



# LESOTHO

## Government Gazette

Vol. 63

Friday – 23rd March, 2018

No. 23

### CONTENTS

No.		Page
LEGAL NOTICES		
24	High Court (Amendment) (Assessors' Retirement..... Age and Assessors' Fees) Rules, 2017	275
25	Value Added Tax (Remission of Additional Tax and..... Penalties (Voluntary Disclosure) Regulations, 2018	277

### OTHER NOTICES

(See Supplement of the Gazette)

Published by the Authority of His Majesty the King  
Price: M9.50

LEGAL NOTICE NO. 25 OF 2018

**Value Added Tax (Remission of Additional Tax and Penalties  
(Voluntary Disclosure) Regulations, 2018**

Pursuant to sections 88(1)(a) of the Value Added Tax, 2001<sup>1</sup>, I

**MOEKETSI MAJORO**

Minister responsible for finance, make the following Regulations -

**Citation and commencement**

1. These Regulations may be cited as the Value Added Tax (Remission of Additional Tax and Penalties (Voluntary Disclosure) Regulations, 2018. and shall come into operation on the date of publication in the Gazette.

**Interpretation**

2. For the purposes of these Regulations, unless context otherwise requires -

“Commissioner General” means the Commissioner General of the Lesotho Revenue Authority;

“pre-notification” means a disclosure made by the taxpayer before the taxpayer becomes aware of pending tax audit or investigation;

“post-notification” means a disclosure made by the taxpayer after the taxpayer becomes aware of a pending tax audit or investigation, but be-

fore the Lesotho Revenue Authority starts the audit or investigation;

“tax irregularity” means -

- (a) the submission of inaccurate or incomplete information to the Lesotho Revenue Authority, or the failure to submit information or the adoption of a position in self-assessment or in making a tax return or in a tax audit or investigation, where such submission, non-submission, or adoption resulted in an understatement of tax due; or
- (b) failure to comply with the registration, filing, payment or record keeping requirements as spelt in the Act.

“Valid voluntary disclosure” means a disclosure that -

- (a) is voluntary;
- (b) is full and complete in all material respects;
- (c) is not information already discovered by the Lesotho Revenue Authority in a tax audit or investigation;
- (d) does not result in a refund due by the Lesotho Revenue Authority;
- (e) is made in a prescribed form and manner; and
- (f) is not on a tax irregularity committed or otherwise arising within 5 years after the taxpayer was granted a relief under this Regulations for a tax irregularity of the same nature.

### **Voluntary disclosure relief**

3. (1) A taxpayer who makes a valid voluntary disclosure the submission of a tax irregularity, shall be entitled to voluntary disclosure relief from the Commissioner General.

(2) Where an application for voluntary tax relief is made before the 31st March, 2018 and the disclosure meets the requirements of a valid voluntary disclosure, and is made -

- (a) by way of pre-notification ; or
- (b) by way of post-notification; or
- (c) after completion of the tax audit or investigation but before full payment of resulting tax liability;

the Commissioner General shall, grant a full voluntary disclosure relief to the taxpayer.

(3) Where the Commissioner General is satisfied that the taxpayer has submitted a voluntary disclosure -

- (a) by way of a pre-notification disclosure, where the taxpayer shall be entitled to 100% remission of additional taxes; or
- (b) by way of post-notification disclosure, where the taxpayer shall be entitled to 80% remission of additional taxes; or
- (c) after the start or completion of a tax audit but in that instance only in relation to matters falling outside the scope of that tax audit, where the taxpayer shall be entitled to 60% remission of additional taxes; or
- (d) who had a tax liability as at 31st March 2018, where the taxpayer shall be entitled to 80% remission of additional taxes in relation to the said tax liability and for the liability arising from the disclosure,

the Commissioner General shall, if the voluntary disclosure is submitted after the 31st March, 2018, grant a voluntary disclosure relief to the taxpayer as stated in paragraphs (a) to (d).

(4) The Commissioner General shall, where he has granted the vol-

untary disclosure relief -

- (a) remit, additional taxes payable under the Acts; and
- (b) not initiate criminal prosecution for a tax offence arising from a tax irregularity,

subject to regulation 3(2) and (3).

#### **Apportionment of principal debt and additional taxes**

4. Where part payment has been made, the remaining debt will be apportioned between the remaining principal debt and additional taxes and only the additional taxes remaining will be waived accordingly.

#### **Disclosure in respect of investigations**

5. With regard to the period after the 31st March 2018 in respect of investigations, the taxpayer shall be entitled to a relief under regulation 3 only if voluntary disclosure is made by way of pre-notification.

#### **Awareness of pending audit or investigation by taxpayer**

6. A taxpayer is deemed to have been aware of a pending tax audit or investigation, or that the tax audit or investigation has started, if -

- (a) the taxpayer; or
- (b) an officer, shareholder or member of the taxpayer, if the taxpayer is a company;
- (c) a partner in partnership with the taxpayer; or
- (d) a trustee or beneficiary of the person, if the person is a trust;
- (e) a person acting for or on behalf of or as a fiduciary of the taxpayer,

has become aware of the pending tax audit or investigation, or

that the tax audit or investigation has started.

#### **Time for the start of an audit**

7. An audit starts at the earlier of -
- (a) the end of the first interview an officer of the Lesotho Revenue Authority has with the taxpayer or the taxpayer's representative after the taxpayer receives notification referred to in regulation 6; or
  - (b) the time when -
    - (i) an officer of the Lesotho Revenue Authority inspects information (including books or records) of the taxpayer after the taxpayer receives the notification referred to in regulation 6; or
    - (ii) the taxpayer is notified of the inspection.

#### **Time for the start of an investigation**

8. For purposes of investigations, a taxpayer is deemed to have been aware of investigations at the earlier of either -
- (a) when the taxpayer is notified of the investigations by the Lesotho Revenue Authority; or
  - (b) when the taxpayer otherwise becomes aware of investigations through a third party.

#### **Withdrawal of voluntary disclosure relief**

9. (1) Where, subsequent to being granted the voluntary disclosure relief pursuant to these Regulations, it is established that the applicant failed to disclose a matter that was material for purposes of making a valid voluntary disclosure under these Regulations, or the applicant fails to comply with the terms and conditions of the payment agreement reached subsequent to being granted the voluntary disclosure relief under these Regulations, the Lesotho Revenue Authority shall -

- (a) withdraw such relief;
- (b) reinstate applicable additional tax under the relevant Act in respect of the tax irregularity;
- (c) regard an amount paid in terms of the voluntary disclosure to constitute part payment of any further outstanding tax debt in respect of the relevant tax irregularity;
- (d) initiate, take steps for or otherwise pursue criminal prosecution for a tax offence arising from the relevant tax irregularity.

(2) A decision by the Lesotho Revenue Authority under this section shall be subject to objection and appeal under the relevant Act.

#### **Scope of application**

10. Tax irregularities covered under these Regulations shall be those committed from the 1st April, 2005 onwards.

**DATED:**

**DR. MOEKETSI MAJORO  
MINISTER OF FINANCE**

#### **NOTE**

1. Act No. 9 of 2001