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#### 24. Property Income of Expatriate Taxpayers

This section recognises that Lesotho relies on the assistance of overseas technical personnel in a number of key economic areas. Under section 5, these persons will be resident individuals if they are present in Lesotho for more than 182 days. As residents, they will be liable for Lesotho income tax on their worldwide income (see Commentary to section 17). As these persons are generally only in Lesotho for a fixed term for the purpose of providing technical assistance, it would be unfair to subject them to Lesotho income tax on worldwide income. Consequently, this section exempts from income tax the foreign property income derived from a foreign source or from the disposal of an investment asset generating foreign income by an expatriate taxpayer. "Expatriate taxpayer" is defined in section 3 to mean a resident individual (other than a citizen or permanent resident) who is employed or engaged under a "technical services contract" (separately defined in section 3(1)). When combined with the definition of "permanent resident" in section 3(1), this section effectively exempts from Lesotho income tax the foreign property income of most overseas technical personnel for a period of seven years. An ancillary effect of this exemption is that the exempt income is subtracted in making the calculation under section 16(2).

This exemption replaces the remittance basis of taxation which applies under section 11 of the 1981 Act to all resident individuals (other than citizens and permanent residents). See the Commentary to section 17 for a discussion of the reasons for removal of the remittance basis of taxation.

#### 25. Exempt Organisations

This section exempts the income of a religious or charitable organisation, an amateur sporting association, or a trade union or like organisation (such as an employer association) from income tax. The exemption largely re-enacts the exemptions in section 22(1)(b), (c), and (d) of the 1981 Act, while removing some of the anomalies and inconsistencies which exist under those exemptions. The exemption covers, for

example, donations and receipts from fund-raising activities such as dinners, fetes and jumble sales. The exemption is only available where the organisation has a ruling from the Commissioner confirming its exempt status, and none of its income or assets confers, or may confer, a private benefit on any person. In this context, a private benefit is in distinction to a benefit that may be conferred on a member of a charitable class as a consequence of an organisation's charitable activities, or a benefit ancillary to those activities. A private benefit also would not be considered as arising from an arm's-length payment to a provider of property or services to an exempt organisation.

It is generally regarded as inappropriate for the tax-exempt status of such organisations to extend to commercial activities carried on in direct competition with the private sector. Consequently, under subsection (3), income from commercial activity is exempt only if that activity is ancillary to the organisation's charitable or non-profit function. For example, income from the sale of religious literature would generally be regarded as ancillary to the exempt function of a church; whereas income from a general bookshop or a printing press operated by a church in a commercial manner would not normally be regarded as ancillary to the church's exempt function.

It is also usual to deny the exemption for property income as such income is generally untaxed at the level of the payer. If property income is exempt, then there is an incentive to convert taxable business income into untaxed property income, particularly through related party transactions. Consequently, the exemption in section 25 does not apply to property income (see section 20); although interest income from which tax has been withheld under section 158 is not included in the gross income of an exempt organisation (section 158(2)).

An organisation which is exempt from income tax under section 25 is still liable for fringe benefits tax on fringe benefits provided to employees. Fringe benefits tax is a

surrogate for income tax on the employee, and therefore, should be paid by exempt organisations.

#### 26. War Pensions

War pensions and gratuities paid by the Lesotho Government in respect of persons who retired before the date of enactment of this Order are exempt from income tax. This basically re-enacts the exemption in section 22(1)(f) of the 1981 Act, although the exemption is only available to persons who retired before the date of enactment of the Order (that is, to persons currently receiving the benefit of the exemption). In other words, the exemption is to be phased out with the introduction of the new law. Section 26 also makes it clear that the exemption is only available for pensions or gratuities paid by the Lesotho Government.

#### 27. Interest

This section exempts the first M500 of interest derived from a single savings account by a resident individual from income tax. The exemption is only available in respect of savings accounts with a registered financial institution resident in Lesotho. As the Lesotho branch of a non-resident financial institution is deemed to be a resident company under section 6(2), an account held with such a branch qualifies for the exemption. An account held with a foreign branch of a non-resident financial institution does not qualify for exemption, and the interest paid on such an account is fully taxable with a credit for any foreign tax (such as withholding tax) paid on the interest.

The exemption is only available in respect of a single savings account. It is not possible to aggregate the interest earned on several accounts to reach the M500 limit. An individual with more than one account must nominate the account to which the exemption applies. The nomination must be made to the financial institution with whom the account is held and must include the individual's taxpayer identification number. This allows the financial institution to take the exemption into account in calculating the amount of tax (if