 5 PERMANENT ESTABLISHMENT

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of the enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a warehouse, in relation to a person providing storage facilities for others;
- (g) a mine, or oil or gas well, a quarry or any other place of extraction of natural resources; and
- (h) an installation or structure used for the exploration of natural resources.

3. The term "permanent establishment" likewise encompasses:

- (a) a building site or a construction, installation or assembly project, or supervisory activities in connection therewith only if the site, project or activity lasts more than six months;
- (b) the furnishing of services including consultancy services by an enterprise of a Contracting State through employees or other personnel engaged in the other Contracting State, provided that such activities continue for the same or a connected project for a period or periods aggregating to more than 6 months within any twelve month period.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise; and
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, a person acting in a Contracting State on behalf of an enterprise of the other Contracting State (other than an agent of an independent status to whom paragraph 6 applies) notwithstanding that he has no fixed place of business in the first-mentioned State shall be deemed to be a permanent establishment in that State if:

- (a) he has, and habitually exercises, a general authority in the first-mentioned State to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or
- (b) he maintains in the first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf of the enterprise.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6 INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property, including income from agriculture or forestry, is taxable in the Contracting State in which such property is situated.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

ARTICLE 7 BUSINESS PROFITS

- 1.** The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
- 2.** Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
- 3.** In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in the contracting State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in determining the profits of a permanent establishment, of amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.
- 4.** In so far as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary. The method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
- 5.** No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
- 6.** For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
- 7.** Where profits include items of income which are dealt with separately in the other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8 SHIPPING AND AIR TRANSPORT

- 1.** Profits of an enterprise from the operation or rental of ships or aircraft in international traffic and the rental of containers and related equipment which is

incidental to the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. If the place of effective management of a shipping enterprise is aboard a ship or boat, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship or boat is situated, or if there is no such home harbour, in the Contracting State of which the operator of the ship or boat is a resident.

3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9 ASSOCIATED ENTERPRISES

1. Where:

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State — and taxes accordingly — profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10 DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends, the tax so charged to the beneficial owner shall not exceed 7.5 per cent of the gross amount of dividends.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares or other rights (not being debt claims) participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated. therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, no tax may be imposed on the beneficial owner in that other State on the dividends paid by the company except in so far as such dividends are paid to a resident of that other State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11 INTEREST

1. Interest arising in a Contracting State and paid to a resident of the Other Contracting State may be taxed in that other State.

2. However, subject to the provisions of paragraph 3, such interest may also be taxed in the Contracting State in which it arises and according to the law of that State, but if the recipient is the beneficial owner of the interest the tax so charges shall not exceed 5 per cent of the gross amount of the interest.

3. Interest arising in a Contracting State shall be exempt from tax in that State if it is derived and beneficially owned by:

- (a) the Government or a local authority of the other Contracting State; or
- (b) any institution, body or board which is wholly owned by the Government or a local authority of the other State.

4. The term "interest" as used in this Article means income from debt-claims of even debts whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purposes of this Article. The term "interest" shall not include any item which is treated as a dividend under the provisions of Article 10 of this Agreement.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State it local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne

by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 12 ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the beneficial owner is a resident of the other Contracting State, the tax so charged shall not exceed 7.5 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films and films, tapes or discs for radio or television broadcasting), any patent, trade mark, design or model, computer programme, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base with which the right or property in respect of which the royalties are paid is effectively connected, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 13 CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property, referred to in Article 6, and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purposes of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains from the alienation of any property other than that mentioned in paragraphs 1, 2 and 3 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14 INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

ARTICLE 15 DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16, 18, 19 and 20 salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned;
- (b) the remuneration is paid by or on behalf of an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic may

be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

ARTICLE 16 DIRECTORS' FEES

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 17 ENTERTAINERS AND SPORTSMEN

1. Notwithstanding the provisions of Articles 14 and 15, income derived by entertainers such as theatre, motion picture, radio or television artistes, and musicians, or by sportsmen, from their personal activities as such, may be taxed only in the Contracting State in which these activities are exercised.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived from activities, referred to in paragraph 1, performed under a cultural agreement or arrangement between the Contracting States shall be exempt from tax only in the Contracting State in which the activities are exercised if the visit to that State is wholly or substantially supported by funds of either Contracting State, a local authority or public institution thereof.

ARTICLE 18 PENSIONS AND ANNUITIES

1. Any pension (other than a pension of the kind referred to in paragraph 2 of Article 19) and any annuity, derived from sources within a Contracting State by an individual who is a resident of the other Contracting State and is subject to tax on the whole or portion thereof in the other State, shall be exempt from tax in the first-mentioned State to the extent that it is subjected to tax in the other State.

2. The term "annuity" as used in this Article means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

3. Notwithstanding the provisions of paragraph 1, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State or a local authority thereof shall be taxable only in that State.

ARTICLE 19 GOVERNMENT SERVICE

1. (a) Remuneration, other than a pension, paid by, or out of funds created by, one of the Contracting States or a local authority or statutory body thereof to an individual in respect of services rendered to that State, authority or body in the discharge of governmental functions shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who:

- (i) is a national of that State; or
- (ii) did not become a resident solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or local authority or statutory body thereof to an individual in respect of services rendered to that State or authority or body in the discharge of governmental functions shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident and a national of that other State.

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State, or local authority or statutory body thereof.

ARTICLE 20 PROFESSORS AND TEACHERS

1. Notwithstanding the provisions of article 15, a professor or teacher who makes a temporary visit to one of the Contracting States for a period not exceeding two years for the purpose of teaching or carrying out research at a university, college, school or other educational institution in that State and who is, or immediately before such visit was, a resident of the other Contracting State shall, in respect of remuneration for such teaching or research, be exempt from tax in the first-mentioned State, where such remuneration is derived by him from outside that State and such remuneration is subject to tax in the other State.

2. The provisions of this Article shall not apply to income from research if such research is undertaken not in the public interest but wholly or mainly for the private benefit of a specific person or persons.

ARTICLE 21 STUDENTS AND BUSINESS APPRENTICES

A student or business apprentice who is present in a Contracting State solely for the purpose of his education or training and who is, or immediately before being so present was, a resident of the other Contracting State, shall be exempt from tax in the first-mentioned State on payments received from outside that first-mentioned State for the purposes of his maintenance, education or training.

ARTICLE 22 OTHER INCOME

1. Subject to the provisions of paragraph 2, items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles in respect of which he is subject to tax in that State, shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and a right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

ARTICLE 23
METHOD FOR ELIMINATION OF DOUBLE TAXATION

1. The laws in force in either of the Contracting States shall continue to govern the taxation of income in the respective States except where provisions to the contrary are made in this Agreement. Where income is subject to tax in both States, relief from double taxation shall be given in accordance with the next paragraphs of this Article.

2. (a) In the case of Mauritius, where a resident of Mauritius derives income from Swaziland, the amount of tax on that income payable in Swaziland in accordance with the provisions of this Agreement may be credited against the Mauritius tax imposed on that resident. The amount of credit, however, shall not exceed the amount of the Mauritius tax on that income computed in accordance with the taxation laws and regulations of Mauritius;

(b) where the income derived from Swaziland is a dividend paid by a company which is a resident of Swaziland to a company which is a resident of Mauritius, the credit shall take into account the tax paid in Swaziland by the company paying the dividend in respect of the profits out of which the dividend is paid.

3. (a) In the case of Swaziland, where a resident of Swaziland derives income from Mauritius, the amount of tax on that income payable in Mauritius in accordance with the provisions of this Agreement may be credited against the Swaziland tax imposed on that resident.

The amount of credit, however, shall not exceed the amount of the Swaziland tax on that income computed in accordance with the taxation laws and regulations of Swaziland;

(b) Where the income derived from Mauritius is a dividend paid by a company which is a resident of Mauritius to a company which is a resident of Swaziland, the credit shall take into account the tax paid in Mauritius by the company paying the dividend in respect of the profits out of which the dividend is paid.

4. The tax paid in a Contracting State mentioned in paragraphs 2 and 3, shall be deemed to include the tax which would have been payable but for the legal provisions concerning tax reduction, exemption or other tax incentives of the Contracting States, for the promotion of economic development.

ARTICLE 24
NON-DISCRIMINATION

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. This provision shall notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

3. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.

4. Nothing in this Article shall be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residences.

5. In this Article the term "taxation" means taxes which are the subject of this Agreement.

ARTICLE 25 MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a commission consisting of representatives of the competent authorities of the Contracting States.

ARTICLE 26 EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by this Agreement in so far as the taxation thereunder is not contrary to the Agreement, in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Article 1. Any information so exchanged shall be treated as secret in the same manner as information obtained under the domestic law of that State and shall be disclosed only to persons or authorities (including courts or administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or Authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchanges of information shall be made, including, where appropriate, exchanges of information regarding tax avoidance.

2. In no case shall the provisions of paragraph 1 be so construed as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (order public).

ARTICLE 27 DIPLOMATIC AGENTS AND CONSULAR OFFICERS

Nothing in this Agreement shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

ARTICLE 28 ENTRY INTO FORCE

1. Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Agreement. The Agreement shall enter into force on the date of the later of these notifications and shall thereupon have effect:

- (a) in both Contracting States in respect of taxes on income for any year of assessment beginning on or after 1 July in the calendar year next following that in which the Agreement enters into force;
- (b) in Swaziland in respect of:
 - (i) non-residents shareholders' tax on dividends;
 - (ii) non-residents tax on interest; and
 - (iii) non-residents' tax on entertainments and sports, payable on or after 1 July following the date on which the Agreement enters into force.

ARTICLE 29 TERMINATION

1. This Agreement shall remain in force indefinitely but either of the Contracting States may terminate the Agreement through diplomatic channels, by giving to the other Contracting State written notice of termination not later than 30 June of any calendar year starting five years after the year in which the Agreement entered into force.

2. In such event the Agreement shall cease to have effect:

- (a) in both Contracting States, as regards taxes on income for any year of assessment beginning on or after the 1 July in the calendar year next following that in which the notice is given; and
- (b) in Swaziland in respect of:
 - (i) non-residents' shareholders' tax on dividends;
 - (ii) non-residents' tax on interest; and
 - (iii) non-residents' tax on entertainments and sports, payable on or after 1 July in the calendar year next following that in which the notice is given.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Agreement.

DONE at Port Louis in duplicate, this twenty ninth day of June of the year one thousand nine hundred and ninety four.

L.S. SHABANGU
For the Government of the
KINGDOM OF SWAZILAND

RAMAKRISHNA SITHANEN
For the Government of the
REPUBLIC OF MAURITIUS

Income Tax: Additional Tax in the Case of Default or Omission – Penalties

Revenue: Act 21/1975(5)

(Section 40)

Citation and commencement.

This notice may be cited as Practice Note No. 176 on additional tax in the case of default or omission notice and shall come into effect on 1 July 2004.

Additional tax in the case of default or omission.

1. In terms of section 40(1) of the Income Tax Order 1975, as amended where a taxpayer defaults in rendering an annual return of income or omits any amount which ought to be included therein, or makes any incorrect statement therein, the Commissioner may impose additional tax.

2. Subsection (3) empowers the Commissioner to waive or remit such additional tax, or part thereof, in those cases where he is satisfied that the default or omission was not intended to evade taxation.

3. The imposition of a penalty for the non-submission of a return ultimately may cause the defaulter to submit the return. This rendition will, in most cases, be accompanied by a plea for the Commissioner to waive the penalty or to reduce the amount. Any such request must be determined in the light of section 40(3) of the Order.

4. For the purposes of section 40, the expression omission of an amount which ought to be included or making any incorrect statement in the return has the following meaning—

- (a) in determining his taxable income, a taxpayer who deducts or sets off any amount the deduction or set off whereof is not permissible under the law or shows as an expenditure or loss any amount which he has in fact not expended or lost;
- (b) a taxpayer who wilfully fails to disclose in any return made by him any facts, which should be disclosed and disclosure of which would result in the taxation of the taxpayer's income on an amount higher than the amount upon which such income would be taxable on such return.

5. Additional tax may be imposed as follows —

- (a) *Default in rendering a return*

if a taxpayer makes default in rendering a return in respect of any year of assessment, such taxpayer will be required to pay an amount equal to 20% of the tax chargeable in respect of his taxable income for such year

of assessment. The 20% shall be chargeable for each year of assessment while such default continues subject to a maximum of 200%;

(b) *Default in rendering a return in the case of a loss*

in terms of Section 40(8) a taxpayer who makes default in rendering a return in respect of any year of assessment in which the determination of the taxable income of the taxpayer results in an assessed loss shall, while such default continues, be liable to a penalty not exceeding fifty emalangenani for each day during which the default continues;

(c) *Deductions or set off-imposition of additional tax under paragraph 4(a)*

in determining his taxable income, a taxpayer who deducts or sets off any amount the deduction or set-off whereof is not permissible under the law or shows as an expenditure or loss any amount which he has in fact not expended or lost, shall be liable to an additional tax determined as follows:

$$100\% \text{ to } 200\% \times A - B$$

Where —

- A is the tax chargeable for the year of assessment on the taxable income of the taxpayer; and
- B is the amount that would have been payable if the tax chargeable had been calculated by reference to the incorrectly stated amount of taxable income.

(d) *Failure to disclose certain material facts*

a taxpayer who wilfully fails to disclose in any return made by him any facts, which should be disclosed and disclosure of which would result in the taxation of the taxpayer's income on an amount higher than the amount upon which such income would be taxable on such return, shall be liable to additional tax determined as follows:

$$200\% \times A - B$$

Where —

- A is the tax chargeable for the year of assessment on the taxable income of the taxpayer; and
- B is the amount that would have been payable if the tax chargeable had been calculated by reference to the incorrectly stated amount of taxable income.

6. The imposition of the levy of additional tax for omission or incorrect statement should be approached on a flexible basis subject to a maximum. The circumstances under which the penalty for concealment of income gets levied are varied. The entire below has a bearing to the imposition of additional tax.

Firstly, there are various shades of disclosure by taxpayers such as —

- Voluntary disclosure — reduce penalty by up to 20%.
- Disclosure on challenge — reduce penalty by up to 15%.
- Belated disclosure — reduce penalty by up to 10%.
- Outright denial right to the end — no reduction of penalty.

Secondly, there are different kinds of concealment of income such as —

- Non-business income.
- Inadequate drawings.
- Unexplained credits.
- Evidence of omission of sales
- Inflation of purchases and false explanations that are disproved.

Thirdly, the personal circumstances of the taxpayer could also be different in different cases —

- The omission due to carelessness or inadvertence by reason of old age — reduce penalty by up to 15%.
- The level of literacy - reduce penalty by up to 15%.
- The nature and extent of professional advice — reduce penalty by up to 10%.
- The nature and extent of cooperation extended to the assessor — reduce penalty by up to 15%.

7. The maximum penalty reduction that could be afforded a taxpayer under the circumstances in paragraph 6 is 100%.

8. The penalty reduction is at the discretion of the assessor/investigation officer and the reasons for the exercise of such should be recorded in taxpayer's file.

9. In terms of the law the additional amounts of tax payable under Section 40 are chargeable where —

- the taxable income or any part thereof is estimated by the Commissioner under section 39(1); or
- agreed with the taxpayer in terms of section 39(3); or
- such taxable income or any part thereof as is determined from accounts rendered by the taxpayer.

Objection and appeal.

The taxpayer has a right of objection and appeal against a decision of the Commissioner not to remit the whole of the additional imposed under paragraph 5 above.

In accordance with section 40(3)(c) the Commissioner may either before or after an assessment is issued agree with the taxpayer on the amount of the additional tax to be paid. In such an event the taxpayer has not right of objection or appeal in respect of the amount so agreed.

Income Tax: Issuance of Income Tax Clearance Certificates

Revenue: Act 21/1975(6)

Citation and commencement.

This notice may be cited as Practice Note No. 177 on the issuance of income tax clearance certificates notice and shall come into effect on 1 July 2004.

Issuance of income tax clearance certificates.

1. The Regulations

1.1 In terms of section 69(3) of the Income Tax Order 1975, as amended, the Minister of Finance may make regulations requiring persons to obtain a tax clearance certificate for the purpose mentioned in such regulations. The Income Tax (Clearance Certificates) Regulations 1988, published in Legal Notice No. 71 of 1988, repealed and replaced the Income Tax (Clearance Certificates) Regulations of 1985. The Schedule to the 1988 Regulations sets out the types of transactions requiring income tax clearance certificates and the persons from whom the income tax clearance certificates are required.

2. Application for Income Tax Clearance.

2.1 In accordance with the provisions of section 69(3)(d) of the Income Tax Order 1975, as Amended, a person requiring a tax clearance certificate shall apply for such certificate to the Commissioner either —

- (a) by himself;
- (b) through a representative; or
- (c) agent.

2.2 In terms of the law there are two endorsements that the Commissioner can make on the certificate —

- (a) that there is no tax outstanding against the person; or
- (b) that satisfactory arrangements have been made by such person with the Commissioner for payment of outstanding tax.

According to the proviso to subsection (3)(d), failure to comply with tax obligations, including but not limited to, failure to furnish returns or pay tax would constitute sufficient reasons for refusal to grant the requested certificate.

2.3 The intended objectives of these tax clearance regulations are twofold —

- (a) to bring to charge all taxpayers having an income; and
- (b) to enforce the collection of all outstanding taxes.

2.4 In order to achieve the above stated objectives, a tax clearance certificate shall only bear the endorsement “that there is no tax outstanding against the person” if the following have been strictly complied with —

- (a) that the person concerned has furnished all the required returns of income in respect of each year of assessment in question;
- (b) that, where applicable, all provisional tax payments in respect of any year of assessment have been fully paid;
- (c) that any duly assessed tax in respect of any year of assessment has been fully paid;
- (d) that all remittances as regards PAYE and other withholding taxes have been made.

Note: that in the case of a person deriving income solely from employment subject to the Final Deduction System (FDS), production of an employee’s tax certificate in respect of the relevant year of assessment shall be *prima facie* proof that such person has met his tax obligations for the year of assessment in question.

2.5 Under no circumstances should any officer make an endorsement that there is no tax outstanding if the conditions in paragraph 2.4 above have not been met.

2.6 As regards the issuance of a tax clearance certificate with the endorsement “that satisfactory arrangement have been made by such person with the Commissioner for payment of outstanding tax”, such endorsement shall only be made in respect of assessed tax that has not been fully paid up when the application for the certificate is made. For the purposes of section 69(3)(d) the arrangement contemplated here is an arrangement made in terms of section 57(1) of the Order.

2.7 Where the tax liability has arisen as a result of an assessment, and the taxpayer is required to make provisional tax payments, if no such payments have been made, the arrangement to pay by instalments would not be permitted.

2.8 Where applicable, any arrangement made with any taxpayer pursuant to the contents of paragraph 2.6 above, must fulfil the requirements prescribed under paragraphs 2.4(i), 2.4(ii), and 2.4(iv). All applications for arrangements to settle any outstanding tax must be forwarded to the Assistant Commissioner (Collection) for consideration and approval. The recovery of tax under such an arrangement if approved must be completed within the financial year, that is, on or before 31 March.

However, in exceptional circumstances where there are compelling reasons to exceed the prescribed period then such cases must be referred to the Deputy Commissioner (Collection) for consideration and approval.

2.9 The extension of time under section 57 to pay tax in installments would only be agreed in cases of acute financial difficulty as the Commissioner holds the view that if profits were made then the tax should have been provided for. It should be noted that in terms of section 57 it is not a matter of the taxpayer making an "offer" of the amount of tax that he thinks he should pay but it is a matter of meeting a statutory obligation.

Note:

Transactions in immovable property (Item 2 of Schedule)

As regards transactions in immovable property or any endorsement to any title deed (see item 2 in the schedule), income tax clearance certificates are required in respect of —

1. Transactions entered into before the commencement of the Act and registered after the commencement of the 1988 regulations (i.e. 1 July 1988).

2. Transactions (of the same type) entered into by persons not domiciled in Swaziland Neither residence nor domicile are the criteria for determining the requirement of income tax clearance certificate.

3. Transactions in connection with deceased estates, if such transactions come within the type of transactions mentioned in the Schedule to the 1988 regulations.

4. In the case of transfer of immovable property, income tax clearance certificates are required from the transferor. As to the other types of transactions, please refer to the Schedule to the 1988 regulations.

5. In terms of the Schedule only those endorsements to any title deeds, having the effect of transferring immovable property, would require income tax clearance certificates. Viewed in this light, endorsements under section 44 of the Deeds Registry Act No. 37 of 1968 will not require income tax clearance certificates. Endorsements under section 45 of the same Act would require income tax clearance certificates, as has been specified in the same section.

6. Transactions relating to bonds, cessions, grants and/or any transactions conferring a real right should be viewed in the light of the issue: Is there a transfer of immovable property? Or, does the endorsement to any title deed have the effect of transferring immovable property? It would appear that transactions relating to bonds generally would not require income tax clearances, whereas cession, where it results in transfer of immovable property, would require such a clearance. Grants (i.e. crown grants) will not require income tax clearances. Transactions conferring a real right (other than change of ownership of immovable property) such as those creating servitudes *et cetera*, will not require income tax clearances.

This practice note supersedes all other instructions relative thereto and come into effect on this 1st day of July 2004.

Tax Treatment of Assets Acquired Under Financial Leases, Directive 2004

REVENUE: Act 21/1975 (7)

Citation and commencement

This directive may be cited as the tax treatment of assets acquired under finance leases (Date of Commencement) directive, 2004 and shall come into effect on 1 July 2004.

Tax treatment of assets acquired under finance leases

1. Background

1.1 The use of finance leases to finance the acquisition of assets particularly motor vehicles has been common practice in Swaziland over the years.

1.2 The Income Tax Order 1975 acknowledges the use of the finance leases as a means of financing and the dealing with thereof by the lessor on a similar basis as dealing with operating leases through certain provisions of the Order namely.

1.3 The proviso to section 14(1)(c) provides that in the case of plant and machinery, implements, utensils and articles which are let by any taxpayer and which are brought into use by the lessee, thereof for the purposes of the lessee's trade, the Commissioner may, if he considers it just and reasonable, allow during the year of assessment wear and tear on an equal annual instalments over the estimated life of such plant and machinery, implements, utensils and articles. And section 14(1)(e)(i) also provides that machinery or plant which was brought into use . . . or which was let by a taxpayer and which is brought into use by the lessee for the purpose of the lessee's trade and is used by the lessee directly in a process of manufacture, an allowance (to be called the "machinery initial allowance") . . . equal to fifty percent of the cost thereof.

Note that these provisions only relate to the determination of taxable income for the lessor and that there are no specific provisions in the Order dealing with finance (or other) leases in determining the taxable income of lessees.

1.4 In the financial statements of the lessor (for instance, the finance company or bank), in order to comply with International Financial Reporting Standards, the finance lease is recorded as a loan receivable over a fixed period in usually equal instalments and the interest element of the repayment is reflected in the income statement as income based on an effective interest rate.

1.5 ***In the case of lessors:*** the practice has been that lessors, in determining their taxable income, to exclude the interest element from income, to include the gross repayments received and to claim wear and tear in equal annual instalments determined, usually, over the period of the lease. Conversely, the lessee has recorded the transaction as the acquisition of a depreciating asset, with a liability under a loan repayable over a fixed period in equal instalments with the interest element of the repayment reflected in the income statement as an expense ("lease finance charges") based on an effective interest rate.

In the case of lessees: the practice has been that lessees, in determining their taxable income, to add back the interest element (for instance, "lease charges") and depreciation on the asset, and to claim the gross repayments as a deduction.

1.6 The effect of these adjustments (in paragraph 1.5 for purposes of determining taxable income results in a deterral of liability for tax both for the lessor and the lessee.

2. Departmental practice

2.1 Departmental practice in past years, has been to accept the submission of tax returns and supporting computations reflecting adjustments for determining taxable income as outlined above without query.

2.2 Recent examination of returns has brought to light that in the case of lessors (for instance banks) the adjustments were made and wear and tear claimed on leased assets notwithstanding that there was the possibility that the assets were not being used by the lessees in the course of their trade.

2.3 Examination of the returns and computations of lessees of assets under finance leases have revealed the following:

- (a) Certain taxpayers have not made any adjustments in their returns for assets acquired under finance leases. (No prejudice to the fiscus);

- (b) certain taxpayers initially made adjustments in their tax computation for finance leases but have discontinued making adjustment in subsequent years. (Prejudice to the fiscus to the extent of deferral of tax at time of discontinuing adjustments);
- (c) attempts to check the tax computation by reference to information in the financial statements were unsuccessful as no reconciliation was provided;
- (d) possibility that proceeds on disposal of an asset acquired under a finance lease, in respect of which adjustments were made in previous tax computations, have not been properly dealt with in current computations.

3. Future considerations: The Income Tax (Admendment) Bill, 2004 includes provisions dealing with the treatment of finance leases for tax purposes as financing transactions and not as the hire of an asset. The actual wording being as follows:

"Finance Leases

20bis. (1) Where a lessor leases property to a lessee under a finance lease, for all purposes of this Order—

- (a) The lessee is treated as the owner of the property; and
- (b) The lessor is treated as having made a loan to the lessee, in respect of which the payments of interest and principal are made equal in amount to the rental payable by the lessee.

(2) The interest component of each payment under the loan is considered as interest expenses for the lessee and interest income for the lessor.

(3) A lease of property is a finance lease if—

- (a) the lease transfers substantially all the risks and rewards to ownership of an asset; or
- (b) the lessee has an option to purchase the property for a fixed or determinable price at the expiration of the lease.

(4) A finance lease entered into before the commencement of this section, which has been dealt with for purposes of the determination of taxable income other than in accordance with the provisions of subsection (1), shall be dealt with for purposes of determining taxable income in each subsequent year of assessment, on the same basis as applied in the previous years of assessment in respect of that lease until the expiry of the term of the lease.

(5) Any amount received or accrued arising from the disposal of an asset which was acquired in terms of a lease which lease has been dealt with for purposes of the determination of taxable income other than in accordance with the provisions of subsection (1), shall be included into taxable income."

4. Future Departmental practice

4.1 In order to address past deficiencies, the Commissioner of Taxes requires all taxpayers who have entered into finance lease for the purposes of acquiring assets and who have dealt with such leases in their tax computations as operating leases to —

- (a) review all previous tax computations and to proof the accuracy of the leasing adjustments therein by providing reconciliations of the amounts therein relating to leasing with the movement on "assets acquired under leases", "liabilities under finance leases" and "deferred lease charges" in the balance sheet and with the relevant items in the income statement "depreciation of leased assets", "lease finance charges" and "profit/loss on disposal of leased assets";
- (b) submit amended tax computations in cases where the leasing adjustment in a subsequent computation was discontinued notwithstanding that

finance leases were still in operation or assets held under finance leases still owned;

- (c) submit reconciliations as contemplated above in support of the adjustments for leasing in the return for the year of assessment commencing 1 July 2003. Alternatively the taxpayer may opt to deal with finance leases in the return for the year of assessment commencing 1 July 2003 as if the amendment had come into force with effect from that year of assessment.

4.2 For tax computations submitted subsequent to the coming into force of the amendment to the Income Tax Order as contemplated above, taxpayers will be required to submit reconciliations as outlined above distinguishing between assets acquired before and after the commencement of the amendment.

4.3 To provide assistance, a tabulation of the tax computation and of the relevant extracts from the financial statements is set below together with cross references as to the agreement of amounts.

Explanatory Note on Reconciliation of Finance Lease Data

Extracts from tax computation

1	Profit per financial statements	Per income statement - Profit before tax
2	Add depreciation of leased assets	Agrees to depreciation as below #13
3	Add lease finance charges	Agrees to lease charges as below #18
4	Less lease premium instalments paid	Agrees to payments as below #19
5	Less settlements on termination before end of contract period	Agrees to payments as below #20
6	Less profit/(loss) on disposal of leased assets	Per financial statements and #24 below
7	Add recoupments arising on disposal of leased asset	Agrees to proceeds on disposal #22 below
8	Taxable income	

Extract from financial statements

	Leased fixed assets	
11	Balance at beginning of period	Per balance sheet prior year
12	Add: additions to cost	Agrees to cost of new assets below #17
13	Less: depreciation for period	Agrees to depreciation as above #2
14	Less: disposals at net book value	Agrees to #23 below
15	Balance at end of period	Per balance sheet current year
	Lease finance liability	
16	Balance at beginning of period	Per balance sheet prior year
17	Add: cost of new assets	Agrees to cost of new assets above #12
18	Add: finance charges for period	Agrees to lease charges as above #3
19	Less: repayments	To computation #4
20	Less: settlements on termination before end of contract period	To computation #5
21	Balance at end of period	Per balance sheet current year
	Profit/(Loss) on disposal of leased assets	Per financial statements
22	Proceeds on disposal of asset	Agrees to computation #7
23	Less: book value of asset sold	Agrees to disposals at net book value as above #14
24	Profit/(loss) on disposal of leased assets	Agrees to #6 above

**The Double Taxation Agreement between the Kingdom of Swaziland and the
Republic of Seychelles Notice, 2012**

(Under Section 68)

1. Citation and Commencement.

(1) This Notice may be cited as the Double Taxation Agreement between the Kingdom of Swaziland and the Republic of Seychelles, Notice, 2012.

(2) This Notice shall come into force on the date of publication.

2. Double Taxation Agreement.

Notice is given of the attached Double Taxation Agreement between the Kingdom of Swaziland and the Republic of Seychelles.

AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF SEYCHELLES

AND

THE GOVERNMENT OF THE KINGDOM OF SWAZILAND

FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL
EVASION WITH RESPECT TO TAXES ON INCOME

Preamble

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and to promote and strengthen the economic relations between the two countries, the Government of the Kingdom of Swaziland and the Government of the Republic of Seychelles (hereinafter referred to as 'the Contracting States')

Have agreed as follows:

Article 1

General Definitions.

1. For the purposes of this Agreement, unless the context otherwise requires —
 - (a) the term "business" includes the performance of professional services and of other activities of an independent character;
 - (b) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
 - (c) the term "competent authority" means —
 - (i) in the case of Swaziland, the Minister of Finance or an authorized representative;
 - (ii) in the case of Seychelles, the Minister of Finance or an authorised representative of the Minister of Finance;
 - (d) the terms "a Contracting State" and "the other Contracting State" mean Swaziland or Seychelles, as the context requires;

- (e) the term "enterprise" applies to the carrying on of any business;
- (f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (g) the term "international traffic" means any transport by a ship, aircraft or rail or road transport vehicle operated by an enterprise of a Contracting State, except when the ship, aircraft or rail or road transport vehicle is operated solely between places in the other Contracting State;
- (h) the term "national" means —
 - (i) any individual possessing the nationality or citizenship of a Contracting State; and
 - (ii) any legal person or association deriving its status as such from the laws in force in a Contracting State;
- (i) the term "Seychelles" means the territory of the Republic of Seychelles including its exclusive economic zone and continental shelf where Seychelles exercises sovereign rights and jurisdiction in conformity with the provisions of the United Nations Convention on the Law of the Sea;
- (j) the term "Swaziland" means the Kingdom of Swaziland;
- (k) the term "tax" means Swaziland tax or Seychelles tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Agreement applies or which represents a penalty imposed relating to those taxes.

2. As regards the application of the provisions of this Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which this Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 2

Persons Covered

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

Article 3

Taxes Covered

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions or local authorities irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property.

3. The existing taxes to which the Agreement shall apply are —

- (a) in the case of Swaziland, the taxes covered under the Income Tax Order 1975, as amended;
 - (hereinafter referred to as "Swaziland tax"); and
- (b) in the case of Seychelles —

- (i) the business tax;
- (ii) the income and non-monetary benefits tax; and
- (iii) the petroleum income tax; (hereinafter referred to as "Seychelles tax").

4. This Agreement shall also apply to any identical or substantially similar taxes that are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in the respective taxation laws.

Article 4

Resident

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax in that State by reason of that person's domicile, residence, place of incorporation or registration, place of management, or any other criterion of a similar nature, and also includes that State or any political subdivision or local authority of that State. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then that individual's status shall be determined as follows —

- (a) an individual shall be deemed to be a resident solely of the Contracting State in which a permanent home is available to him; if a permanent home is available to that individual in both States, that individual shall be deemed to be a resident only of the State with which that individual's personal and economic relations are closer (centre of vital interests);
- (b) if sole residence cannot be determined under the provisions subparagraph (a), that individual shall be deemed to be a resident solely of the State in which that individual has an habitual abode;
- (c) if that individual has an habitual abode in both States or in neither of them, he shall be deemed to be a resident solely of the State of which that individual is a national;
- (d) if that individual is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident solely of the State in which its place of effective management is situated.

Article 5

Permanent Establishment

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially —

- (a) a place of management;
- (b) a branch;
- (c) an office;

- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction or exploitation of natural resources;
- (g) a building site, a construction, assembly or installation project or supervisory activity connected therewith where such site, project or activity continues for a period of more than 183 days; and
- (h) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purposes, but only where activities of that nature continue for the same or a connected project within a Contracting State for a period or periods exceeding in the aggregate 90 days in any twelve month period commencing or ending in the year of assessment concerned.
- (i) the performance of professional services or other activities of an independent character by an individual, but only where those services or activities continue within a Contracting State for a period or periods exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the year of assessment concerned.

3. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include —

- (a) the use of facilities solely for the purpose of storage, display of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- (e) the maintenance of fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

4. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 5 applies – is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned State in respect of any activities which that person undertakes for the enterprise, if such a person —

- (a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 3 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
- (b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which such person regularly delivers goods or merchandise on behalf of the enterprise

5. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker,

general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

6. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

7. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 5 applies,

Article 6

Income from Immovable Property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other Contracting State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources shall also be considered as "immovable property". Ships, boats, aircraft and rail or road transport vehicles shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise.

Article 7

Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of the profits as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of

patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by the way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary. The method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

International Transport

1. Profits of an enterprise of a Contracting State from the operation of ships, aircraft or rail or road transport vehicles in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. For the purpose of this Article, profits from the operation in international traffic of ships or aircraft shall include in particular —

- (a) profits derived from the rental or lease by the enterprise on a bare boat charter basis of ships or aircraft used in international traffic where such rental or lease is ancillary to the transportation of passengers or cargo;
- (b) profits derived from the use, maintenance, rental or lease of containers by the enterprise where such use, maintenance, rental or lease is ancillary to the transportation of cargo.

3. If the place of effective management of a shipping enterprise is aboard a ship or boat, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship or boat is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship or boat is a resident.

4. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9

Associated Enterprises

1. Where —

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State, and where the competent authorities of the Contracting States agree, upon consultation, that all or part of the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State may make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of the Agreement and the competent authorities of the Contracting States shall, if necessary, consult each other.

Article 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed –

- (a) 7.5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds at least 25 per cent of the capital of the company paying the dividends; or
- (b) 10 per cent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term “dividends” as used in this Article means income from shares, or other rights participating in profits (not being debt-claims), as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company’s undistributed profits to a tax on the company’s

undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11

Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 7.5 percent of the gross amount of the interest.

3. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State, in which the interest arises through a permanent establishment situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

5. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount of interest. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 12

Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for —

- (a) the use of, or right to use any patent, invention, design or model, secret formula or process, trademark, or other like property or right;

- (b) the use of, or right to use any copyright of a literary, artistic, or scientific work (including computer software, cinematograph films or films or video tapes or discs for use in connection with radio or television broadcasting;
- (c) the receipt of, or right to receive, any visual images or sounds, or both, transmitted by satellite, cable, optic fibre, or similar technology in connection with television, radio, or internet broadcasting;
- (d) the supply of any technical, industrial, commercial, or scientific knowledge, experience, or skill;
- (e) the use of or right to use any industrial, commercial, or scientific equipment; or
- (f) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any property or right referred to in paragraphs (a) through (e).

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment with which the right or property in respect of which the royalties are paid is effectively connected, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 13

Technical Fees

1. Technical fees arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such technical fees may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the beneficial owner of the technical fees is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the technical fees.

3. The term "technical fees" as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration of any services of a technical, managerial or consultancy nature.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the technical fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the technical fees arise, through a permanent establishment situated therein and the technical fees are effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

5. Technical fees shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the technical fees, whether that person is a resident of a Contracting State or not, has in a Contracting

State a permanent establishment in connection with which the obligation to pay the technical fees was incurred, and such technical fees are borne by the permanent establishment, then such technical fees shall be deemed to arise in the State in which the permanent establishment is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the technical fees paid exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 14

Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

3. Gains of an enterprise of a Contracting State from the alienation of ships, aircraft or rail or road transport vehicles operated in international traffic or movable property pertaining to the operation of such ships, aircraft or rail or road transport vehicles shall be taxable only in that State.

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from the alienation of any property, other than that referred to in the preceding paragraphs, shall be taxable only in the Contracting State of which the alienator is a resident.

Article 15

Income from Employment

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if —

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the year of assessment concerned, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- (c) the remuneration is not borne by a permanent establishment which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship, aircraft or road or rail transport

vehicle operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

Article 16

Directors' Fees

Directors' fees and other similar payments derived by a resident of a Contracting State in the capacity of that residents as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17

Entertainers and Sportspersons

1. Notwithstanding the provisions of Articles 7 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from that person's personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in that capacity accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. Income derived by a resident of a Contracting State from activities of an entertainer or sportsperson exercised in the other Contracting State as envisaged in paragraphs 1 and 2 of this Article, shall be exempt from tax in that other State if the visit to that other State is supported wholly or mainly by public funds of the first-mentioned Contracting State or takes place under a cultural agreement or arrangement between the Governments of the Contracting States.

Article 18

Pensions and Annuities

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration, and annuities, arising in a Contracting State and paid to a resident of the other Contracting State, may be taxed in the first-mentioned State.

2. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

3. Notwithstanding the provisions of paragraph 1, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State, a political subdivision or a local authority of that Contracting State shall be taxable only in that State.

Article 19

Government Service

1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who —

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages and other similar remuneration, and to pensions, in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority of that Contracting State.

Article 20

Students, Apprentices and Business Trainees

A student, apprentice or business trainee who is present in a Contracting State solely for the purpose of the education or training of the student, apprentice or business trainee and who is, or immediately before being so present was, a resident of the other Contracting State, shall be exempt from tax in the first-mentioned State on payments received from outside that first-mentioned State for the maintenance, education or training of the student, apprentice or business trainee.

Article 21

Professors and Teachers

1. Notwithstanding the provisions of Article 15, a professor or teacher who makes a temporary visit to one of the Contracting States for a period not exceeding two years from the date of first arrival in that State, solely for the purpose of teaching or carrying out research at a university, college, school or other educational institution in that State and who is, or immediately before such visit was, a resident of the other Contracting State shall, in respect of remuneration for such teaching or research, be exempt from tax in the first-mentioned State, provided that such remuneration is derived by the professor or teacher from outside that State or such remuneration is not borne by a university, college, school or other educational institution in the first-mentioned State.

2. The provisions of this Article shall not apply to income from research if such research is undertaken not in the public interest but wholly or mainly for the private benefit of a specific person or persons.

Article 22

Other Income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein and the right or

property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of the Agreement and arising in the other Contracting State may also be taxed in that other State.

Article 23

Elimination of Double Taxation

1. Double taxation shall be eliminated as follows —

- (a) In Swaziland, subject to the provisions of the law of Swaziland, from time to time in force, which relates to the allowance of credit against Swaziland tax of tax paid in a country outside Swaziland (which shall not affect the general principle of this Article), Seychelles tax paid under the law of Seychelles and in accordance with this Agreement, whether directly or by deduction, in respect of income derived by a person who is a resident of Swaziland from sources in Seychelles shall be allowed as a credit against Swaziland tax payable in respect of that income but such credit shall not exceed the average rate of Swaziland income tax on that income.
- (b) In Seychelles, subject to the provisions of the law of Seychelles, from time to time in force, which relates to the allowance of credit against Seychelles tax of tax paid in a country outside Seychelles (which shall not affect the general principle of this Article), Swaziland tax paid under the law of Swaziland and in accordance with this Agreement, whether directly or by deduction, in respect of income derived by a person who is a resident of Seychelles from sources in Swaziland shall be allowed as a credit against Seychelles tax payable in respect of that income but such credit shall not exceed the average rate of Seychelles income tax on that income.

2. For the purposes of paragraph 1, the terms "Swaziland tax paid" and "Seychelles tax paid" shall be deemed to include the amount of tax which would have been paid in Swaziland or Seychelles, as the case may be, but for an exemption or reduction granted in accordance with laws which establish schemes for the promotion of economic development in Swaziland or Seychelles, as the case may be, such schemes having been mutually agreed by the competent authorities of the Contracting States as qualifying for the purposes of this paragraph.

3. A grant given by a Contracting State or a political subdivision of that Contracting State to a resident of the other Contracting State in accordance with laws which establish schemes for the promotion of economic development in Swaziland or Seychelles, as the case may be, such schemes having been mutually agreed by the competent authorities of the Contracting States as qualifying for the purposes of this paragraph, shall not be taxable in the other State.

Article 24

Non-Discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 2, also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances,

reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Nothing in this Agreement shall be construed as preventing a Contracting State from imposing under its laws an income tax (referred to as a "branch profits tax") on the deemed repatriated income of a company which is a resident of the other Contracting State in addition to the income tax imposed on the chargeable income of the company in accordance with this Agreement; provided that any branch profits tax so imposed shall not exceed 10 per cent of the amount of the deemed repatriated income in the year of assessment.

4. Except where the provisions of paragraph 1 of Article 9, paragraph 6 of Article 11, paragraph 6 of Article 12 or paragraph 6 of Article 13 apply, interest, royalties, technical fees and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first mentioned State.

5. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

Article 25

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for that person in taxation not in accordance with the provisions of this Agreement, that person may, irrespective of the remedies provided by the domestic law of those States, present a case to the competent authority of the Contracting State of which the person is a resident or, if the case comes under paragraph 1 of Article 24, to that of the Contracting State of which the person is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

5. If it seems desirable to amend any Article of the Agreement without affecting the general principles thereof, the necessary amendments may be made by mutual consent by means of exchange of diplomatic notes.

Article 26

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes covered

by this Agreement. The exchange of information is not restricted by Article 2 of the Agreement.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

3. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation —

- (a) to carry out administrative measures at variance with the laws and the administrative practice of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information requested by the other Contracting State because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 27

Members of Diplomatic Missions and Consular Posts

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

Article 28

Assistance in Recovery

1. The Contracting States shall, to the extent permitted by their respective domestic law, lend assistance to each other in order to recover the taxes referred to in Article 2 as well as interest and penalties with regard to such taxes, provided that reasonable steps to recover such taxes have been taken by the Contracting State requesting such assistance.

2. Claims which are the subject of requests for assistance shall not have priority over taxes owing in the Contracting State rendering assistance and the provisions of paragraph 1 of Article 25 shall also apply to any information which, by virtue of this Article, is supplied to the competent authority of a Contracting State.

3. It is understood that unless otherwise agreed by the competent authorities of both Contracting States —

- (a) ordinary costs incurred by a Contracting State in providing assistance shall be borne by that State;
- (b) extraordinary costs incurred by a Contracting State in providing assistance shall be borne by that other State and shall be payable regardless of the amount collected on its behalf by the first-mentioned State.

As soon as a Contracting State anticipates that extraordinary costs may be incurred, it shall so advise the other Contracting State and indicate the estimated amount of such costs.

4. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of the provisions of this Article.

Article 29

Entry into Force

1. Each of the Contracting States shall notify to the other, by means of exchange of diplomatic notes, the completion of the procedures required by its law for the bringing into force of this Agreement. The Agreement shall enter into force on the date of receipt of the later of these notifications.

2. The provisions of the Agreement shall apply —

- (a) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the thirtieth day following the date upon which the Agreement enters into force; and
- (b) with regard to other taxes, in respect of years of assessment beginning on or after the date upon which this Agreement enters into force.

Article 30

Termination

1. This Agreement shall remain in force indefinitely but either of the Contracting States may terminate the Agreement, through the diplomatic channels, by giving to the other Contracting State written notice of termination not later than 30 June of any calendar year starting five years after the year in which the Agreement entered into force.

2. In such event the Agreement shall cease to apply —

- (a) with regard to taxes withheld at source, in respect of amounts paid or credited after the end of the calendar year in which such notice is given; and
- (b) with regard to other taxes, in respect of years of assessment beginning after the end of the calendar year in which such notice is given.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Agreement.

DONE at in duplicate, this day of, 20.....

.....
 FOR THE GOVERNMENT OF THE KINGDOM OF SWAZILAND FOR THE GOVERNMENT OF THE REPUBLIC OF SEYCHELLES
