



# SWAZILAND

## GOVERNMENT GAZETTE

### EXTRAORDINARY

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VOL. XXIII]

MBABANE, Friday, July 12th., 1985

[No. 377

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PUBLISHED BY AUTHORITY

SUPPLEMENT TO  
THE  
SWAZILAND GOVERNMENT  
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**S1**

**THE INCOME TAX (CONSOLIDATION) (AMENDMENT)  
ACT, 1985**

(Act No. 11 of 1985)



**I ASSENT**

**NTOMBI**

**Ndlovukazi and Regent  
of Swaziland**

**8th July, 1985**

**AN ACT  
entitled**

**An Act to amend the Income Tax (Consolidation) Order, 1975**

**ENACTED By the Regent and the Parliament of Swaziland.**

*Short title and commencement.*

1. This Act may be cited as the Income Tax (Consolidation) (Amendment) Act, 1985, shall be read as one with the Income Tax (Consolidation) Order, 1975 (hereinafter referred to as "the Order") and, except insofar as the Minister may in respect of any particular provision thereof by notice in the Gazette otherwise determine, shall come into operation on the 1st July, 1985.

*Amendment of section 1.*

2. Section 1 of the Order is amended by deleting the word "(Consolidation)".

*Amendment of section 2.*

3. Section 2 of the Order is amended —

- (a) by inserting the following new definition after the definition "executor"—  
"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.
- (b) by deleting the word "partnership" from the definition "person";
- (c) by inserting the following new definition after the definition "this Act"—
- "wife's employment income" means remuneration, as defined in paragraph 1 of the Second Schedule, derived from employment of a married woman, excepting income derived by her as an employee of
- (a) a partnership in which her husband is a partner;
  - (b) her husband;
  - (c) a company the voting power of which is held to the extent of twelve and one half per cent or more at any time during a year of assessment by her or by her husband or by both jointly, either directly or through nominees;
  - (d) any other person, where such income is in excess of an amount considered reasonable by the Commissioner."

(d) by inserting the following proviso to the definition "Year of assessment"—

"Provided that in the case of a company any reference to a year of assessment shall be construed to mean the financial year of that company."

*Amendment of section 6.*

4. Section 6 of the Order is amended in subsection (1) by deleting the proviso thereto.

*Amendment of section 7.*

5. Section 7 is amended by replacing paragraph (k) with the following —

"(k) any amount by way of allowance so received or accrued to a public servant, a Member of Parliament or a Minister, but excluding amounts paid or payable to such persons for reimbursive allowances in terms of General Orders or regulations relating to such allowances and housing allowances paid to Ministers."

*Amendment of section 8.*

6. Section 8 of the Order is amended in subsection (2) by adding after the word "taxpayer" the words "other than a company".

*Amendment of section 10.*

7. Section 10 of the Order is amended by deleting the proviso thereto.

*Amendment of section 11.*

## 8. Section 11 of the Order is amended —

- (a) by inserting the following new subsection after subsection (2):  
 “(2) (bis). So much of the income deemed under subsection (2) as is attributable to the wife's employment income shall be charged to tax at the wife's employment income rates set out in the Third Schedule.”
- (b) in subsection (11) by adding at the end of the definition “trading stock” (which definition appears at the end of that sub-section) the words “and consumable stores”.

*Amendment of section 12.*

## 9. Section 12 of the Order is amended —

- (a) in subsection (1) —
  - (i) by deleting sub-paragraph (ix) of paragraph (a);
  - (ii) by adding the following sub-paragraph after paragraph (j) (ii)—
    - (iii) with effect from 1st November, 1981, any amount payable as severance allowance under the Employment Act, 1980 to any employee whose services are or have been terminated and who receives a severance allowance calculated at a rate not exceeding twenty Emalangeni in wages per working day, but the amount in excess of that rate shall not be so exempt.”
  - (iii) in paragraph (p) by replacing the words “four thousand emalangeni” with the words “ten thousand emalangeni” and by deleting the words “of not less than three years duration.”
  - (iv) in paragraph (q) by replacing the words “one thousand emalangeni” with the words “ten thousand emalangeni”;
  - (v) by adding the following new sub-paragraph after paragraph (r)
    - “(s) (i) income derived by a person from farming operations conducted by him solely as an individual, mainly on land held by the Ngwenyama personally or in trust for the Swazi Nation insofar as such land is not held by such person on a lease given by the Swazi Nation.
    - (ii) for the purpose of the sub-paragraph (i), the word “lease” means any document signed by a person seeking possession of the land and the Swazi Nation, in accordance with the requirements laid down by the Swazi Nation.
    - (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.”

(b) in sub-section (4) by inserting after the words “another person” the words “other than the wife's employment income”.

(c) by adding the following new sub-section after sub-section (4) —

- “(5) (a) Where a new business engaged in a manufacturing industry which is not already in existence in Swaziland derives taxable income from such manufacturing industry, such taxable income shall, for a period of five years of assessment, as from the date of commencement of such business, be exempt from normal tax provided that the cumulative taxable

income derived from such industry less cumulative remuneration paid to his employees who are citizens of Swaziland does not exceed one hundred and fifty per cent of the value of the assets owned by the owner of such business as at the end of each year of assessment and employed in such business.

- (b) In paragraph (a), where the cumulative taxable income derived from such business less the cumulative remuneration paid to his employees who are citizens of Swaziland exceeds one hundred and fifty per cent of the value of the assets owned by the owner of the business at the end of each year of assessment and employed in such business, such excess shall be deemed to be the income of such owner and shall be liable to normal tax in accordance with this Order:

Provided that where such excess is more than the taxable income derived by the business from such industry in any year, tax for that year shall be levied on such taxable income as computed under section 14."

*Amendment of section 14.*

10. Section 14 of the Order is amended in sub-section (1)—

- (a) by replacing the words "losses" and "outgoings" wherever they appear in paragraph (a) with the words "expenditure" and "loss", respectively —
- (b) by replacing all the paragraphs after paragraph (d) with the following —

"(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 which was let by a taxpayer and which is brought into use by the lessee thereof 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 "machinery initial allowance") for the year of assessment during which such machinery or plant is first used equal to fifty per cent of the cost thereof incurred by the taxpayer on or after the first day of July, 1985;
- (ii) a building, if such a building was wholly or mainly used by the taxpayer for the purpose of housing machinery or plant referred to in sub paragraph (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 per cent of the actual cost thereof incurred by the taxpayer on or after the first day of July, 1985.

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 sub paragraph (ii), 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:

Provided further that in the case of a building, referred to in sub paragraph (ii), 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;

- (iii) For the purpose of this paragraph, the expression "machinery and plant" does not include motor vehicles intended or adapted for use or capable of being used on roads.
- (iv) The allowances referred in sub-paragraphs (i) and (ii) shall not be given if the taxpayer elects otherwise;
- (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;
- (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 four thousand emalangeni for the first year and the sum of two thousand emalangeni in respect of each of the succeeding eight years; and
- (ii) the expenditure on which such allowance is made shall not include the cost of the land on which such dwelling is erected;
- (h) in the case of a taxpayer who, after the thirtieth day of June, 1968, 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, an annual allowance in respect of the first five years after the incurring of such expenditure of ten per centum of the actual cost of the erection of the new hotel



or the effecting of the improvements, as the case may be, and in respect of succeeding years, an annual allowance of five per centum of such expenditure, so however 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:

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

(ii) in so far as the effecting of improvements is concerned, the Minister shall, by certificate issued under his hand, have certified them as being beneficial improvements;

- (j) any sum contributed during the year of assessment by way of current contribution to any pension fund by any person holding any appointment, office or employment:

Provided that the deductions to be allowed in respect of contributions to a pension fund not established by law shall not exceed the sum of six hundred emalangeni:

- (j) the amount of current contributions to any retirement annuity fund made by any person as a member of such fund:

Provided that the deductions shall not exceed twelve hundred emalangeni less the amount of any deduction allowed under paragraph (i) or so much of his taxable income as accrues to him from a trade carried on by him, whichever is the less;

- (k) any sum contributed by a taxpayer to any pension fund, provident fund or benefit fund established for the benefit of the employees of such taxpayer:

Provided that—

(i) If the contributions (including any lump sum payments) made by the taxpayer in respect of any employee during any year of assessment to such funds exceed an amount equal to ten per centum of the total remuneration of such employee for such year of assessment and the Commissioner is satisfied that the aggregate of such contributions and the total remuneration accrued during such year of assessment to such employee in respect of his employment by the taxpayer is excessive or unjustifiable in relation to the value of the services rendered by such employee, and having regard to other benefits, if any, derived by him from his employment by the taxpayer only so much of such contributions as appears to the Commissioner to be reasonable, but not less than an amount equal to ten per centum of the approved remuneration of such employee for such year of assessment, shall be allowed to be deducted under this paragraph;

(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;



(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 one thousand emalangeni.

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

Provided that —

- (i) the aggregate of the allowances under this paragraph shall not exceed the 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;
- (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;
- (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;
- (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;

- (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;

- (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.
- (u) notwithstanding subsections (1) (a) hereof and subsections (a), (b) and (g) (i) of section 15, an allowance not exceeding in the aggregate the sum of four hundred emalangeni in respect of:
  - (i) any sum contributed by a taxpayer during the year of assessment by way of current contributions due by him, as a member, to any fund recognised by the Commissioner as a benefit fund established for the sole purpose of defraying in whole or in part any nursing home, hospital, medical, optical and dental expenditure which may be incurred by its members; and
  - (ii) any fees which the Commissioner is satisfied were paid by a taxpayer during the year of assessment to —

- (a) any nursing home in connection with any confinement of his wife;
- (b) any dentist or medical practitioner for dental, optical and medical services rendered to the taxpayer or his wife or his children;
- (c) any duly registered nursing home or hospital in respect of the illness of the taxpayer or his wife or his children;

Provided that:-

(i) no allowance under this paragraph shall be made to a person not ordinarily resident in Swaziland who is entitled to a similar allowance in respect of income or similar tax paid by him in a foreign country;

(ii) if the taxpayer has received a cash allowance for medical expenses which is excluded from gross income under section 7(f) or if the fees have been recouped, under a policy of insurance or otherwise the deduction under this paragraph shall be reduced by the amount of such cash allowance or the amount of such recoupment as the case may be;

- (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;

- (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;

- (x) in addition to any amount otherwise deductible under this section an allowance in respect of training expenses to be ascertained under section 18.

#### *Amendment of section 18.*

#### 11. Section 18 (1) of the Order is amended —

- (a) by replacing paragraph (a) with the following —

“(a) (i) “approved training scheme” means a scheme for the training of citizens of Swaziland for employment in an industry which is approved by the Commissioner and subject to such conditions and limitations as the Commissioner may determine.

(ii) for the purposes of sub-section (i) “industry” means any industry which the Minister may determine by written notice in the Gazette.”

- (b) by replacing sub-section (5) with the following subsection —

“(5) Without prejudice to any deductions allowable prior to the 1st July, 1985, no deduction under this section shall be made in respect of any training expenses as determined under subsection (3) incurred before the 1st July, 1985.

#### *Amendment of Part III.*

#### 12. Part III of the Order is amended by adding the following new Division after Division II —

**"DIVISION III ENTERTAINERS AND SPORTSMEN"**

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

32A

- (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 sub-section (5), the individual members shall not be liable to tax.

- (2) Any person who makes any payment to any other person referred to in sub-section (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 sub-section (1), remit to the Commissioner, the amount of tax so deducted.
- (4) Where any person who is required by sub-section (2) to deduct tax in accordance with that sub-section 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 sub-section (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 sub-section (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."

*Amendment of section 33.*

13. Section 33 of the Order is amended —

- (a) by replacing subsection 3 with the following subsection —

- "(3) For the purposes of sub-section (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 sub-section (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."
- (b) in sub-section (16) by replacing the words "the English language" with the words "English or Siswati".

*Amendment of section 35.*

14. Section 35 of the Order is amended by replacing the words "the English language" with the words "English or Siswati".

*Amendment of section 36.*

15. Section 36 is replaced with the following new section —

*"Income of a married woman.*

36. (1) The income of a married woman deemed to be income accrued to her husband under section 11(2) shall be included by him in the returns of income required to be rendered by him under this Order.
- (2) Notwithstanding anything contained in sub-section (1), if either the husband or the wife makes written application to the Commissioner, returns of income may be rendered by such husband and wife separately and tax may be charged in respect of:
- (i) the wife's employment income, upon such income; and
  - (ii) other income, an amount proportionate to the share of such combined income returned by each,
- and assessments may be levied upon each.
- (3) The total amount so assessed upon the husband and the wife together, in terms of sub-paragraph (2), shall not be less than the total amount which would have been assessed upon the husband alone if the income of both husband and wife had been included in one return as required by this section."

*Amendment of section 51.*

16. Section 51 of the Order is amended in subsection (8) by replacing the words "ten Emalangeni" with the words "twenty Emalangeni".

*Addition of section 58A.*

17. The Order is amended by adding the following section after section 58 —

*Payment of provisional tax (fourth Schedule).*

- "58A (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 sub-section (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."

*Amendment to Section 59.*

18. Section 59 of the Order is amended by replacing sub-section (6) with the following sub-section —

- "(6) Any person who fails to notify the Commissioner under sub-section (1), or fails to deduct tax in accordance with subsection (3) 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."

*Amendment of section 66.*

19. Section 66 of the Order is amended —

- (a) in sub-section (1) by replacing the words "two hundred Emalangeni" with the words "four hundred Emalangeni";
- (b) in sub-section (2) by replacing the words "ten Emalangeni" with the words "twenty Emalangeni"; and
- (c) in sub-section (3) by replacing the words "one thousand Emalangeni" with the words "two thousand Emalangeni".

*Amendment of section 69.*

20. Section 67 of the Order is amended by adding the following sub-section after sub-section (2) —

- "(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 clearance certificate for the purposes mentioned in such regulations.
- (b) Every notice, published under sub-section (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 subsection (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) A person requiring a tax clearance 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 payment of outstanding tax:

Provided that, in addition to any other reasons, the Commissioner may refuse to issue the certificate if the taxpayer has not rendered returns of income in respect of any year of assessment or part thereof."

*Amendment of First Schedule.*

21. The First Schedule to the Order is amended in paragraph 8 (5) by replacing the words "five thousand Emalangeni" with the words "twenty thousand Emalangeni".

*Amendment of Third Schedule.*

22. The Third Schedule to the Order is amended in Part II by adding the following table of income rates (relating to the income of married women) after paragraph (b).

(C) WIFE'S EMPLOYMENT INCOME RATES

<i>Wife's Employment Income</i>	<i>Rates of Tax</i>
Where wife's employment income does not exceed E1000	Nil
Exceeds E1000 but does not exceed E3000	4 per centum of the amount by which the wife's employment exceeds E1000
Exceeds E3000 but does not exceed E4000	E80 plus 16 per centum of the amount by which the wife's employment income exceeds E3000
Exceeds E4000 but does not exceed E5000	E240 plus 19 per centum of the amount by which the wife's employment income exceeds E4000
Exceeds E5000 but does not exceed E6000	E430 plus 23 per centum of the amount by which the wife's employment income exceeds E5000
Exceeds E6000 but does not exceed E8000	E660 plus 24 per centum of the amount by which the wife's employment income exceeds E6000
Exceeds E8000 but does not exceed E10000	E1140 plus 26 per centum of the amount by which the wife's employment income exceeds E8000
Exceeds E10000 but does not exceed E11000	E1660 plus 30 per centum of the amount by which the wife's employment income exceeds E10000
Exceeds E11000 but does not exceed E12000	E1960 plus 34 per centum of the amount by which the wife's employment income exceeds E11000
Exceeds E12000 but does not exceed E13000	E2300 plus 38 per centum of the amount by which the wife's employment income exceeds E12000
Exceeds E13000 but does not exceed E14000	E2680 plus 42 per centum of the amount by which the wife's employment income exceeds E13000



Exceeds E14000 but does not exceed E15000

E3100 plus 46 per centum of the amount by which the wife's employment income exceeds E14000

Exceeds E15000

E3560 plus 50 per centum of the amount by which the wife's employment income exceeds E15000

*Addition of Fourth Schedule.*

23. The Order is amended by adding the following new Schedule after the Third Schedule —

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**"FOURTH SCHEDULE**

**PROVISIONAL PAYMENTS IN RESPECT OF NORMAL TAX**

(Under Section 58A)

*Definitions.*

1. 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 sub-paragraph (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.

*Payment of Provisional Tax.*

2. (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 para-

graph 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 subparagraph (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 or 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).

#### *Exemptions.*

3. 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.

#### *Estimates of taxable income to be made by provisional taxpayers.*

4. (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 a 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).

*Additional tax in the event of taxable income being under-estimated.*

5. (1) If the final or last estimate of his taxable income made in terms 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.

*Additional tax in the event of failure to submit an estimate of taxable income timeously.*

6. (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 ten 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.
- (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.

*Payments of provisional tax by provisional taxpayers (other than companies), whose income is not normally derived wholly or mainly from farming.*

7. (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 employees' 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.
- (4) This paragraph shall not apply in the case of any provisional tax payer in respect of whom the Commissioner has under item (a) of paragraph 12 directed that paragraph 8 shall apply.

*Payment of provisional tax by provisional taxpayers (other than companies) whose income is normally derived wholly or mainly from farming.*

8. (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 employees' 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.

*Provisional tax payments by companies.*

9. 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) or this paragraph.

*Phasing-in of provisional payments.*

9A. (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 of taxable income as calculated under paragraph 4 of the first payment due under paragraphs 7(1)(a) and at the rate of one-tenth of the estimated liability of the taxable income 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 4 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 4 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 4 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).

(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);

*Commissioner's discretion.*

10. 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.

*Extension of time for payment of provisional tax.*

11. (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.

*Certain matters to be decided by the Commissioner.*

12. The Commissioner's decision or direction in regard to the following matters shall be final and conclusive, namely —
- 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;
  - 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.

*Penalty on late payments of provisional tax.*

13. (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 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 ten per cent of the amount not paid.
- (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).

*Set off of provisional tax against tax liability of persons.*

14. (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.

*Refund procedure compliance.*

15. No refund of provisional tax shall be made to the taxpayer concerned otherwise than as provided for in paragraph 14.

*Offences.*

16. 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 four hundred emalangeni or to imprisonment for a period not exceeding twelve months, or both.

*Recovery of provisional tax.*

17. 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.

THE INCOME TAX (CONSOLIDATION) (AMENDMENT) ACT, 1985

(Act No. 11 of 1985)

THE INCOME TAX (DATE OF COMMENCEMENT OF OTHER  
PROVISIONS) NOTICE, 1985

(Under section 1)

In exercise of the power conferred by section 1 of the Income Tax (Consolidation) (Amendment) Act, 1985, the Minister for Finance hereby issues the following Notice —

*Title.*

1. This Notice may be cited as the Income Tax (Date of Commencement of Other Provisions) Notice, 1985.

*Commencement of other provisions of Act No. 11 of 1985.*

2. Sections 9(a)(i), 16 and 19 of the Income Tax (Consolidation) (Amendment) Act, 1985 shall come into operation on the 12th July, 1985.

K. MBULI  
*Principal Secretary*

MBABANE,  
16th July, 1985.

LEGAL NOTICE NO. 81 OF 1985

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THE INCOME TAX ORDER, 1975

(Order No. 21 of 1975)

THE EMPLOYEES' TAX DEDUCTION TABLES (VOLUME VI) (DATE  
OF COMMENCEMENT) NOTICE, 1985

(Under paragraph 9 of the Second Schedule)

In exercise of the powers conferred by paragraph 9 of the Second Schedule to the Income Tax Order, 1975, I, JOSEPH MKHULUNYELWA BOY SIMELANE, COMMISSIONER OF TAXES, hereby issues the following Notice —

*Citation and date of commencement of the employees' Tax deduction tables (volume VI)*

1. This Notice may be cited as the Employees' Tax Deduction Tables (Volume VI) (Date of Commencement) Notice, 1985 and shall be deemed to have come into operation on the 1st July, 1985.

*Revocation of Legal Notice No. 100 of 1982.*

2. The Employees' Tax Deduction Tables (Volume VI) (Date of Commencement) Notice, 1982 is revoked as from 1st July, 1985.

J.M.B. SIMELANE  
*Commissioner of Taxes*

MBABANE,  
16th July, 1985.