



## **Observatory on the Protection of Taxpayers' Rights**

Below you will find a questionnaire filled in by Mbakiso Magwape, Postdoctoral Fellow at the *International Center for Tax and Development* and OPTR National Reporter of Botswana.

This set of questionnaires comprises the National Reporter's assessment of the country's practice during 2023 in protecting taxpayers' rights and the level of fulfilment of the minimum standards and best practices on the practical protection of taxpayers' rights identified by Prof. Dr. Philip Baker and Prof. Dr. Pasquale Pistone at the 2015 IFA Congress on "The Practical Protection of Taxpayers' Fundamental Rights."

# OPTR - 2023 Questionnaire 1 - Country Practice

Dear National Reporter,

I would like to thank you for your participation in the IBFD's Observatory on the Protection of Taxpayers' Rights (OPTR).

This form collects the information on the practical implementation in domestic law of legal procedures, safeguards and guarantees associated with taxpayers' rights in 82 situations for the practical protection of taxpayers' rights, as monitored by the IBFD Observatory on the Protection of Taxpayers' Rights.

We kindly ask you to assess assertively (yes/no) the level of practical implementation of said procedures, safeguards and guarantees associated with taxpayers' rights in your country. When answering, please bear in mind the actual practice regarding each situation, regardless of whether a given procedure, safeguard or guarantee has been formally adopted in your country.

We would be very grateful if you submit us this questionnaire, duly filled out, by no later than 12 January 2024.

Feel free to contact us for any clarification you may need. We look forward to your valuable contribution to this remarkable project.

Kind regards,

Dr Alessandro Turina  
Scientific Coordinator  
IBFD Observatory on the Protection of Taxpayers' Rights.

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\* Better if filled in using Google Chrome © or Mozilla Firefox ©

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Tax Administration

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## Questionnaire 1 - Country Practice

Instructions:

1. Please answer all questions. The form will not allow you to continue/submit your responses until you have answered all questions.
2. For assertive questions, please answer with "yes" or "no" by clicking on the corresponding button.
3. For questions that require you to specify a period of time (namely, Q. 26 and Q. 45), please select the time applicable in your country to carry out the procedures indicated in the questions in practice, within the options provided.

4. For questions with more than one possible answer (namely, Q. 56), please check all necessary boxes to reflect better the practical situation of your country regarding the issue, by clicking on them.
5. When completed, please submit the survey.
6. Once you have submitted the survey, you will receive an email acknowledging your participation in the OPTR and providing a backup of your answers.
7. The email will also include an "edit your survey" link, in case you want to modify any of your answers. You will receive this email every time you submit partial responses.
8. An option to quit the survey and save your answers is provided at the end of each section.
9. If answering partially, please select "Yes" at the end of the section in which you are to submit your partial answers to the survey. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this survey.
10. For editing your answers, please use the last "edit your response" link provided to you via email. Please bear in mind that this is the only way the system will acknowledge your previous answers. If you use a link other than the last one provided, some (or all) changes might not be retrieved by the system.
11. When clicking on the last "edit your response" link, the system will lead you to the front page of the survey. Click on "Next" as many times as needed to get to the section you want to continue in. Once you have reached said section, please remember to change your answer to the question "Do you want to save your results and quit?" to "No", in order to be able to continue.

#### Area 1 - Identification of taxpayers, issuing tax returns and communicating with taxpayers

1. Do taxpayers have the right to see the information held about them by the tax authority? \*

Yes

No

2. If yes, can they request the correction of errors in the information? \*

Not applicable (click here if you answered "No" to the previous question)

Yes

No

3. Is it possible in your country for taxpayers to communicate electronically with the tax authority? \*

Yes

No

4. If yes, are there systems in place to prevent unauthorised access to the channel of communication? \*

Yes

No

5. In your country, is there a system of "cooperative compliance" / "enhanced relationship" which applies to some taxpayers only? \*

Yes

No

6. If yes, are there rules or procedures in place to ensure this system is available to all eligible taxpayers on a non-preferential/non discriminatory/non arbitrary basis? \*

Not applicable (click here if you answered "No" to question 5)

Yes

No

7. Are there special arrangements for individuals who face particular difficulties (e.g. the disabled, the elderly, other special cases) to receive assistance in complying with their tax obligations? \*

Yes

No

Do you want to save your results and quit? \*

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

Area 2 - The issue of tax assessment

8. Does a dialogue take place in your country between the taxpayer and the tax authority before the issue of an assessment in order to reach an agreed assessment? \*

Yes

No

9. If yes, can the taxpayer request a meeting with the tax officer? \*

Not applicable (click here if you answered "No" to question 8)

Yes

No

10. If a systematic error in the assessment of tax comes to light (e.g. the tax authority loses a tax case and it is clear that tax has been collected on a wrong basis), does the tax authority act ex officio to notify all affected taxpayers and arrange repayments to them? \*

Yes

No

Do you want to save your results and quit? \*

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

### Area 3 - Confidentiality

11. Is information held by your tax authority automatically encrypted? \*

Yes

No

12. Is access to information held by the tax authority about a specific taxpayer accessible only to the tax official(s) dealing with that taxpayer's affairs? \*

Yes

No



13. If yes, must the tax official identify himself/herself before accessing information held about a specific taxpayer? \*

Not applicable (click here if you answered "No" to question 12)

Yes

No

14. Is access to information held about a taxpayer audited internally to check if there has been any unauthorised access to that information? \*

Yes

No

15. Are there examples of tax officials who have been criminally prosecuted in the last decade for unauthorised access to taxpayers' data? \*

Yes

No

16. Is information about the tax liability of specific taxpayers publicly available in your country? \*

Yes

No

17. Is "naming and shaming" of non-compliant taxpayers practised in your country? \*

Yes

No

18. Is there a system in your country by which the courts may authorise the public disclosure \*  
of information held by the tax authority about specific taxpayers (e.g. habeas data or freedom  
of information?)

Yes

No

19. Is there a system of protection of legally privileged communications between the taxpayer \*  
and its advisors?

Please provide separately (via [optr@ibfd.org](mailto:optr@ibfd.org)) an annex with the actual wording of relevant excerpts of  
your country's legislation regarding this matter. Technically accurate translations of such material into  
English, if possible, would be very appreciated. Thank you.

Yes

No

20. If yes, does this extend to advisors other than those who are legally qualified (e.g. accountants, tax advisors)? \*

Please provide separately (via [optr@ibfd.org](mailto:optr@ibfd.org)) an annex with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

Not applicable (click here if you answered "No" to question 19)

Yes

No

Do you want to save your results and quit? \*

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

#### Area 4 - Normal audits

21. Does the principle ne bis in idem apply to tax audits (i.e. that the taxpayer can only receive one audit in respect of the same taxable period)? \*

Yes

No

22. If yes, does this mean only one audit per tax per year? \*

- Not applicable (click here if you answered "No" to question 21)
- Yes
- No

23. Does the principle audi alteram partem apply in the tax audit process (i.e. does the taxpayer have to be notified of all decisions taken in the process and have the right to object and be heard before the decision is finalised)? \*

- Yes
- No

24. Does the taxpayer have the right to request an audit (e.g. if the taxpayer wishes to get finality of taxation for a particular year)? \*

- Yes
- No

25. Are there time limits applicable to the conduct of a normal audit in your country (e.g. the audit must be concluded within so many months)? \*

- Yes
- No

26. If yes, what is the normal limit in months? \*

More than 24 months



27. Does the taxpayer have the right to be represented by a person of its choice in the audit process? \*

Yes

No

28. May the opinion of independent experts be used in the audit process? \*

Yes

No

29. Does the taxpayer have the right to receive a full report on the conclusions of the audit at the end of the process? \*

Yes

No

30. Are there limits to the frequency of audits of the same taxpayer (e.g. in respect to different periods or different taxes)? \*

Yes

No

Do you want to save your results and quit? \*

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

#### Area 5 - More intensive audits

31. Is the principle nemo tenetur applied in tax investigations (i.e. the principle against self-incrimination)? \*

Yes

No

32. If yes, is there a restriction on the use of information supplied by the taxpayer in a subsequent penalty procedure/criminal procedure? \*

- Not applicable (click here if you answered "No" to question 31)
- Yes
- No

33. If yes to nemo tenetur, can the taxpayer raise this principle to refuse to supply basic accounting information to the tax authority? \*

- Not applicable (click here if you answered "No" to question 31)
- Yes
- No

34. Is there a procedure applied in your country to identify a point in time during an investigation when it becomes likely that the taxpayer may be liable for a penalty or a criminal charge, and from that time onwards the taxpayer's right not to self-incriminate is recognised? \*

- Yes
- No

35. If yes, is there a requirement to give the taxpayer a warning that the taxpayer can rely on the right of non-self-incrimination? \*

Not applicable (click here if you answered "No" to question 34)

Yes

No

36. Is authorisation by a court always needed before the tax authority may enter and search premises? \*

Yes

No

37. May the tax authority enter and search the dwelling places of individuals? \*

Yes

No

38. Is a court order required before the tax authority can use interception of communications (e.g. telephone tapping or access to electronic communications)? \*

Yes

No



39. Is there a procedure in place to ensure that legally privileged material is not taken in the course of a search? \*

Yes

No

Do you want to save your results and quit? \*

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

#### Area 6 - Reviews and appeals

Please provide separately (via [optr@ibfd.org](mailto:optr@ibfd.org)) an annex with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

40. Is there a procedure for an internal review of an assessment/decision before the taxpayer appeals to the judiciary? \*

Yes

No

41. Does the taxpayer need permission to appeal to the first instance tribunal? \*

Yes

No

42. Does the taxpayer need permission to appeal to the second or higher instance tribunals? \*

Yes

No

43. Is it necessary for the taxpayer to bring his case first before an administrative court to quash the assessment/decision, before the case can proceed to a judicial hearing? \*

Yes

No

44. Are there time limits applicable for a tax case to complete the judicial appeal process? \*

Yes

No

45. If yes, what is the normal time it takes for a tax case to be concluded on appeal? \*

There is no limit (click here if you answered "No" to question 44) ▼

46. Are there any arrangements for alternative dispute resolution (e.g. mediation or arbitration) before a tax case proceeds to the judiciary? \*

Yes

No

47. Is there a system for the simplified resolution of tax disputes (e.g. by a determination on the file, or by e/filing)? \*

Yes

No

48. Is the principle audi alteram partem (i.e. each party has a right to a hearing) applied in all tax appeals? \*

Yes

No

49. Does the taxpayer have to pay some/all the tax before an appeal can be made (i.e. solve <sup>\*</sup> et repete)?

Yes

No

50. If yes, are there exceptions recognised where the taxpayer does not need to pay before <sup>\*</sup> appealing (i.e. can obtain an interim suspension of the tax debt?)

Not applicable (click here if you answered "No" to question 49)

Yes

No

51. Does the loser have to pay the costs in a tax appeal? <sup>\*</sup>

Yes

No

52. If yes, are there situations recognised where the loser does not need to pay the costs (e.g. because of the conduct of the other party)? \*

- Not applicable (click here if you answered "No" to question 51)
- Yes
- No

53. If there is usually a public hearing, can the taxpayer request a hearing in camera (i.e. not in public) to preserve secrecy/confidentiality? \*

- Yes
- No

54. Are judgments of tax tribunals published? \*

- Yes
- No

55. If yes, can the taxpayer preserve its anonymity in the judgment? \*

- Not applicable (click here if you answered "No" to question 54)
- Yes
- No

Do you want to save your results and quit? \*

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

### Area 7 - Criminal and administrative sanctions

56. Does the principle ne bis in idem apply in your country to prevent either: \*

The principle does not apply in my country

The imposition of a tax penalty and the tax liability

The imposition of more than one tax penalty for the same conduct

The imposition of a tax penalty and a criminal liability

57. If ne bis in idem is recognised, does this prevent two parallel sets of court proceedings arising from the same factual circumstances (e.g. a tax court and a criminal court)? \*

Not applicable (click here if you answered "No" to question 56)

Yes

No

58. If the taxpayer makes a voluntary disclosure of a tax liability, can this result in a reduced \*  
or a zero penalty?

Yes

No

Do you want to save your results and quit? \*

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

#### Area 8 - Enforcement of taxes

59. Is a court order always necessary before the tax authorities can access a taxpayer's bank \*  
account or other assets?

Yes

No

60. Does the taxpayer have the right to request a deferred payment of taxes or a payment in instalments (perhaps with a guarantee)? \*

Yes

No

Do you want to save your results and quit? \*

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

#### Area 9 - Cross-border situations

61. Does the taxpayer have the right to be informed before information relating to him is exchanged in response to a specific request? \*

Yes

No



62. Does the taxpayer have a right to be informed before information is sought from third parties in response to a specific request for exchange of information? \*

Yes

No

63. If no to either of the previous two questions, did your country previously recognise the right of taxpayers to be informed and was such right removed in the context of the peer review by the Forum on Transparency and Exchange of Information? \*

Not applicable (click here if you answered "No" to either question 61 or question 62)

Yes

No

64. Does the taxpayer have the right to be heard by the tax authority before the exchange of information relating to him with another country? \*

Yes

No

65. Does the taxpayer have the right to challenge before the judiciary the exchange of information relating to him with another country? \*

Yes

No

66. Does the taxpayer have the right to see any information received from another country that relates to him? \*

Yes

No

67. Does the taxpayer have the right in all cases to require a mutual agreement procedure is initiated? \*

Yes

No

68. Does the taxpayer have a right to see the communications exchanged in the context of a mutual agreement procedure? \*

Yes

No

Do you want to save your results and quit? \*

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

## Area 10 - Legislation

69. Is there a prohibition on retrospective tax legislation in your country? \*

Yes

No

70. If no, are there restrictions on the adoption of retrospective tax legislation in your country? \*

Not applicable (click here if you answered "Yes" to question 69)

Yes

No

71. Is there a procedure in your country for public consultation before the adopting of all (or most) tax legislation? \*

Yes

No

72. Is tax legislation subject to constitutional review which can strike down unconstitutional laws? \*

Yes

No

Do you want to save your results and quit? \*

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

Area 11 - Revenue practice and guidance

73. Does the tax authority in your country publish guidance (e.g. revenue manuals, circulars, etc.) as to how it applies your tax law? \*

Yes

No

74. Does your country have a generalised system of advanced rulings available to taxpayers? \*

Yes

No

75. If yes, is it legally binding? \*

Not applicable (click here if you answered "No" to question 74)

Yes

No

76. If a binding ruling is refused, does the taxpayer have a right to appeal? \*

Yes

No

77. If your country publishes guidance as to how it applies your tax law, can taxpayers acting <sup>\*</sup> in good faith rely on that published guidance (i.e. protection of legitimate expectations)?

Not applicable (click here if you answered "No" to question 76)

Yes

No

Do you want to save your results and quit? <sup>\*</sup>

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

## Area 12 - Institutional framework for protecting taxpayers' rights

78. Is there a taxpayers' charter or taxpayers' bill of rights in your country? <sup>\*</sup>

Please provide separately (via [optr@ibfd.org](mailto:optr@ibfd.org)) an annex with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

Yes

No

79. If yes, are its provisions legally effective? \*

Please provide separately (via [optr@ibfd.org](mailto:optr@ibfd.org)) an annex with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

- Not applicable (click here if you answered "No" to the previous question)
- Yes
- No

80. Is there a (tax) ombudsman / taxpayers' advocate / equivalent position in your country? \*

- Yes
- No

81. If yes, can the ombudsman intervene in an on-going dispute between the taxpayer and the tax authority (before it goes to court)? \*

- Not applicable (click here if you answered "No" to question 80)
- Yes
- No

82. If yes to a (tax) ombudsman, is he/she independent from the tax authority? \*

- Not applicable (click here if you answered "No" to question 80)
- Yes
- No

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# OPTR - 2023 Questionnaire 2 - Standards of Protection

Dear National Reporter,

I would like to thank you for your participation in the IBFD Observatory on the Protection of Taxpayers' Rights (OPTR).

This form collects the information on developments occurred in 2023 regarding the implementation of 57 minimum standards and 44 best practices, distributed into 86 benchmarks, for the practical protection of taxpayers' rights as monitored by the OPTR.

We kindly ask you to provide an impartial, non-judgmental summary of events occurred in 2023 that in your opinion affect the level of compliance of a given minimum standard/best practice in your country. These events may include, without limitation, legislation enacted, administrative rulings and/or circulars issued, case law and tax administration practices implemented, among others, as requested by this form.

In ALL cases back up your assertions with the relevant documentary materials, and provide full details for identifying the documents related to the reported developments. Either a (soft) copy or internet links to make said documents available (and therefore, quotable) are greatly appreciated.

You are also kindly required to assess whether the events you described represent either a step towards or a step away from the practical implementation of the given minimum standard/best practice in your country. Full instructions are provided below.

This form should be filled in as soon as any of the events mentioned above occurs and edited as many times as necessary to cover all relevant developments occurred in 2023, until no later than 12 January 2024. We appreciate very much your cooperation in this regard.

Feel free to contact us for any clarification you may need. We look forward to your valuable contribution to this remarkable project.

Kind regards,

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IBFD Observatory on the Protection of Taxpayers' Rights.

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Tax Administration

Judiciary

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Academia

Other: \_\_\_\_\_

Instructions

1. Please answer all questions. The form will not allow you to continue/submit your responses until you

have answered all questions.

2. All questions are two or three-tiered (namely, either with parts "MS" and/or "BP", and "S"). They comprise a minimum standard (MS) and /or a best practice (BP), and a "summary of relevant facts in 2023" (S). The latter is a space for providing a summarized account on facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way.

3. Please Indicate, by clicking on the corresponding button, whether there was an improvement or a decrease of the level of compliance of the relevant standard/best practice in your country in 2023. If there were no changes, please indicate so by clicking on the corresponding button.

4. In ALL cases where an assessment of either improvement or decrease is reported, please refer the relevant novelties in the space provided under "summary of relevant facts in 2023", for each question. Please give a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. In case there is nothing to report for a given minimum standard/best practice, please answer "no changes".

5. If any, make additional, non-judgmental commentaries at the space provided under "summary of relevant facts in 2023".

6. In ALL cases back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcomed to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org).

7. When completed, please submit the survey.

8. Once you have submitted the survey, you will receive an email acknowledging your participation in the OPTR and providing a backup of your answers.

9. The email will also include an "edit your survey" link, in case you want to modify any of your answers. You will receive this email every time you submit partial responses.

10. An option to quit the survey and save your answers is provided at the end of each section. This survey has 12 sections, as many as those identified by Baker and Pistone in their 2015 IFA General Report.

11. If answering partially, please select "Yes" at the end of the section in which you are to submit your partial answers to the survey. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this survey.

12. For editing your answers, please use the last "edit your response" link provided to you via email. Please bear in mind that this is the only way the system will acknowledge your previous answers. If you use a link other than the last one provided, some (or all) changes might not be retrieved by the system.

13. When clicking on the last "edit your response" link, the system will lead you to the front page of the survey. Click on "Next" as many times as needed to get to the section you want to continue in. Once you

have reached said section, please remember to change your answer to the question "Do you want to save your results and quit?" to "No", in order to be able to continue.

## Area 1 - Identification of taxpayers, issuing tax returns and communicating with taxpayers

Please provide separately (via [optr@ibfd.org](mailto:optr@ibfd.org)) an annex with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

1 (MS). Implement safeguards to prevent impersonation when issuing a unique identification number \*

- No changes
- Shifted away
- Shifted towards

1 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

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2 (MS). The system of taxpayer identification should take account of religious sensitivities \*

- No changes
- Shifted away
- Shifted towards

2 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

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3 (MS). Impose obligations of confidentiality on third parties with respect to information gathered by them for tax purposes \*

- No changes
- Shifted away
- Shifted towards

3 (BP). Where tax is withheld by third parties, the taxpayer should be excluded from liability if \*  
the third party fails to pay over the tax

- No changes
- Shifted away
- Shifted towards

3 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

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4 (MS). Where pre/populated returns are used, these should be sent to taxpayers to correct \*  
errors.

- No changes
- Shifted away
- Shifted towards

#### 4 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

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5 (MS). Provide a right to access to taxpayers to personal information held about them, and a \* right to correct inaccuracies.

- No changes
- Shifted away
- Shifted towards

5 (BP). Publish guidance on taxpayers' rights to access information and correct inaccuracies \*

- No changes
- Shifted away
- Shifted towards

### 5 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

Implementation of self assessment system with guidelines

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6 (MS). Where communication with taxpayers is in electronic form, institute systems to prevent impersonation or interception

\*

- No changes
- Shifted away
- Shifted towards

### 6 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

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7 (MS). Where a system of "cooperative compliance" operates, ensure it is available on a non-discriminatory and voluntary basis \*

- No changes
- Shifted away
- Shifted towards

7 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

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8 (MS). Provide assistance for those who face difficulties in meeting compliance obligations, including those with disabilities, those located in remote areas, and those unable or unwilling to use electronic forms of communication \*

- No changes
- Shifted away
- Shifted towards

## 8 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

Taxpayer support drives (through physical in-person support in remote areas)

Do you want to save your results and quit? \*

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

## Area 2 - The issue of tax assessment

Please provide separately (via [optr@ibfd.org](mailto:optr@ibfd.org)) an annex with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

9 (BP). Establish a constructive dialogue between taxpayers and revenue authorities to ensure a fair assessment of taxes based on equality of arms \*

- No changes
- Shifted away
- Shifted towards

9 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

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10 (BP). Use e-filing to speed up assessments and correction of errors, particularly systematic errors \*

- No changes
- Shifted away
- Shifted towards

## 10 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

Increased features of self-assessment system, and stability of system

Do you want to save your results and quit? \*

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

## Area 3 - Confidentiality

Please provide separately (via [optr@ibfd.org](mailto:optr@ibfd.org)) an annex with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

11 (MS). Provide a specific legal guarantee for confidentiality, with sanctions for officials who make unauthorised disclosures (and ensure sanctions are enforced). \*

- No changes
- Shifted away
- Shifted towards

11 (BP). Encrypt information held by a tax authority about taxpayers to the highest level attainable. \*

- No changes
- Shifted away
- Shifted towards

11 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

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12 (MS). Introduce an offence for tax officials covering up unauthorised disclosure of confidential information. \*

- No changes
- Shifted away
- Shifted towards

12 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

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13 (MS). Restrict access to data to those officials authorised to consult it. For encrypted data, \* use digital access codes.

- No changes
- Shifted away
- Shifted towards

13 (BP). Ensure an effective fire-wall to prevent unauthorised access to data held by revenue <sup>\*</sup> authorities.

- No changes
- Shifted away
- Shifted towards

13 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

Increased processes in security, including restricted access, and access restrictions (log-in verification) to access taxpayers information

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14 (MS). Audit data access periodically to identify cases of unauthorised access. <sup>\*</sup>

- No changes
- Shifted away
- Shifted towards

#### 14 (S). Summary of relevant facts in 2023

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#### 15 (MS). Introduce administrative measures emphasizing confidentiality to tax officials. \*

- No changes
- Shifted away
- Shifted towards

#### 15 (BP). Appoint data protection/privacy officers at senior level and local tax offices. \*

- No changes
- Shifted away
- Shifted towards



### 15 (S). Summary of relevant facts in 2023

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16 (MS). If a breach of confidentiality occurs, investigate fully with an appropriate level of seniority by independent persons (e.g. judges). \*

- No changes
- Shifted away
- Shifted towards

### 16 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

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17 (MS). Provide remedies for taxpayers who are victims of unauthorised disclosure of confidential information. \*

- No changes
- Shifted away
- Shifted towards

17 (S). Summary of relevant facts in 2023

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18 (MS). Exceptions to the general rule of confidentiality should be explicitly stated in the law, \* narrowly drafted and interpreted.

- No changes
- Shifted away
- Shifted towards

### 18 (S). Summary of relevant facts in 2023

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19 (MS). If "naming and shaming" is employed, ensure adequate safeguards (e.g. judicial authorisation after proceedings involving the taxpayer). \*

- No changes
- Shifted away
- Shifted towards

19 (BP). Require judicial authorisation before any disclosure of confidential information by revenue authorities \*

- No changes
- Shifted away
- Shifted towards

### 19 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

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20 (MS). No disclosure of confidential taxpayer information to politicians, or where it might be used for political purposes. \*

- No changes
- Shifted away
- Shifted towards

20 (BP). Parliamentary supervision of revenue authorities should involve independent officials, subject to confidentiality obligations, examining specific taxpayer data, and then reporting to Parliament. \*

- No changes
- Shifted away
- Shifted towards

## 20 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

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21 (MS). Freedom of information legislation may allow a taxpayer to access information \* about himself. However, access to information by third parties should be subject to stringent safeguards: only if an independent tribunal concludes that the public interest in disclosure outweighs the right of confidentiality, and only after a hearing where the taxpayer has an opportunity to be heard.

- No changes
- Shifted away
- Shifted towards

## 21 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

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22 (MS). If published, tax rulings should be anonymised and details that might identify the taxpayer removed. \*

- No changes
- Shifted away
- Shifted towards

22 (BP). Anonymize all tax judgments and remove details that might identify the taxpayer \*

- No changes
- Shifted away
- Shifted towards

22 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

In practice, Board of Adjudicators decisions (tribunal) unpublished, and generally inaccessible

23 (MS). Legal professional privilege should apply to tax advice. \*

Please provide separately (via [optr@ibfd.org](mailto:optr@ibfd.org)) an annex with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

- No changes
- Shifted away
- Shifted towards

23 (BP). Privilege from disclosure should apply to all tax advisors (not just lawyers) who supply similar advice to lawyers. Information imparted in circumstances of confidentiality may be privileged from disclosure. \*

Please provide separately (via [optr@ibfd.org](mailto:optr@ibfd.org)) an annex with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

- No changes
- Shifted away
- Shifted towards

23 (S). Summary of relevant facts in 2023

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AML/CFT legislation, s.38 of the Financial Intelligence Act erodes right to privilege on specific grounds.

24 (MS). Where tax authorities enter premises which may contain privileged material, arrangements should be made (e.g. an independent lawyer) to protect that privilege. \*

Please provide separately (via [optr@ibfd.org](mailto:optr@ibfd.org)) an annexe with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

- No changes
- Shifted away
- Shifted towards

#### 24 (S). Summary of relevant facts in 2023

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Sec 70(1)(b) of the income tax act enables CG to all material (does not exclude privileged material).

Do you want to save your results and quit? \*

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

- Yes
- No



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25 (MS). Audits should respect the following principles: (i) Proportionality. (2) Ne bis in idem \* (prohibition of double jeopardy). (3) Audi alteram partem (right to be heard before any decision is taken). (4) Nemo tenetur se detegere (principle against self/incrimination). Tax notices issued in violation of these principles should be null and void.

- No changes
- Shifted away
- Shifted towards

25 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

Nemo tenetur se detegere principle does not exist, specifically due to s.70 which requires disclosure/ access to incriminating documentation

26 (MS). In application of proportionality, tax authorities may only request for information that <sup>\*</sup> is strictly needed, not otherwise available, and must impose least burdensome impact on taxpayers.

- No changes
- Shifted away
- Shifted towards

### 26 (S). Summary of relevant facts in 2023

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27 (BP). In application of ne bis in idem the taxpayer should only receive one audit per <sup>\*</sup> taxable period, except when facts that become known after the audit was completed.

- No changes
- Shift away
- Shift towards

### 27 (S). Summary of relevant facts in 2023

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28 (MS). In application of audi alteram partem, taxpayers should have the right to attend all relevant meetings with tax authorities (assisted by advisors), the right to provide factual information, and to present their views before decisions of the tax authorities become final. \*

- No changes
- Shifted away
- Shifted towards

### 28 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

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29 (MS). In application of nemo tenetur, the right to remain silent should be respected in all tax audits. \*

- No changes
- Shifted away
- Shifted towards

29 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

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30 (BP). Tax audits should follow a pattern that is set out in published guidelines. \*

- No changes
- Shifted away
- Shifted towards

### 30 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

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### 31 (BP). A manual of good practice in tax audits should be established at the global level. \*

- No changes
- Shifted away
- Shifted towards

### 31 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

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32 (BP). Taxpayers should be entitled to request the start of a tax audit (to obtain finality). \*

- No changes
- Shifted away
- Shifted towards

32 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

No provision to request for audit present

33 (MS). Where tax authorities have resolved to start an audit, they should inform the taxpayer \*

- No changes
- Shifted away
- Shifted towards

33 (BP). Where tax authorities have resolved to start an audit, they should hold an initial meeting with the taxpayer in which they spell out the aims and procedure, together with timescale and targets. They should then disclose any additional evidence in their possession to the taxpayer. \*

- No changes
- Shifted away
- Shifted towards

### 33 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

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34 (MS). Taxpayers should be informed of information gathering from third parties. \*

- No changes
- Shifted away
- Shifted towards

### 34 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

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### 35 (BP). Reasonable time limits should be fixed for the conduct of audits. \*

- No changes
- Shifted away
- Shifted towards

### 35 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

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36 (MS). Technical assistance (including representation) should be available at all stages of the audit by experts selected by the taxpayer. \*

- No changes
- Shifted away
- Shifted towards

36 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

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37 (MS). The completion of a tax audit should be accurately reflected in a document, notified in its full text to the taxpayer. \*

- No changes
- Shifted away
- Shifted towards

37 (BP). The drafting of the final audit report should involve participation by the taxpayer, with \* the opportunity to correct inaccuracies of facts and to express the taxpayer's view.

- No changes
- Shifted away
- Shifted towards

37 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

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38 (BP). Following an audit, a report should be prepared even if the audit does not result in \* additional tax or refund.

- No changes
- Shifted away
- Shifted towards

### 38 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

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Do you want to save your results and quit? \*

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

### Area 5 - More intensive audits

Please provide separately (via [optr@ibfd.org](mailto:optr@ibfd.org)) an annex with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

39 (BP). More intensive audits should be limited to the extent strictly necessary to ensure an effective reaction to non-compliance. \*

- No changes
- Shifted away
- Shifted towards

39 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

No case-studies on this in particular, however public sources have indicated increased intensive audits, particularly of multinationals

40 (MS). If there is point in an audit when it becomes foreseeable that the taxpayer may be liable for a penalty or criminal charge, from that time the taxpayer should have stronger protection of his right to silence, and statements from the taxpayer should not be used in the audit procedure. \*

- No changes
- Shifted away
- Shifted towards

#### 40 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

No provision exists in tax code (Income Tax Act) - nemo tenetur seipsum accusare

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41 (MS). Entering premises or interception of communications should be authorised by the judiciary. \*

- No changes
- Shifted away
- Shifted towards

#### 41 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

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42 (MS). Authorisation within the revenue authorities should only be in cases of urgency, and \* subsequently reported to the judiciary for ex-post ratification.

- No changes
- Shifted away
- Shifted towards

42 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

s.70 of the Income Tax Act prescribes unfettered power to the Revenue Authority to enter any premises. The interception of communications, however, is unlawful under s.20

43 (MS). Inspection of the taxpayer's home should require authorisation by the judiciary and \* only be given in exceptional cases.

- No changes
- Shifted away
- Shifted towards

43 (BP). Where tax authorities intend to search the taxpayer's premises, the taxpayer should <sup>\*</sup> be informed and have an opportunity to appear before the judicial authority, subject to exception where there is evidence of danger that documents will be removed or destroyed.

- No changes
- Shifted away
- Shifted towards

#### 43 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

s.70 of the Income Tax Act prescribes unfettered power to the Revenue Authority to enter any premises.

44 (BP). Access to bank information should require judicial authorisation. <sup>\*</sup>

- No changes
- Shifted away
- Shifted towards

#### 44 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

s.70 of the Income Tax Act prescribes unfettered power to request for specific documentation regarding taxpayers

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45 (BP). Authorisation by the judiciary should be necessary for the interception of telephone \* communications and monitoring of internet access. Specialised offices within the judiciary should be established to supervise these actions.

- No changes
- Shifted away
- Shifted towards

#### 45 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

The interception of communications, however, is unlawful under s.20

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46 (MS). Seizure of documents should be subject to a requirement to give reasons why seizure is indispensable, and to fix the time when documents will be returned; seizure should be limited in time. \*

- No changes
- Shifted away
- Shifted towards

#### 46 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

No procedures for seizure - s.70 of the Income Tax Act prescribes unfettered power to request for specific documentation regarding taxpayers

47 (BP). If data are held on a computer hard drive, then a backup should be made in the presence of the taxpayer's advisors and the original left with the taxpayer. \*

- No changes
- Shifted away
- Shifted towards

#### 47 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

No provisions or guidelines developed

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48 (MS). Where invasive techniques are applied, they should be limited in time to avoid a disproportionate impact on taxpayers. \*

- No changes
- Shifted away
- Shifted towards

#### 48 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

No provisions or guidelines specified or developed

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Do you want to save your results and quit? \*

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

### Area 6 - Reviews and appeals

Please provide separately (via [optr@ibfd.org](mailto:optr@ibfd.org)) an annex with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

49 (BP). E-filing of requests for internal review to ensure the effective and speedy handling of \* the review process.

No changes

Shifted away

Shifted towards

#### 49 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

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50 (MS). The right to appeal should not depend upon prior exhaustion of administrative reviews. \*

- No changes
- Shifted away
- Shifted towards

#### 50 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

s.92 requires Board of Adjudicators (tribunal) to determine matters

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51 (BP). Reviews and appeals should not exceed two years. \*

- No changes
- Shifted away
- Shifted towards

51 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

No specified time, but in principle, always within two years

52 (MS). Audi alteram partem should apply in administrative reviews and judicial appeals. \*

- No changes
- Shifted away
- Shifted towards

## 52 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

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53 (MS). Where tax must be paid in whole or in part before an appeal, there must be an effective mechanism for providing interim suspension of payment. \*

- No changes
- Shifted away
- Shifted towards

53 (BP). An appeal should not require prior payment of tax in all cases. \*

- No changes
- Shifted away
- Shifted towards

### 53 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

BURS may require that tax be paid before hearing any form of appeal - no provision in legislation, but in practice if liability

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### 54 (BP). The state should bear some or all of the costs of an appeal, whatever the outcome. \*

- No changes
- Shifted away
- Shifted towards

### 54 (S). Summary of relevant facts in 2023

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Common law - cost follow cause

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55 (MS). Legal assistance should be provided for those taxpayers who cannot afford it. \*

- No changes
- Shifted away
- Shifted towards

55 (S). Summary of relevant facts in 2023

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No pro-bono services or legal assistance for tax disputes

56 (MS). Taxpayers should have the right to request the exclusion of the public from a tax appeal hearing. \*

- No changes
- Shifted away
- Shifted towards



### 56 (S). Summary of relevant facts in 2023

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Public not allowed to hear tribunal (BOA) cases. No legal provision which prescribes that tax matters be held in-camera.

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### 57 (MS). Tax judgments should be published. \*

- No changes
- Shifted away
- Shifted towards

### 57 (S). Summary of relevant facts in 2023

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Board of Adjudicators cases unpublished, High Court and Court of Appeal Matters published

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Do you want to save your results and quit? \*

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Yes

No

### Area 7 - Criminal and administrative sanctions

Please provide separately (via [optr@ibfd.org](mailto:optr@ibfd.org)) an annex with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

58 (MS). Proportionality and ne bis in idem should apply to tax penalties. \*

No changes

Shifted away

Shifted towards

### 58 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

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59 (BP). Where administrative and criminal sanctions may both apply, only one procedure and one sanction should be applied. \*

- No changes
- Shifted away
- Shifted towards

### 59 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

s.116 of the Income Tax Act prescribes for both Civil and criminal penalties relating to the same offence

60 (BP). Voluntary disclosure should lead to reduction of penalties. \*

- No changes
- Shifted away
- Shifted towards

60 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

Only on an intermittent basis where a particular scheme or regime is legislated or announced

61 (MS). Sanctions should not be increased simply to encourage taxpayers to make voluntary disclosures. \*

- No changes
- Shifted away
- Shifted towards

### 61 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

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Do you want to save your results and quit? \*

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Yes

No

### Area 8 - Enforcement of taxes

Please provide separately (via [optr@ibfd.org](mailto:optr@ibfd.org)) an annex with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

62 (MS). Collection of taxes should never deprive taxpayers of their minimum necessary for living. \*

- No changes
- Shifted away
- Shifted towards

62 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

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63 (BP). Authorisation by the judiciary should be required before seizing assets or bank accounts \*

- No changes
- Shifted away
- Shifted towards

### 63 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

No requirement for authorisation under legislation - s.70 Income Tax Act.

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### 64 (MS). Taxpayers should have the right to request delayed payment of arrears. \*

- No changes
- Shifted away
- Shifted towards

### 64 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

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65 (BP). Bankruptcy of taxpayers should be avoided, by partial remission of the debt or structured plans for deferred payment. \*

- No changes
- Shifted away
- Shifted towards

65 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

Payment plan for deferred payment in practice undertaken - no legislative basis

66 (MS). Temporary suspension of tax enforcement should follow natural disasters. \*

Please provide separately (via [optr@ibfd.org](mailto:optr@ibfd.org)) an annex with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

- No changes
- Shifted away
- Shifted towards



## 66 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

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Do you want to save your results and quit? \*

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Yes

No

## Area 9 - Cross-border situations

Please provide separately (via [optr@ibfd.org](mailto:optr@ibfd.org)) an annex with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

67 (MS). The requesting state should notify the taxpayer of cross-border requests for information, unless it has specific grounds for considering that this would prejudice the process of investigation. The requested state should inform the taxpayer unless it has a reasoned request from the requesting state that the taxpayer should not be informed on grounds that it would prejudice the investigation. \*

- No changes
- Shifted away
- Shifted towards

67 (BP). The taxpayer should be informed that a cross-border request for information is to be made. \*

- No changes
- Shifted away
- Shifted towards

### 67 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

No legislated procedure or rules for cross-border sharing of information, or third-part information sharing.

68 (BP). Where a cross-border request for information is made, the requested state should also be asked to supply information that assists the taxpayer. \*

- No changes
- Shifted away
- Shifted towards

68 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

No legislated procedure or rules for cross-border sharing of information, or third-part information sharing.

69 (BP). Provisions should be included in tax treaties setting specific conditions for exchange of information. \*

- No changes
- Shifted away
- Shifted towards

### 69 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

No legislated procedure or rules for cross-border sharing of information, or third-party information sharing

70 (MS). If information is sought from third parties, judicial authorisation should be necessary. \*

- No changes
- Shifted away
- Shifted towards

### 70 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

No prescribed rules requiring authorisation for information sharing

71 (BP). The taxpayer should be given access to information received by the requesting state. \*

- No changes
- Shifted away
- Shifted towards

71 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

No rules on access to information or requests from third parties

72 (BP). Information should not be supplied in response to a request where the originating cause was the acquisition of stolen or illegally obtained information. \*

- No changes
- Shifted away
- Shifted towards

### 72 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

No rules on access to information or requests from third parties

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73 (BP). A requesting state should provide confirmation of confidentiality to the requested state. \*

- No changes
- Shifted away
- Shifted towards

### 73 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

No rules on access to information or requests from third parties

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74 (MS). A state should not be entitled to receive information if it is unable to provide independent, verifiable evidence that it observes high standards of data protection. \*

- No changes
- Shifted away
- Shifted towards

74 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

Data protection Act, s.32 provides for minimum standards of data protection, however no internal rules on verifying evidence from the Revenue Authority

75 (BP). For automatic exchange of financial information, the taxpayer should be notified of the proposed exchange in sufficient time to exercise data protection rights. \*

- No changes
- Shifted away
- Shifted towards

### 75 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

No rules prescribing notification, Data Protection Act does not address notification periods

### 76 (BP). Taxpayers should have a right to request initiation of mutual agreement procedure. \*

- No changes
- Shifted away
- Shifted towards

### 76 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

DTA's domesticated incorporates right to initiate MAP, which forms part of the Income Tax Act.  
Botswana UAE - s. Article 26



77 (MS). Taxpayers should have a right to participate in mutual agreement procedure by being heard and being informed as to the progress of the procedure. \*

- No changes
- Shifted away
- Shifted towards

77 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

DTA's domesticated incorporates right to initiate MAP, which forms part of the Income Tax Act.  
Botswana UAE - s. Article 26

Do you want to save your results and quit? \*

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

- Yes
- No

Area 10 - Legislation

Please provide separately (via [optr@ibfd.org](mailto:optr@ibfd.org))  
an annex with the actual wording of relevant excerpts of your country's  
legislation regarding this matter. Technically accurate translations  
of such material into English, if possible, would be very appreciated.  
Thank you.

78 (MS). Retrospective tax legislation should only be permitted in limited circumstances which are spelt out in detail. \*

- No changes
- Shifted away
- Shifted towards

78 (BP). Retrospective tax legislation should ideally be banned completely. \*

- No changes
- Shifted away
- Shifted towards

### 78 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

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### 79 (BP). Public consultation should precede the making of tax policy and tax law. \*

- No changes
- Shifted away
- Shifted towards

### 79 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

No legislated requirements or rules for public consultation.

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Do you want to save your results and quit? \*

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

## Area 11 - Revenue practice and guidance

Please provide separately (via [optr@ibfd.org](mailto:optr@ibfd.org)) an annex with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

80 (MS). Taxpayers should be entitled to access all relevant legal material, comprising legislation, administrative regulations, rulings, manuals and other guidance. \*

No changes

Shifted away

Shifted towards

### 80 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

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81 (MS). Where legal material is available primarily on the internet, arrangements should be made to provide it to those who do not have access to the internet. \*

- No changes
- Shifted away
- Shifted towards

### 81 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

No required legislation or rules prescribing for access to laws and material

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82 (MS). Binding rulings should only be published in an anonymised form \*

- No changes
- Shifted away
- Shifted towards

82 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

No binding rulings prescribed

83 (MS). Where a taxpayer relies upon published guidance of a revenue authority which subsequently proves to be inaccurate, changes should apply only prospectively. \*

- No changes
- Shifted away
- Shifted towards

### 83 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

No legislation or case-law on same

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Do you want to save your results and quit? \*

If "Yes", please submit the form. If "Yes", bear in mind that there are still several questions that need to be answered later. To edit/complete your answers later, please use the "edit your response" link sent to your email after submitting this form. If not, click "Next" to continue.

Yes

No

### Area 12 - Institutional framework for protecting taxpayers' rights

Please provide separately (via [optr@ibfd.org](mailto:optr@ibfd.org)) an annex with the actual wording of relevant excerpts of your country's legislation regarding this matter. Technically accurate translations of such material into English, if possible, would be very appreciated. Thank you.

84 (MS). Adoption of a charter or statement of taxpayers' rights should be a minimum standard. \*

- No changes
- Shifted away
- Shifted towards

84 (BP). A separate statement of taxpayers' rights under audit should be provided to taxpayers who are audited. \*

- No changes
- Shifted away
- Shifted towards

84 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

No taxpayers rights or standards, or rights under audit.

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\*

85 (BP). A taxpayer advocate or ombudsman should be established to scrutinise the operations of the tax authority, handle specific complaints, and intervene in appropriate cases. Best practice is the establishment of a separate office within the tax authority but independent from normal operations of that authority.

- No changes
- Shifted away
- Shifted towards

85 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

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86 (BP). The organisational structure for the protection of taxpayers' rights should operate at local level as well as nationally. \*

- No changes
- Shifted away
- Shifted towards

## 86 (S). Summary of relevant facts in 2023

Only if answered "shifted away" or "shifted towards", please give here a summarized account of facts (legislation enacted, administrative rulings, circulars, case law, tax administration practices), in a non-judgmental way. Specify if some content is no longer applicable, due to other developments. If applicable, indicate whether the fact reported is under a minimum standard or fully complies with the best practice. IN ALL CASES please back up your assertions with the relevant documentary materials. While it is not mandatory, a short summary of such materials in English is appreciated. You are welcome to send us these materials to our email: [optr@ibfd.org](mailto:optr@ibfd.org). Thank you.

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**REPUBLIC OF BOTSWANA**

**AGREEMENT**

**BETWEEN**

**THE GOVERNMENT OF THE REPUBLIC OF BOTSWANA**

**AND**

**THE GOVERNMENT OF THE UNITED ARAB EMIRATES**

**FOR THE AVOIDANCE OF DOUBLE TAXATION**

**AND THE PREVENTION OF FISCAL EVASION**

**WITH RESPECT TO TAXES ON INCOME**



**REPUBLIC OF BOTSWANA**

**The Government of the Republic of Botswana and the Government of the United Arab Emirates;**

Desiring to promote their mutual economic relations through the conclusion between them of an Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income;

Intending to conclude an Agreement for the elimination of double taxation with respect to taxes on income without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Agreement for the indirect benefit of residents of third States).

**Have agreed as follows:**

**Article 1**

**Persons covered**

1. This Agreement shall apply to persons who are residents of one or both of the Contracting States.
2. For the purposes of this Agreement, income derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either Contracting State shall be considered to be income of a resident of a Contracting State but only to the extent that the income is treated, for purposes of taxation by that State, as the income of a resident of that State.

**Article 2**

**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.



**REPUBLIC OF BOTSWANA**

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 as well as taxes on the total amounts of wages or salaries paid by enterprises.
3. The existing taxes to which this Agreement shall apply are:
  - a) In the case of the Republic of Botswana:
    - (i) the income tax; and
    - (ii) the capital gains tax charged under the Income Tax Act. (hereinafter referred to as "Botswana tax").
  - b) In the case of United Arab Emirates:
    - (i) the income tax;
    - (ii) the corporate tax, (hereinafter referred to as "United Arab Emirates tax");
4. This Agreement shall apply also to any identical or substantially similar taxes, which are imposed under the laws of a Contracting State 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, which have been made in their respective taxation laws.

**Article 3**

**Income from Hydrocarbons and Mineral resources**

Notwithstanding any other provision of this Agreement nothing shall affect the right of either of the Contracting States, or of any of their local Governments or local authorities thereof to apply their domestic laws and regulations related to the taxation of income and profits derived from hydrocarbons and mineral resources situated in the territory of the respective Contracting State, as the case may be.



**REPUBLIC OF BOTSWANA**

**Article 4**  
**General definitions**

1. For the purposes of this Agreement, unless the context otherwise requires:
  - a) The terms “a Contracting State” and “ the other Contracting State” mean Botswana or the United Arab Emirates as the context requires;
  - b) the term “Botswana” means the Republic of Botswana including its territorial waters and air space;
  - c) The term “the United Arab Emirates” when used in a geographical sense, means the territory of the United Arab Emirates which is under its sovereignty as well as the area outside the territorial water, airspace and submarine areas over which the United Arab Emirates exercises sovereign and jurisdictional rights in respect of any activity carried on in its water, sea bed, subsoil, in connection with the exploration for or the exploitation of natural resources by virtue of its law and international law;
  - d) The term “person” includes an individual , an estate, a trust, a company or any other entity which is treated as a person for tax purposes according to the laws and regulations of either Contracting State;
  - e) The term “national” means:
    - (i) any individual possessing the nationality of a Contracting State;
    - (ii) any legal person, association or other entity deriving its status as such from the laws in force in a Contracting State or of a political subdivision or a local government thereof ;
  - f) The term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;



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- g) the term “recognized pension fund” of a State means an entity or arrangement established in that State that is treated as a separate person under the taxation laws of that State and:
  - (i) that is established and operated exclusively or almost exclusively to administer or provide retirement benefits and ancillary or incidental benefits to individuals and that is regulated as such by that State or one of its political subdivisions or local authorities; or
  - (ii) that is established and operated exclusively or almost exclusively to invest funds for the benefit of entities or arrangements referred to in subdivision (i).
- h) 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;
- i) the term "enterprise" applies to the carrying on of any business;
- j) The term “international traffic” means any transport by aircraft operated by an enterprise of a Contracting State, except when the aircraft is operated solely between places in the other Contracting State;
- k) The term "business" includes the performance of professional services and of other activities of an independent character;
- l) The term "qualified government entity" means the Central bank of a Contracting State and any person, agency, institution, authority, fund, enterprise, organization or any other entity owned or controlled directly or indirectly by a Contracting State or political subdivision or local government thereof.



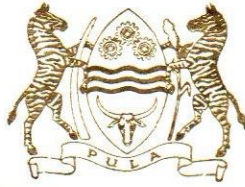
**REPUBLIC OF BOTSWANA**

- m) the term “tax” means Botswana tax or the United Arab Emirates tax, as the context requires;
  - n) the term “competent authority” means:
    - (i) in the case of Botswana, the Minister responsible for finance represented by the Commissioner General of the Botswana Unified Revenue Service or an authorised representative of the Commissioner General; and
    - (ii) in the case of the United Arab Emirates, the Minister of Finance or an authorized representative of the Minister of Finance.
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, or the competent authorities agree to a different meaning pursuant to the provisions of Article 26, have the meaning which 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 5**  
**Resident**

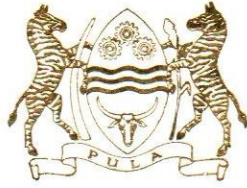
1. For the purposes of this Agreement, the term “resident of a Contracting State” means:
- a) in the case of Botswana, the term ‘resident of a Contracting State’ means any person who, under the laws of Botswana, is liable to tax therein by reason of that person’s domicile, residence, place of incorporation, place of management or any other criterion of a similar nature, and also includes Botswana or any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in Botswana in respect only of income from sources in Botswana.





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- b) in the case of the United Arab Emirates:
- i) an individual who is a United Arab Emirates national and other individuals liable for tax by reason of his domicile and residence under the laws of the United Arab Emirates;
  - ii) any person other than an individual that is incorporated or otherwise recognized under the laws of the United Arab Emirates or any political subdivision or local government thereof.
2. For the purposes of paragraph 1, a resident of a Contracting State includes:
- a) the Government of that Contracting State and any political subdivision or local Government or local authority thereof;
  - b) any person other than an individual owned or controlled directly or indirectly by that State or any political subdivision or local government or local authority thereof;
  - c) a qualified government entity;
  - d) a recognized pension fund; and
  - e) charities or religious, educational and cultural organizations.
3. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:
- a) he shall be deemed to be a resident only of the Contracting State in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident only of the Contracting State with which his personal and economic relations are closer (center of vital interests);



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- b) if the Contracting State in which he has his center of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident only of the Contracting State in which he has an habitual abode;
  - c) if he has a habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident only of the Contracting State of which he is a national;
  - d) If his status cannot be determined under the provisions of subparagraph c), the competent authorities of the Contracting States shall settle the question by mutual agreement.
4. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of the Agreement, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Agreement except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting State.

**Article 6**

**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;



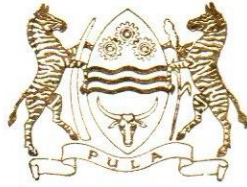
**REPUBLIC OF BOTSWANA**

- 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 or any activities related thereof.
3. The term “permanent establishment” shall be deemed to include:
- a) a building site, a construction, assembly or installation project or any supervisory activity in connection with such site or project, but only where such site, project or activity continues for a period of more than nine months within any twelve-month period;
  - b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by an enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the Contracting State for a period or periods aggregating more than 183 days within any twelve-month period; and
  - c) for an individual, the performing of services in a Contracting State by that individual, but only if the individual’s stay in that State, for the purpose of performing those services, is for a period or periods aggregating more than 183 days;
  - d) an installation or structure used in connection with the exploration of natural resources provided that the installation or structure continues for a period of not less than ninety days.
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;



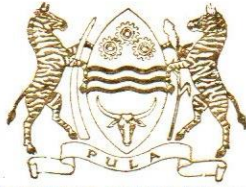
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- b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
  - c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
  - d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
  - e) the maintenance of a 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.
5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 9 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 Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:
- a) has, and habitually exercises in the first-mentioned Contracting State, an authority to conclude contracts in the name of such enterprise, unless the activities of such person are limited to those mentioned in paragraph 6 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;



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- b) has no such authority, but habitually maintains in the first-mentioned Contracting State a stock of goods or merchandise belonging to such enterprise from which he regularly delivers goods or merchandise on behalf of such enterprise;
  - c) habitually secures orders in the first-mentioned Contracting State, exclusively or almost exclusively for the enterprise itself or for such enterprise and other enterprises, which are controlled by it or have a controlling interest in it;
  - d) in so acting, he manufactures or processes in that Contracting State for the enterprise goods or merchandise belonging to the enterprise.
6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, 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 an employee or through a person other than an agent of an independent status to whom paragraph 9 applies.
7. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other Contracting 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. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise and other enterprises, which are controlled by it or have a controlling interest in it, he will not be considered an agent of an independent status within the meaning of this paragraph.
8. 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 Contracting State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.



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**Article 7**

**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. The tax so charged shall be reduced to 50% if beneficiary owner of the income derived from immovable property is the State itself or local authorities, political subdivision, local Governments or local financial institutions are belong to the Contracting State.
2. The term "immovable property" shall have the meaning, which it has under the national laws 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 laws respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right of work, mineral deposits, sources and other natural resources. Aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 of this Article 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 of this Article shall also apply to income from immovable property of an enterprise.

**Article 8**

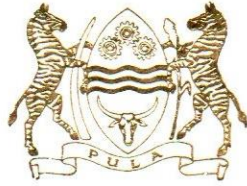
**Business Profits**

1. The profits of an enterprise of a Contracting State shall be taxable only in that Contracting State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated in that other Contracting State. If the enterprise carries on or has carried on business in that manner, the profits of the enterprise may be taxed in the other Contracting State but only so much of them as is attributable to that permanent establishment.



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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 those deductible 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, taking into consideration any applicable law or regulations in the concerned Contracting State. 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 head office of the enterprise or any of its other offices.
4. 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.
5. 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.



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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 or gains 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 9**  
**Air Transport**

1. Profits of an enterprise of a Contracting State from the operation of aircraft in international traffic shall be taxable only in that Contracting State.
2. For the purposes of this Article profits from the operation of aircraft in international traffic include profits from the rental on a bareboat basis of aircraft.
3. The provisions of paragraph 1 shall also apply to profits derived from:
  - a) the participation in a pool, a joint business or an international operating agency;
  - b) selling of tickets on behalf of another enterprise; and
  - c) income deriving from deposits at the bank, bonds, shares, stocks and other debentures.
4. For greater certainty Article 8 shall not be applied on the operation of aircrafts in international traffic.

**Article 10**  
**Associated Enterprises**

1. Where





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- 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 Contracting State -and taxes accordingly -profits on which an enterprise of the other Contracting State has been charged to tax in that other Contracting State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Contracting State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Contracting State shall make an appropriate adjustment to the amount of the profits subjected to tax. 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.
3. The provisions of paragraph 2 shall not apply where judicial, administrative or other legal proceedings have resulted in a final ruling that by actions giving rise to an adjustment of profits under paragraph 1, one of the enterprises concerned is liable to penalty with respect to fraud, gross negligence or wilful default.



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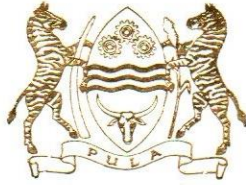
**Article 11**  
**Dividends**

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 the 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) 5 per cent of the gross amount of the dividends if the beneficial owner is a company the capital of which is wholly or partly divided into shares which holds directly at least 10 per cent of the capital of the company paying the dividends;
  - b) 7.5 per cent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

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, "jouissance" shares or "jouissance" rights, mining shares, founders' 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 taxation 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 in that other Contracting State and the holding in respect of which the dividends are paid is effectively connected



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with such permanent establishment. In such case the provisions of Article 8 shall apply.

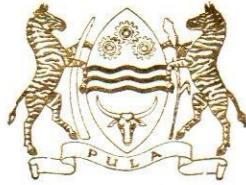
5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other Contracting State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other Contracting State who is the beneficial owner of the dividends or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other Contracting 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 Contracting State.
6. The provision of paragraphs 4 and 5 shall not apply if the beneficial owner of the dividends is the State itself, local government, local authority or their financial institutions. Such income shall be subject to tax at the State of residence.

**Article 12**

**Interest**

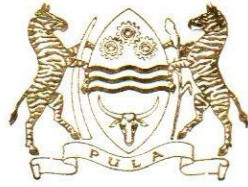
1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 7.5 per cent of the gross amount of the interest.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.



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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, as well as income which is subjected to the same taxation treatment as income from money lent by the taxation laws of the Contracting State in which the income arises. 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 in that other Contracting State situated in that other Contracting State, 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 8 shall apply.
5. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that Contracting 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 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 Contracting State in which the permanent establishment is situated.
6. Where, by reason of a special relationship between the payer and the beneficial owner of the interest, 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 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.



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7. The provisions of paragraph 4, 5 and 6 shall not be applied if the beneficial owner of the interest being the state itself, political subdivision, local Government or local authority or their financial institutions. Such income shall be taxable only at the state of residence.

**Article 13**  
**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 7.5 per cent of the gross amount of the royalties.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

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 (including the copyright of literary, artistic, scientific work, broadcasts or cinematograph films, motion pictures or movies), any patent, trade mark, design or model, 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 in that other Contracting State, 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 8 shall apply.

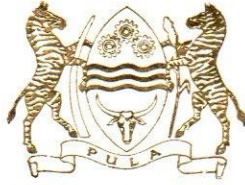


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5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that Contracting State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection 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 Contracting State in which the permanent establishment is situated.
6. Where, by reason of a special relationship between the payer and the beneficial owner of the royalties or between both of them and some other person, the amount of the 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 14**  
**Capital Gains**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 7 and situated in the other Contracting State may be taxed in that other Contracting 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 Contracting State.
3. Gains derived by an enterprise of a Contracting State from the alienation of aircrafts operated in international traffic or movable property pertaining to the operation of such aircrafts shall be taxable only in that Contracting State.



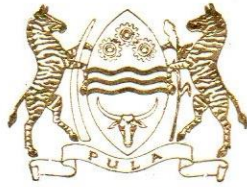
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4. Gains derived by a resident of a Contracting State from the alienation of shares or comparable interests, such as interests in a partnership or trust, may be taxed in the other Contracting State if, at any time during the 365 days preceding the alienation, these shares or comparable interests derived more than 50 per cent of their value directly or indirectly from immovable property, as defined in Article 7, situated in that other State, unless it is listed in a recognized stock market.
5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3 shall be taxable only in the Contracting State of which the alienator is a resident.
6. For the purpose of the interpretation of this Article, it is understood that property referred to in paragraph 5 shall mean bonds, debentures and other comparable interest in a company and such like property shall be taxable only at the State where the alienator is resident.

**Article 15**

**Fees for Technical Services**

1. Fees for technical services arising in a Contracting State which are derived by a resident of the other Contracting State may be taxed in that other State.
2. However, subject to the provisions of Articles 9, 17 and 18, fees for technical services arising in a Contracting State may also be taxed in the Contracting State in which they arise and subject to the laws of that State, but if the beneficial owner of the fees is a resident of the other Contracting State, the tax so charged shall not exceed 5 per cent of the gross amount of the fees.
3. The term “fees for technical services” as used in this Article means any payment in consideration for any service of a managerial, technical or consultancy nature, unless the payment is made:
  - a) to an employee of the person making the payment;



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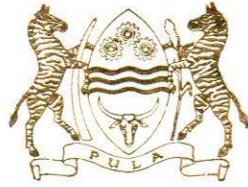
- b) for teaching in an educational institution or for teaching by an educational institution; or
  - c) by an individual for services for the personal use of an individual.
4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the fees for technical services 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 8 shall apply.
5. For the purposes of this Article, subject to paragraph 6, fees for technical services shall be deemed to arise in a Contracting State if the payer is a resident of that State or if the person paying the 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 obligations to pay the fees was incurred, and such fees are borne by the permanent establishment.
6. For the purposes of this Article, fees for technical services shall be deemed not to arise in a Contracting State if the payer is a resident of that State and carries on business in the other Contracting State or a third State through a permanent establishment situated in that other State or the third State and such fees are borne by that permanent establishment.

**Article 16**

**Income from Employment**

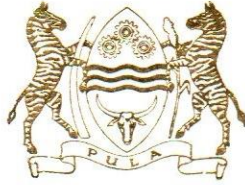
1. Subject to the provisions of Articles 17, 19 and 20, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that Contracting State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived there from may be taxed in that other Contracting State.





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2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State shall be taxable only in the first-mentioned Contracting State if all the following conditions are met:
  - a) The recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in 12 month period commencing or ending in the fiscal year concerned;
  - b) The remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting State; and
  - c) The remuneration is not borne by a permanent establishment or a fixed base, which the employer has in the other Contracting State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard an aircraft operated in international traffic by an enterprise of a Contracting State shall be taxable only in that Contracting State.
4. An individual who is both a national of a Contracting State and an employee of an enterprise of that Contracting State the principal business of which consists of the operation of aircraft in international traffic and who derives remuneration in respect of duties performed in the other Contracting State shall be taxable only in that Contracting State on remuneration derived from his employment with that enterprise.
5. The provisions of paragraphs 1, 2 and 3 of this Article shall likewise apply in respect of salaries, wages and other similar remuneration and pensions paid by a government owned institution performing functions of a governmental nature which:
  - a) in the case of Botswana:
    - a) Bank of Botswana;
    - b) Botswana Investment and Trade Centre;
    - c) National Development Bank;
    - d) Botswana Development Corporation; and

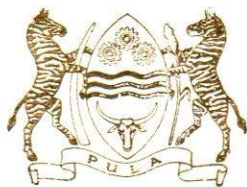


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- e) any other statutory body or institution or instrumentality wholly owned by the Government of the Republic of Botswana, that should be communicated through diplomatic channels.
  
- b) in the case of the United Arab Emirates:
  - (i) the Government of the United Arab Emirates;
  - (ii) a local government of the United Arab Emirates (Abu Dhabi, Dubai, Sharjah, Ras al Khaima, Fujairah, Umm al Quwain and Ajman);
  - (iii) the following financial institutions particularly but not exclusively:
    - a. the Abu Dhabi Investment Council;
    - b. Abu Dhabi Investment Authority;
    - c. Emirates Investment Authority;
    - d. Dubai Investment Corporation;
    - e. Mubadala Investment Company; and
    - f. any other statutory body or institution or instrumentality wholly owned by the Government of the United Arab Emirates, at the federal or local level, that should be communicated through diplomatic channels.

**Article 17**  
**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 or other similar organ of a company, which is a resident of the other Contracting State, shall be taxable only in the first-mentioned Contracting State.



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**Article 18**

**Artistes and Sportsmen**

1. Notwithstanding the provisions of Articles 14 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 sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other Contracting State.
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 8 and 16 be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.
3. The provisions of paragraphs 1 and 2 shall not apply to income derived by entertainers or sportsmen who are residents of a Contracting State from personal activities as such exercised in the other Contracting State if their visit to that other Contracting State is substantially supported from the public funds of the first-mentioned Contracting State, including those of any political subdivision, a local authority or statutory body thereof, nor to income derived by a non-profit making organization in respect of such activities provided no part of its income is payable to, or is otherwise available for the personal benefit of its proprietors, founders or members.

**Article 19**

**Pensions and Annuities**

1. Subject to the provisions of paragraph 2 of Article 20, pensions and other similar remuneration and annuities paid to an individual who is a resident of a Contracting State in consideration of past employment shall be taxable only in that Contracting State.

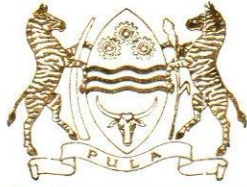


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2. As used in this Article:
- a) The terms “pensions and other similar remuneration” mean periodic payments made after retirement in consideration of past employment or by way of compensations for injuries received in connection with past employment;
  - b) The term “annuity” means a stated sum payable to an individual 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 similar 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 20**  
**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 Contracting State or subdivision or authority shall be taxable only in that Contracting 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 Contracting State and the individual is a resident of that Contracting State and has fulfilled one of the following conditions:
- (i) is a national of that Contracting State; or
  - (ii) did not become a resident of that Contracting State solely for rendering the services.



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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 Contracting State or subdivision or authority shall be taxable only in that Contracting 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 Contracting State.
3. The provisions of Articles 16, 17, 18 and 19 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 thereof.

**Article 21**

**Teachers and Researchers**

An individual who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who at the invitation of the Government of the first-mentioned Contracting State or of a university college, school, museum or other cultural institution in that first-mentioned Contracting State or under an official programme of cultural exchange is present in that Contracting State for a period not exceeding two consecutive years solely for the purpose of teaching giving lectures or carrying out research at such institution shall be exempt from tax in that Contracting State on his remuneration for such activity.

**Article 22**

**Students and Trainees**

1. Payments which a student or business trainee who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance,



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education or training shall not be taxed in that Contracting State, provided that such payments arise from sources outside that Contracting State.

2. In respect of grants, scholarships and remuneration from employment not covered by paragraph 1, a student or business trainee described in paragraph 1 shall, in addition, be entitled during such education or training to the same exemptions, relief's or reductions in respect of taxes available to residents of the Contracting State which he is visiting.

**Article 23**

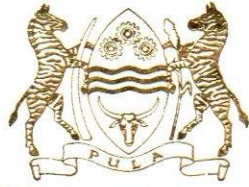
**Other Income**

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 Contracting State.
2. Notwithstanding the provisions of paragraph 1, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Agreement and arising in the other Contracting State may also be taxed in that other State.

**Article 24**

**Entitlement to Benefits**

Notwithstanding the other provisions of this Agreement, a benefit under this Agreement shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Agreement.



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**Article 25**

**Elimination of Double Taxation**

1. Double taxation shall be eliminated as follows:
  - a) in Botswana, subject to the provisions of the laws of Botswana regarding the allowance of a credit against Botswana tax of tax payable under the laws of a country outside Botswana which shall not affect the general principle hereof, United Arab Emirates tax payable under the laws of United Arab Emirates and in accordance with this Agreement, whether directly or by deduction, on profits or income liable to tax in United Arab Emirates shall be allowed as a credit against any Botswana tax payable in respect of the same profits or income by reference to which the United Arab Emirates tax is computed. However, the amount of such credit shall not exceed the amount of the Botswana tax payable on that income in accordance with the laws of Botswana;
  - b) in the United Arab Emirates, tax paid by residents of the United Arab Emirates in respect of income taxable in Botswana in accordance with the provisions of this Agreement, shall be deducted from the taxes due according to the United Arab Emirates tax law. Such deduction shall not, however, exceed that part of the United Arab Emirates tax, as computed before the deduction is given, which is attributable to the income which, in accordance with the provisions of this Agreement, may be taxed in Botswana.
2. For the purposes of paragraph 1 of this Article, the terms “Botswana tax payable” and “United Arab Emirates tax paid” shall be deemed to include the amount of tax which would have been paid in Botswana or in the United Arab Emirates as the case may be, but for an exemption or reduction granted in accordance with laws designed to promote economic development in that Contracting State.
3. A grant given by a Contracting State to a resident of the other Contracting State in accordance with laws designed to promote economic development in that first mentioned State, shall not be taxable in the other State.



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**Article 26**

**Mutual Agreement Procedure**

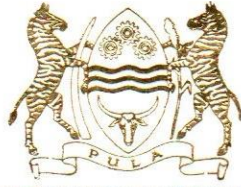
1. Where a person considers that the actions of one or both of the Contracting State result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those Contracting State, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 28, 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 provision of this Agreement.
2. The competent authority shall endeavor, 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 Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting State.
3. The competent authorities of the Contracting State shall endeavor 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 State may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

**Article 27**

**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 of every kind and description imposed on behalf of the

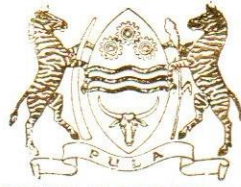




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Contracting States, or of their political subdivisions in particular for the prevention of fraud or evasion of such taxes, in so far as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.

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 paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:
  - a) to carry out administrative measures at variance with the laws and 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; or
  - 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



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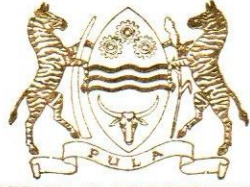
shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely 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 28**

**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 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 favorably 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, relieves and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
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



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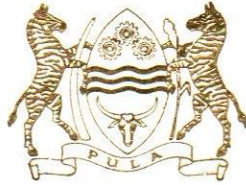
burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

4. Nothing in this Agreement shall prevent a Contracting State from granting exemption from tax or reduction to its own national companies in accordance to its domestic laws and regulations
5. In this Article the term "taxation" means taxes which are the subject of this Agreement.

**Article 29**

**Miscellaneous Rules**

1. Notwithstanding the provisions of paragraph 2 of Article 10 and paragraph 2 of Article 11, and paragraph 2 of Article 14, dividends, interest or capital gains paid by a resident of a Contracting State to the Government of the other Contracting State or political subdivision or local authority thereof shall be exempt from tax in the first-mentioned State.
2. For the purposes of paragraph 1, the term "Government" shall include:
  - a) in the case of Botswana:
    - a) Bank of Botswana;
    - b) Botswana Investment and Trade Centre;
    - c) National Development Bank;
    - d) Botswana Development Corporation.
    - e) any other statutory body or institution or instrumentality wholly owned by the Government of the Republic of Botswana, that should be communicated through diplomatic channels.
  - b) in the case of the United Arab Emirates:
    - (i) the Government of the United Arab Emirates;
    - (ii) a local government of the United Arab Emirates (Abu Dhabi, Dubai, Sharjah, Ras al Khaima, Fujairah, Umm al Quwain and Ajman);



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- (iii) the following financial institutions particularly but not exclusively:
- a. the Abu Dhabi Investment Council;
  - b. Abu Dhabi Investment Authority;
  - c. Emirates Investment Authority;
  - d. Dubai Investment Corporation;
  - e. Mubadala Investment Company;
  - f. any other statutory body or institution or instrumentality wholly owned by the Government of the United Arab Emirates, at the federal or local level, that should be communicated through diplomatic channels.

**Article 30**

**Members of Diplomatic Missions and Consular Posts**

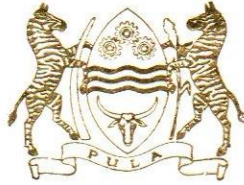
Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts or employees of international organizations under the general rules of international law or under the provisions of special agreements.

**Article 31**

**Entry into Force**

Each of the Contracting States shall notify to the other in writing the completion of its constitutional procedures for the entry into force of this Agreement. This agreement shall enter into force on the date of receipt of the latter of these notifications and its provisions shall thereupon have effect in both Contracting States:

- a) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of July of the year in which this Agreement is signed; and
- b) in respect of other taxes, for taxable periods beginning on or after the first day of July of the year in which this Agreement is signed.



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**Article 32**

**Duration and Termination**

This Agreement shall remain in force for a period of ten years and shall continue in force thereafter for a similar period or periods unless either Contracting State notifies the other in writing, at least six months before the expiry of the initial or any subsequent period, of its intention to terminate this Agreement. In such event, this Agreement shall cease to have effect in both Contracting States:

- a) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of July of the year next following that in which the notice of termination is given; and
- b) in respect of other taxes, for taxable periods beginning on or after the first day of July of the year next following that in which the notice of termination is given.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

Done at Denpasar, Bali on 12<sup>th</sup> day of October, 2018, in two originals the English and the Arabic languages. In case of divergence between the two texts the English text shall prevail.

**Hon. O. K. Matambo**  
For the Government of the  
Republic of Botswana

**Hon. Obaid Humaid Al-Tayer**  
For the Government of the  
United Arab Emirates

**CHAPTER 52:01  
INCOME TAX**

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Act 14, 2006,  
Act 18, 2006.

**An Act to consolidate and amend the law relating to the imposition, assessment and collection of tax on incomes.**

[Date of Commencement: 1st July, 1995.]

**PART I**  
**Preliminary (ss 1-2)**

**1. Short title**

This Act may be cited as the Income Tax Act.

**2. Interpretation**

In this Act, unless the context otherwise requires-

**"accounting period"**, in relation to any person, means the period for which that person makes up the accounts of his or her business;

**"agent"** includes any partnership, company or other body of persons, corporate or unincorporate, which is acting as an agent;

**"approved benefit fund"** means a fund which, in respect of any tax year, the Commissioner General is satisfied is a permanent fund *bona fide* established for the purpose of providing sickness, accident or unemployment benefits for its members, or mainly for such a purpose; and also for the purpose of providing benefits for the widows, children, dependants or nominees of deceased members;

**"approved financial operations"** means those operations specified in a tax certificate granted by the Minister under section 138;

**"approved provident fund"** means a permanent fund or scheme *bona fide* established for providing such benefits as may be prescribed by the Minister, other than those provided by an approved superannuation fund;

**"approved superannuation fund"** means a permanent fund, or a scheme which provides for the establishment and administration of such scheme exclusively by an insurer, and in either case *bona fide* established for the purpose of providing such pensions, annuities or other benefits as may be prescribed by the Minister;

**"assessable income"** means assessable income as defined in section 37;

**"assessed loss"** means an assessed loss determined under section 82 or the loss assessed under section 78(3) in respect of the carrying on of a business, and shall not include a loss, incurred on the disposal of a property, which is ascertained in accordance with the Tenth Schedule;

**"assessment"** in relation to any person means-

- (i) a determination by the Commissioner General-
  - (a) of the amount of taxable income upon which tax is chargeable;
  - (b) of the amount of any loss allowable as a deduction in any subsequent tax year;  
or
  - (c) that no tax is chargeable,

and includes an additional assessment, a reduced assessment, a provisional assessment or a penalty imposed under section 117(2); or

- (ii) an assessment under section 78(3);

**"associated company"** in relation to a group of two or more resident companies means a resident company in which another resident company holds 20 per cent or more of every class of equity share:

Provided that the definition shall not apply to an international financial services company holding shares in a company resident in Botswana.

**"associated person"** means-

- (a) in relation to any individual carrying on mining operations, any relative or partner of that individual; and
- (b) in relation to any company carrying on mining operations, any other company, if either of those companies has control, directly or indirectly, of the other, or if both such companies are controlled, directly or indirectly, by the same person or persons;

**"bank"** has the same meaning as in the Banking Act;

**"Board of Adjudicators"** means the Board of Adjudicators established under section 90 and constituted in accordance with the provisions of the Ninth Schedule;

**"building society"** means a building society registered under the Building Societies Act;

**"business"** means any business, trade, adventure or concern in the nature of trade, profession or vocation and includes the letting of any property; and in the case of-

- (a) a company, all amounts accrued to that company shall be deemed to have accrued from one business;
- (b) a person other than a company, where separate businesses are carried on by that person, all amounts accrued therefrom shall be deemed to have accrued from

separate sources unless, upon application by that person, the Commissioner General is satisfied that it is reasonable that more than one of the business activities should be treated as constituting one source, and in such event all amounts accrued therefrom shall be deemed to have accrued from one business:

Provided that nothing in paragraph (a) or (b) of this definition shall apply to amounts accrued from farming, mining or any disposal of property under section 35(1);

**"chargeable income"** means chargeable income as ascertained in accordance with Part VI;

**"child"**, in relation to an individual, includes a lawfully adopted child and a step-child;

**"collective investment undertaking"** means an undertaking-

- (a) the principle objective of which is the collective investment of its funds in real or personal property of whatever kind including securities and other liquid financial assets, with the aim of spreading investment risk and giving its members, shareholders or unit holders the benefit of the results of the management of its funds; and
- (b) the units of which are at the request of the holders, redeemed directly or indirectly, out of those undertaking's assets;

**"commercial royalty"** means any amount payable for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films, and films or tapes for radio or television broadcasting), any patent, trade mark, design or model, 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;

**"Commissioner General"** means the Commissioner General of Taxes appointed under section 3(1);

**"Commissioner of Internal Revenue"** means the Commissioner of Internal Revenue appointed under section 3(1);

**"company"** includes-

- (a) any body corporate;
- (b) any specified corporation;
- (c) collective investment undertaking; and
- (d) any association or society whether incorporated or registered or not, but does not include a partnership;
- (e) any charitable, religious or educational institution or a trust established for public purposes;

**"connected persons"** means-

- (a) at least two companies where either of the companies has control directly or indirectly, of the other, or if both companies are controlled, directly or indirectly, by

the same person or persons; and

- (b) any person if that person has control of a company or if the person or persons connected to that person together have control of the company; and

**"control"** means where a person exercises, is able to exercise or is entitled to acquire control whether directly or indirectly, over the company's affairs and in particular if the person possesses or is entitled to acquire-

- (i) the greater part of the share capital of or voting rights in the company;
- (ii) such part of the share capital that would entitle them to the greater part of the distribution of all the income of the company; or
- (iii) such rights as would entitle the person to the greater part of the assets of the company upon winding up, or in any circumstances.

**"debt"** means the greatest amount at any time during the year of assessment of any debt obligation owed by the company on which interest is payable and deductible;

**"dividend"** means any amount distributed, whether in cash or otherwise, by a company to its shareholders; and in this definition the expression "amount distributed" includes-

**"disposal"**, for the purposes of section 35 and the Tenth Schedule, includes-

- (a) the sale, lease, exchange or relinquishment of the asset or the extinguishment of any rights in the asset;
- (b) the compulsory acquisition of the asset under any law;
- (c) the conversion by the owner of a capital asset into stock-in-trade of a business carried on by the owner; or
- (d) any transaction which has the effect of transferring or enabling the use or enjoyment of any immovable property;

**"dividend"** means any amount distributed, whether in cash or otherwise, by a company to its shareholders; and in this definition the expression "amount distributed" includes-

- (a) in relation to a company which is not being wound up or liquidated, any profits distributed, whether of a capital nature or not, including an amount, other than an amount representing a return of capital, equal to the nominal value of any bonus shares, debentures or securities awarded to the shareholders:

Provided that bonus shares shall not include shares issued by a company to a shareholder in satisfaction of bonus award and is included in its equity share capital;

- (b) in the event of the partial reduction of the capital of a company, any cash or the value of any property which is given to a shareholder in excess of the amount by which the nominal value of the shares of that shareholder is reduced;
- (c) in the event of the reconstruction of a company, any cash or the value of any property which is given to a shareholder in excess of the nominal value of the

shares held by him or her before the reconstruction; and

- (d) where a dividend consists of property other than cash, it shall be deemed to be of an amount equal to the market value of the property at the time of the distribution of the dividend:

Provided that-

- (i) there shall be excluded from such amount any distribution of profits by an investment company, a unit trust or collective investment undertaking, a variable rate loan stock company or similar company, where such distribution is made out of dividends accrued to such investment company, unit trust, other undertaking or company, if withholding tax had been deducted from such dividends, in accordance with the provisions of section 58(1)(a) and the Seventh Schedule, by the company which declared the dividends; and
- (ii) where any such distribution of profits as is referred to in proviso (i) is made partly out of dividends accrued and partly out of interest, proviso (i) shall apply only to such proportion of the distribution as is made from dividends;

**"employment"** means any employment in which the relationship of master and servant subsists, or an appointment or office, whether public or not, and whether or not that relationship subsists; and the terms

**"employee"** and **"employer"** shall, except for the purposes of the Fifth Schedule, be construed accordingly;

**"employment income"**, in relation to any person, means the gross amount, whether in cash or otherwise, accrued or deemed to have accrued to such person from employment and includes any pensions, annuities or other benefits;

**"entertainment fee"** means any amount payable to an entertainer (including any cabaret, motion picture, radio, television or theatre artiste and any musician) or a sportsman or sportswoman, for the personal activity of such entertainer, sportsman or sportswoman, and includes any payment made to any other person in relation to such activity;

**"equity"** means paid up value of all shares and the amount standing to the credit of the share premium account of a company, the accumulated profits and the asset revaluation reserves of the company at the beginning of the year of assessment, reduced by the sum of any debt obligation owed by the company and accumulated losses at the beginning of the year of assessment;

**"equity share capital"**, in relation to the share capital of a company, means its issued share capital, excluding any part thereof which does not carry any right to participate beyond a specified amount in any distribution by way of dividend or capital made by the company; and the expression "equity share" shall be construed accordingly;

**"executor"** means the executor, administrator or other person administering or managing the estate of a deceased person;

**"farming"** means the carrying on of farming operations;

**"farming operations"** includes livestock, agricultural and pastoral farming;

**"group"**, in relation to one or more associated companies and the companies with which they are associated, shall not include a non-resident company;

**"gross income"** means gross income as defined in section 9;

**"industrial building"** means any building-

- (a) which contains and is used solely or mainly for the purpose of operating machinery;
- (b) which is on the same premises as any building to which paragraph (a) applies, and in respect of which the Commissioner General is satisfied that depreciation is caused by reason of the operation of machinery installed in that other building;
- (c) in respect of which the Commissioner General is satisfied that depreciation is caused by reason of the use of chemicals, corrosive substances, furnaces of any kind or any substance or thing directly used in the particular business of which the building forms an integral and essential part;
- (d) erected and used for carrying out industrial research, including scientific experiments, into new or improved methods of manufacture;
- (e) in respect of which, by reason of the nature of the business carried on, the Commissioner General is satisfied that it is used for industrial purposes; or
- (f) erected and used as an hotel, and includes any structure or work of a permanent nature directly related or attached to such a building;

**"international financial services centre"** means a centre established under section 138;

**"international financial services centre company"** means a company in possession of a valid certificate granted under section 138;

**"investment company"** means a company or trust engaged in the business of investing the pooled capital of shareholders in financial instruments (including shares, debentures and units) of other companies, and the term "similar company" shall be construed accordingly;

**"investment income"** means income accrued by way of interest and net aggregate gains as determined under the Tenth Schedule;

**"livestock"** includes cattle, sheep, goats, horses, donkeys, mules, pigs and poultry;

**"management or consultancy fee"** means any amount payable for administrative, managerial, technical or consultative services or any similar services, whether such services are of a professional nature or not;

**"member of the Botswana Development Corporation Limited group of companies"**, in relation to any tax year, means-

- (a) the Botswana Development Corporation Limited;
- (b) any company of which the whole of every class of equity share issued is , throughout the whole of that tax year, held by the Botswana Development Corporation Limited; or



- (c) any company of which the whole of every class of equity share issued is, throughout the whole of that tax year, held by the company referred to under paragraph (b);

**"mineral"** means any constituent of the crust of the earth whether lying on the surface of the earth or which can be obtained by mining, digging, drilling, quarrying or other operations, and includes precious metals, precious stones, semi-precious stones, oil shale, natural oil, natural gas, petroleum, bituminous shale and salt, but does not include-

- (a) water; or
- (b) soil, sand, clay, gravel or stone (other than limestone or marble) if these mineral substances are extracted for the purpose of agriculture, fencing, building, road making or other construction activities;

**"mining capital expenditure"** means expenditure incurred by any person in carrying on mining operations-

- (a) on the acquisition for the purposes of the carrying on of his or her mining operations, of a mineral, mining or prospecting right or mining or prospecting information from another person, and the expenditure incurred in such acquisition shall be deemed to be the amount for which such property was disposed of, or deemed to have been disposed of, for the purposes of section 31;
- (b) on the preparation of a site for his or her mining operations, including expenditure on exploratory work done on the site to determine the best means for the carrying on of his or her mining operations;
- (c) on buildings, structures, works of a permanent nature, other improvements, including plant, machinery or equipment, directly or primarily connected with the carrying on of the mining operations;
- (d) on providing, or by way of contribution to the cost of providing water, light or power for use on, access to or communication with, the site of mining operations carried on or to be carried on by that person;
- (e) on residential accommodation and welfare facilities for employees; and
- (f) on general administration and management, including any interest payable on any loan for the time being utilized to finance such mining operations, incurred prior to the commencement of carrying on a business of mining or during any period when such business of mining is not being carried on;

**"Mining Commissioner"** means the public officer holding or acting in that office in the public service;

**"mining operations"** means mining operations carried on by any person on a mining property in Botswana for the extraction of minerals from their natural site, and their treatment, transportation or storage;

**"mining or prospecting information"** means geological, geophysical or technical information, being information that relates to the presence, absence or extent of deposits of minerals in an area, or is likely to be of assistance in determining the presence, absence or

extent of such deposits, and has been obtained from prospecting or mining for minerals;

**"mining or prospecting right"** means a mineral concession as defined in the Mines and Minerals Act, or a development licence or exploration licence as defined in the Petroleum (Exploration and Production) Act;

**"partnership assessed loss"** means an assessed loss calculated in the same manner as partnership chargeable income;

**"partnership chargeable income"** means the gross income of the partnership calculated as if the partnership were a person chargeable to tax, less any amounts which would be exempt under Part V, and all deductions which would be allowable to such person under Part VI in respect of such gross income;

**"person"** includes an individual, a trustee, the estate of a deceased person, a company, whether incorporated or unincorporated, a partnership and every other juridical person;

**"petroleum"** has the meaning assigned to it in the Petroleum (Exploration and Production) Act;

**"Productive Employment Development Fund"** means the Fund established under the Productive Employment Development Fund Order;

**"prospecting operations"** means any of the following-

- (a) geological mapping, geophysical surveys, systematic search for areas containing minerals, and search by drilling or other means for minerals within those areas; and
- (b) search for ore within or in the vicinity of an ore body by drives, shafts, cross-cuts, winzes, rises and drilling, preliminary to the establishment of a mine, but does not include operations in the course of working a mine;

**"qualifying foreign participation"** means a participation held by an international financial services centre company in a company which is not resident in Botswana, where the international financial services centre company controls either directly or indirectly, alone or with connected persons, 25 per cent or more of the share capital including 25 per cent or more of the voting rights of the non resident company;

**"regulation"** means a regulation made under this Act;

**"relative"**, in relation to an individual, means-

- (a) his or her spouse;
- (b) any ancestor, lineal descendant, brother, sister, uncle, aunt, nephew, niece, stepfather, stepmother, stepchild or adopted child of the taxpayer or his or her spouse, and in the case of an adopted child his or her adopter; and
- (c) the spouse of any relative mentioned in paragraph (b) of this definition;

**"representative taxpayer"** means-

- (a) in relation to a company, the public officer of that company;
- (b) in relation to the estate of a deceased person, a person under a legal disability, a

trust or a settlement, the trustee of that person;

- (c) in relation to a non-resident, any person appointed under section 23 to act as agent on his or her behalf;
- (d) in relation to tax due and payable by a deceased person at the date of his or her death, the executor of the estate of that deceased person; and
- (e) in relation to tax due and payable at the commencement of liquidation or judicial management of a company which is being wound up or has been placed under judicial management, the liquidator or judicial manager of that company;

**"resident in Botswana"**, in relation to a tax year, means-

- (a) in the case of an individual, that-
  - (i) his or her permanent place of abode is in Botswana;
  - (ii) he or she is physically present in Botswana for not less than 183 days in that tax year, whether or not he maintains a place of abode in Botswana;
  - (iii) he or she maintains a place of abode and is physically present in Botswana for not less than 183 days in that tax year; and for the purposes of this subparagraph he or she shall be deemed to be physically present in any part of that period notwithstanding that he or she is temporarily absent for business, recreation or similar purposes; or
  - (iv) he is physically present in Botswana for any period of time in that tax year and such period is continuous with a period of physical presence in the immediately preceding or immediately succeeding tax year, and provided he or she is treated as resident for such preceding or succeeding tax year under subparagraph (iii);
- (b) in the case of a company, that-
  - (i) its registered office or place of incorporation is in Botswana; or
  - (ii) is managed and controlled from Botswana;
- (c) in the case of a trust, that the trust-
  - (i) was established in Botswana; or
  - (ii) is administered in Botswana; and
    - (aa) the terms "resident" and "non-resident", in relation to a person, mean that such person is resident or not resident in Botswana, as the case may be, and when used as nouns mean a person who is resident or not resident in Botswana, as the case may be;
    - (bb) in computing any period of time under subparagraphs (ii) and (iii) of paragraph (a), a part of a day shall be counted as a day;

**"residential accommodation and welfare facilities for employees"**, in relation to

mining capital expenditure of any person carrying on a business of mining, means-

- (a) residential accommodation provided by that person at or adjacent to the site of the mining operations, being accommodation provided for the use of employees of that person engaged in mining operations on that site or operations connected with such mining operations and for the use of dependants of such employees; and
- (b) health, educational, recreational or other similar facilities or facilities for the provision of meals provided by that person at or adjacent to the site of the mining operations being facilities which-
  - (i) are provided principally for the welfare of such employees or of dependants of such employees; and
  - (ii) are not conducted for the purpose of profit-making by that person or any other person, and includes structures and works of a permanent nature carried out directly in connection with such accommodation or facilities, including the provisions of water, light, power, access or communications;

**"retirement annuity insurance" ...**

**"securitization"** means the process of creating a financial instrument by combining other financial assets, which are then marketed to investors;

**"scientific research"** means any activity in the field of natural or applied science for the extension of knowledge;

**"special purpose vehicle"** means a legal entity whose operations are limited to the acquisition, financing and selling of specific assets;

**"specified collective investment undertaking"** means a collective investment undertaking which-

- (a) is managed by an international financial services company;
- (b) except to the extent that the units are held by the undertaking itself, an international financial services centre, company, or another specified collective investment undertaking, is an undertaking, none of whose unit holders are resident in Botswana.

**"specified corporation"** means-

- (a) the Botswana Development Corporation Limited;
- (b) the Botswana Housing Corporation;
- (c) the Botswana Power Corporation;
- (d) the Botswana Telecommunications Corporation;
- (e) the National Development Bank;
- (f) the Water Utilities Corporation; and
- (g) any other corporation which the Minister may prescribe to be a specified

corporation for the purposes of this Act;

"**stock**" includes anything produced, manufactured, purchased or otherwise acquired for the purposes of manufacture, sale or exchange, or the proceeds from the disposal of which form, or will form, any part of gross income; and in the case of a business of farming shall include livestock and produce;

"**tax**" means the tax charged under this Act and for the purpose of recovery of tax includes any penalty, interest, fee or other charge imposed under this Act; and any reference to tax payable under the laws of another country means a tax of substantially similar nature to the tax charged under the Act;

"**taxable income**" means taxable income as ascertained in accordance with Part VII;

"**tax year**" means a period of 12 months beginning on 1st July and ending on the next succeeding 30th June;

"**trustee**" means a person appointed or constituted trustee by act of parties, by order or declaration of a court or by operation of law and includes-

- (a) an executor, administrator, tutor or curator;
- (b) a liquidator or judicial manager;
- (c) any person having or taking upon himself or herself the administration or control of any property subject to a trust;
- (d) any person acting in any fiduciary capacity; and
- (e) any person having the possession, control or management of the property of a person under any legal or other disability;

"**unit**" means any investment such as a subscription for shares or a contribution of capital in a collective investment undertaking which entitles the investor to a share in the profits or capital of the undertaking;

"**unit holder**" means a person who by reason of the holding of a unit or under the terms of a unit, has a beneficial interest in the profits or capital of an undertaking;

"**units**" means a right or interest in a unit trust;

"**variable rate loan stock company**" means a company with limited liability in Botswana in terms of the Companies Act, the objects of which in terms of its Memorandum of Association are restricted to investment in immovable property and the development, refurbishment and maintenance thereof, and which, in terms of its Articles of Association, issues shares and debentures which together comprise linked units.

## **PART II** **Administration (ss 3-7)**

### **3. Appointment of officers**

(1) For the administration of this Act and the management of the tax imposed thereunder there shall be appointed a Commissioner General of Taxes and a Commissioner of Internal

Revenue, and such other officers as may be necessary for such purposes.

(2) The Commissioner General shall perform the duties imposed on him or her, and may exercise all the powers conferred upon him or her, under this Act.

(3) The Commissioner of Internal Revenue shall, under the control of the Commissioner General, perform such official duties as he or she is required to perform by the Commissioner General, and shall, on any occasion when the Commissioner General is unable to perform any of his or her functions under subsection (2), act in his or her own name, and while so acting shall perform the duties imposed on, and may exercise the powers conferred upon, the Commissioner General under this Act.

(4) A notification in the *Gazette* that a person has been appointed to any office referred to in subsection (1) shall be conclusive evidence of such appointment.

#### **4. Delegation by Commissioner General**

(1) The Commissioner General may delegate to any person employed in carrying out the provisions of this Act any powers, functions or duties conferred or imposed upon the Commissioner General by this Act, other than the power of delegation conferred by this section.

(2) In this Part the expression "any person employed in carrying out the provisions of this Act" shall include any person whose services, under agreement with the Government, are provided by any other government or international agency to assist with the administration of this Act.

(3) Except as especially provided by this Act, any decision made or communication issued or signed by any person to whom the Commissioner General has delegated any power, function or duty under subsection (1) may be amended or withdrawn by the Commissioner General or that person within three years from the date on which such decision was made or communication issued or signed, but shall, for the purposes of this Act, be treated as having been made, issued or signed by the Commissioner General unless it has been so withdrawn.

#### **5. Secrecy**

(1) Subject to this section, every person appointed under, or employed in carrying out the provisions of, this Act shall regard and deal with all documents and information relating to any person, and all confidential instructions in respect of the administration or management of this Act, which may come into his or her possession or to his or her knowledge in the course of his or her duties, as secret and shall not disclose the contents of any such document or communicate any such information or instruction to any other person, other than the person to whom the document or information or instruction relates or his or her lawful representative, except as required in the performance of his or her functions under this Act or by order of a court.

(2) Any person appointed by a competent authority to audit the assessment and accounts of the Commissioner General shall, for the purposes of this section, be deemed to be a person employed in carrying out the provisions of this Act.

(3) Nothing in this section shall apply to the disclosure of any confidential information-

- (a) to the Attorney-General;
- (b) to the Governor of the Bank of Botswana or his or her lawful representative;
- (c) to the Minister, or any other person, where such disclosure is necessary for the purposes of this Act;
- (d) to the Director or Deputy Director of the Directorate on Corruption and Economic Crime, or to the authorized representative of the Director, to the Director of Public Prosecutions, or to the authorized representative of the Director, or to the commissioner of Police or his or her authorized representative for the purposes of an investigation into corruption or economic crime, including any offence against any fiscal law, or other criminal offence, and a prosecution in respect of such crime, or to any other person for the purposes of a prosecution under this Act;
- (e) to 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
- (f) to any authorized officer of the Government of a country with which an agreement for the avoidance of double taxation exists, for the purposes of that agreement.

(4) Any information obtained by the Commissioner General in the performance of his or her duties under this Act, or any other Act administered by him or her, may be used by him or her, or disclosed by him or her to any other public officer, for the purposes of any fiscal law administered by him or by such other public officer.

(5) Every court officer shall treat any document or information referred to in subsection (1) as secret until it is produced as evidence in any proceedings before the court, and the provisions of this section shall apply to every such officer as if he or she were a person appointed under, or employed in carrying out, the provisions of this Act.

(6) Every person appointed under or employed in carrying out the provisions of this Act and every person to whom confidential information is disclosed under paragraph (c) or (e) of subsection (3), except the Minister, shall make an oath or declaration of secrecy in such manner and form as may be prescribed.

## **6. Forms of notices and returns**

(1) Subject to this Act, the Commissioner General may prescribe the form of any notice, tax return or other return required for the purposes of this Act, and where any form has been so prescribed such form of notice or return shall be used for such purposes.

(2) Any notice given by the Commissioner General under this Act may be signed by any officer authorized by him or her in that behalf, and any notice purporting to be signed on behalf of the Commissioner General shall, unless the contrary is proved, be presumed to have been signed by an officer so authorized.

(3) Every form, notice or other document issued, served or given by the Commissioner General under this Act shall be sufficiently authenticated if the name or title of the Commissioner General, or the officer authorized in that behalf, is printed, stamped or written thereon.

## **7. Service of notice or documents**

Where under this Act any notice or other document is required or authorized to be served on or given to any person by the Commissioner General, then such notice or other document shall be sufficiently served-

- (a) in the case of a person other than a company or a partnership, if personally served on him or her or, where the Commissioner General is satisfied that such service is not practicable, by such of the following methods as appears to the Commissioner General to be the most satisfactory-
  - (i) left at his or her usual or last place of abode or office or place of business in Botswana;
  - (ii) sent by post to such place of abode, office or place of business or to his or her usual or last known postal address in Botswana; or
  - (iii) sent by post in care of the District Commissioner or Chief in the area in which his or her usual or last place of abode or place of business is situated;
- (b) in the case of a company if-
  - (i) personally served on the public officer of the company;
  - (ii) left at the company's address appointed under section 135 for service of notices under this Act; or
  - (iii) where no address for service of notices has been appointed under section 135, left at or sent by post to any office or place of business of the company in Botswana; or
- (c) in the case of a partnership, if-
  - (i) personally served on the precedent partner or an agent of the partnership;
  - (ii) left at the partnership's address appointed under section 136 for service of notices; or
  - (iii) where no address for service of notices has been appointed under section 136, left at or sent by post to any office or place of business of the partnership in Botswana.

### **PART III**

#### ***Imposition of Income Tax (ss 8-23)***

### **DIVISION I**

#### **CHARGE TO TAX (ss 8-11)**

#### **8. Charge to tax, general**

(1) Subject to this Act, tax shall be charged for each tax year on the taxable income of every person for that tax year.

(2) The persons chargeable to tax shall be those persons specified in Division II of this Part.

(3) Subject to Part VIII, the taxable income of any person shall be ascertained in



accordance with Parts IV, V, VI and VII.

(4) The tax payable by any person shall be calculated in accordance with Part IX.

## **9. Scope of charge to tax**

Subject to Parts IV and VIII, the gross income of every person for each tax year shall be the total amount, whether in cash or otherwise, accrued or deemed to have accrued to him or her in that tax year from every source situated or deemed to be situated in Botswana but shall not include any amount of a capital nature except to the extent specified in this Act.

## **10. Effective date of accrual**

For the purposes of this Act, an amount which accrues to a person shall be deemed to have accrued-

- (a) in the case of employment, at the time it is-
  - (i) received by him or her;
  - (ii) due and payable, even though not actually paid to him or her; or
  - (iii) credited in account, reinvested, accumulated, capitalized, carried to reserve or otherwise disposed of by him or her or on his or her behalf;
- (b) in the case of a business, in relation to which the Commissioner General is satisfied that a commercially recognized system of accounting is regularly followed, at the time it is credited in the books of account of such person; or
- (c) in any other case, at the time it becomes due and payable to him or her.

## **11. Amounts deemed to have accrued in Botswana**

An amount accrued to any person shall be deemed to have accrued from a source situated in Botswana where it has accrued to such person in respect of-

- (a) any contract made by such person in Botswana for the sale of goods, whether such goods have been or are to be delivered in or out of Botswana;
- (b) any service rendered or work done by such person in Botswana, whether the payment therefor is made by a resident or a non-resident and wherever payment is made;
- (c) any service rendered or work done out of Botswana-
  - (i) by such person under a contract of employment with the Government; or
  - (ii) by such person, being a resident, for or on behalf of his or her employer in Botswana during his or her temporary absence from Botswana, whether the payment for such services rendered or work done is made by a resident or a non-resident and wherever the payment is made;
- (d) any pension, bonus, gratuity or compensation granted to such person in respect of past services-

- (i) by the Government; or
- (ii) where such past services were performed in Botswana by any other person, and wherever payment is made or the funds from which payment is made are situate:

Provided that where any pension, bonus, gratuity or compensation to which subparagraph (ii) applies is payable in respect of past services performed partly in Botswana and partly elsewhere, only such part of such pension, bonus, gratuity or compensation as, in the opinion of the Commissioner General, is reasonable shall be deemed to have accrued in Botswana;

- (e) any business carried on by such person, being a resident, as the owner or charterer of any aircraft, wherever such aircraft may be operated;
- (f) any service rendered or work done out of Botswana by such person, being a resident, as an officer or a member of the crew of any aircraft referred to in paragraph (e), wherever payment is made;
- (g) the disposal by such person of any interest in mineral rights over land situate in Botswana or the disposal of any share or interest in the capital or income of a company holding such mineral rights;
- (h) the disposal by such person of mining or prospecting information or mining or prospecting rights over land situate in Botswana; or
- (i) any investment made outside Botswana or any business carried on outside Botswana by a resident of Botswana:

Provided that paragraph (i) shall not apply to foreign investment income of non-citizens resident in Botswana.

## **DIVISION II**

### **PERSONS CHARGEABLE TO TAX (ss 12-24)**

#### **12. Persons chargeable, general**

Subject to this Part, the taxable income of any person shall be charged to tax in the name of that person.

#### **13. Minor children**

(1) Where, by reason of any donation, settlement or other disposition (in this section referred to as "a settlement") made by any person (in this section referred to as "the settlor") for the benefit of a minor child, any amount has accrued to that child, such amount shall, during the minority of that child or until the prior death of the settlor, be deemed to have accrued to the settlor and shall be included in his or her gross income.

(2) In this section a settlement does not include any donation which the Commissioner General is satisfied has been made pursuant to and in accordance with customary tradition by a citizen of Botswana.

#### **14. Settlements and wills**

(1) Where any deed of donation, settlement or other disposition (in this section referred to as "the settlement") made by any person (in this section referred to as "the settlor") contains a stipulation to the effect that the beneficiaries therein, or one or more of them, shall not receive any amount accrued under the settlement until the happening of an event, whether fixed or contingent, any such amount as would, but for the stipulation, have accrued to the beneficiaries, shall, until the happening of that event, or the prior death of the settlor, be deemed to have accrued to the settlor and shall be included in his or her gross income.

(2) Where any person has made, in a will or other testamentary disposition, a stipulation to the effect that the beneficiaries therein, or one or more of them, shall not receive any amount accrued under such will or disposition until the happening of an event, whether fixed or contingent, any such amount as would, but for the stipulation, have accrued to the beneficiaries shall, until the happening of that event, be deemed to have accrued to the trust and shall be included in the gross income of the trust and the taxable income ascertained therefrom shall be charged to tax in the name of the trustee.

#### **15. Revocable trusts**

Where any deed of donation, settlement or other disposition (in this section referred to as "the settlement") made by any person (in this section referred to as "the settlor") contains a stipulation that the right of any person to receive any amount accrued under the settlement may be revoked by the settlor or conferred upon some other person, such amount as is subject to the stipulation shall be deemed to have accrued to the settlor and shall be included in his or her gross income.

#### **16. Deceased persons**

Any amount accrued to a person and not included in any assessment made prior to his or her death shall be included in his or her gross income and the taxable income ascertained therefrom shall be charged to tax in the name of his or her executor.

#### **17. Estates of deceased persons**

(1) Any amount accruing to the estate of a deceased person before there is a beneficiary entitled to the immediate benefit thereof shall be included in the gross income of the estate and the taxable income ascertained therefrom shall be charged to tax in the name of the executor.

(2) Any amount accruing to the estate of a deceased person on or after the date on which there is a beneficiary entitled to the immediate benefit thereof, other than a legatee, shall be deemed to have accrued to the beneficiary and shall be included in his or her gross income.

(3) Where a beneficiary of the estate of a deceased person is a legatee any amount accruing in respect of the property of which he or she is the legatee, on and after the date of the handing over of the property or on and after the date of the completion of the administration of the estate, whichever is the earlier, shall accrue to or be deemed to accrue to such legatee and shall be included in his or her gross income.

(4) For the purposes of this section-

(a) a beneficiary shall be deemed to be entitled to the immediate benefit of any amount

accrued to the estate of a deceased person on and after the date of completion of the administration of the estate; and

- (b) the date of completion of the administration of the estate means the date upon which the whole of the debts relating to the estate of the deceased person have been ascertained and paid or provided for.

## **18. Legally disabled persons**

Subject to this Part, any amount accrued to a person being a minor, a mentally defective person or any other person disabled under a legal disability, shall be included in his or her gross income and the taxable income ascertained therefrom shall be charged to tax in the name of the trustee in the same amount as would have been charged if that person had not been legally disabled.

## **19. Trusts**

(1) Any amount accrued to a trust for the benefit of any person shall be included in the gross income of the trust and the taxable income ascertained therefrom shall, except in a case to which section 14(2) applies, be charged to tax in the name of the trustee in the same sum as would have been charged if such amount had been included in the gross income of such person.

(2) In this section "trust" includes-

- (a) a will or other testamentary disposition; and
- (b) a deed of donation, settlement or other disposition.

## **20. Insolvent persons**

Where a person becomes insolvent-

- (a) any amount accrued to that person in his or her own right after the date of sequestration and prior to the date sequestration ceases (in this section referred to as "the period of insolvency") shall be included in the gross income of that person; and
- (b) any amount accrued in respect of the estate of that person held by his or her trustee during the period of insolvency shall be included in the gross income of the estate and the taxable income ascertained therefrom shall be charged to tax in the name of the trustee.

## **21. Partnerships**

(1) A partnership shall not be charged to tax in its own name but all amounts accrued thereto in any tax year shall be charged on the partners in such tax year in accordance with this section.

(2) The chargeable income of a partner for any tax year shall-

- (a) include an amount equal to that proportion of the partnership chargeable income of that tax year which the amount of the net partnership profit or income to which he or she is entitled under the partnership agreement, as ascertained under that

agreement, bears to the net partnership profit or income; or

- (b) be calculated after deducting an amount equal to that proportion of the partnership assessed loss of that tax year which the amount of the net partnership loss for which he or she is responsible under the partnership agreement, ascertained under that agreement, bears to the net partnership loss:

Provided that a partner shall not be entitled to set off such loss against any amount accruing to him or her in any tax year from any source outside the partnership.

## **22. Collective investment undertaking**

(1) A collective investment undertaking shall be charged to tax on the undistributed amount of the chargeable income and the amount of the chargeable income that has been distributed to shareholders shall retain its form and be taxed as such in the hands of shareholders.

(2) The proceeds of a collective investment undertaking derived in the ordinary course of its business from the sale of shares and securities shall be treated as part of its business income.

## **23. Non-resident persons**

(1) The taxable income of a non-resident shall, where it is not charged to tax directly on him or her, be charged to tax on his or her agent in the same amount as would have been charged on the non-resident.

(2) For the purposes of this section "agent", in relation to a non-resident, means a resident who has the management or control of property in Botswana of such non-resident or who is appointed by the non-resident to act on his or her behalf.

## **24. Responsibility of representative taxpayers**

Any person in whose name the taxable income of a deceased person, an estate of a deceased person, a person under a legal disability, a non-resident or any other person is chargeable, shall be responsible for doing all such things as are under this Act required to be done by a person liable to tax.

### **PART IV**

#### ***Ascertainment of Gross Income (ss 25-36)***

### **DIVISION I**

#### **ACCOUNTING PERIODS AND RECORDS (ss 25-26)**

## **25. Substituted accounting records**

(1) Where any person carries on a business he or she shall, subject to this section, regularly make up the accounts of that business for a period of 12 months.

(2) Where any person regularly makes up the accounts of his or her business-

(a) for the tax year; or

(b) for a period of 12 months ending on a date other than 30th June, then, in respect of

any tax year,

his or her taxable income shall be calculated by reference to such accounts for that tax year or period of 12 months ending within that tax year:

Provided that, where, in relation to the tax year immediately preceding the commencement of this Act, the taxable income has been calculated by reference to accounts regularly made up by that person for a period of 12 months ending after 30th June in that tax year then, in respect of each subsequent tax year, his or her taxable income shall be calculated by reference to accounts for the same accounting period.

(3) Where any person makes up the accounts of his or her business for a period less than 12 months, the Commissioner General may, subject to such adjustments as he or she considers necessary to avoid loss of tax, determine the taxable income of the tax year in which such accounting period ends by reference to such accounts and to the accounts for the immediately preceding or immediately succeeding accounting periods in such manner as appears to him or her to be reasonable.

(4) Where any person makes up the accounts of his or her business for a period greater than 12 months, the Commissioner General may, subject to such adjustments as he or she considers necessary to avoid loss of tax, determine the taxable income of the tax year in which such accounting period ends, and the taxable income of each previous tax year in which any part of the accounting period falls, by reference to such accounts and to the accounts for preceding or succeeding accounting periods in such manner as appears to him or her to be reasonable.

(5) References in this Act to a tax year shall include references to any other period by reference to which business chargeable income for such tax year is to be calculated.

## **26. Maintenance of proper record of transactions and methods of accounting**

(1) Every person carrying on any business shall keep a proper record in English or in Setswana of his or her business transactions.

(2) In this section "a proper record" means-

- (a) in the case of a business of farming carried on by any person other than a company, such records as the Minister may prescribe; and
- (b) in the case of any business other than a business referred to in paragraph (a), such records or books of account as the Commissioner General considers reasonable to reflect the true and full nature of the transactions of the business, regard being had to the nature of the activities concerned and the scale on which they are carried on.

(3) In relation to any business to which subsection (2)(b) applies, the Commissioner General may, in the case of any person or class of persons, direct the method of accounting or the manner in which payments should be made or commercial transactions should be recorded.

## **DIVISION II GROSS INCOME (ss 27-38)**

### **27. Gross income, general**

(1) Subject to Part VIII, the gross income of every person for each tax year shall be ascertained in accordance with this Part.

(2) Where gross income is derived from more than one source, the amount accrued from each source shall be ascertained separately.

## **28. Business, general**

(1) Subject to this Act, the gross income of any person for any tax year insofar as it is derived from a business shall be the gross amount, whether in cash or otherwise, accrued or deemed to have accrued therefrom during that tax year.

(2) The gross income referred to in subsection (1) shall include:

- (a) any excess of the value of any stock, ascertained in accordance with the First Schedule, held and not disposed of at the end of that tax year over the value of any stock, so ascertained, held and not disposed of at the beginning of that tax year;
- (b) any amount accrued under any contract of insurance or indemnity against loss of profits or by way of compensation or damage for loss of profits;
- (c) any amount accrued 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 41; or
  - (iii) any amount which has been allowed as a deduction under section 41(1)(g);
- (d) any amount accrued by way of subsidy for or in relation to the carrying on of a business;
- (e) any amount accrued after the cessation of a business which, if it had accrued prior to cessation, would have been included in the gross income from that business but, where such amount relates to any stock realized after the cessation of business, it shall be deemed to be an amount equal to the excess of the amount accrued for that stock over the value of that stock at the date of cessation, ascertained in accordance with the First Schedule;
- (f) the amount of any balancing charge or recovery charge ascertained in accordance with the Third Schedule;
- (g) the market value of any benefit, whether or not convertible into cash, accruing in the course of business;
- (h) the amount of a debt released or waived by a creditor which was owing to him or her by a person referred to in subsection (1);
- (i) any amount paid into an account in Botswana, or brought into Botswana, in money or money's worth, out of income accrued from a business referred to in section 11(i).

(3) Subject to section 31 and Part VIII, where a person carries on a business both inside and outside of Botswana, the amount which shall be deemed to have accrued to him or her

from a source situate in Botswana in respect of that business shall be such sum as appears to the Commissioner General to be reasonable having regard to-

- (a) the nature of the operations carried on inside and outside of Botswana;
- (b) the turnover of the business inside and outside of Botswana;
- (c) the situation and value of the assets employed in the business;
- (d) the market value of any stock imported into or exported from Botswana; and
- (e) any other matters which appear to him or her to be relevant.

## **29. Business, farming**

(1) Where, in relation to a business of farming carried on by any person, there have been granted in previous years farming deductions allowable under paragraph 1(a) of Part IV of the Third Schedule, any amount accrued to such person during any tax year in respect of such allowances or deductions on disposal of the property in relation to which they were allowed shall be included in the gross income of that person for that tax year derived from the business of farming, and the provisions of Part V of the Third Schedule shall not apply to such disposal.

(2) Where any person carrying on a business of farming makes a donation of any livestock or produce during a tax year to any other person, there shall be included in the gross income of the person making the donation an amount equal to the current market price of such livestock or produce at the date of making the donation.

(3) Where any person ceases to carry on a business of farming during any tax year but does not dispose of the whole of his or her livestock or produce, the value of such livestock or produce held at the end of the tax year shall be included in his or her gross income for that year.

(4) Where a person, in relation to whom the provisions of subsection (3) apply, makes a donation of any livestock or produce after ceasing to carry on such business during any tax year, an amount equal to the current market price of such livestock or produce at the date of making the donation shall for the purposes of section 28(2)(e) be deemed to be the amount accrued for that livestock or produce.

## **30. Farming, optional liability**

(1) Subject to subsection (2), any amount accrued from farming operations carried on in a tax year by a resident individual which involve the rearing for slaughter of cattle, sheep or goats or dryland farming, or both rearing for slaughter of cattle, sheep or goats and dryland farming, shall not form part of such individual's gross income for that tax year, if-

- (a) in respect of livestock farming operations the total number of livestock at all times during the tax year consisted of not more than 300 cattle, or the equivalent in whole or in part of sheep or goats, on the basis that six sheep or goats are equivalent to one head of cattle; and
- (b) in respect of dryland farming, the total extent of the land involved in such farming operations did not exceed 100 hectares at any time during the tax year.



(2) Any resident individual to whom subsection (1) applies in respect of any tax year, may, within six months after the end of such tax year, by notice in writing to the Commissioner General, elect to have such farming operations included together with other sources of gross income for that and all succeeding tax years:

Provided that once such election is made it shall be irrevocable.

(3) For the removal of doubt, and without prejudice to the natural meaning of the words, it is hereby declared that the rearing of cattle for slaughter does not include the rearing of dairy cattle for milk and dairy products, stud farming, poultry farming, pig farming or the rearing of sheep for wool or pelts, and dryland farming does not include irrigated agriculture or horticulture.

### **31. Mines and minerals**

(1) Subject to Part VIII, where a person carries on a business of mining, the gross income of that person for any tax year from mining operations shall-

- (a) include all amounts accrued to him or her during that tax year from all mining and prospecting operations carried on by him or her;
- (b) notwithstanding section 9, be deemed to include all amounts, whether in cash or otherwise, accrued to him or her or to any associated person, during that tax year from processing, marketing, servicing, financial or administrative operations whether-
  - (i) any such operation is carried on in or out of Botswana;
  - (ii) the source of any such amount is situate in or out of Botswana, to the extent to which the Commissioner General is of the opinion that such amounts are related to the mining operations;
- (c) be deemed to include the amount of any royalty-
  - (i) remitted, exempted or repaid during that tax year under section 66(5) or 67 of the Mines and Minerals Act where such royalty has been allowed as a deduction under section 43(1)(c);
  - (ii) repaid, remitted or exempted during that tax year under section 74 or 76 of the Petroleum (Exploration and Production) Act, where such royalty has been allowed as a deduction under section 43(1)(a); and
- (d) be deemed to include the amount of any excess of disposal value of any property, disposed of in that tax year and included in mining capital expenditure incurred in that tax year or any previous tax year.

(2) The gross income of any person, whether or not carrying on a business of mining, for any tax year shall be deemed to include all amounts, whether in cash or otherwise, accrued to him or her during that tax year-

- (a) by way of royalty, premium or other consideration, however described, for the right to extract minerals from land situate in Botswana; or
- (b) in respect of the disposal of any share or interest in the capital or income of a

company holding mineral rights over land situate in Botswana.

(3) The gross income of any person, not being a person carrying on a business of mining, for any tax year shall be deemed to include all amounts, whether in cash or otherwise, accrued to him or her during that tax year in respect of the disposal of any interest in mineral rights or any mining or prospecting information or any mining or prospecting rights over land situate in Botswana.

(4) Where a disposal is made to which subsection (2)(b) or subsection (3) applies and, in the opinion of the Commissioner General the disposal was-

- (a) for a consideration which cannot be valued; or
- (b) made otherwise than by way of a transaction at arm's length,

the disposal shall be deemed to have been made for a consideration which the Commissioner General considers to be equal to the market value of such interest, share or rights at the date such disposal was made.

### **32. Employment income**

(1) The employment income of any person for any tax year shall include-

- (a) any amount accrued by way of wages, salary, leave pay, severance pay, fee, commission, bonus or gratuity;
- (b) any amount accrued in commutation of moneys due under any contract of employment or service, or any amount received in commutation of a pension;
- (c) any travelling, entertainment or other allowance to the extent to which it does not represent moneys wholly, exclusively and necessarily expended for the purposes of the employment;
- (d) the annual value of any quarters or residence provided for an employee;
- (e) subject to subsection (2), the value of any other benefit or advantage granted to an employee in respect of his or her employment, included in which may be the difference in the amount of any preferential rate of interest granted to the employee by the employer in respect of any loan made by the employer to the employee, and the normal commercial rate currently prevailing; and
- (f) the amount of any balancing charge ascertained under the Third Schedule.

(2) The employment income of any person for any tax year shall not include-

- (a) the value of any free medical attention provided or medical attention paid for by the employer;
- (b) the value of any free passage by air, rail, road or sea provided for an employee, his wife or his or her dependent children pursuant to the terms of his or her employment.

(3) For the purposes of this section, the value of any quarters or residence provided for an employee in respect of his or her employment shall be deemed to be-

- (a) in the case where such quarters or residence is a rateable property in accordance with the provisions of the Townships Act and regulations made thereunder, an amount equal to 10 per cent of the rateable value shown in the valuation roll in force in respect of such property at the commencement of the tax year;
- (b) in the case where such quarters or residence becomes a rateable property in the course of the tax year after the completion of the current valuation roll, an amount equal to 10 per cent of the interim valuation made of such property;
- (c) in the case where such quarters or residence is not a rateable property or has not been valued, an amount equal to eight per cent of such amount as may be prescribed as being the value of the property (in this section referred to as "the current capital valuation") at the commencement of the tax year or the date of the completion of the construction of the property if such completion took place during the tax year; or
- (d) where the period for which the quarters or residence is provided in a tax year is less than 12 months, such amount (determined either under paragraph (a), (b) or (c) as the case may be) as bears to that amount the same ratio as that period bears to 12 months, less any amount payable by the employee as rent for the quarters or residence in the tax year:

Provided that-

- (i) in the case of any quarters or residence provided during any tax year or an employee whose employment income, excluding the value of the quarters or residence, for that year does not exceed that portion of the taxable income upon which in terms of section 59 no tax is leviable, the value of the quarters or residence shall be deemed to be nil; and
- (ii) in any other case, the amount deemed to be the value to an employee of any quarters or residence provided for him or her in any tax year shall not be greater than-
  - (aa) where the quarters or residence is provided for the whole of a tax year, the excess of the relevant percentage of his or her employment income, excluding the value of the quarters or residence, for that year over any amount payable by him or her as rent for the quarters or residence during that year; or
  - (bb) where the quarters or residence is provided in the tax year for a period of less than 12 months, the excess of the relevant percentage of his or her employment income, excluding the value of the quarters or residence, for that period over any amount payable by him or her as rent for the quarters or residence during that period.

(4) Where any quarters or residence is provided for an employee in respect of his or her employment and the Commissioner General is of the opinion that any arrangement made in relation to-

- (a) the acquisition or lease of such quarters or residence by the employer;

- (b) the amount of rent payable by the employee for such quarters or residence;
- (c) the employment of the employee or any of his or her relatives; or
- (d) the amount of the employment income of the employee or any of his or her relatives,

was made to avoid or reduce the liability to tax of such employee then the provisions of subsection (3) shall not apply and the value to such employee of the quarters or residence shall be deemed to be such amount as the Commissioner General considers reasonable having regard to all matters which appear to him or her to be relevant.

(5) For the purposes of subsections (3) and (4), "employer" includes any person who, with the agreement, authority, consent or knowledge of the employer of any employee, provides or assists in the provision of any quarters or residence for that employee in respect of his or her employment.

(6) The Minister may prescribe the amounts of-

- (a) the current capital valuation referred to in subsection (3)(c); and
- (b) the relevant percentage of the employment income, excluding the value of the provided quarters or residence, of an employee for the purposes of paragraph (ii) of the proviso to subsection (3).

(7) Where in any tax year an approved service gratuity or severance pay accrues to a citizen, whether during the course of or on termination of his or her employment, the whole of such gratuity or severance pay shall be excluded from the gross income of such person if it is directly invested on his or her behalf in an approved pension fund or approved retirement annuity fund or scheme, and where it is not so invested one third only of such gratuity or severance pay shall be so excluded and, at the option of the Commissioner General, the remaining two thirds thereof may be deemed to have accrued at the time it is payable, or accrued in three successive equal annual instalments, the last of such instalments being deemed to have accrued on the date on which the whole amount became payable:

Provided that the exercise of the option by the Commissioner General would reduce the tax liability of the employee; and

Provided further that the employee is not-

- (i) a relative of the employer where the employer is an individual;
- (ii) a relative of one or more of the partners where the employer is a partnership; or
- (iii) a participator within the meaning in section 132, or a relative or nominee of such a participator of the company where the employer is a close company,

unless the Commissioner General is satisfied that it is a *bona fide* arm's length payment.

(8) "Approved service gratuity" means a payment made to an employee in accordance with the written conditions of employment, approved by the Commissioner General, which conditions shall include provisions that-

- (a) the conditions must apply to all permanent employees of the employer to whom no retirement benefit accrues under any retirement benefit scheme established by their employer whether such scheme has been approved under this Act or not;
- (b) the payment is to be in recognition of a period of continuous employment of not less than five years;
- (c) a payment made in the course of the employment may be made only at the end of a period of continuous employment of five years or a multiple of five years;
- (d) a payment made shall not exceed five weeks pay for each year of service at the rate of pay applicable to the last year of service in respect of which the payment is made;
- (e) a payment made on cessation of employment may be made in respect of any residual period of service of less than five years provided that the employee has served in the employment for a continuous period of not less than five years;
- (f) a period of service may be recognized by a payment of gratuity once only;
- (g) the total gratuity up to the time any payment is made must not exceed two years' pay at the rate current when the payment is due; and
- (h) any changes in the conditions shall only apply on approval by the Commissioner General:

Provided that where the Commissioner General is of the opinion that there is good reason for so doing he or she may approve conditions which do not comply with these requirements in all respects.

(9) Where a citizen employed in the service of government is entitled to a gratuity on the same terms as for an approved service gratuity in accordance with paragraphs (b) to (h) of subsection (8), the provisions of subsection (7) shall apply to the gratuity.

(10) Where a citizen, other than a citizen referred to in subsection (9), is entitled to a gratuity under a contract of employment, one third of such gratuity shall be excluded from his or her gross income, and the remaining two thirds thereof shall be deemed to have accrued evenly over the duration of the contract, or over the last three years thereof, whichever is the lesser, or over the last year of the contract, at the option of the Commissioner General:

Provided that the exercise of the option by the Commissioner General would reduce the tax liability of the employee.

(11) Where a non citizen employee is entitled to a bonus or gratuity under a contract of employment, one third of such bonus or gratuity shall be excluded from his or her gross income, and the remaining two thirds thereof shall be deemed to have accrued evenly over the duration of the contract or over the last three years thereof, whichever is the lesser, or over the last year of the contract, at the option of the Commissioner General:

Provided that the exercise of the option by the Commissioner General would reduce the tax liability of the employee:

Provided further that one third of the bonus or gratuity mentioned herein shall only be excluded from the gross income of a non-citizen employee if in the opinion of the

Commissioner General the payment is reasonable in the circumstances having regard to-

- (a) the period of the employment;
- (b) the nature of the employment;
- (c) the salary payable to the employee; and
- (d) the measure of retirement benefits generally prevailing at that time.

(12) Where an employee elects to receive severance pay from his or her employer in accordance with section 27 of the Employment Act, one third of the amount payable shall be excluded from his or her gross income, and the remaining amount shall be deemed to have accrued evenly over the period of service, or over the last three years thereof, whichever is the lesser, or over the last year of the contract, at the option of the Commissioner General:

Provided that the exercise of the option by the Commissioner General would reduce the tax liability of the employee.

(13) Where an employee elects to withdraw his or her contributions to an approved superannuation fund in accordance with the rules of the fund and the Income Tax (Superannuation Funds) Regulations, the whole of the amount withdrawn shall be deemed to accrue to him or her from employment, and shall be included in his or her gross income for the tax year in which the amount was withdrawn.

(14) Where an employee receives a retrenchment package, one third of the amount received in money or money's worth or equivalent of the threshold, whichever is greater, shall be exempt from tax and at the option of the Commissioner General, the remaining two thirds thereof may be deemed to have accrued at the time it is payable or accrued in three successive equal instalments, the last of such instalments being deemed to have accrued on the date on which the whole amount becomes payable:

Provided that the exercise of the option would reduce the tax liability of the employee.

(15) For the purposes of subsection (14), retrenchment package means remuneration made to an employee on termination of his or her or her contract of employment for the purpose of reducing the size of the work force.

(16) Where an employee receives a lump sum payment after reinstatement following a dismissal or suspension from duty with reduced or without pay, such lump sum payment shall be spread back over the period in which such income was earned or would have been paid.

### **33. Interest and certain royalties and fees**

(1) The gross income of any person for any tax year shall include any commercial royalty, entertainment fee or management or consultancy fee accrued or deemed to have accrued to him or her from a source situated or deemed to be situated in Botswana; and

- (a) in the case of a resident, any interest accrued or deemed to have accrued to him or her from a source situated or deemed to be situated in Botswana, and any dividend or interest accrued from an investment such as is referred to in section 11(i); or
- (b) in the case of a non-resident, any interest accrued or deemed to have accrued to

him or her from a source situated or deemed to be situated in Botswana.

(2) Subsection (1) shall not apply to any interest, commercial royalty or management and consulting fees accrued or deemed to have accrued to a non-resident where the payment is made by an international financial services centre company or a specified collective investment undertaking.

(3) Notwithstanding the provisions of Parts V, VI and VII, where gross income to which subsection (1) relates accrues or is deemed to accrue to a non-resident, and tax is deducted from the payment thereof under section 58 and in accordance with the Seventh Schedule, that tax shall be a final charge in relation to such gross income and such gross income shall not form part of the assessable income of the non-resident.

(4) In this Act-

- (a) the source of any interest shall be deemed to be situated in any country where the person paying the interest is resident or has in that country a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by that permanent establishment; and
- (b) the source of any commercial royalty or management or consultancy fee shall be deemed to be situated in Botswana where the person paying the commercial royalty or management or consultancy fee is resident in Botswana, or has in Botswana a permanent establishment and such commercial royalty or management or consultancy fee is borne by that permanent establishment.

(5) For the purposes of subsection (4), "permanent establishment" means a fixed place of business or a fixed base for the performance of professional services, and the expression "fixed place of business" includes-

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a mine or any other place of extraction of natural resources;
- (f) an installation or structure used for exploration of natural resources; and
- (g) a building site or construction or assembly project.

### **34. Rents, premiums and improvements to land or buildings**

(1) The gross income of any person for any tax year insofar as it is derived from rents or premiums in relation to land, buildings and other property shall include-

- (a) the gross rent payable to him or her by a lessee of any property;
- (b) any premium or other consideration, however described, payable to him or her by a lessee for the right of use or occupation of any property; and
- (c) 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 reason of the cession of any rights under any such agreement, there has accrued in that tax year 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, such amount as in the opinion of the Commissioner General is a fair and reasonable valuation of the improvements.

(2) Any person to whom the right has accrued in any tax year to have improvements effected on his or her land or to his or her buildings under subsection (1)(c) may, within six months after the end of that tax year, by notice in writing to the Commissioner General, elect that the value of such improvements shall not be included in his or her gross income for that tax year, but that instead an amount equal to the market value of the improvements in the tax year in which such property reverts to him or her shall be included in his or her gross income for that tax year.

(3) For the purposes of subsections (1)(c) and (2), any grant of land or buildings for a fixed period, other than a fixed period State grant, shall be deemed to be an agreement relating to the grant by one person to another person of the right of use or occupation of land or buildings.

### **35. Other provisions relating to gross income**

(1) Except as otherwise provided in the Tenth Schedule, the gross income of any person for any tax year shall include any amount whether in cash or otherwise accruing to him or her on the disposal of-

- (a) any movable or immovable property of a business carried on by him or her in Botswana;
- (b) any shares in or debentures of a company; and
- (c) a residential property;
- (d) assets of an international financial services centre company situated in Botswana;
- (e) any immovable property other than property referred to in paragraph (a) or (c):

Provided that the provisions of this subsection shall not apply to any amount which would otherwise be included in the gross income under-

- (i) section 9, accruing on the disposal of any property in the ordinary course of business;
- (ii) section 139, accruing on the disposal of any property by an international financial services centre company in the ordinary course of business; or
- (iii) section 140 in respect of any specified foreign exchange gain.

(2) Except as otherwise provided in the Tenth Schedule, the gross income of any person for any tax year shall, in relation to a company which is being wound up or liquidated,



include any amount, whether in cash or otherwise, distributed, other than an amount representing a return of capital.

### **36. Transactions designed to avoid liability to tax**

(1) Where the Commissioner General is of the opinion that a transaction, operation or scheme, in this section referred to as a "transaction", including a transaction for the alienation of property, is fictitious or artificial, or is entered into or carried out otherwise than as a transaction between independent persons dealing at arm's length and that such transaction has the effect of avoiding, reducing or postponing the liability to tax of any person for any tax year, he or she may disregard such transaction for the purposes of this Act and determine the liability for the tax chargeable under this Act as if the transaction had not been entered into or carried out, or in such manner as in the circumstances he or she deems appropriate to counteract such avoidance, reduction or postponement.

(2) Without prejudice to the generality of the expression "at arm's length", a transaction of any of the following kinds shall for the purposes of subsection (1) be deemed not to be a transaction at arm's length-

- (a) a contract of employment or agency where the employee or agent, or the relative or nominee of such employee or agent, is the employer or principal, or one of the employers or principals, of such employee or agent:

Provided that for the purposes of this paragraph-

- (i) where the employer or principal is a close company in terms of section 132, every participator or relative or nominee of such participator shall be deemed to be an employer or principal of such employee or agent;
  - (ii) where the employer or principal is a firm carrying on business in partnership, every partner with an interest in the capital of the business, or a relative or nominee of such partner, shall be deemed to be an employer or principal of such employee or agent;
- (b) an agreement or contract for the payment of a commercial royalty or for the provision of management or consultancy services to which both parties to the agreement or contract are in effect the same person or substantially the same person, or if each party is a partnership, any partner of one party is a partner of the other, or a relative or nominee of any partner of one party is a partner of the other;
- (c) a contract for the sale of goods or other property where the buyer controls the seller or the seller controls the buyer, or a third person controls both the buyer and the seller; or
- (d) a trust established for the benefit of any person, the instrument of which contains conditions of appointments that enable the settlor or any other person instrumental in the establishment of the trust to retain control of the trust property or to derive benefits from the trust or to prevent the beneficiary from legally enforcing his or her rights under the trust.

(3) Where any agreement in relation to, or any change in, the share-holding in any company has been entered into or effected, whether before or after the commencement of this Act, and the Commissioner General is of the opinion that the purpose, or one of the

purposes, of such agreement or change was to utilize an assessed loss or any balance of an assessed loss incurred by the company, in order to avoid or reduce the liability to tax of the company or any other person for any tax year, a deduction in respect of such assessed loss or balance of assessed loss shall not be allowed.

## **PART V**

### ***Ascertainment of Assessable Income (ss 37-38)***

#### **37. Assessable income, general**

The assessable income of every person from any source for each tax year shall be his or her gross income from that source for that tax year less any amount exempt from tax under this Part.

#### **38. Exemption from tax**

The persons and classes of gross income specified in Parts I and II of the Second Schedule shall be exempt from tax to the extent specified therein.

## **PART VI**

### ***Ascertainment of Chargeable Income (ss 39-50)***

#### **39. Deductions allowable, general**

(1) The chargeable income of every person for each tax year shall be ascertained in accordance with this Part.

(2) In ascertaining the chargeable income of any person for any tax year there shall, upon due claim and subject to such evidence as the Commissioner General may require, be deducted from the assessable income of such person all expenditure wholly, exclusively and necessarily incurred by that person during the tax year in the production of his or her assessable income.

(3) Subject to this Act, where such assessable income accrues in respect of more than one source of gross income, the expenditure incurred by that person and any other deductions to which he or she may be entitled under this Part in relation to each such source shall be deducted only from that part of the assessable income which accrues from that source.

(4) Where the expenditure deductible under this Part for any tax year relates to the assessable income from more than one source of gross income, and it is necessary in order to give effect to any of the provisions of this Part to apportion such expenditure between such sources, the Commissioner General shall make such apportionment as appears to him or her to be reasonable.

(5) Where the expenditure incurred by any person, other than a company, which is deductible under this Part for any tax year has been apportioned to any source of income under subsection (4), and such apportioned amount exceeds the amount of assessable income of that person which accrues from that source, the excess shall not be deducted in ascertaining the chargeable income of that person for that tax year.

(6) For the purposes of this Part, where amounts accrued to a person are deemed to have accrued to some other person, any expenditure incurred by either person in relation to

such amounts shall be deemed to have been incurred by the person to whom such amounts are deemed to have accrued.

#### **40. Income from disposal of property of business**

Notwithstanding the other provisions of this Part, the gross income of any person under section 35(1) shall be chargeable income under this Part.

#### **41. Deductions allowable, specific**

(1) Subject to this Part, and notwithstanding the generality of section 39(2), the deductions allowed from the assessable income of any person for any tax year shall include-

- (a) any allowance to which that person is entitled in respect of capital expenditure under the Third Schedule;
- (b) any excess of the value of any stock, ascertained in accordance with the First Schedule, held and not disposed of by that person at the beginning of the tax year over the value of any stock, so ascertained, held and not disposed of at the end of that tax year;
- (c) any legal expenses incurred by that person during the tax year in respect of any claim, dispute or action at law arising in the course of, or by reason of, the ordinary operations undertaken by him or her in the course of carrying on a business;
- (d) where such person is an employer, any amount contributed by him to any approved benefit fund or approved superannuation fund established for the benefit of his or her employees or, for any tax year to an approved benefit fund, an approved pension fund or an approved retirement annuity fund or scheme established for the benefit of his or her employees:

Provided that-

- (i) in respect of any lump sum contribution, the Commissioner General may determine that such amount shall be deducted in a number of successive equal annual deductions, the first such deduction being allowed in the tax year in which such contribution was made; and
  - (ii) in respect of an annual contribution of a recurrent nature made in any tax year, the deduction allowable shall not exceed 20 per cent of the employment income which accrued from that employer to each employee who was a member of the fund in that tax year;
- (e) where such person is an employer, any amount paid by him or her by way of annuity during the tax year to-
- (i) a former employee who has retired from employment by that employer by reason of age or infirmity; or
  - (ii) any person who was dependent for his or her maintenance upon a former employee of that employer where the former employee is deceased;
- (f) (i) an allowance in respect of any premium or other consideration, however described, incurred by that person for the right of use or occupation of any land

or buildings, or for the right of use of any plant, machinery, patent, design, trade mark, copyright or any other property where such land, buildings or other property is used or occupied in the production of his or her assessable income:

Provided that in respect of a motor car (which expression shall include a station wagon) used by a person other than a person whose principal business is that of hiring or leasing of motor vehicles, an allowance under subparagraph (i) shall not exceed the amount of annual allowance claimable in respect of a motor vehicle under the proviso to paragraph 5(1) of Part II of the Third Schedule;

- (ii) the allowance referred to in subparagraph (i) shall consist of a number of successive annual deductions equal to the amount of the premium or consideration divided by the number of years for which that person is entitled to such use or occupation, or one twenty-fifth of that amount, whichever is the greater, the first such deduction being allowed in the tax year in which the premium or consideration was incurred:

Provided that where that person is entitled to such use or occupation for an indefinite period he or she shall be deemed to be entitled to such use or occupation for such period as, in the opinion of the Commissioner General, represents the probable duration of such use or occupation, or 25 years, whichever is the lesser;

- (g) (i) an allowance in respect of any expenditure incurred by that person pursuant to an obligation to effect improvements on land or to buildings under an agreement whereby the right of use or occupation of such land or buildings is granted by any other person, where such land or buildings are used or occupied in the production of his or her assessable income;

- (ii) the allowance referred to in subparagraph (i) shall consist of a number of successive annual deductions equal to the amount of expenditure incurred divided by the number of years, calculated from the date on which the improvements are completed, for which that person is entitled to such use or occupation, or one twenty-fifth of that amount, whichever is the greater, the first such deduction being allowed in the tax year in which the improvements are completed;

- (iii) for the purposes of this paragraph any grant of land or buildings for a fixed period, including a fixed period State grant, shall be deemed to be an agreement whereby the right of use or occupation of land or buildings is granted by one person to another person:

Provided that where that person is entitled to such use or occupation for an indefinite period he or she shall be deemed to be entitled to such use or occupation for such period as, in the opinion of the Commissioner General, represents the probable duration of such use or occupation, or 25 years, whichever is the lesser;

- (h) the amount of any debts due to that person to the extent which they are bad and provided they have been brought to account by that person in the ascertainment of his or her assessable income of any tax year;

(i) such amount as the Commissioner General deems reasonable in respect of debts due to that person which he or she considers to be doubtful of recovery and provided they have been brought to account in the ascertainment of his or her assessable income of any tax year;

(j) any provision for bad or doubtful debts, in the case of a bank, not exceeding an amount as may be prescribed by the Minister:

Provided that the provision had been made in the accounts of such bank for the relevant tax year or accounting period, as the case may be;

(k) any expenditure incurred during the tax year by way of interest on any loan made to that person, including interest payable on debentures or debenture stock, where the Commissioner General is satisfied that the amount of such loan was used by that person in the production of his or her assessable income:

Provided that, except in the case of a variable rate loan stock company where, in the opinion of the Commissioner General, the rate of interest payable on such loan is excessive by reference to the commercial rate generally prevailing at the time the loan was made, the deduction shall be limited to such amount as the Commissioner General deems reasonable;

(l) expenditure incurred by that person during the tax year-

(i) on scientific research undertaken by him or her for the development of his or her business, not being expenditure of a capital nature; or

(ii) by way of contributions to any association, institution, college or university, where the Commissioner General is satisfied that such contribution will be used in scientific research relating to that person's business;

(m) expenditure incurred by him or her during the tax year on the replacement of any implement, utensil or similar article used by him or her in a business;

(n) any periodic subscription paid during the tax year by that person in respect of his or her membership of a trade union or an association of employees or employers to which items (viii) and (ix) of Part I of the Second Schedule apply;

(o) any licence fees or licence levy paid under the Casino Act; and

(p) expenditure incurred in any tax year by a company solely for the purpose of having its shares listed by the Botswana Stock Exchange, and for maintaining the listing annually;

(q) any amount of value added tax included in any expenditure, other than an expenditure to which the Third Schedule applies, to the extent that an input tax credit is not allowed in terms of the Value Added Tax Act.

(2) Notwithstanding the provisions of section 39(2), in ascertaining the chargeable income of any person for any tax year, any expenditure incurred by him or her-

(a) on hospitality or entertainment during the tax year, shall be allowed as a deduction only to the extent to which, in the opinion of the Commissioner General, such expenditure was wholly, exclusively and necessarily incurred in the production of

the assessable income of that person;

- (b) on management or consultancy fees payable to a non-resident shall be allowed as a deduction only if it is proved to the satisfaction of the Commissioner General that such expenditure was wholly, exclusively and necessarily incurred by him or her in the production of his or her assessable income.

#### **42. Farming: average chargeable income**

(1) Subject to the provisions of this section and except as provided in section 46, any person other than a company carrying on a business of farming may, within six months after the end of any tax year by notice in writing to the Commissioner General, elect that his chargeable income derived from the business of farming for that tax year and each of the two preceding tax years shall be determined by substituting for the chargeable income for each of the three years the annual average of the chargeable income derived from his or her business of farming for those three tax years.

(2) Where an election has been made in respect of any tax year under subsection (1), no further election shall be made with regard to that tax year.

(3) Notwithstanding the provisions of section 87(1), the Commissioner General shall take such action as is necessary to give effect to an election made under subsection (1).

#### **43. Deductions allowable: mines and minerals**

(1) Subject to Part VIII, and notwithstanding the generality of section 39(2), in ascertaining the chargeable income of any person for any tax year from mining operations, the deductions allowed shall include-

- (a) expenditure wholly, exclusively and necessarily incurred-
  - (i) in Botswana, during the tax year by that person or any associated person in the production of his or her assessable income from mining operations;
  - (ii) outside Botswana, during the tax year by that person or any associated person in the production of his or her assessable income from mining operations to the extent specified in the Twelfth Schedule:

Provided that deductions shall be subject to the provisions of the Twelfth Schedule;
  - (iii) during the tax year by that person on prospecting operations carried on by him or her in Botswana;
- (b) for the tax year in which that person commences mining operations, an amount equal to any assessed loss incurred by him or her in respect of prospecting operations carried on prior to the commencement of his or her mining operations to the extent that any such assessed loss has not been deducted under section 46;
- (c) any liability to pay royalties under Part X of the Mines and Minerals Act which arose during that tax year, whether or not payment thereof has been deferred under section 68 of that Act; and
- (d) any liability to pay royalties under Part V of the Petroleum (Exploration and

Production) Act which arose during the tax year, whether or not payment thereof has been deferred under section 76(2) of that Act.

(2) In ascertaining the chargeable income of any person, not being a person carrying on mining operations, for any tax year from prospecting operations, the deductions allowed shall include expenditure wholly, exclusively and necessarily incurred during the tax year by that person on the acquisition of mineral rights, mining or prospecting information or mining or prospecting rights over land situate in Botswana:

Provided that where such rights or information were acquired by that person-

- (i) for a consideration which cannot be valued; or
- (ii) otherwise than by way of a transaction at arm's length,

there shall be deducted the amount which the Commissioner General considers to be equal to the market value of the rights or information at the time they were acquired.

#### **44. Special deduction for approved training expenditure**

In ascertaining the chargeable income of any person carrying on business for any tax year, there shall be deducted from his or her assessable business income for that year an amount equal to two hundred per cent of any expenditure actually incurred by him or her during that tax year on training approved by the Commissioner General in accordance with such rules as the Minister may from time to time prescribe.

#### **45. Deductions not allowable under more than one provision**

No amount shall be deducted under any provision of this Act in respect of expenditure which has been or will be taken into account as a deduction or in calculating a deduction under any other provision of this Act.

#### **46. Deductions for assessed losses**

(1) Any assessed loss determined by the Commissioner General as incurred by any person in relation to any tax year shall be deducted in ascertaining the chargeable income of such person from a business for a subsequent tax year to the extent provided in this section.

(2) The deduction provided for in subsection (1) shall not exceed the amount of the chargeable income of the next subsequent tax year, ascertained in accordance with section 39(3), but before the operation of this section, and hereinafter in this section referred to as "the relevant chargeable income", and where the assessed loss exceeds the relevant chargeable income of such subsequent tax year, or there is no relevant chargeable income of such subsequent tax year, the excess or amount of the assessed loss, as the case may be, shall be carried forward and deducted in like manner in ascertaining the chargeable income of the following tax year, and so on until the assessed loss has been fully allowed:

Provided that, except in the case of an assessed loss incurred in carrying on a business of farming, mining or prospecting, no assessed loss shall be carried forward as a deduction for more than the five years next succeeding the tax year in which that loss arose.

(3) Where an assessed loss has been determined in respect of two or more tax years then, for the purposes of this section, the whole of such loss, determined in respect of the earliest of such tax years, shall, subject to the proviso to subsection (2), be deducted before

any part of such loss determined in respect of a later year.

(4) The deduction provided in subsection (2) shall not apply in relation to any person whose estate has been voluntarily or compulsorily sequestrated (unless such sequestration is set aside), or to the trustee of any such person in respect of any tax year subsequent to the date of sequestration:

Provided that for the purposes of this subsection that part of the tax year in which sequestration occurs which is subsequent to the date of sequestration, shall be deemed to be a tax year.

(5) The assessed loss of any person determined by the Commissioner General for any tax year shall be reduced by the amount or value of any benefit accruing to that person in that tax year as a result of a concession granted by or a compromise made with his or her creditors whereby his or her liabilities to them have been reduced or extinguished, to the extent to which such liabilities arose in the ordinary course of business and have been taken into account in ascertaining his or her chargeable income of any tax year.

(6) Where an assessed loss is determined in relation to any person in the carrying on of a business, the deduction provided in subsection (2) shall not be affected by reason only of the temporary discontinuance of the carrying on of that business by that person.

(7) Where, in respect of the disposal-

- (a) by any person other than a person carrying on a mining or prospecting business, of any interest in mineral rights or mining or prospecting rights or mining or prospecting information over land situated in Botswana; or
- (b) by any person, of any share or interest in the capital or income of a company holding mineral rights over land situated in Botswana, the deductions allowed under this Part in relation to such source of gross income exceed the assessable income from that source, the loss arising therefrom shall be deemed to be an assessed loss to be allowed only as a deduction against future gross income from that source.

#### **47. Special deduction for farming assessed losses**

(1) Subject to subsection (2), and notwithstanding section 46, where an assessed loss is incurred in any tax year in carrying on a business of farming by any person, other than a company, such person may elect, within three years after the end of that tax year by notice in writing to the Commissioner General, that the whole or any part of such assessed loss shall be deducted in ascertaining his or her chargeable income for that tax year:

Provided that the amount of such assessed loss deducted shall not exceed 50 per cent of the aggregate amount of such chargeable income.

(2) Where an election is made in respect of an assessed loss under this section, the Commissioner General may, notwithstanding the provisions of section 87, make any reduced assessment in accordance with the provisions of subsection (1).

(3) For the purposes of this section, chargeable income referred to in subsections (1) and (2) shall not include any chargeable income ascertained in accordance with the provisions of section 40.



#### **48. Set-off of farming assessed losses**

(1) Where in any tax year an assessed loss is incurred by any person in carrying on a business of farming, he or she may set off all or part of such loss against his or her farming chargeable income in the two years preceding the year in which the loss was incurred, commencing with the year immediately preceding such loss.

(2) Where an election is made in respect of an assessed loss under this section, the Commissioner General may, notwithstanding the provisions of section 87, make any reduced assessment in accordance with the provisions of subsection (1).

#### **49. Capital expenditure by an employee**

Notwithstanding anything in the Third Schedule to the contrary, where, in any tax year, an employee incurs capital expenditure on plant or machinery which, in the opinion of the Commissioner General, was necessarily incurred for the purposes of his or her employment, the provisions of Parts II, V and VI of the Third Schedule shall apply to such expenditure and any allowance to which he or she may be entitled under the Third Schedule shall be deducted in ascertaining his or her chargeable income.

#### **50. Deductions not allowable**

Subject to any express provision in this Part authorizing a specified deduction in ascertaining chargeable income, no deduction shall be allowed in respect of-

- (a) domestic or private expenses;
- (b) any amount not wholly, exclusively and necessarily laid out or expended for the purpose of producing assessable income;
- (c) any capital withdrawn or any expenditure or loss of a capital nature;
- (d) any tax imposed under this Act;
- (e) any income tax or tax of a similar nature charged in a country outside Botswana; or
- (f) any contribution to a benefit, superannuation, pension, provident or similar fund which is not an approved benefit fund or an approved superannuation fund.

### **PART VII**

#### ***Ascertainment of Taxable Income (s 51)***

#### **51. Taxable income, general**

(1) Subject to the provisions of this Part, the taxable income of any person for any tax year shall be the aggregate of his or her chargeable income from all sources, other than chargeable income under section 40, and the amount of his or her net aggregate gains ascertained under the Tenth Schedule for the tax year, less any deductions he or she may be entitled to under subsections (2) and (3).

(2) Where a person makes a donation to-

- (a) any educational institution recommended by the Ministry of Education; or
- (b) any sports clubs or sports associations recommended by the Ministry responsible

for sports,

and approved by the Commissioner General, the taxable income ascertained in respect of that person under subsection (1) shall be subject to the deduction of not less than P1,000 of the aggregate value in money's worth of donations made by him or her:

Provided that such deduction does not exceed 20 per cent of the person's aggregate chargeable income for that tax year.

(3) In the case of a resident individual, the taxable income as ascertained in respect of any other person under subsection (1) shall be subject to the deduction of 15 per cent of his or her chargeable income, other than his or her investment income in respect of contributions made by him or her to an approved superannuation fund for that tax year:

Provided that-

- (i) this subsection shall not apply to an employee who, not being a citizen of Botswana, commenced a contract of employment before the 1st July, 1999, and is entitled on the termination of that contract to a bonus or gratuity which is exempt from tax under paragraph (xviii) of Part II of the Second Schedule.
- (ii) a Minister or Member of Parliament who is entitled to pension and gratuity which is exempt from tax under paragraph (xxxiv) of Part II of the Second Schedule;
- (iii) an employee who is entitled on termination of his or her contract to a gratuity which is exempt from tax under paragraph (xxxv) of Part II of the Second Schedule;
- (iv) the contributions made and which are claimed as deductions, were made wholly out of income accrued from a source situated in or deemed to be situated in Botswana.

(4) ....

(5) No person shall be entitled to any deduction under this Part except upon due claim and subject to the production of such evidence as the Commissioner General may require.

## **PART VIII**

### ***Special Provisions relating to Certain Taxpayers (ss 52-58)***

#### **DIVISION I**

#### **ORDERS AND AGREEMENTS (ss 52-54)**

### **52. Development approval orders and additional tax relief**

(1) The Minister may make an Order, to be known as a development approval order, prescribing-

- (a) any business which proposes to carry out a project which would be beneficial to the economy of Botswana or to the economic advancement of the citizens of Botswana as a business which may be granted additional tax relief;
- (b) any business activity which would be beneficial to the economy of Botswana or to the economic advancement of the citizens of Botswana as an activity which, if carried out by any business, will entitle that business to the grant of additional tax relief;

- (c) the type of development project or activity in respect of which additional tax relief may be granted;
- (d) the area in which any such development project or activity is to be carried out; or
- (e) the types and rates of additional tax relief which may be granted in respect of any development project or activity.

(2) Notwithstanding any other provision of this Act, the Minister may, in any development approval order, prescribe that such additional amount as he or she may determine shall be deducted in ascertaining the chargeable income of the business insofar as it is derived from the development project or activity and such deduction may relate to any expenditure incurred by the business in relation to the development project or activity, including any expenditure to which Part VI applies.

(3) A business which wishes to be granted additional tax relief in respect of a development project or in respect of any activity under this section shall apply on such form as may be prescribed or approved by the Minister, and shall submit such application to the Permanent Secretary of the Ministry responsible for finance.

(4) In considering any application made under subsection (3), the Minister shall have regard to-

- (a) the number of Botswana citizens who will be employed in relation to the project or activity and the capacities in which they will be employed;
- (b) any facilities proposed for the training and imparting of skills to Botswana citizens;
- (c) any provisions made for the eventual replacement of non-resident employees by Botswana citizens;
- (d) any provision made for participation by Botswana citizens in the management of the business;
- (e) the degree of investment in the business of capital owned by Botswana citizens;
- (f) the area in which the proposed development project or activity will be carried on; and
- (g) any effect which the proposed project or activity might be expected to have-
  - (i) on stimulating the development of other economic, industrial or commercial activities in Botswana, whether of the business or otherwise; or
  - (ii) in reducing the price in Botswana of consumer goods or services.

(5) Where the Minister is satisfied that the proposed project or activity would be beneficial to the development of the economy of Botswana or to the economic advancement of its citizens, he or she may issue a development approval order in respect of such business or business activity.

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

(7) The Minister may, at any time, by a further order, amend or revoke a development

approval order if he or she is satisfied that-

- (a) a business has failed substantially to carry out the development project or activity specified in the order; or
- (b) there has been a substantial breach of any conditions specified in the order, but no such order of amendment or revocation shall be made until the business has, by notice in writing, been given the opportunity to rectify that failure or breach, or to show cause within such time as may be specified, not being less than 30 days from the date of such notice, why the development approval order should not be amended or revoked.

(8) Any person who is aggrieved by the proposed amendment or revocation of a development approval order may appeal to a magistrate's court presided over by a Magistrate Grade I or above, on the grounds that it has carried out the development or activity specified in the order, or that it is not in breach of any condition of the order; and if such appeal is upheld the proposed amendment or revocation of the development approval order shall not proceed.

(9) A business to which a development approval order relates shall be entitled to the relief specified in the order where the Commissioner General is satisfied that the development project or activity to which the order relates has been carried out.

(10) Where, under subsection (7), the Minister has, by further order, amended or revoked a development approval order relating to a development project or activity carried on by any business, such adjustment shall be made in respect of the liability to the tax of such business for any tax year as is necessary to give effect to that further order.

(11) A development approval order or further order made under this section shall be laid before the National Assembly as soon as possible after it is made, and shall not take effect until one month thereafter, provided that it is not sooner disapproved by resolution of the National Assembly, but upon taking effect, it shall come into operation or be deemed to have come into operation from the date specified in the order or further order.

(12) Where a development approval order made in respect of any business activity has been approved by the National Assembly and has come into operation in accordance with the provisions of subsection (11), then any subsequent development approval order made by the Minister in respect of a business activity which carries on such business activity as that approved by the National Assembly shall not be laid before the National Assembly.

### **53. International agreements for the avoidance of double taxation**

(1) The Minister may, on behalf of the Government, enter into an agreement with the government of any other country with a view to the prevention, mitigation or discontinuance of double taxation, the levying of tax under this Act and the income tax laws of that other country, or to the rendering of reciprocal assistance in the administration of and in the collection of tax under this Act and such income tax laws.

(2) Any agreement entered into under this subsection (1) shall, by order, be laid before the National Assembly as soon as possible after the agreement is entered into but shall not take effect unless or until it is approved by resolution of the National Assembly, when it shall come into operation or be deemed to have come into operation on the date specified in the

agreement.

(3) The Minister may at any time by order, which shall be laid before the National Assembly as soon as may be after it is issued, amend or cancel any agreement entered into under subsection (1), and if such order of amendment or cancellation is approved by resolution of the National Assembly such agreement shall, as the case may be, from the date specified in such order-

- (a) stand amended, and operate in its amended form; or
- (b) cease to operate.

#### **54. Tax agreements**

(1) The Minister may, on behalf of the Government, enter into a tax agreement with any person who is or may become liable to tax under this Act.

(2)(a) Any agreement entered into under this section shall, by order, be laid before the National Assembly as soon as possible after it is entered into, and shall not take effect unless or until it is approved by resolution of the National Assembly, when it shall come into operation, or be deemed to have come into operation on the date specified in the agreement.

(b) Any agreement entered into under this section may be amended or cancelled in like manner as is provided in paragraph (a).

(3) Any agreement entered into under this section may, in respect of the person with whom it is made, vary the provisions of this Act insofar as such provisions either impose liability to tax, or regulate the imposition of such liability, and may provide for-

- (a) the exemption of any dividend, interest, commercial royalty, entertainment fee or management or consultancy fee paid by that person to a non-resident;
- (b) the exemption or limitation of liability in respect of any amount accrued or deemed to have accrued, or any benefits derived from employment carried on by a person or any class of persons who are not citizens of Botswana, in terms of a contract of employment entered into by the person with whom the tax agreement under this section is made; or
- (c) the relief of that person from any duty, responsibility and liability under any provision of this Act.

(4) If any agreement entered into under this section imposes any liability to tax such liability shall be deemed to be a liability imposed under this Act and all the provisions of this Act including any variations thereto which may have been made under subsection (3) shall apply thereto.

### **DIVISION II SPECIAL CLASSES OF COMPANIES AND BUSINESS (s 55)**

#### **55. Taxation of special classes of companies and business**

Notwithstanding anything contained in this Act-

- (a) the taxable income of the Botswana Meat Commission shall be ascertained in accordance with the provisions of Part I of the Fourth Schedule;
- (b) the chargeable income of any company which is a member of the Botswana Development Corporation Limited group of companies shall be ascertained in accordance with the provisions of sections 36 to 49 inclusive and Part II of the Fourth Schedule;
- (c) the chargeable income derived from the carrying on of insurance business by any person shall be ascertained in accordance with the provisions of Part III of the Fourth Schedule; and
- (d) the chargeable income of mining operations shall be ascertained in accordance with the provisions of the Twelfth Schedule.

**DIVISION III**  
**WITHHOLDING AND DEDUCTED TAXES (ss 56-58)**

**56. Deduction of tax by employers**

(1) Every employer shall deduct tax from the remuneration paid to his or her employees in accordance with and in the manner specified in the Fifth Schedule and shall carry out such other obligations as are imposed by that Schedule.

(2) In this section the word "employer" has the meaning given to it in the Fifth Schedule.

**57. Deduction of tax due under certain contracts**

Every person who makes any payment to any person under a contract relating to construction operations shall deduct tax from such payment in accordance with and in the manner specified in the Sixth Schedule and shall carry out such other obligations as are imposed by that Schedule:

Provided that this section shall not apply to-

- (a) contracts with a value of less than P2 000 000 being executed by construction companies which have been classified as falling under categories OC, A and B by the Public Procurement and Asset Disposal Board in terms of section 121 of the Public Procurement and Asset Disposal Act; and
- (b) contracts exclusively for design, engineering, surveying work, and other related professional services.

**58. Deduction of tax from payments of dividends, interest and certain royalties and fees**

(1) Every person who-

- (a) being a resident company, makes any payment of dividend to a resident or a non-resident; or
- (b) makes any payment of interest to a resident or a non-resident;
- (c) makes any payment of commercial royalty, entertainment fee, or management or

consultancy fee to a non-resident,

shall deduct tax from such payment in accordance with and in the manner specified in the Seventh Schedule and shall carry out such other obligations as are imposed by that Schedule.

(2) For the purposes of this section a person, including a partnership, to whom any payment is made to which this section applies shall be presumed, unless the contrary is proved, to be a non-resident if such payment is made to an address outside Botswana.

(3) The Commissioner General may direct that this section shall not apply to any payment of interest to a non-resident, if he or she is satisfied that, by reason of the small amount of the payment or any other special circumstances, it is reasonable to so direct.

(4) This section shall not apply to-

- (a) any payment of interest, commercial royalty or management consultancy fee;
- (b) the payment of a dividend to a non resident, an international financial services centre company or a collective investment undertaking,
- (c) any payment of interest to a resident where the recipient of such interest is a person exempt from taxation; and
- (d) an IFSC company, a banking company or a financial institution receiving such interest in its ordinary course of business,

where the payment is made by an international financial services centre company or a collective investment undertaking which is exempt from tax under paragraph (xvi) of Part I of the Second Schedule.

**PART IX**  
***Ascertainment of Tax Payable (ss 59-64)***

**DIVISION I**  
**RATES OF TAX (ss 59-60)**

**59. Rate of tax, general**

(1) Subject to this Part, tax shall be charged on the taxable income for each tax year at the relevant rates specified in the Eighth Schedule:

Provided that in the case of an individual, the tax payable on the amount of his or her net aggregate gains shall be calculated in accordance with Table IV of the Eighth Schedule.

(2) Where any interest, commercial royalty, entertainment fee, or management or consultancy fee accrues from Botswana to a non-resident, tax shall be charged for each tax year at the rates specified in paragraph 2 of the Seventh Schedule.

(3) Where a resident company pays withholding tax under paragraph 2 of the Seventh Schedule, at the rate specified therein, on dividends distributed to a shareholder, this shall be a final charge to tax, and the dividends shall not form part of the assessable income of the shareholder.

(4) Where an international financial services centre company pays a dividend which is

exempt from withholding tax under section 58(4), such dividend shall not form part of the assessable income of the shareholder.

(5) The tax rate specified in Table III paragraph 7 of the Eighth Schedule or such lesser rate as Parliament may from time to time specify, shall apply for each tax year until the tax year 2019/2020.

#### **60. Set-off against additional company tax**

(1) Subject to subsections (2) and (3), where in any tax year a resident company is liable to deduct tax from dividends in accordance with section 58(1) and the Seventh Schedule, hereinafter referred to as "withholding tax", and has paid such tax to the Commissioner General, and such company is also liable for additional company tax as provided in Table III of the Eighth Schedule, the amount of withholding tax shall be set off, in whole or in part, against the additional company tax due for that tax year:

Provided that the withholding tax shall be set-off in chronological order of withholding, and no amount of such deducted tax shall be set-off more than once.

(2) Where additional company tax due for any tax year exceeds the amount of withholding tax, paid or payable, which can be set-off against such additional company tax under subsection (1), the excess is payable upon assessment for that tax year.

(3) Where additional company tax has been paid for a tax year under subsection (2), the amount paid shall be carried over to the next tax year as a set-off against the withholding tax in that tax year; and the remaining amount of withholding tax shall be set-off against any additional company tax due for that tax year.

(3A) No additional company tax shall be carried forward for set-off against withholding tax for more than five years following the tax year in which it was paid.

(4) Notwithstanding the provisions of subsections (1), (2) and (3) and any other provision of this Act, the liability to tax of any company carrying on business under an agreement with the Government in terms of section 54 of this Act, or any other agreement, or the liability to tax of any other person which is determined by such agreement, shall be in terms of the law in force at the time such agreement was signed, and such law shall be applicable for the duration of the agreement, unless the Government and the parties thereto agree otherwise.

(5) ...

### **DIVISION II CREDIT FOR TAX PAID (ss 61-64)**

#### **61. Credit for tax deducted at source**

Where under Division III of Part VIII any tax has been deducted from any amount accrued to any person, the tax so deducted shall be set off against the tax charged under section 59 for the tax year in which such amounts accrued or are deemed to have accrued:

Provided that any tax deducted from-

- (a) dividends payable to a resident or non-resident; or
- (b) interest, commercial royalty, entertainment fee or management or consultancy fee,



payable to a non-resident which is a final charge under this Act shall not be deducted from any tax charged under section 59.

## **62. Credit for tax paid under section 114**

Where any tax has been paid by a person under subsection (2), (3) or (4) of section 95 or section 114, the tax so paid shall be set off against the tax charged under section 59, for the tax year in respect of which such payment was made.

## **63. Credit for tax paid outside Botswana**

(1) Where an agreement which has effect under section 53 provides that tax payable under the laws of the country with which such agreement has been made shall be allowed as a credit against tax charged in Botswana, credit for such tax shall be calculated in the manner provided in section 64, and shall be set off against the tax charged under this Act.

(2) Subject to subsection (1), where employment income, interest or dividends accrued to a resident from a source outside Botswana are charged to tax under this Act, credit for any tax payable under the laws of the country from which such employment income, interest or dividends accrued shall be calculated in the manner provided in section 64, and shall be set off against the tax charged under this Act.

(3) Subject to subsection (1), where an amount accrued to any person from a source outside Botswana is charged to tax under section 11 or section 31, credit for any tax payable under the laws of the country from which such amount accrued shall be given to such extent as in the opinion of the Commissioner General is reasonable.

(4) Notwithstanding the provisions of subsection (3), where an amount accrued to a resident of Botswana from a source outside Botswana is charged to tax under section 11, credit for any tax payable under the laws of the country from which such amount accrued shall be allowed as a credit against tax charged in Botswana, and credit for such tax shall be calculated in the manner provided under section 64.

(5) Where an international financial services centre company has gross income accrued from a source outside Botswana which is charged to tax under this Act, credit for any tax payable under the laws of the country from which such gross income accrued shall be calculated in accordance with section 64 and shall be set off against the tax charged under this Act and the credit shall apply whether or not an agreement referred to in section 53 is in place with that country.

## **64. Calculation of tax credit**

(1) The credit to be set off in respect of tax payable in another country on the amount referred to in section 63, shall be the lesser of the following-

- (a) the tax payable in the other country; or
- (b) the tax charged under this Act, on such amount.

(2) In this section-

"the tax payable in the other country" means the amount of tax payable, either directly or by deduction, for which the taxpayer was personally liable and ultimately bears in that other

country; and

"the tax charged under this Act", in relation to any tax year, means that proportion of such tax which the amount accrued from a source outside Botswana referred to in section 63 bears to the chargeable income of that tax year.

(3) In the case of an international financial services centre company, the tax charged under this Act in relation to any tax year, means that proportion of such tax which is equal to the proportion that gross income which is accrued from a source outside Botswana bears to the gross income of that tax year as defined in section 139 and the credit available for foreign tax shall be restricted in accordance with the following formula:

$$\text{Tax payable in Botswana} \quad \times \quad \frac{\text{Gross income from foreign source}}{\text{Gross income}}$$

Provided that the foreign tax credit will be restricted to the tax payable in the foreign country if less than the amount determined by the above formula.

## **PART X** **Returns and Notices (ss 65-77)**

### **65. Tax returns, general**

(1) Subject to section 77, every person shall furnish a return in the prescribed form of his or her gross income (hereinafter referred to as a "tax return") in respect of any tax year, either personally or in a representative capacity, within three months after the end of that tax year, and such form shall be signed by him or her or by an agent authorized by him or her on his her behalf.

(2) Subject to section 77, every person shall furnish a return of the gross income and such other particulars as may be required in the return, computation of taxable income and tax payable as well as payments made thereof, in the prescribed form, in respect of any tax year in accordance with the provisions of this Act, either personally or in a representative capacity within four months of the end of that tax year, or in the case of a person whose accounting period is different from that of the tax year, within four months from the end of such accounting period, and such form and other documents shall be signed by the person or by an agent authorized by such person:

Provided that the provisions of this subsection shall become applicable to taxpayers or to categories of taxpayer's from such dates as the Minister, by order, may determine:

Provided further that upon the application of this subsection to a taxpayer, the provisions of subsection (1) shall cease to apply to such taxpayer.

(3) The Commissioner General shall give general notice in the *Gazette* and in such other manner and at such other places as he or she deems fit of the obligations imposed by this section, but failure to give any such notice shall in no way relieve any person liable to furnish a tax return from his or her obligation to comply with subsection (1).

(4) Tax return forms may be obtained from the Commissioner General or from any income tax office or from any other place specified in the notice under subsection (3), and it

shall be the duty of all persons liable to furnish a tax return to obtain such forms.

(5) Notwithstanding subsection (4) the Commissioner General may, if he or she deems it so advisable, cause forms to be delivered by hand or post to any person.

(6) Notwithstanding the provisions of subsection (1), the following persons shall not, unless specifically requested by the Commissioner General, be required to furnish a return-

- (a) any person who has been informed in writing or by any general notification that a return is not required for the tax year;
- (b) any resident individual in respect of whose taxable income for any tax year there is no liability to tax;
- (c) any individual the whole of whose income is remuneration subject to the provisions of the Fifth Schedule;
- (d) a person whose gross income accrued or is deemed to have accrued from sources situated or deemed to be situated in Botswana to a non-resident for any tax year, and consists only of amounts to which section 33(1) relates, and tax is deducted from the payment of all such amounts under section 58 and in accordance with the Seventh Schedule.

#### **66. Provisional tax return**

Where under section 77 the Commissioner General has extended the period in which a tax return for any tax year is to be furnished by any person other than a person to whom section 65(2) applies, he or she may by notice in writing require such person, within such time as may be specified in the notice, not being less than seven days from the date of service of that notice, to furnish a provisional return containing an estimate by such person of his or her taxable income for such tax year.

#### **67. Tax returns: cessation of income during a tax year**

Where it appears to the Commissioner General that-

- (a) a person may leave Botswana during the current tax year or shortly after its expiry, and that the absence from Botswana of such person is unlikely to be temporary only;
- (b) a person has ceased to carry on business in any tax year; or
- (c) in the case of any other person it is expedient to do so, the Commissioner General may at any time serve upon such person a notice in writing requiring him or her to furnish within such time as may be specified in the notice, not being less than seven days from the date of service of such notice, a tax return for any tax year.

#### **68. Tax returns: where no return is furnished**

(1) Where it appears to the Commissioner General that any person is or may be liable to furnish a tax return for any tax year and has not done so, he or she may, by notice in writing, require such person to furnish a tax return within such time as may be specified in the notice, not being less than seven days from the date of service of such notice.

(2) Nothing in this section shall be construed as extending the time limits provided by section 65 for the furnishing of any tax return.

#### **69. Further returns or information, production of books and giving of evidence to Commissioner**

(1) For the purpose of obtaining full information in respect of the chargeable income of any person, the Commissioner General may, by notice in writing, require any person-

- (a) to furnish to the Commissioner General such further tax return, statement of assets and liabilities or other information as may be required by the Commissioner General;
- (b) to produce at such time and place as may be specified in such notice, for examination by the Commissioner General or for retention by him or her for such period as may be reasonable for their examination, any accounts, books of account, statement of assets and liabilities or other documents which the Commissioner General may consider necessary for such purpose and, if any such information is not available in the English or Setswana language, to produce at the taxpayer's expense a translation in English prepared and certified by an approved translator; or
- (c) to attend at such time and place as may be specified in such notice, for the purpose of being examined by the Commissioner General respecting his or her chargeable income or the chargeable income of any other person or any transactions or matters appearing to be relevant thereto.

(2) Where any person is required to attend and give information under subsection (1) in relation to any other person, he or she may be allowed such expenses of attending as may be prescribed.

(3) Notwithstanding the provisions of subsection (1), the Commissioner General may, by notice in writing, require any person to furnish annually, or at such intervals as the Commissioner General may determine, any information that the Commissioner General considers necessary to enable him or her to fulfil his or her duties under this Act.

#### **70. Powers of entry, inspection and removal of documents**

(1) The Commissioner General, or any officer authorized by him or her, may, for the purposes of obtaining information which he or she considers necessary in relation to the liability of any person to tax, enter any premises at any time during the day, without previous notice, and search for any moneys or documents; and in carrying out any search he or she may-

- (a) open, or cause to be removed and opened, any article in which he or she considers any moneys or documents may be contained;
- (b) seize any documents which he or she considers may afford material evidence of the liability of any person to tax;
- (c) retain any such documents for such period as may be reasonable for their examination or for the purposes of a prosecution; or

(d) make copies of any such documents.

(2) Any officer exercising any power under subsection (1) shall, upon demand, produce the authority furnished to him or her by the Commissioner General.

(3) Where any documents are seized and retained under subsection (1), the person to whom such documents belong shall be entitled to examine and make copies of or extracts from them at such time and place and under such supervision as the Commissioner General may determine.

(4) In this section "documents" includes any books, records or accounts.

#### **71. Submission of accounts with tax return and certificate relating to preparation of accounts**

(1) Where any person carries on business in any tax year, his or her tax return for such year shall be accompanied by a copy of the accounts of the business together with a reconciliation of the accounts with the chargeable income disclosed in that return in relation to the business.

(2) Where the accounts referred to in subsection (1) have been prepared by the person carrying on the business, he or she shall furnish together with the accounts a certificate signed by him or her stating-

- (a) the nature of the books of account and documents from which such accounts were prepared; and
- (b) whether such accounts present a true and fair view of the profits from his or her business for the accounting period.

(3) Where the accounts referred to in subsection (1) have been prepared by a person other than the person carrying on the business, such other person shall provide on the face of such accounts a certificate giving his or her name, address and occupation and stating-

- (a) the extent of the examination made of the books of account and of the documents from which such books of account were prepared; and
- (b) whether or not, as far as he or she was able to ascertain from such examination, the entries in those documents and books of account disclosed the true nature of every transaction, receipt, accrual, payment and debit.

(4) The manager or trustee of any charitable, religious or educational institution or a trust or an association referred to in the proviso to paragraph (xxxix) or in paragraph (xl) of Part II of the Second Schedule shall, in accordance with the provisions of section 65, furnish a tax return of the gross income of such institution, trust or association, for the tax year including statements of accounts, certificates and other relevant documents in relation to the return, signed by such manager or trustee, as the case may be, and shall also furnish such evidence as may be required by the Commissioner General as to the application of such income during the tax year.

#### **72. Annual returns by companies of interest and dividends paid**

Every resident company shall, on or before 31st August next following each tax year, furnish to the Commissioner General a return showing the name and address of each

person-

- (a) to whom interest was paid in such tax year in respect of any debentures, debenture stock, loans or advances and the amount of interest paid; or
- (b) to whom dividends were paid or any bonus shares, debentures or securities were awarded in such tax year and the amount or value of such payment or award,

and, for the purposes of this section, where any interest or dividend is not paid but is reinvested, accumulated, capitalized, carried to any reserve or otherwise dealt with on his or her behalf or as he or her directs, it shall be deemed to have been paid.

### **73. Annual return by private companies of shareholders**

Every resident private company shall, on or before 31st August next following each tax year, furnish to the Commissioner General a return showing the name and address of, and number of shares held by, each shareholder on the last day of that tax year.

### **74. Companies: documents of incorporation, amendments thereof and prospectus**

(1) Every company shall furnish to the Commissioner General, within the time specified in this section-

- (a) a copy of the memorandum and articles of association constituting the company, or any other documents setting out the powers, aims and objects of and the rules or regulations governing the company;
- (b) a copy of any amendment made to such documents; and
- (c) a copy of any prospectus proposed to be issued by the company.

(2) In the case of a company incorporated or formed in Botswana, the documents referred to in subsection (1) shall be furnished within 60 days of the date of incorporation or formation, amendment thereof or, in the case of a prospectus, registration thereof.

(3) In the case of a company incorporated or formed outside Botswana but carrying on business in Botswana, the documents referred to in subsection (1) shall be furnished within 60 days of the date of commencing to carry on business in Botswana, amendment of the documents constituting or governing the company or, in the case of a prospectus, registration thereof.

### **75. Returns deemed to be furnished by due authority and in full knowledge of contents**

Every return, statement or form purporting to be furnished under this Act by or on behalf of any person shall for all purposes of this Act be deemed to have been furnished by that person or with his or her authority, as the case may be, unless the contrary is proved; and any person signing such return, statement or form shall be deemed to be cognizant of all matters contained therein.

### **76. Returns: method of furnishing**

Any return required to be furnished shall be delivered by hand or post to the address specified in the prescribed form.

## **77. Extension of time**

Where under this Act any return is required to be furnished by any person within a specified period, such person may, on just cause, request for an extension of the period in which such return is to be furnished, and the Commissioner General may, by notice in writing served on that person, extend the period in which the return is to be furnished.

## **PART XI** **Assessment of Tax (ss 78-87)**

## **78. Commissioner General to make assessment**

(1) Where a person is required to furnish a tax return in terms of sections 65(1) and 67, the Commissioner General shall proceed to assess the person chargeable with tax as expeditiously as possible after the time allowed for such person or as extended under section 77.

(2) Where a person is required to furnish a tax return in terms of section 65(2), the person shall estimate the tax payable for the current tax year for the purpose of making the quarterly payments as provided for under section 95(2) for that tax year.

(2A) Where a person, other than a company, has the option to furnish a tax return in terms of section 65(2), the person may estimate the tax payable for the current tax year for the purpose of making a lump sum payment of tax for that tax year as provided in section 95(5).

(3) Subject to subsection (4), the return furnished in terms of section 65(2) shall be the assessment of taxable income or assessed loss, and the tax payable on the basis of the return shall be the assessed tax of that person for the tax year.

(4) Where a person has delivered a tax return in terms of section 65(1), the Commissioner General may accept such return and make an assessment in accordance therewith.

(5) Where a person has delivered a tax return in terms of section 65(2) the Commissioner General may accept such return and the assessment made by the person of that person's taxable income or assessed loss and the tax payable in terms of subsection(6), if the tax thereon is duly paid in full in terms of the provisions of section 95.

(6) Where-

- (a) a person fails to furnish a tax return; or
- (b) the Commissioner General is not satisfied that the tax return furnished by any person is true and correct;
- (c) a person fails to pay the tax for any tax year under section 95(2) and (3) in full, within the specified period.

the Commissioner General may make an assessment to the best of his or her judgement.

(7) Notwithstanding the provisions of subsection (6), where the Commissioner General is of the opinion that a person in any of the circumstances specified in section 67 is chargeable to tax for any tax year, he or she may at any time assess such person without first requiring

him or her to furnish a tax return under any of the provisions of this Act.

(8) When a person fails to furnish a tax return for any tax year, the Commissioner General shall serve on such person a notice in writing requesting him or her to furnish the tax return within such time as may be specified in the notice.

(9) If after the expiration of the time specified in the notice referred to in subsection (8) the person on whom the notice was served fails to furnish the tax return, the Commissioner General shall, where a penalty has been imposed under section 117(2), make an assessment on him or her in respect of the penalty.

(10) The provisions of section 88 shall not apply to an assessment made on any person under subsection (9), except where the person so assessed objects that he or she is not liable to furnish a tax return.

#### **79. Additional assessments**

Where, in relation to an assessment made on any person for any tax year, the Commissioner General is of the opinion that-

- (a) the tax charged is less than the amount which should have been charged;
- (b) any assessed loss is greater than the amount at which it should have been assessed; or
- (c) a refund has been made in excess of the amount which should have been refunded,

the Commissioner General shall make an additional assessment accordingly.

#### **80. Reduced assessments**

(1) Where, in relation to an assessment made on any person for any tax year, the Commissioner General is satisfied that-

- (a) the tax charged is greater than the amount which should have been charged;
- (b) any assessed loss is less than the amount at which it should have been assessed; or
- (c) a refund has been made which is less than the amount which should have been refunded,

by reason of some error, mistake or omission in the assessment, the Commissioner General may, within four years of the date of the notice of the assessment, make a reduced assessment accordingly.

(2) Where, on the determination of an appeal made under Part XII, the High Court or the Board of Adjudicators orders the reduction of an assessment, the Commissioner General shall reduce the assessment accordingly.

(3) Where, for any tax year, a person who has furnished a tax return for that tax year and has been assessed under section 78 or section 79, notifies the Commissioner General in writing within one year after the date of the notice of assessment that by reason of some error or mistake of fact in such return the assessment was excessive, the Commissioner



General, after taking into account all relevant circumstances, may reduce the assessment to provide such relief as is fair and reasonable:

Provided that no relief shall be given under this subsection if the assessment was properly made in accordance with the practice generally prevailing at the time such return was made.

### **81. Reduced assessments in respect of persons other than companies or partnerships**

Where any person other than a company or partnership fails to lodge an objection to an assessment in the absence of a tax return or otherwise, and the Commissioner General is satisfied that the tax charged is greater than the amount which should have been charged, he or she may within four years after the date of the notice of assessment reduce or cancel the assessment accordingly:

Provided that this section shall not apply in a case where tax chargeable in respect of any person in any tax year exceeds P1,000.

### **82. Determination of assessed loss**

(1) Where, in relation to any tax year, the amount, as determined by the Commissioner General, by which the deductions allowable to any person under Part VI in relation to the carrying on of a business by that person exceed that part of the assessable income of that person which accrues from that business, the Commissioner General shall make a determination of such excess (referred to in this Act as "the assessed loss").

(2) The determination of the assessed loss of any person for any tax year under subsection (1) shall constitute the making of an assessment by the Commissioner General, and such assessment shall be notified in writing to the person assessed, and the provisions of this Act other than sections 85 and 86 shall apply as if such determination were the determination of the amount of the taxable income of such person for such tax year.

(3) For the purposes of this Act "assessed loss" shall not include a loss ascertained under the Tenth Schedule.

### **83. Provisional assessments**

(1) Without prejudice to the powers of the Commissioner General under section 77, where a provisional return has been furnished by any person under section 66, the Commissioner General may proceed to make a provisional assessment in the amount of the taxable income disclosed in such return, and shall determine the tax payable accordingly.

(2) Notwithstanding any extension of time which has been granted under section 77 for the furnishing of a tax return for any tax year, any tax payable under a provisional assessment shall be due and payable within the time specified in section 95, and may be recovered in the manner provided in Part XIII, but upon the furnishing of such tax return the Commissioner General shall make an additional assessment or a reduced assessment or confirm the provisional assessment, as the case may be.

(3) Any provisional assessment made under this section shall be subject to the right of objection and the time within which any such objection may be made in accordance with section 88 shall not commence to run until the date of service of the notice of additional

assessment, reduced assessment or confirmation of the provisional assessment, as the case may be.

#### **84. Time limits for assessments**

(1) Subject to the provisions of this section, an assessment may be made in relation to any person under this Act at any time prior to the expiry of four years after the end of the tax year to which it relates.

(2) An assessment may be made at any time prior to the expiry of four years from the end of the four years specified in subsection (1) if the Commissioner General is satisfied that an amount which was subject to tax and should have been assessed under subsection (1) has not been assessed because the person in relation to whom an assessment should have been made under the said subsection (1)-

- (a) has misrepresented certain material facts or neglected or failed to disclose such facts;
- (b) has failed to furnish a tax return; or
- (c) has furnished an incorrect tax return.

(3) Where a person in relation to whom an assessment should have been made under subsection (1) is deceased, such assessment may only be made within three years after the end of such tax year.

(4) Where any fraud or wilful default has been committed in connection with tax for any tax year by or on behalf of any person, and-

- (a) such person is an individual who is alive at the time the assessment is made, or a person other than an individual, an assessment in relation to such tax year may be made at any time; or
- (b) such person is deceased, subject to subsection (5), an assessment may only be made in respect of the tax year in which he or she died and the five immediately preceding tax years.

(5) In the case of an assessment made upon the executor of an estate of a deceased person in accordance with section 16, the assessment shall be made within three years of the end of the tax year in which such person died.

#### **85. Notice of assessment**

(1) Subject to subsection (2), a notice of assessment in respect of every person chargeable with tax shall be made and issued to such person in the prescribed form.

(2) The Commissioner General shall not be required to issue a notice of assessment other than a notice of reduced assessment to any person where-

- (a) no liability to tax arises;
- (b) the balance of tax due to be paid by him or her does not exceed P5; or
- (c) the balance of refund of tax due to him or her does not exceed P1,

unless that person makes a request to the Commissioner General for the issue of a notice of assessment.

(3) In this section "notice of assessment" includes a notice of a reduced assessment, an additional assessment and a provisional assessment.

#### **86. Record of assessments**

The Commissioner General shall maintain in such manner as he or she thinks fit a record of all assessments made in respect of each tax year.

#### **87. Finality of assessment**

(1) Subject to section 80(1) and (3) and section 81, where in relation to an assessment-

- (a) no valid notice of objection has been given under section 88;
- (b) subsequent to the determination of an objection, no valid notice of appeal has been given under section 91; or
- (c) an appeal has been determined and there is no right of further appeal,

such assessment shall be final and not subject to appeal.

(2) Nothing in this section shall prevent the Commissioner General from making any additional assessment for any tax year which does not involve reopening any matter which has been determined on appeal for such tax year.

(3) Notwithstanding subsections (1) and (2), where any fraud or wilful default has been committed by or on behalf of any person in relation to his or her liability to tax for any tax year, the Commissioner General may make an additional assessment for such tax year even though it may involve reopening a matter which has been determined on appeal.

### **PART XII**

#### ***Objections and Appeals (ss 88-94)***

#### **88. Objection to assessment**

(1) Any person aggrieved by an assessment made on him or her may, by notice in writing lodged with the Commissioner General within 60 days after the date of the notice of assessment, object to the assessment accordingly:

Provided that no objection shall be considered unless-

- (a) a tax return for the tax year to which the assessment relates has been furnished; and
- (b) tax due on the taxable income declared has been paid.

(2) Where the assessment is-

- (a) an additional assessment; or
- (b) a reduced assessment which, in part, imposes a fresh liability,

the person assessed shall have no further right of objection than he or she would have had if

that assessment had not been made, except to the extent to which the assessment has imposed a fresh liability on him or her.

- (3) An objection shall specify particulars of the grounds on which it is made.
- (4) In this section "aggrieved by an assessment" means aggrieved by-
  - (a) the inclusion in an assessment of an amount as part of the taxable income;
  - (b) the disallowance in an assessment of an amount claimed as a deduction in ascertaining the taxable income;
  - (c) the determination by the Commissioner General of the amount of an assessed loss;
  - (d) the amount set off under section 61 or section 63;
  - (e) the imposition of any amount of penalty for failure to lodge a tax return within the prescribed time or any extended time allowed under section 77;
  - (f) the imposition of any amount of penalty for failure to lodge a correct tax return;
  - (g) any decision relating to the status of a company under sections 130, 131 and 132;
  - (h) a determination by the Commissioner General of the amount of capital losses on disposal of assets.

(5) Notwithstanding the provisions of subsection (1), the Commissioner General may consider an objection to an assessment-

- (a) lodged with him or her any time after the 60 days' period prescribed by subsection (1), if the assessment was made following the furnishing to him or her of a tax return for the tax year to which the assessment relates;
- (b) lodged with him or her, in the absence of such tax return, if such tax return is subsequently furnished to him or her within such period as he or she shall specify;  
or
- (c) lodged with him or she within such further period as he or she shall specify if a tax return was furnished to him or her:

Provided that the Commissioner General shall not consider an objection to an assessment in terms of this subsection unless he or she is satisfied that reasonable cause has been shown for the delay in lodging the objection or furnishing the tax return, as the case may be, and tax due on the tax return furnished has been paid.

## **89. Decision by Commissioner General**

(1) The Commissioner General shall consider any valid objection made under section 88 and may either disallow it or allow it either wholly or in part, and shall by notice in writing inform the person concerned of his or her decision.

(2) If a decision of the Commissioner General requires the reduction of an assessment made on any person, the Commissioner General shall issue a notice of reduced assessment to that person, together with the notice of his or her decision, or as soon as is practicable

thereafter.

## **90. Board of Adjudicators**

For the purposes of this Part there shall be a Board of Adjudicators constituted and regulated in accordance with the provisions of the Ninth Schedule.

## **91. Appeal from decision of Commissioner General**

(1) Any person who is aggrieved by a decision of the Commissioner General on an objection (hereinafter referred to as "the appellant") may, by notice of appeal, appeal therefrom-

- (a) to the High Court; or
- (b) at his or her option, to the Board of Adjudicators.

(2) Notice of appeal shall-

- (a) be made in writing;
- (b) state whether the appeal is to the High Court or the Board of Adjudicators;
- (c) be lodged with the Commissioner General within 60 days after the date of service of the notice of his or her decision on the objection, or within such further time as the Commissioner General may for good cause allow;
- (d) be restricted to the grounds stated in the objection given to the Commissioner General except for such modifications as may be necessary arising from the partial allowance by the Commissioner General of the objection; and
- (e) contain an address for service of notice of the date and place of hearing.

(3) In this section "aggrieved by a decision of the Commissioner General" means aggrieved by-

- (a) the inclusion in an assessment of an amount as part of the taxable income;
- (b) the disallowance in an assessment of an amount claimed as a deduction in ascertaining the taxable income;
- (c) the determination by the Commissioner General of the amount of an assessed loss;
- (d) the amount set off under section 61 or 63;
- (e) the imposition of an amount of penalty for failure to lodge a tax return within the prescribed time or any extended time allowed under section 77;
- (f) the imposition of any amount of penalty for failure to lodge a correct tax return; or
- (g) any decision relating to the status of a company under sections 130, 131 and 132.

(4) Upon receipt of a valid notice of appeal the Commissioner General shall forward to the High Court or the Chairman of the Board of Adjudicators as early as is practicable such number of copies as may be necessary of-

- (a) the tax return;
- (b) the notice of assessment under appeal;
- (c) the notice of objection;
- (d) the decision of the Commissioner General on the objection;
- (e) the notice of appeal; and
- (f) a statement setting out the matter in dispute between the appellant and the Commissioner General.

(5) Upon transmission of the documents referred to in subsection (4) the Commissioner General shall notify the appellant that such action has been taken, and at the same time shall forward to the appellant a copy of such documents.

## **92. Hearing by the Board of Adjudicators or High Court**

(1) Upon every hearing of an appeal by the Board of Adjudicators or the High Court, the Board or the Court, as the case may be, may confirm, increase, annul or order the reduction of any assessment, or may make such other order as it deems fit.

(2) On any appeal to which this section relates both the appellant and the Commissioner General shall bear their own costs, except where the Board of Adjudicators or the High Court is of the opinion that-

- (a) the decision of the Commissioner General on the objection was arbitrary and unreasonable; or
- (b) the grounds of appeal by the appellant were frivolous,

when the Board of Adjudicators or the Court may make such order as to costs as it deems fit.

(3) On any appeal the burden of proof shall lie upon the appellant.

(4) At least 30 days before the date fixed for the hearing of an appeal by the Board of Adjudicators the Chairman shall, by notice in writing, advise the appellant and the Commissioner General of the date and place on and at which the appeal has been set down for hearing.

(5) At every hearing by the Board of Adjudicators the appellant and the Commissioner General shall be entitled to appear in person or by representation.

(6) The sittings of the Board of Adjudicators for the hearing of any appeal shall be in camera.

## **93. Right of further appeal**

(1) The Commissioner General or the appellant may appeal to the High Court from any decision of the Board of Adjudicators which involves a question of law, including a question of mixed fact and law, or where the amount of tax in dispute exceeds the sum of P10,000, but in any other case the decision of the Board of Adjudicators on an appeal shall be final

and not subject to further appeal.

(2) The Commissioner General or the appellant may appeal to the Court of Appeal as of right from any decision of the High Court which involves a question of law, including a question of mixed fact and law, but in any other case the decision of the High Court on an appeal shall be final and not subject to further appeal.

(3) On any further appeal to which this section relates the High Court or Court of Appeal, as the case may be-

- (a) may confirm, increase, annul or order the reduction of any assessment;
- (b) may make such other order as it deems fit; and
- (c) may make such order as to costs as it deems fit.

#### **94. Payment of tax not suspended by notice of objection or appeal**

The obligation to pay any tax chargeable under an assessment shall not be suspended by reason of any notice of objection or appeal having been given against such assessment, and the tax charged may be recovered as if no such notice of objection or appeal had been given.

### **PART XIII**

#### ***Payment, Recovery and Refund of Tax (ss 95-115)***

#### **95. When tax is payable**

(1) Subject to this Part, any tax charged shall be due and payable by the person chargeable within 30 days of the date of service on him or her of the notice of assessment.

(2) Every person to whom section 65(2) applies shall pay the tax as estimated under section 78(2) in any tax year, in four equal instalments, the first of which shall commence on or before the end of the three month period as from the commencement of that tax year or where the commencement of the accounting year in respect of that tax year is earlier than the commencement of that tax year, three months from the commencement of that accounting year, and thereafter on or before the end of three months from the end of the period of the first quarterly payment in either case until the fourth quarterly payment:

Provided that during a transition period of two years as from 1st July, 2001, the Commissioner General may vary the dates for payment of the quarterly instalments.

(2A) Persons to whom section 65(2) applies shall also have an option to pay the tax in monthly instalments on condition that the proportion of the tax paid would not be less than one third of the tax payable in the case of payment by quarterly instalments.

(3) The balance of the tax payable for any tax year in accordance with the return furnished under section 65(2), including the interest payable under section 97(3), shall be paid on or before the due date for furnishing of a tax return under section 65(2) of that tax year or such extended period as allowed by the Commissioner General in terms of section 77.

(4) Notwithstanding subsection (3), where a person, other than a company designated under section 113, has tax payable as estimated under section 78(2) in any tax year, that is

less than P50,000, the person may either pay such tax in quarterly instalments or pay the lump sum in one instalment the due date for furnishing of a tax return under section 65(2) for that tax year.

(5) Notwithstanding subsections (2), (3) and (4), where a person, not being a company, has tax payable as estimated under section 78 (2A) in any tax year, that person may pay such tax in one lump sum by the due date of the furnishing of a tax return under section 65 (2) for that tax year.

#### **96. Extensions of time or payment by instalments**

(1) On application by the person chargeable, the Commissioner General may in any case grant such extension of time for payment, or permit payment to be made by such instalments and within such time as he or she considers the circumstances warrant.

(2) Where, under subsection (1), the tax is permitted to be paid by instalments and there is default in payment of any instalment, the whole of the balance of tax outstanding shall become payable forthwith.

#### **97. Interest on unpaid tax**

(1) Any tax not paid within the time specified in section 95 shall bear interest at the rate of one and a half per cent for each month or part of a month during which it remains unpaid.

(2) The Commissioner General may remit the interest charged, if the interest so charged is due to a mistake committed by the Department of Taxes.

(3) Where for any tax year-

- (a) the amount of each quarterly payment made by any person in accordance with section 95(2) is less than one-fifth of the tax due on the return for that tax year, or where a tax return has not been furnished for the year, less than one fifth of the tax due under an assessment made under section 78(6); or
- (b) the final payment made by any person is less than the balance of tax due in accordance with section 95(3),

that person shall be liable to bear interest calculated at the rate of one and a half per cent for each month or part of the month during which the tax payable remains unpaid.

#### **98. When tax deducted by employer is payable**

(1) Any tax deducted or deductible by an employer under section 56 from the remuneration paid to an employee shall be due and payable by the employer-

- (a) within 15 days after the end of the month during which that tax was deducted or deductible; or
- (b) in the case of a person who ceases to be an employer, within 15 days after the date on which he or she so ceases.

(2) On application by an employer, the Commissioner General may grant such extension of time for payment as he or she considers the circumstances warrant, and in such case the tax deducted or deductible shall be payable accordingly.



(3) In this section the words "employer", "remuneration" and "employee" have the meaning assigned to them in the Fifth Schedule.

#### **99. When tax deducted under section 57 is payable**

Any tax deducted or deductible by any person under section 57 in respect of a contract relating to construction operations, shall be due and payable by that person within 15 days after the end of the month during which that tax was deducted or deductible.

#### **100. When tax deducted under section 58 is payable**

Any tax deducted or deductible by any person under section 58 shall be due and payable by that person within 15 days after the end of the month during which such tax was deducted or deductible.

#### **101. Interest on unpaid tax deductions**

(1) Any tax deducted or deductible by any person and not paid within the time specified in section 98, 99 or 100 shall bear interest at the rate of two per cent for each month or part of a month during which it remains unpaid.

(2) Any interest imposed on any person by subsection (1) shall be a debt due by that person and shall not be recoverable by him or her from the person in respect of whom the tax was deducted or should have been deducted.

#### **102. Recovery of tax, general**

(1) Tax shall, when it becomes due and payable, be a debt due to the Government and payable to the Commissioner General in the manner and at the place prescribed.

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

(3) In any proceedings for the recovery of tax it shall not be competent for the defendant to enter a defence that-

- (a) the taxable income is incorrect;
- (b) the tax charged is excessive; or
- (c) the assessment is the subject of objection or appeal.

#### **103. Procedure for recovery of tax by court action**

(1) If any person fails to pay any tax when it becomes due and payable, the Commissioner General may file with the clerk or registrar of any court of competent jurisdiction a statement, certified by him or her as correct, of the amount of tax due and payable and unpaid.

(2) A statement filed under subsection (1) shall have the effect of a civil judgment given in that court in favour of the Commissioner General for a liquid debt of the amount specified in the statement, and the court shall, subject to subsection (3), issue a writ of execution in respect thereof against the person who has so failed to pay.

(3) No writ of execution shall be issued against any person pursuant to subsection (2)

until 14 days after service on him or her by the court of a notice informing him or her that a writ of execution will be issued by the court in respect of tax due by him or her and unpaid, unless before the expiration of that period of 14 days he or she produces proof of payment thereof satisfactory to the court.

- (4) After giving the Commissioner General the opportunity of being heard, in the event of-
- (a) proof of payment being produced with which the court is satisfied, the writ of execution shall not be issued;
  - (b) no proof of payment being produced with which the court is satisfied, the writ of execution shall be issued and execution thereon shall proceed forthwith; or
  - (c) proof of payment being produced which appears to the court to be inconclusive, the court shall proceed to set down a case for hearing and both parties shall be entitled to be heard personally or by representation; and upon completion of the hearing the court shall direct whether or not the writ of execution shall be issued.

(5) Notwithstanding the provision of any other law, the Registrar of the High Court may, in order to facilitate the operation of the procedure prescribed by the preceding subsections, appoint the Commissioner General, or any other officer appointed in terms of section 3(1), to be a Deputy Sheriff in terms of section 18(2) of the High Court Act and a court bailiff in terms of the Magistrates' Courts Act.

(6) The issue of a writ of execution under subsection (2) shall be without prejudice to the right of the Commissioner General to apply for any other form of execution of the judgment debt.

#### **104. Recovery of moneys from person leaving Botswana**

(1) Where the Commissioner General has reason to believe that any person may leave Botswana owing moneys or might, upon assessment, owe moneys to the Commissioner General under this Act, the Commissioner General may, by notice in writing served on that person, require that he or she pay the amount owing or give security to the satisfaction of the Commissioner General for the payment thereof, or to cover the amount which might be owing, within the time specified in the notice.

- (2) The Commissioner General may issue to the Chief Immigration Officer-
- (a) a copy of the notice served under subsection (1); and
  - (b) a request for the person charged to be prevented from leaving Botswana until he or she pays the amount owing or gives security as provided in subsection (1).

(3) Where a notice has been served under subsection (1) and a request has been made under subsection (2), upon payment of the amount owing or the giving of satisfactory security as required under subsection (1), the Commissioner General shall, as soon as possible, issue to the Chief Immigration Officer a withdrawal of his or her request made under subsection (2), and shall furnish the person charged with a copy thereof, which shall be sufficient evidence for any immigration officer to permit the departure of that person.

(4) If any person fails to pay any moneys owing or to give satisfactory security as required under subsection (1), the Chief Immigration Officer shall take such steps as may be necessary to prevent such person from leaving Botswana pending compliance with the

notice served on him or her.

(5) Where the Commissioner General has reason to believe that any person owing money or who, upon assessment, might owe monies to the Commissioner General, or might transfer assets to avoid payment of such monies to the Commissioner General, the Commissioner General may, by notice in writing served on the person, require that person to pay the amounts owing or furnish security for the amount that might be owed within the time specified in the notice, failing which the Commissioner General may provisionally attach the assets of the person.

(6) Any transfer of assets made after a notice served on the person concerned in terms of subsection (5) shall be void.

(7) A copy of the notice of provisional attachment served on any person in terms of subsection (5) shall be given to the authorities responsible for effecting the transfer or release of the assets in question.

(8) A notice served in terms of subsection(5) shall be valid for a period of six months from the date of issue and shall be renewable every six months for a period not exceeding two years.

(9) If a person against whom a notice is issued in terms of this section furnishes adequate security to the satisfaction of the Commissioner General, the Commissioner General shall withdraw the notice of provisional attachment.

#### **105. When tax recoverable from assets of other spouse**

(1) No tax due and payable by a married person may be recovered from the assets of the other spouse unless the Commissioner General is satisfied that there has been a transfer of assets from the spouse liable to tax to the other and that such transfer was intended to avoid the recovery of the tax due.

(2) So much of any tax due and payable by a settlor as is attributable to amounts accrued in a settlement but charged to tax in the name of the settlor under section 13, 14(1) or 15 may be recovered from assets of the settlement.

(3) For the purposes of this section, tax attributable to amounts deemed to have accrued to any person under section 13, 14(1) or 15 means the amount by which the tax charged under section 59 has been increased by the inclusion of such amounts in the gross income of the person charged to tax.

(4) In subsection (2) the words "settlor" and "settlement" shall have the meaning assigned to them respectively in sections 13, 14(1) and 15.

#### **106. Recovery of tax from representative taxpayers**

(1) Where any person dies, then in respect of any tax payable under an assessment-

- (a) made upon him or her prior to and remaining unpaid at his or her death;
- (b) made upon his or her executor under section 16 in respect of amounts accrued prior to his or her death; or
- (c) made upon his or her executor under section 17 in respect of amounts accrued

after death to the estate of the deceased person,

the amount of tax unpaid by that person in his or her lifetime or payable under an assessment made on his or her executor shall be a debt due and payable out of the estate of the deceased person.

(2) Where a company is being wound up or has been placed under judicial management, then in respect of any tax payable under an assessment-

- (a) made upon the company, prior to and remaining unpaid at the commencement of the liquidation or judicial management;
- (b) made upon the liquidator or judicial manager in respect of amounts accrued prior to commencement of the liquidation or judicial management; or
- (c) made upon the liquidator or judicial manager in respect of amounts accrued during the winding-up or judicial management of the company,

the amount of tax unpaid by the company or payable by the liquidator or judicial manager shall be a debt due and payable out of the assets of the company.

(3) Where any person is chargeable to tax under section 14(2) as trustee of a trust the income of which is accumulated, then any tax payable by the trustee shall be due and payable out of the assets of the trust.

(4) Where any person is chargeable to tax under section 18 as trustee for a legally disabled person, any tax payable by the trustee shall be due and payable out of the assets of the legally disabled person.

(5) Where any person is chargeable to tax under section 19 as trustee for the beneficiaries of a trust, any tax payable by the trustee shall be due and payable out of the assets of the trust.

(6) Where any person is chargeable to tax under section 23 as agent for a non-resident, any tax payable shall be due and payable out of the assets in Botswana of the non-resident.

(7) Where any person is chargeable to tax as public officer of a company, any tax payable shall be due and payable by the company.

#### **107. Right of representative taxpayer to indemnity**

Every person who as a representative taxpayer pays any tax shall be entitled to recover the amount paid from the person on whose behalf it was paid, or to retain out of any moneys which may be in his or her possession, or may come to him or her, in his or her representative capacity, an amount equal to the amount paid.

#### **108. Personal liability of representative taxpayer**

(1) Every representative taxpayer shall be personally liable for any tax payable by him or her in his or her representative capacity if, while it remains unpaid-

- (a) he or she alienates, charges or disposes of any amounts in respect of which the tax is charged; or
- (b) he or she disposes of or parts with any assets or money which is in his or her

possession or comes to him or her after the date on which the tax is payable, if the tax could legally have been paid out of such amounts, assets or money.

(2) If the representative taxpayer referred to in subsection (1) was representing a company, every person who was a director of the company at the time of the commission of the acts referred to in that subsection or thereafter shall also be liable, jointly and severally, for any tax payable by the company unless he or she proves, to the satisfaction of the Commissioner General, that the failure of the representative to pay the tax was not due to any negligence on his or her part.

### **109. Recovery of tax from person holding money for another person**

(1) For the purpose of recovery of any tax due from any person the Commissioner General may, by notice in writing, declare any other person-

- (a) from whom any money is due or may become due to the first-mentioned person;
- (b) who holds or may subsequently hold money for or on account of the first-mentioned person;
- (c) who holds money on account of some other person for payment to the first-mentioned person; or
- (d) who has authority from some other person to pay money to the first-mentioned person,

to be the agent of that person and to pay to the Commissioner General within 15 days of the date of service of that notice, or if on such date no money is due from him or her to that person, within 15 days of the date on which money becomes due to that person, the amount specified in the notice, or if the money due is less than the amount specified, the whole amount of the money due.

(2) Where any person declared to be an agent under subsection (1) fails to make any payment within the time specified in a notice under that subsection, the provisions of this Act shall apply as if such amount were tax due and payable by that person on the date by which he or she was required to make such payment to the Commissioner General.

### **110. Priority of tax debt upon insolvency or liquidation**

From the date on which any tax becomes due and payable the Commissioner General shall have such preferential claim for such debt upon the assets of-

- (a) an insolvent person as is specified in section 86 of the Insolvency Act; or
- (b) a company in liquidation or under judicial management as is specified in section 261 or 275(4) of the Companies Act.

### **111. Refund of tax overpaid**

(1) Where the Commissioner General is satisfied that any person has paid tax for any tax year, by deduction or otherwise, in excess of the amount finally determined to be payable under this Act for such tax year, that person shall, subject to section 80, be entitled to have the amount of the excess refunded, and such refunds shall be charged on and paid out of

the Consolidated Fund, and the amount of the excess will also include any amount of interest paid in excess.

(2) The burden of proof that any amount of tax has been paid, by deduction or otherwise, shall rest with the person referred to in subsection (1), but any tax certificate issued to such person under the Fifth, Sixth or Seventh Schedule shall be *prima facie* evidence that the amount of tax shown therein has been paid by such person.

(3) Subject to the provisions of subsection (4), where, for any tax year commencing on or after 1st July 2001, any person is entitled to a refund of excess tax in terms of subsection (1) of this section, and where the amount has not already been refunded by the Commissioner General-

- (a) if such refund arises in consequence of the reduction of the amount of an assessment on a determination given on an objection filed under section 88 or an appeal lodged under section 91, and where such amount has not been refunded by the Commissioner General to that person before the end of six months from the date of such determination; or
- (b) in any other case, within a period of six months from the date on which an application in writing was received by the Commissioner General for such refund, or from the date on which the tax return, with full details as required under this Act, was filed with the Commissioner General in relation to such refund,

that person shall be entitled to receive interest on the amount of the refund due, calculated at the rate of one per cent for each month or part thereof, for which such amount remains unpaid after the period of six months referred to in paragraphs (a) and (b).

(4) Subsection (3) shall not apply to any amount of tax paid in excess as a result of deduction of assessed loss under sections 47 and 48 in respect of farming.

## **112. Remission of tax**

(1) The Minister may remit wholly or in part any tax payable by any person where he or she is satisfied that it is just and equitable to do so, or where he or she is satisfied that such tax is irrecoverable.

(2) Any decision made by the Minister under this section shall be final and not subject to appeal.

(3) After first consulting the accounting officer for the purposes of the Finance and Audit Act the Commissioner General may, if he or she is satisfied that the same is irrecoverable, remit any amount of tax, not exceeding P25 000, unpaid by any person in respect of any tax year.

**113. - 115. ...**

**PART XIV**  
**Offences (ss 116-129)**  
  
**DIVISION I**  
**CIVIL PENALTIES (ss 116-119)**

### **116. Penalties: general**

The penalties imposed by this Division of this Part may be imposed by the Commissioner General at his or her discretion, and shall be in addition to any right to institute criminal proceedings against any person for an offence under this Act, and any fine payable on conviction for an offence shall be in addition to the penalties provided herein.

### **117. Penalties: failure to furnish tax return**

(1) Where any person who is required to furnish a tax return including a withholding return for any tax year fails to do so within the prescribed time or any extended time allowed under section 77, he or she shall be liable to-

- (a) interest at the rate of two per cent per month on the amount of tax charged for such tax year, calculated for the period-
  - (i) commencing 30 days after the date on which the return should have been lodged; and
  - (ii) ending on the date on which the tax becomes due and payable under the assessment made for that tax year under section 78, or 30 days after the day when the return was furnished; and
- (b) a penalty not exceeding the amount of tax chargeable for that tax year.

(2) Without prejudice to the provisions of subsection (1), if a person on whom a notice has been served in accordance with section 78(8), requiring him or her to furnish a tax return, fails to do so within the time specified in the notice, the Commissioner General may, if he or she considers it appropriate in the circumstances to do so, impose on such person a penalty not exceeding P2,000 at any time after the date on which the tax return is due to be furnished, and such penalty shall be in addition to any amount of interest and penalty to which he or she is liable in accordance with subsection (1):

Provided that, upon submission of the tax return, a penalty imposed under this subsection may be mitigated, in whole or in part, without the application of the provisions of section 129.

### **118. Penalties: failure to furnish correct tax return or estimate of taxable income**

(1) Where any person has failed to lodge a correct tax return for any tax year by reason of-

- (a) his or her failure to disclose any gross income accrued to him or her from any source;
- (b) the deduction or set off by him or her of any amount which is not allowable as a deduction;
- (c) the claim by him or her of an expenditure or loss of an amount which was not expended or lost; or
- (d) his or her failure to disclose any fact, the disclosure of which would result in an increase in his or her taxable income,

he or she shall be liable to a penalty in accordance with subsection (2).

(2) Where the incorrectness of the tax return, statement or information was attributable to-

- (a) neglect or carelessness, he or she shall be liable to a penalty not exceeding the amount of tax which would have been lost if he or she had been assessed on the basis of the incorrect return, statement or information furnished by him or her; or
- (b) fraud or wilful default, he or she shall be liable to a penalty not exceeding twice the amount of tax which would have been lost if he or she had been assessed on the basis of the incorrect return, statement or information furnished by him or her.

(3) If, in any tax year in which the determination of the taxable income of any person does not result in an assessed loss, that person is entitled to the deduction of a balance of assessed loss from the previous tax year, and the balance to which he or she is entitled is less than it would have been if it had been calculated on the basis of the tax return, statement or information furnished by him or her for the tax year in which it was incurred, he or she shall be deemed for the purposes of this section to have omitted from his or her tax return of the first-mentioned tax year an amount equal to the difference between the amount at which such balance of loss is finally determined and the amount at which it would have been determined if the incorrect return, statement or information had been accepted by the Commissioner General as correct under section 78(4).

(4) Where for any tax year a person furnishes a provisional return under section 66 whereby the tax payable under section 83 is less than three-quarters of the tax chargeable under an assessment made under section 78 for that tax year, that person shall be liable to pay a penalty calculated at the rate of two per cent per month on the amount of the difference between the tax payable under the provisional assessment issued under section 83 and the tax charged in relation to an assessment made under section 78 for the period commencing 30 days after the due date for furnishing a tax return under section 65 for that tax year.

(5) Where for any tax year the amount of estimated tax paid in accordance with the provisions of section 114 by a company designated under section 113(1) is less than the tax due on its tax return for that year, the company shall be liable to pay a penalty calculated at the rate of two per cent per month on the amount of the difference between the tax payable on its tax return and the estimated tax paid for the period commencing on 1st July of the next tax year and ending on the date on which the tax return is furnished.

(6) For the purposes of withholding taxes as contained under the provisions of Division III of Part VIII, the Commissioner General shall impose on a person who after reasonable request-

- (a) fails to give access to books and records;
- (b) fails to appear at a tax office for determination of the tax liability of such person for withholding of tax; or
- (c) otherwise impedes the determination or collection or withholding tax under Division III of Part VIII,

a penalty of P100 per day or one per cent of the tax due for each month or part of a month during which such failure or impediment continues, whichever is greater.



(7) A person who-

- (a) within the prescribed time fails to register as an employer, to notify any change of address or to notify that he or she has ceased to be an employer;
- (b) within the prescribed time fails to deduct any amount of tax from the remuneration paid to an employee;
- (c) within the prescribed time fails to pay to the Commissioner General any amount of tax deducted from an employees' remuneration;
- (d) fails to comply with any direction issued or condition specified by the Commissioner General under the Fifth Schedule;
- (e) fails to maintain a record of remuneration paid to his or her employees and tax deducted therefrom;
- (f) fails to deliver to any employee a certificate of tax deducted from remuneration as and when required;
- (g) furnishes to his or her employer or Commissioner General an incorrect return of personal particulars, or gives incorrect information to his or her employer in relation to a matter affecting the amount of tax to be deducted from his or her remuneration;
- (h) issues, possesses, uses or causes to be issued or used any certificate of remuneration and tax deducted which is incorrect;
- (i) fails to deduct any tax from payment made to any person to which section 57 applies;
- (j) within the prescribed period, fails to pay to the Commissioner General any amount deducted under section 57;
- (k) within the prescribed period fails to notify the Commissioner General that he or she has entered into a contract to which the Sixth Schedule applies;
- (l) fails to comply with the provisions of section 58; or
- (m) fails to deliver to any contractor a certificate of tax deducted within the time prescribed in the Sixth Schedule.

shall be liable to a penalty of P100 per day or one percent of the tax due for each month or part of a month that the violation continues, whichever is the greater.

**119. Penalties: failure to appoint a public officer, precedent partner, agent or address for service of notices**

(1) Where a company makes default-

- (a) in appointing a public officer;
- (b) in appointing an address for service of notices; or
- (c) in notifying the Commissioner General of any change of public officer or address for service of notices,

it shall be liable to a penalty not exceeding P10 for every day during which the default continues.

(2) Where a partnership makes default-

- (a) in notifying the Commissioner General of the name of its precedent partner or in appointing an agent of the partnership;
- (b) in appointing an address for service of notices; or
- (c) in notifying the Commissioner General of any change of precedent partner, agent or address for service of notices,

it shall be liable to a penalty not exceeding P10 for every day during which the default continues.

## **DIVISION II CRIMINAL PROCEEDINGS (ss 120-129)**

### **120. Sanction for prosecution**

(1) Subject to the powers of the Director of Public Prosecutions under the Constitution, no criminal proceedings in respect of any offence under this Act shall be commenced except with the sanction of the Commissioner General.

(2) Criminal proceedings under this Act shall be commenced in the name of the Commissioner General.

### **121. Offences: breach of secrecy**

Any person appointed under or employed in carrying out the provisions of this Act who, in contravention of the oath or declaration of secrecy made by him or her under section 5 discloses to any unauthorized person any document, information or confidential instruction which has come into his or her possession or to his or her knowledge in the course of his or her duties, or permits any unauthorized person to have access to any records in the possession or custody of the Commissioner General, shall be guilty of an offence and liable to a fine of P1,000 and to imprisonment for one year.

### **122. Offences: failure to comply with requirements of this Act**

(1) Any person who-

- (a) fails or neglects to furnish to the Commissioner General any return or document as and when required under this Act;
- (b) fails to comply with the requirements of any notice in writing served on him or her under this Act;
- (c) refuses or neglects to answer truly and fully any questions put to him or her or to supply any information required from him or her respecting his or her gross income or the gross income of any other person;
- (d) fails to keep a proper record of his or her transactions as required under section 26;
- (e) fails to preserve any books of account or document which he or she is required to

preserve under section 144;

- (f) obstructs or hinders any person appointed or employed under this Act in the discharge of his or her duties;
- (g) fails to disclose in any tax return made by him or her any gross income accrued to him or her or any material facts which should have been disclosed; or
- (h) signs any return or statement rendered to the Commissioner General without reasonable grounds for believing that return or statement or any part thereof to be correct,

shall be guilty of an offence and liable to a fine of P1,000 and to imprisonment for one year.

(2) Any person who, having been convicted under subsection (1) of failing to do anything required to be done by him or her under this Act, fails, within any further period specified by the Commissioner General in a notice served on that person, to comply with the requirements of the notice, shall be guilty of a further offence and shall be liable for each day during which the default continues to a fine of P10 and to imprisonment for one month.

### **123. Offences: intent to evade liability to tax**

- (1) Any person who wilfully and with intent to evade assessment or liability to tax-
- (a) makes or causes or allows to be made any incorrect statement in any return lodged under this Act;
  - (b) signs any statement in any return lodged under this Act having reason to believe such statement or any part thereof to be incorrect;
  - (c) gives any incorrect answer, verbally or in writing, to any request for information made by the Commissioner General;
  - (d) prepares or maintains any incorrect books of account or other records, or falsifies any books of account or other records;
  - (e) authorizes the preparation or maintenance of any incorrect books of account or other records or the falsification of any books of account or other records; or
  - (f) makes use of or authorizes the use of any fraud whatever,

shall be guilty of an offence and liable to a fine of P4,000 and to imprisonment for two years.

(2) In any proceedings under this section, if it is proved that any incorrect statement or entry is wilfully made in any return, answer, books of account or other records, certificate or statement by any person, he or she shall be presumed, until the contrary is proved, to have made or caused or allowed to be made that incorrect statement or entry with intent to evade assessment or liability to tax.

### **124. Offences by employers**

- (1) Any person who, wilfully and with intent to evade liability to tax-
- (a) within the prescribed time fails to register as an employer, or to notify any change of

address or to notify that he or she has ceased to be an employer;

- (b) within the prescribed time fails to deduct any amount of tax from remuneration paid to an employee;
- (c) within the prescribed time fails to pay to the Commissioner General any amount of tax so deducted;
- (d) fails to comply with any direction issued or condition specified by the Commissioner General under the Fifth Schedule;
- (e) fails to maintain a record of remuneration paid to his or her employees and tax deducted therefrom; or
- (f) fails to deliver to any employee a certificate of tax deducted from remuneration, as and when required,

shall be guilty of an offence and liable to a fine of P4,000 and to imprisonment for two years.

(2) In this section the words "employer", "remuneration" and "employee" have the meanings assigned to them in the Fifth Schedule.

#### **125. Offences by employees**

- (1) Any person who wilfully with intent to evade assessment or liability to tax-
  - (a) furnishes to his or her employer or the Commissioner General an incorrect return of personal particulars, or gives any incorrect information to his or her employer in relation to any matter affecting the amount of tax to be deducted from his or her remuneration;
  - (b) issues, possesses, uses or causes to be issued or used any certificate of remuneration and tax deducted which is incorrect;
  - (c) alters any certificate of remuneration and tax deducted, issued by any other person, pretends to be the employee named in any certificate of remuneration and tax deducted, or in any other way to his or her own advantage or benefit obtains credit with respect to or payment of the whole or any part of any amount of tax deducted from remuneration received by another person; or
  - (d) not being an employer and without being authorized by any person who is an employer issues or causes to be issued any document purporting to be a certificate of remuneration and tax deducted from remuneration,

shall be guilty of an offence and liable to a fine of P4,000 and to imprisonment for two years.

(2) In this section the words "employer", "remuneration" and "employee" have the meanings assigned to them in the Fifth Schedule.

#### **126. Offences: deduction from payments due under certain contracts with non-residents**

Any person who, wilfully and with intent to evade liability to tax-

- (a) fails to deduct any tax from a payment made to any person to which section 57

applies;

- (b) within the prescribed time fails to pay to the Commissioner General any amount deducted under section 57;
- (c) within the prescribed time fails to notify the Commissioner General that he or she has entered into a contract to which the Sixth Schedule applies; or
- (d) fails to deliver to any contractor a certificate of tax deducted within the time prescribed in the Sixth Schedule,

shall be guilty of an offence and liable to a fine of P4,000 and to imprisonment for two years.

### **127. Offences under section 58**

Any person who, wilfully and with intent to evade liability to tax fails to comply with the provisions of section 58 shall be guilty of an offence and liable to a fine of P4,000 and to imprisonment for two years.

### **128. Aiding and abetting an offence**

- (1) Where any person-
  - (a) wilfully makes or delivers on behalf of another person; or
  - (b) aids or abets another person to make or deliver,

an incorrect return, account, statement or any incorrect information relating to any matter affecting the tax liability of that other person, the first-mentioned person shall be guilty of an offence and liable to a fine of P2,000 and to imprisonment for one year.

(2) Where any person wilfully and with intent to assist any other person to evade assessment or liability to tax does any of the matters referred to in section 123, he or she shall be guilty of an offence and liable to a fine of P4,000 and to imprisonment for two years.

(3) In any proceedings under subsection (2), if it is proved that any incorrect statement or entry is wilfully made in any return, answer, book of account or other record, certificate or statement by such person, he or she shall be presumed, until the contrary is proved, to have made such incorrect statement or entry with intent to assist such other person to evade assessment or liability to tax.

### **129. Mitigation of penalties and compounding of offences**

(1) Where any person has committed a breach of the provisions of this Act for which a penalty is provided under Division I of this Part, then in relation to such breach the Commissioner General may mitigate any penalty imposed by him or her, either wholly or in part, and whether before or after judgment for its recovery has been obtained.

(2) Nothing in subsection (1) shall be construed so as to authorize the Commissioner General to mitigate any penalty where the penalty imposed by the Commissioner General has been the subject of appeal under section 91.

(3) Where any penalty has been mitigated under subsection (1) by agreement with the person concerned then, notwithstanding the provisions of sections 88 and 91, that person shall not be entitled to object to or appeal against the imposition of, or the amount of, the

penalty as so mitigated.

(4) Subject to the direction of the Director of Public Prosecutions, where any person has committed an offence against this Act for which criminal proceedings may be taken under Division II of this Part, then in relation to such offence the Commissioner General may, at any time prior to the commencement of the hearing by any court of such proceedings, compound the offence and order the person to pay such sum of money, not exceeding the amount provided in Division II of this Part for such offence, as the Commissioner General may think fit.

(5) The Commissioner General shall not exercise his or her power to compound under this section unless the person who has committed the offence requests the Commissioner General in writing to so deal with the offence.

(6) Where the Commissioner General compounds any offence under this section and makes an order accordingly-

- (a) the order shall be made in writing and there shall be attached to it the request referred to in subsection (5);
- (b) the order shall specify-
  - (i) the offence committed;
  - (ii) the sum of money ordered to be paid; and
  - (iii) the date on which payment is to be made or the dates on which instalments of that sum are to be paid;
- (c) a copy of the order shall be given, if he or she so requests, to the person who committed the offence;
- (d) that person shall not be liable to any criminal proceedings or further criminal proceedings, as the case may be, in respect of such offence, and if any such proceedings are taken it shall be a good defence for that person to prove that the offence has been compounded under this section;
- (e) the order shall be final and shall not be subject to any appeal; and
- (f) a statement of the amount due by reason of the order may be filed with any court of competent jurisdiction in the manner provided in section 103 and such amount shall be deemed to be an amount of tax due and payable and unpaid, and recovery thereof shall be made in accordance with the provisions of that section.

(7) Where under subsection (6)(b)(iii) any sum is to be paid by instalments and there is default in payment of any instalment, the whole of the balance then outstanding shall become due and payable forthwith.

## **PART XV**

### ***Provisions relating to Companies and Partnerships (ss 130-136)***

#### **130. Status of companies: public or private**

(1) For the purposes of this Act the expression "private company", in respect of each tax

year, means-

- (a) a company which by its memorandum or articles of association-
  - (i) restricts the right to transfer its shares;
  - (ii) limits the number of its members to fifty, not including persons who are in the employment of the company and persons who have been formerly in the employment of the company and who were while in that employment and after the termination of that employment, members of the company; or
  - (iii) prohibits any invitation to the general public to subscribe for any shares or debentures of the company;
- (b) a company whose membership is less than seven persons; or
- (c) a company which is not recognised as a public company by the Registrar of Companies under the Companies Act.

(2) For the purposes of this Act, a company, not being a private company, shall be recognised as a public company in relation to a tax year if-

- (a) (i) in the case of a resident company all classes of its equity shares are listed for quotation on the Botswana Stock Exchange on the last day of the tax year or any substituted accounting period:

Provided that in respect of a tax year prior to the establishment of the Botswana Stock Exchange all classes of its shares are listed for quotation by Stock Brokers Botswana Ltd. with the approval of the Interim Stock Exchange Committee appointed by the Minister; or

- (ii) it is a subsidiary of a public company; or
  - (iii) it is an insurance company transacting life insurance business; or
  - (iv) it is a society or company registered under the Co-operative Societies Act;
  - (v) it is a Collective Investment Undertaking or Unit Trust; or
  - (vi) it is a specified corporation;
- (b) in the case of a non-resident company, it is recognized as a public company under the law of the country in which it is resident.

(3) For the purposes of this section, a company is a public company in relation to a tax year if more than 50 per cent of every class of equity shares issued by it are owned, throughout the tax year, by one or more public companies.

(4) For the purposes of subsection (2)(a)(ii), a company is a subsidiary of a public company if it is controlled, directly or indirectly, by that public company; and a subsidiary of the first-mentioned company shall itself be a subsidiary of that public company.

(5) In this section, "control", in relation to a company, means that a person is able to control a majority of voting power either directly by ownership of more than 50 percent of every class of equity shares, or indirectly by ownership of shares in any other company by

means of which that person is able to control a majority of voting power in the first-mentioned company.

(6) Where, by reason of changes in the constitution or shareholding of any company, or for any other reason, a company which has been recognised as a public company ceases to satisfy the requirements of subsection (2) in any tax year, such company shall be recognised as a private company in relation to that tax year.

### **131. Small companies**

(1) For the purposes of this section a small company means a resident private company whose gross income does not exceed P300, 000 in any tax year.

(2) In respect of any such tax year the shareholders of a small company may elect unanimously, and so notify the Commissioner General in writing, within six months after the end of that tax year, that they be treated for tax purposes as a business carried on in partnership:

Provided that, where all the shares are beneficially owned by a single resident individual, he or she may elect to be treated for tax purposes as an individual carrying on business.

(3) Where a valid election is made under subsection (2), it shall apply to that and the next two subsequent tax years, unless the company is not, or ceases to be, eligible for treatment as a small company for any of those tax years.

(4) Where, in any tax year, a company is treated as a partnership under this section, the chargeable income of the company shall be apportioned among the shareholders in the proportions in which they own the equity capital, and such apportioned shares or income shall be included in the chargeable income of such shareholders:

Provided that, if the business for any tax year results in a loss, the assessed loss shall be apportioned among the share holders in like manner.

(5) Notwithstanding the provisions of subsection (4), the shareholders may elect unanimously and apply in writing to the Commissioner General for a different basis of apportionment and, subject to subsection (6), the Commissioner General may vary the basis of assessment under subsection (4) and adopt a procedure he or she considers reasonable in respect of the apportionment of the tax withheld from dividends under the Seventh Schedule.

(6) The Commissioner General may reject an election under subsection (2), or an application under subsection (5), if he or she is satisfied that the election or application, as the case may be, is made in pursuance of a tax avoidance scheme.

### **132. Meaning of close company**

(1) For the purposes of this section and sections 133 and 134, and subject to subsection (2), a "close company" is a resident company recognized as a private company in accordance with section 130(1) in which a person (in this section and sections 133 and 134 referred to as a "participator") is, either on his or her own or with a relative or nominee-

- (a) the beneficial owner of or able to control, directly or indirectly, five per cent or over of the equity share capital of the company;



(b) the beneficial owner, directly or indirectly, of shares in the company carrying five per cent or over of the voting powers; or

(c) a loan creditor.

(2) The expression "close company" referred to in subsection (1) does not apply-

(a) to a company in which the Government of Botswana owns shares; or

(b) to a company with which the Government of Botswana has a tax agreement under section 54.

(3) In subsection (1)(c), the term "loan creditor", in relation to a company, means a creditor or other person having a beneficial interest in respect of any redeemable loan capital issued by the company or any debt incurred by the company-

(a) for any money borrowed or capital assets acquired by the company; or

(b) for any right to receive income created in favour of the company:

Provided that a person carrying on a business of banking shall not be deemed to be a loan creditor in respect of any loan capital or debt issued or incurred by the company for money lent by him or her to the company in the ordinary course of that business.

### **133. Payment of participators**

(1) Where any amount paid by a close company in any tax year to or for a participator, or to a relative or nominee of such participator is-

(a) a gratuity in respect of employment;

(b) the cost of any passage or other benefit or advantage granted in respect of that participator's employment which has not been included in his or her gross income under section 32;

(c) the cost of any other passage, travel or entertainment which, in the opinion of the Commissioner General, has not been incurred by the company wholly, exclusively and necessarily in the production of its assessable income; or

(d) a loan made to the participator, relative or nominee out of amounts available for distribution to shareholders, including distribution from reserves, either free of interest or on conditions which, in the opinion of the Commissioner General, are not characteristic of a transaction between independent persons dealing at arms length,

such amount shall, notwithstanding any provision to the contrary in this Act, be treated as dividend income for that tax year accrued and shall form part of the taxable income of such a participator and be charged to tax at the prevailing dividend withholding tax rate to the participator:

Provided that the amount shall not be so treated if the Commissioner General is satisfied that it is the cost of a passage such as is referred to in paragraph (b) paid to a participator not more than once in every two years during his or her residence in Botswana and does not exceed the reasonable cost of direct travel between Botswana and the participator's country

of permanent residence.

(2) Where in any tax year any loan made by a close company under subsection (1)(d) to a participator has been repaid, in whole or in part, during the tax year and no further loan has been made to the participator within nine months of the repayment, then in arriving at the amount to be treated as dividend income of the participator under subsection (1)(d), there shall be deducted from the amount of any loan made under the said subsection so much of the amount that has been repaid.

(3) For the purposes of subsection (1)(d), where a loan is made by a close company to a person who is not a participator in that company but is a participator in another company and the companies are acting under arrangements made between them, then the loan shall be treated as having been made by that other company.

### **134. Interest payable to participator**

(1) Where in any tax year a loan is made by a participator, or by a relative or nominee of a participator, to a close company, either free of interest or at a rate of interest lower than the commercial rate generally prevailing at the time the loan is made, and the Commissioner General is of the opinion that the loan is not one between independent persons dealing at arm's length with each other, interest on the loan shall be deemed to have accrued to the participator for that tax year and any subsequent tax year in which the loan remains unpaid at such commercial rate as the Commissioner General deems reasonable in the circumstances.

(2) In the case of a person who is not resident in Botswana, every amount of interest deemed to have accrued to him or her by virtue of subsection (1) shall be deemed, for the purposes of section 58, to have been paid to him or her.

(3) Any amount of interest which is deemed to have accrued to any person by virtue of this section shall not be deducted in ascertaining the chargeable income of the company for that tax year.

(4) If a loan referred to in subsection (1) is repaid in full by the issue of equity shares in any tax year to the participator, the provisions of subsection (1) shall not apply to that tax year.

(5) The provisions of this section shall not apply to transactions between companies which are participators of each other.

### **135. Public officer**

(1) Every company carrying on business in Botswana shall at all times be represented for the purposes of this Act by a public officer residing in Botswana and duly appointed by the company or its authorized agent or attorney.

(2) Every company, if it has not appointed a public officer and an address for service of notices before the commencement of this Act, shall appoint a public officer and an address for service of notices-

- (a) within two months after the commencement of this Act; or
- (b) in the case of a company which begins to carry on business in Botswana after the

commencement of this Act, within one month after the commencement of business.

(3) Every change of public officer or of the address for service of notices on the company shall be notified to the Commissioner General by the public officer within 15 days of such change occurring.

(4) No appointment of a public officer shall be deemed to be duly made until notice thereof in writing, specifying the name of the public officer and an address for service of notices, has been given to the Commissioner General.

(5) The appointment of a public officer shall be subject to the approval of the Commissioner General, who may decline to approve the appointment of a public officer or may subsequently withdraw his or her approval of a person who had previously been appointed.

(6) The public officer shall be answerable for the doing of all such things as are required under this Act to be done by the company of which he or she is the representative and in case of default he or she shall be liable to the same penalties.

(7) Everything done by the public officer, which he is required to do in his or her representative capacity, shall be deemed to have been done by the company, and any notice given to or request made upon the public officer shall be deemed to be given to or made upon the company.

(8) The absence of or failure to appoint a public officer shall not excuse a company from the necessity of complying with any of the provisions of this Act, and the company shall be subject to and liable to comply with its provisions as if there were no requirement to appoint a public officer.

(9) Every notice, process or proceeding which under this Act may be given to, served on or taken against any company may be given to, served on or taken against the public officer, and if at any time there is no public officer then any such notice, process or proceeding may be given to, served on or taken against any officer or person acting in the management of the business of the company or as agent for the company, and such person shall have the same liability in respect of that notice, process or proceedings as the company or public officer would have had if it had been given to, served on or taken against the company or public officer.

(10) In the event of any company being placed in liquidation or under judicial management the liquidator or judicial manager, as the case may be, shall be required to exercise all the functions and assume all the responsibilities of a public officer under this Act during the continuance of the liquidation or judicial management, and any person previously appointed as public officer of the company shall cease to be public officer at such time.

### **136. Precedent partner**

(1) Every partnership carrying on business in Botswana shall at all times be represented by a resident individual who shall be-

- (a) the precedent partner; or
- (b) if no acting partner is resident in Botswana, the agent of the partnership in Botswana.

(2) The precedent partner shall be the person who, being an acting partner resident in Botswana-

- (a) is first named in the partnership agreement;
- (b) if there is no partnership agreement, is specified by name or initial singly or with precedence to the other partners in the usual name of the partnership,

or, in any case where neither paragraph (a) or (b) is applicable, such other person as is specified by the partnership.

(3) Every partnership shall notify the Commissioner General of the name of the precedent partner or, if there is no acting partner resident in Botswana, shall appoint and notify the Commissioner General of the name of its agent in Botswana-

- (a) if it is carrying on business at the commencement of this Act, within two months after such commencement; or
- (b) if it begins to carry on business after the commencement of this Act, within one month after the commencement of business.

(4) Every partnership shall within the period specified in subsection (3) appoint an address for service of notices.

(5) Every change of precedent partner or agent of the partnership or of address for service of notices shall be notified to the Commissioner General within 15 days of such change.

(6) The precedent partner or the agent, as the case may be, shall be answerable for the doing of all such things as are required under this Act to be done by the partnership of which he or she is the representative and in case of default he or she shall be liable to the same penalties.

(7) Everything done by the precedent partner or the agent, as the case may be, which he or she is required to do in his or her representative capacity, shall be deemed to have been done by the partnership, and any notice given to or request made upon the precedent partner or the agent shall be deemed to have been given to or made upon the partnership.

## **PART XVI**

### ***Taxation of International Financial Services Centre Companies (ss 137-142)***

#### **137. Definitions of terms**

In this Part, unless the context otherwise requires-

"**average foreign exchange rate**" means the average of the monthly foreign exchange rates between the currency of the state and the functional currency of an international financial services centre company, as published by the Bank of Botswana for the relevant period, or where published, the average rate applicable to that tax year;

"**currency of the state**" means the Pula;

"**functional currency**" means in relation to an international financial services centre company, the currency of the primary economic environment in which the international

financial services centre company operates or, if elected by the company, the currency of the state.

### **138. Tax certificate**

(1) The Minister may by Order published in the *Gazette*, provide for-

- (a) the establishment, marketing and operation of an international financial services centre;
- (b) the constitution of an international financial services centre certification committee; and
- (c) powers, duties and functions of a committee established under paragraph (b).

(2) The Minister or his or her authorised representative may, on the recommendation of a committee established in accordance with subsection (1)(b), issue a tax certificate certifying that activities of a company as are specified in the certificate are with effect from the date specified in the certificate, approved financial operations and any tax certificate so given, unless it is revoked, shall remain in force until 31st December, 2020.

(3) A certificate issued in accordance with subsection (2) may be given subject to such conditions as the Minister on the recommendation of a committee established in accordance with subsection (1)(b) considers proper and specifies in the tax certificate.

(4) A certificate issued in accordance with subsection (2) shall be granted to a person who agrees, in writing, with the Bank that he or she shall comply with the reporting requirements stipulated under section 47 of the Bank of Botswana Act, or is exempted from the requirements by Regulations made under section 46 of that Act.

(5) Where in the case of a company in relation to which a certificate under subsection (2) has been given the Minister is satisfied that-

- (a) the company has ceased to carry on business;
- (b) the company has breached any of the conditions referred to in subsection (3);
- (c) the licence granted in accordance with section 3 of the Banking Act has been revoked or the registration under the Insurance Industry Act has been cancelled;
- (d) the company has carried on activities that have had or may have an adverse effect on the use or development of the international financial services centre or are otherwise inimical to the development of the international financial services centre;
- (e) a change in the ownership of the company has occurred since the grant of the certificate without the prior written approval of the Minister; or
- (f) the company has carried on business with persons other than those approved under subsection (7); or
- (g) recommendation for revocation of the tax certificate has been made by the Bank of Botswana under section 49 of the Bank of Botswana Act.

the Minister may, on the recommendation of the international financial services centre certification committee, by notice in writing served on the company require the

company to rectify the position or revoke the certificate with effect from such date as may be specified in the notice.

(6) For the purposes of subsection (5)-

- (a) ownership of a company shall be deemed to have changed if the beneficial ownership of one quarter or more of its share capital or one quarter or more of the voting rights affecting the day to day management of its business shall have changed hands in comparison with the date on which the certificate is granted; and
- (b) the holding of shares in a company resident in Botswana shall not constitute the carrying on of business with persons resident in Botswana.

(7) The following shall be approved financial operations for the purpose of subsection (2) provided that they shall be carried on with persons not resident in Botswana or international financial services companies or specified collective investment undertakings-

- (a) banking and financing operations transacted in foreign currency;
- (b) the broking and trading of securities denominated in foreign currency;
- (c) investment advice;
- (d) management and custodial functions in relation to collective investment schemes;
- (e) insurance and related activities;
- (f) registrars and transfer agency services;
- (g) exploitation of intellectual property;
- (h) development and supply of computer software for use in the provision of services described in (a) to (f) above;
- (i) accounting and financial administration; and
- (j) other operations that the Minister may declare by order from time to time to be approved financial operations for the purposes of this section:

Provided that transactions incidental to financial operations referred to in this subsection carried on at arm's length with connected persons resident in Botswana shall be considered as approved financial operations for the purposes of this subsection.

(8) In considering an application for a tax certificate, the international financial services centre certification committee shall have regard to-

- (a) the number of Botswana citizens who will be employed in relation to the approved operation and the capacities in which they will be employed;
- (b) facilities proposed for the training and imparting of skills to Botswana citizens;
- (c) provisions made for the eventual replacement of non resident employees by Botswana citizens; and
- (d) provision made for the participation by Botswana citizens in the management of the

business.

(9) A tax certificate shall entitle a company to carry on the approved financial operations either on its own account or through a wholly owned subsidiary.

(10) The Commissioner General may by notice in writing require a company claiming relief from tax by virtue of this section to furnish him or her with such information, participation or particulars as may be necessary for the purpose of giving effect to this section.

### **139. Gross income**

Notwithstanding section 9 and subject to Parts IV and VIII, the gross income of an international financial services centre company shall be the total amount whether in cash or otherwise, accrued or deemed to have accrued to it in that tax year from all sources both inside and outside Botswana, but shall not include any amount of a capital nature except to the extent specified in this Act.

### **140. Specified foreign exchange**

(1) The gross income of an international financial services centre company shall include the amount of any specified foreign exchange gain, provided the gain has been credited in the profit and loss account of the international financial services centre company under a commercially recognised system of accounting.

(2) In ascertaining the chargeable income of an international financial services centre company, there shall be deducted the amount of any specified foreign exchange loss, provided the loss has been debited in the profit and loss account of the international financial services centre company under a commercially recognised system of accounting.

(3) A contract which, for the purposes of this section is a relevant contract shall be disregarded for all purposes of the Act except under this section.

(4) In this section, unless the context otherwise requires-

"rate of exchange" means the price at which two currencies might reasonably be expected to be exchanged between persons dealing at arms length and, unless there is evidence to the contrary, this price shall be the rate quoted by the Bank of Botswana;

"relevant asset or liability" means the assets and liabilities of an international financial services centre company, other than shareholders equity, which are held for the purposes of the approved financial operations of the company as stated in its tax certificate granted in accordance with section 138, including a liability for the discharge of a tax under section 50(d) and (e);

"relevant contract" means a contract entered into for the purpose of reducing or eliminating the risk of loss arising in respect of a relevant asset or liability due to a change in a rate of exchange, whether or not the contract is recognised on the balance sheet of a company;

"shareholder's equity" means the share capital and reserves of a company which are classified as equity or its equivalent in the balance sheet under a commercially recognised system of accounting;

"specified foreign exchange gain" means a gain whether realised or unrealised, that results directly from a change in a rate of exchange and is attributable to a relevant asset, liability or contract; and

"specified foreign exchange loss" means a loss whether realised or unrealised that results directly from a change in a rate of exchange and is attributable to a relevant asset, liability or a relevant contract.

#### **141. Foreign debt interest**

(1) Where an amount of foreign debt interest is, apart from this section, allowable as a deduction from the gross income of an international financial services centre company in a particular tax year and, at any time during that tax year, the total foreign debt of the tax payer exceeds the foreign equity product for that year, then the amount of foreign debt interest ascertained in accordance with the following formula:

$$I = \frac{A}{B} \times \frac{C}{365}$$

where-

- A is the amount of the excess of the total foreign debt over the foreign equity product;
- B is the total foreign debt;
- C is the number of days in that tax year during which the total foreign debt exceeded the foreign equity product by that amount; and
- I is the foreign debt interest,

shall not be allowable as a deduction.

(2) The formula in subsection (1) shall be reapplied in every circumstance in which the excess represented by A changes in order to identify the total amount of foreign debt interest which is not allowable as a deduction for an international financial services centre company in the relevant tax year.

(3) In this section-

"approved multiple" means the maximum number of times that the foreign debt is divisible by the foreign equity and such multiple shall be fixed by the Commissioner General on application by an international financial services centre company, at a level which the Commissioner General deems reasonable:

Provided that in the absence of such an application, the approved multiple shall be-

- (i) in the case of banks, a multiple of 12; and
- (ii) in the case of other international financial services centre companies, a multiple of 3;

"bank" ...



"foreign controller" means in relation to an international financial services centre company, a non resident who either alone or together with a connected person has control, directly or indirectly, of the resident company;

"foreign debt" means the balance outstanding on any amount owing by an international financial services centre company to its foreign controller, or to a connected person of the foreign controller, and where interest is, or may become payable in respect of the amount owed:

Provided that where an amount is owing by an international financial services centre company to a non resident other than its foreign controller, or a connected person of the foreign controller, and the amount owing is wholly or partly guaranteed directly or indirectly by the foreign controller, or by a connected person of the foreign controller, the amount shall be treated for the purpose of this definition as an amount owing by the international financial services centre company to its foreign controller;

"foreign debt interest" means the interest payable by an international financial services centre company in respect of an amount of foreign debt, which, is apart from this section, allowable as a deduction from the gross income of the company;

"foreign equity" means so much of the amount standing to the credit calculated under a commercially recognised system of accounting of the-

- (i) share or branch capital account, both equity and non equity;
- (ii) share premium account;
- (iii) accumulated profits account excluding, accumulated losses, if any; and
- (iv) other reserve accounts;

of an international financial services centre company that its foreign controller or a connected person of its foreign controller would be beneficially entitled to receive by way of distribution on a liquidation of the international financial services centre company; and

"foreign equity product" means the foreign equity outstanding at the end of the accounting period of an international financial services centre company multiplied by the approved multiple.

## **142. Accounts**

(1) The accounts of an international financial services centre company together with the reconciliation of the accounts with the chargeable income, which must be submitted with the tax return in accordance with section 71(1) shall be prepared in the functional currency of an international financial services centre company.

(2) The chargeable income in the reconciliation shall be translated into the currency of the state at the average foreign exchange rate for the period.

## **PART XVII** ***Miscellaneous (ss 143-145)***

## **143. Free postage**

All correspondence relating to the assessment and collection of tax including tax returns addressed to the Commissioner General and posted within Botswana by any person may be sent free of postage in envelopes which are marked "Income Tax" and "On the Service of the Botswana Unified Revenue Service".

#### **144. Preservation of documents**

(1) Subject to this section, every person carrying on business in Botswana shall maintain and preserve in Botswana all books of account and other documents which are essential to the explanation of any entry in such books of account relating to that business for a period of eight years after the end of the tax year or accounting period to which such books of account or documents relate.

(2) In the case of foreign business not registered in Botswana and whose presence in Botswana is in relation to specific contractual transactions, the business shall make available to the Commissioner General for examination and audit in Botswana, such books of account and documents as the Commissioner General may request for a period of eight years.

(3) Where-

- (a) a company has gone into liquidation; or
- (b) a person has died,

the Commissioner General, on application by the liquidator or the executor prior to completion of the winding up of the company or administration of the estate, may approve of the disposal of any books of account or other documents within such lesser period than eight years as he or she thinks fit.

(4) The Commissioner General may, subject to such conditions and in respect of such books of account or other documents as he or she may specify, authorize the retention of a microfilm copy or durable computer disc of any books of account or other documents in lieu of the original books or documents.

(5) For the purposes of this section the books of account and other documents required to be preserved shall be deemed to include the record required to be kept under-

- (a) paragraph 11 of the Fifth Schedule;
- (b) paragraph 6 of the Sixth Schedule; and
- (c) paragraph 5 of the Seventh Schedule.

#### **145. Regulations**

The Minister may make regulations for the better carrying out of the purposes of this Act and without prejudice to the generality of the foregoing such regulations-

- (a) may prescribe all matters which are required or permitted to be prescribed;
- (b) may provide for the imposition by the Commissioner General of penalties not exceeding P1,000 for any breach of the regulations; and
- (c) may provide for the imposition by a court of fines not exceeding P4,000 for any

breach of the regulations.

## **FIRST SCHEDULE**

### PARAGRAPH

#### PART I

##### *Stock*

1. Value of stock held to be included in tax return
2. Value of stock held at beginning of tax year
3. Value of stock held at end of tax year
4. Cost price of stock
5. Deemed cost of certain stock

#### PART II

##### *Farming Livestock and Produce*

1. Value of livestock and produce to be included in tax return
2. Value of stock held at beginning of tax year
3. Value of livestock held at end of tax year
4. Revaluation of livestock at beginning of tax year
5. Value of produce held at end of tax year
6. Livestock deemed to be held at end of tax year  
Table of standard values

#### **PART I**

##### **Stock (paragraphs 1-5)**

*(Sections 28 and 41)*

### **1. Value of stock held to be included in tax return**

Every person carrying on business, excluding a business of farming, shall include in his or her tax return for each tax year the value of all stock held and not disposed of by him or her (hereinafter referred to as "the value of stock held") at the beginning and end of each tax year.

### **2. Value of stock held at beginning of tax year**

The value of stock held by any person at the beginning of any tax year shall be deemed to be-

- (a) where he or she carried on his or her business on the last day of the previous tax year, the value of stock held on that date; and
- (b) where he or she commenced business during the tax year, the cost to him or her of any stock acquired prior to the commencement of the business.

### **3. Value of stock held at end of tax year**

The value of the stock held at the end of a tax year shall be deemed to be the cost to the person carrying on business less such amount, if any, as in the opinion of the Commissioner General, is reasonable as representing the amount by which the value of such stock has been diminished because of damage, deterioration, obsolescence or other cause.

### **4. Cost price of stock**

For the purposes of this Part the cost of any stock in relation to any date shall be-

- (a) the cost incurred in acquiring such stock; and
- (b) any further costs incurred up to such date in getting such stock into its then existing condition or location.

## **5. Deemed cost of certain stock**

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

## **PART II**

### ***Farming Livestock and Produce (paragraphs 1-6)***

*(Sections 29 and 41)*

## **1. Value of livestock and produce to be included in tax return**

Every person shall include in his or her tax return for each tax year the value of all livestock or produce held and not disposed of by him or her (hereinafter referred to as "the value of stock held") at the beginning and end of each tax year:

Provided that horses, donkeys and mules used as working animals or held for purposes other than for the business of farming shall not be included in the value of stock held.

## **2. Value of stock held at beginning of tax year**

The value of stock held at the beginning of a tax year shall be deemed to be-

- (a) where the person carried on farming operations on the last day of the previous year, the value of stock held on that day:

Provided that where a person, carrying on the business of farming, has used the relevant standard value in valuing any of his or her stock, such person may, in respect of any tax year, adopt the current standard value specified in paragraph 3 in valuing any such stock held by him or her at the beginning of the tax year; and

- (b) where the person commenced farming during the tax year, the cost to him or her of any stock acquired prior to commencement of farming.

## **3. Value of livestock held at end of tax year**

(1) Subject to subparagraph (2), the value of any livestock held by any person carrying on farming operations at the end of any tax year shall be ascertained in accordance with any of the following methods as the person may choose to adopt-

- (a) where the livestock was acquired by the person by purchase, the value shall be-
  - (i) an amount equal to the purchase price of such livestock;
  - (ii) an amount equal to the current market price of such live stock; or

- (iii) an amount equal to the relevant standard value of such livestock; or
- (b) where the livestock was acquired by the person otherwise than by purchase, the value shall be either-
  - (i) an amount equal to the current market price of such livestock; or
  - (ii) an amount equal to the relevant standard value of such livestock.

(2) The exercise of an option by a person under subparagraph (1) in respect of any class of livestock specified in the Table containing the amounts of standard value for livestock for any tax year shall be binding upon such person in that tax year and every subsequent tax year in respect of which that livestock is specified in the Table.

(3) Where the Table containing the amounts of standard value for any particular class of livestock is amended in any tax year-

- (a) by including any class of livestock not included in the previous year, any person having such livestock may, at the end of that tax year, exercise a further option in accordance with the provisions of subparagraph (1) and the exercise of such option shall be binding on him or her in accordance with the provisions of subparagraph (2); and
- (b) by excluding any class of livestock included in the previous year, any option exercised by any person in respect of such livestock before its removal from the Table shall lapse and the value of such stock held by the person at the end of that tax year shall be ascertained-
  - (i) in the case of livestock acquired by purchase in accordance with either the provisions of subparagraph (1)(a)(i) or (ii), as the person may choose to adopt, and whichever method is adopted by him or her shall be binding on him or her in accordance with the provisions of subparagraph (2); and
  - (ii) in the case of livestock acquired otherwise than by purchase, in accordance with the provisions of subparagraph (1)(b)(i).

(4) In this paragraph "the relevant standard value", in relation to any livestock, means-

- (a) the amount of the standard value specified in the Table to this Schedule, or such amount as may be prescribed for the class of such livestock; or
- (b) any amount not greater than 125 per cent of the amount of such standard value and not less than 75 per cent of the amount of such standard value.

#### **4. Revaluation of livestock at beginning of tax year**

Notwithstanding the provisions of paragraph 2(a), any person referred to in the said paragraph whose livestock is affected by any amendment made in any tax year to the Table, shall revalue the livestock held by him or her at the beginning of that tax year by adopting the same method which he or she used in valuing his or her stock at the end of that tax year.

#### **5. Value of produce held at end of tax year**

The value of any produce held by any person to whom this Schedule applies at the end of a tax year shall be such amount as, in the opinion of the Commissioner General, is reasonable.

#### **6. Livestock deemed to be held at end of tax year**

For the purposes of this Part any livestock which is the subject of any agreement between the owner and any other person whereby the owner retains the right of ownership of such livestock or of

any progeny thereof shall be deemed to be livestock held and not disposed of by such owner.

### **TABLE OF STANDARD VALUES**

(Para. 3)

<i>Class of Livestock</i>	<i>Standard Value</i>
<b>CATTLE</b>	
Fully grown animals	P430
Tollies and heifers	P230
Calves	P90
<b>SHEEP AND GOATS</b>	
Grown animals	P45
Kids	P10

### **SECOND SCHEDULE**

(Sections 38, 41 and 51)

#### **PART I**

#### ***Persons Exempted***

The following persons shall be exempt from tax for any tax year-

- (i) any local authority;
- (ii) Bank of Botswana or any other bank or corporation wholly owned by Botswana Government, other than the Botswana Development Corporation, the Botswana Meat Commission or any other body corporate wholly owned by Botswana Government which is liable to tax under any other provision of the Act;
- (iii) any organization in respect of which an order has been made under section 4 of the Diplomatic Immunities and Privileges Act;
- (iv) ...
- (v) any approved benefit fund, approved provident fund or approved superannuation fund;
- (vi) any building society;
- (vii) any institution which is, in the opinion of the Commissioner General, a mutual savings bank or a mutual loan association;
- (viii) any trade union or employees' association registered under the Trade Unions and Employers' Organizations Act;
- (ix) any association of employers established for a purpose approved by the Minister;
- (x) ...
- (xi) any political party listed in the Schedule to the Societies Act;
- (xii) Motor Vehicle Insurance Fund;

- (xiii) Southern African Centre for Ivory Marketing;
- (xiv) Botswana Institute of Accountants or any other professional institution established by statute;
- (xv) a stock exchange established in Botswana by statute and any ancillary organ thereof;
- (xvi) any specified collective investment undertaking;
- (xvii) any international financial organisation to which Botswana is a member under the International Financial Organisations Act;
- (xviii) any special purpose vehicle formed by the government for securitization of public assets

## **PART II**

### ***Classes of Gross Income Exempted***

The following classes of amounts included in gross income shall be exempt from tax to the extent indicated-

- (i) the official emoluments and allowances of the President;
- (ii) the official salaries and emoluments payable in respect of their offices to-
  - (a) heads of diplomatic missions and consulates accredited to Botswana; and
  - (b) members of the staffs of such missions and consulates who are resident in Botswana solely for the purpose of carrying out duties as members of such missions;
- (iii) the official salary and emoluments of an official of any organization in respect of whom an order has been made under section 4 of the Diplomatic Immunities and Privileges Act;
- (iv) allowances exempted under the National Assembly (Salaries and Allowances) Act;
- (v) allowances exempted under the *Ntlo ya Dikgosi* (Salaries and Allowances) Act;
- (vi) allowances and gratuities exempted under the Judges (Miscellaneous Provisions) Act;
- (vii) any amount accrued to a public servant, teacher or consultant to the government as director of any company other than his or her principal employer, where such amount is paid to his or her principal employer or to the Government;
- (viii) any amount accrued to a public servant or teacher as a foreign service allowance while serving outside Botswana in a diplomatic mission of Botswana;
- (ix) war pensions or gratuities;
- (x) interest payable by the Botswana Savings Bank, including interest on Botswana Savings Bank Certificates;
- (xi) interest on national development bonds exempted under the National Development Bank Act;
- (xii) interest on bonds exempted under the Development Loan (Botswana Registered Bonds) Act;
- (xiii) any amount accrued to the government of any other country, or to any non-resident institution or company by way of interest on any loan, to the extent to which the Minister is satisfied that the exemption of such amount is in the public interest;

- (xiv) any amount payable as interest on any subscription share issued by any building society resident in Botswana;
- (xv) payments to members by any co-operative thrift and loan society;
- (xvi) payments by way of sickness or accident benefits to any person or to his or her dependants or heirs, by any approved benefit fund, a trade union, or under a policy of insurance covering sickness or accident;
- (xvii) amounts received by way of periodical payments in the nature of maintenance or alimony by a woman from her husband or former husband:

Provided that no exemption shall apply under this item where, for the purpose of making such payments, the husband or former husband has divested himself of any assets which produce gross income, or divested from himself or herself amounts which would otherwise have been taken into account in ascertaining his or her taxable income;

- (xviii) any amount payable to an employee, not being a citizen of Botswana whose contract of employment commenced before the 1st July, 1999, upon the *bona fide* termination of his or her employment where such payment is made by the employer-
  - (a) pursuant to the terms of a written contract of employment; or
  - (b) by reasons of any law in force in Botswana, by way of bonus or gratuity to the extent to which, in the opinion of the Commissioner General the payment is reasonable in amount having regard to-
    - (i) the period of the employment;
    - (ii) the nature of the employment;
    - (iii) the salary payable to the employee; and
    - (iv) the measure of retirement benefits generally prevailing at that time;
- (xix) any amounts accrued from a business or employment carried on in Botswana by a citizen of any other country or by a company registered under any law in force in any other country, where such business or employment is carried on in Botswana under an agreement with the Government for the provision of technical assistance to the Government to the extent to which the Minister may, by notice in writing to the Commissioner General, declare such amounts to be exempted from tax;
- (xx) any amount payable by way of interest-
  - (a) by Bamangwato Concessions Limited or BCL (Sales) Limited; or
  - (b) by Botswana RST Limited, to the extent that such interest is in respect of moneys borrowed by the company and made available to Bamangwato Concessions Limited for the purposes of its mining operations or exploration in Botswana, to any non-resident who does not carry on business in Botswana through a permanent establishment situated therein where such interest is interest to which Clause 112(C) or 11(F) of the Schedule to the Selibe-Phikwe Tax Agreement Ratification Act applies;
- (xxi) any amount accrued from an employment carried on by a non-resident aboard an aircraft or road or rail vehicle in the course of the operation of an international transport service by a non-resident;
- (xxii) any amount payable as a pension under the Overseas Officers' Pensions Agreement



(Implementation) Act, 1976;

- (xxiii) any amount received by way of a scholarship or bursary for the purposes of education and maintenance during such education;
- (xxiv) any amount exempted under an agreement entered into under section 53 or 54;
- (xxv) any amount paid to the Commissioner General out of the Productive Employment Development Fund as tax payable by any person for any tax year;
- (xxvi) terminal, sitting, ward, subsistence and meal allowances payable to a councillor of a local authority, or to a member of a land board or a subordinate land board;
- (xxvii) where under any law in force in Botswana an employee is permitted to commute a portion of his or her pension, an amount not exceeding one third of the pension entitlement at the time of retirement;
- (xxviii) in the case of any person other than a person subject to paragraph (xxvii), who, being entitled to a pension or annuity on retirement, elects to receive a part of such pension or annuity as a commuted lump sum, an actuarially calculated sum representing a commutation of not more than one third of his or her full entitlement at the date of his or her retirement;
- (xxix) in the case of any person other than a person referred to in paragraphs (xxvii) and (xxviii) who is entitled *bona fide* to an annual pension or annuity of not more than five hundred Pula, an actuarially calculated sum representing the commutation of that pension or annuity;
- (xxx) the investment income, as defined in section 51(3) of a statutory life insurance fund;
- (xxxi) any amount payable as interest accrued in any year to any resident individual from any banking institution or building society in Botswana, up to a limit of P6,000; and
- (xxxii) the salary and other emoluments of an employee of the Commonwealth of Virginia Trade Office who is not a citizen of Botswana;
- (xxxiii) any amount paid as a subsidy or a grant to any person from the Productive Employment Development Fund under the Financial Assistance Scheme;
- (xxxiv) former President's pension and benefits under the Presidents (Pension and Benefits) Act, 1998;
- (xxxv) pensions and gratuities payable to a Minister and Member of Parliament under the Ministers and National Assembly Gratuities and Pension Act, 1998; and
- (xxxvi) salaries, emoluments, obligations, securities, dividends or any other cash or non-cash benefits received by the employees of any international financial organisation to which Botswana is a member;
- (xxxvii) any dividends received by an international financial services centre company in respect of a qualifying foreign participation as defined under section 2;
- (xxxviii) commercial royalty payments accruing to non-residents in respect of leasing of aircraft;
- (xxxix) any income of a charitable, religious or educational institution or a trust established for public purposes:

Provided that where a person to whom this paragraph applies, carries on any business or derives any gains from disposal of any property chargeable to tax under section 35, exemption under this paragraph shall not be granted to such person unless it is proved to

the satisfaction of the Commissioner General that the income of that person has been applied exclusively for public purposes within that tax year or such extended period as may be allowed by the Commissioner General;

- (xl) any income of an association formed for the purpose of promoting social or sports amenities and not involving the acquisition of gain or the possibility of future gains to the extent that such income is applied exclusively for the purposes of such association within that tax year or such extended period as may be permitted by the Commissioner General;
- (xli) any amounts received by non-resident telecommunication companies on settlement of international telephone traffic under international telecommunication regulations; and
- (xlii) any amount of dividend distributed by a special purpose vehicle formed by the government for the securitization of public assets.

### **THIRD SCHEDULE CAPITAL ALLOWANCES**

*(Sections 41 and 49)*

#### ARRANGEMENT OF PARAGRAPHS

##### PART I

##### *Initial Allowances*

#### PARAGRAPH

- 1. Initial allowance for industrial building
- 2. Computation of initial allowance

##### PART II

##### *Annual Allowances*

- 1. Limitation on annual allowance
- 2. Industrial building, capital expenditure
- 3. Annual allowances, industrial buildings
- 4. Plant or machinery, capital expenditure
- 5. Annual allowances, plant or machinery
- 6. Deductions in relation to commercial building
- 7. Computation of allowances deductible

##### PART III

##### *Residential Accommodation for Employees*

- 1. Deductions in relation to commercial building
- 2. Computation of allowances deductible

##### PART IV

##### *Farmers*

- 1. Computation of allowances deductible

##### PART V

##### *Disposal of Property*

- 1. Charge or allowance on disposal
- 2. Balancing allowance

3. Balancing charge
4. Replacement property
5. Annual allowance on replacement property
6. Effect of election

PART VI  
*Definitions*

1. Definitions

**PART I**  
***Initial Allowances (paragraphs 1-2)***

**1. Initial allowance for industrial building**

In ascertaining the chargeable income of any person for any tax year derived from an approved industrial business, there shall be deducted from his or her business assessable income an allowance (in this Part referred to as "an initial allowance") in respect of expenditure incurred by that person on-

- (a) the erection or purchase of any new industrial building; or
- (b) any improvements, other than repairs, to any industrial building, if that building was used solely for the purposes of such business carried on by that person.

**2. Computation of initial allowance**

The initial allowance deductible under paragraph 1 shall be an amount equal to 25 per cent of the expenditure incurred by him or her on the building or improvements and such allowance shall be deducted in the tax year during which-

- (a) in the case of a building, it was first used; or
- (b) in the case of improvements, they were completed.

**PART II**  
***Annual Allowances (paragraphs 1-7)***

**1. Limitation on annual allowance**

(1) When the aggregate of the allowances granted to any person in respect of any property to which this Part applies equals the annual expenditure incurred by him or her on such property, no further annual allowance shall be granted in respect of that property.

(2) Where any item of property to which this Part applies is used partly for purposes of a business and partly for other purposes, the annual allowance in respect thereof which would otherwise be granted shall be reduced by such amount as the Commissioner General considers to be fair and reasonable having regard to the extent of use for such other purposes.

**2. Industrial building, capital expenditure**

In ascertaining the business chargeable income of any person for any tax year derived from the letting or use of an industrial building, there shall be deducted from his or her business assessable income an annual allowance in respect of the expenditure incurred by him or her on any industrial building or improvements thereto, if that building was used in that tax year for the purposes of such business carried on by that person.

### **3. Annual allowances, industrial buildings**

(1) Subject to the provisions of subparagraph (2), the annual allowance deductible under paragraph 2 shall, in respect of expenditure incurred on or after 1st July 1982, be made in respect of the tax year during which the building was first used or the improvements were completed and of the next 39 succeeding tax years and such allowance shall be of an amount equal to two and one half per cent of the expenditure incurred:

Provided that where an expenditure was incurred on a building before 1st July, 1982, but the building was not first used in that business before that date, then such expenditure shall be deemed to have been incurred on the date the building was first brought into use.

(2) Where the aggregate amount of any initial and annual allowances deductible in respect of any industrial building in accordance with the provisions of Part I and the preceding provisions of this paragraph equals the expenditure incurred in respect of such building, no further allowance shall be deductible in respect of such building.

### **4. Plant or machinery, capital expenditure**

In ascertaining the business chargeable income of any person for any tax year there shall be deducted from his or her business assessable income an annual allowance in respect of expenditure incurred by him or her on any plant or machinery used by him or her in that tax year for the purposes of his or her business.

### **5. Annual allowances, plant or machinery**

(1) Subject to the provisions of this paragraph, the annual allowance deductible under paragraph 4 shall be such amount, not being less than 10 per cent nor more than 25 per cent, of the expenditure incurred by him or her on such plant or machinery as the Commissioner General may consider to be fair and reasonable having regard to the expected life of the plant or machinery:

Provided that in respect of a motor car (which expression shall include a station wagon but not a commercial vehicle) owned or held under a lease, leaseback or similar arrangement and used for the purpose of business, by a person other than a person whose principal business is that of hiring or leasing of motor vehicles, any annual allowance shall only be claimable in respect of expenditure up to a maximum of P175,000.

(2) Where the aggregate amount of annual allowances given in respect of any plant or machinery in accordance with the provisions of paragraph 4 equals the expenditure incurred in respect of such plant or machinery, no further annual allowance shall be given in respect of the plant or machinery.

(3) Where any plant or machinery used by a non-resident is used in Botswana for a period of less than 12 months in any tax year, the annual allowance in respect of such plant or machinery shall be such amount as the Commissioner General may consider to be fair and reasonable having regard to the period of use of such plant or machinery in Botswana.

### **6. Deductions in relation to commercial building**

In ascertaining the business chargeable income of any person for any tax year, there shall be deducted from his or her business assessable income an annual allowance in respect of the expenditure incurred by him or her on the construction or purchase of a commercial building or on any improvements, other than repairs, thereto, used in that tax year solely for commercial purposes.

### **7. Computation of allowances deductible**

The annual allowance deductible under paragraph 6 shall be made in respect of the tax year during which the building was first used or improvements thereto were completed and of the next 39

succeeding tax years and such allowance shall be of an amount equal to two and a half per cent of the expenditure incurred on the building when it was first used or when the improvements thereto were completed.

### **PART III**

#### ***Residential Accommodation for Employees (paragraphs 1-2)***

##### **1. Deductions in relation to commercial building**

In ascertaining the business chargeable income of any person for any tax year from a business other than a business of mining there shall be deducted from his or her business assessable income the amount of any expenditure incurred by him or her during the tax year on the erection of dwelling houses for his or her employees:

Provided that the deduction allowed shall not exceed P25 000 in relation to each dwelling house.

##### **2. Computation of allowances deductible**

Where, for any tax year within a period of nine years after the tax year in which a deduction has been allowed under paragraph 1 to any person, the dwelling house in respect of which such deduction has been allowed is used for any purpose other than the residential accommodation of an employee, there shall be included in the gross income of that tax year of the first-mentioned person an amount equal to 10 per cent of the deduction allowed:

Provided that where a dwelling house was used for any purpose other than the residential accommodation of an employee for a period of less than 12 months in that tax year, the amount to be included in gross income shall be equal to that proportion of 10 per cent of the deduction as that period bears to 12 months.

### **PART IV**

#### ***Farmers (paragraph 1)***

##### **1. Computation of allowances deductible**

In ascertaining the business chargeable income of any person for any tax year from a business of farming, there shall be deducted from his or her business assessable income-

- (a) any expenditure incurred by him or her during the tax year on-
  - (i) the eradication of noxious plants;
  - (ii) the prevention of soil erosion;
  - (iii) dipping tanks;
  - (iv) the sinking of boreholes and wells, the provision of piping and pumping plants or the construction of-
    - (aa) structural improvements for the conservation of water including dams, tanks and reservoirs; or
    - (bb) irrigation channels and water furrows;
  - (v) the erection of fences, yards and crushes;
  - (vi) the erection of buildings used in connection with farming operations, other than buildings designed to provide residential accommodation;

- (vii) the establishment of trees, plantations, orchards and vineyards;
  - (viii) the building of roads, bridges or airstrips used in connection with farming operations;
  - (ix) the carrying of electric power from the main transmission lines to the farm apparatus and the erection of buildings or structures connected with the generation of power;
  - (x) the making of firebreaks; and
  - (xi) any other works of a capital nature which, in the opinion of the Commissioner General, are reasonably associated with the classes of expenditure enumerated in items (i) to (x); and
- (b) such annual allowances in respect of any other property as is provided under Parts II and III.

## **PART V**

### ***Disposal of Property (paragraphs 1-6)***

#### **1. Charge or allowance on disposal**

Where, in relation to any business carried on by any person, there have been allowances granted in respect of any property and that property is disposed of in any tax year, a balancing allowance or a balancing charge shall be made for that tax year as provided in this Part.

#### **2. Balancing allowance**

Where the expenditure incurred by any person on the property referred to in paragraph 1 disposed of in any tax year exceeds the aggregate of-

- (a) the allowances granted in respect thereof; and
- (b) the disposal value, the amount of such excess (referred to in this Act as "a balancing allowance") shall be deducted from the business assessable income of such person for that tax year.

Provided that in the case of a motor car to which the proviso to subparagraph (1) of paragraph 5 of Part II of the Third Schedule applies, the expenditure incurred on the property for the purposes of this paragraph shall not exceed the amount of expenditure on which an annual allowance is grantable under that proviso in respect of that property.

#### **3. Balancing charge**

Subject to paragraph 2 hereof, where the disposal value of the property referred to in paragraph 1 disposed of in any tax year exceeds the difference between-

- (a) the expenditure by that person on that property; and
- (b) the allowances granted in respect thereof,

the amount of such excess (referred to in this Act as a "**balancing charge**") shall be included in the gross income of such person for that tax year:

Provided that where the property disposed of is a property to which the Tenth Schedule applies, the balancing charge shall be limited to so much of the said difference as does not exceed the sum of the allowances granted in respect of the said property.

#### **4. Replacement property**

Where, but for this paragraph, the amount of any balancing charge arising from the disposal of any plant or machinery would be taken into account in ascertaining the gross income of any person for any tax year, that person may elect, by notice in writing given to the Commissioner General, when lodging his or her tax return for that year, that, in lieu of the balancing charge being so taken into account, it may be deducted, in accordance with paragraph 5 or 6, from the expenditure incurred on any plant or machinery (hereinafter referred to as "the replacement plant or machinery") acquired by him or her for the purposes of his or her business during the tax year, to replace the plant or machinery disposed of:

Provided that the provisions of this paragraph shall not apply in respect of a car owned by a person or held by him or her under a lease or lease-back arrangement, for the purposes of a business other than the business of a car rental or taxi service.

## **5. Annual allowance on replacement property**

For the purposes of determining annual allowances under Part II, the expenditure incurred on the replacement plant or machinery in respect of which an election is made under paragraph 4 shall be reduced by the amount of the balancing charge referred to therein.

## **6. Effect of election**

Where an election is made by any person under paragraph 4 in respect of the amount of any balancing charge and that balancing charge exceeds the expenditure incurred on the replacement plant or machinery-

- (a) no annual allowance shall be granted under Part II in respect of the replacement plant or machinery; and
- (b) the amount of the excess shall be included in the gross income of that person for that tax year.

## **PART VI** **Definitions (paragraph 1)**

### **1. Definitions**

In this Schedule-

**"allowances granted"** means the aggregate of all allowances and deductions granted under-

- (a) Parts I and II of this Schedule; and
- (b) any amount by which any expenditure incurred on the replacement of any plant or machinery is reduced by the amount of a balancing charge under paragraph 5 of Part V;

**"annual allowance"**, in relation to any case to which paragraph 1(2) of Part II applies, means the annual allowance which would have been granted in respect of any item of property if no restriction had been imposed under that subparagraph;

**"approved industrial business"** means-

- (a) an hotel business;
- (b) any business the predominant activity of which is a process of manufacture; or
- (c) the letting of an industrial building or plant or machinery for use by the lessee thereof in any business of the kind referred to in item (a) or (b);

**"business assessable income"** means that part of the assessable income of any person derived from a business carried on by him or her;

**"business chargeable income"** means that part of the chargeable income of any person derived from a business carried on by him or her;

**"commercial building"** means any building in use for the purposes of a business other than-

- (a) a building in respect of which allowances or deductions relating to the expenditure incurred on such building are provided for under any other provisions of this Act; or
- (b) any residential building;

**"disposal value"** means, in relation to-

- (a) the scrapping of property, the scrap value thereof;
- (b) the disposal of property by way of-
  - (i) sale, the net proceeds of sale;
  - (ii) exchange, the market value of any asset acquired through such exchange adjusted to take into account any monetary consideration made;
  - (iii) compulsory acquisition, the amount for which it was compulsorily acquired; or
  - (iv) gift, the market value thereof;
- (c) withdrawal of property from use in the business or removal from Botswana, the market value thereof; or
- (d) the loss or destruction of property, any amount received for the remains of such property together with any amounts accrued by way of compensation or indemnity for such loss or destruction;

**"disposed of"**, in relation to a unit of property, means scrapped, sold, exchanged, compulsorily acquired, given away, withdrawn from use, removed from Botswana, lost or destroyed;

**"dwelling house"** includes a unit of residential accommodation in a building constructed for the accommodation of more than one person;

**"expenditure"** means expenditure of a capital nature but does not include any amount of value added tax allowable as an input tax credit under the Value Added Tax Act;

**"expenditure incurred"**, in relation to property acquired by any person, means the cost to that person of such property or, where such property was acquired by him or her-

- (a) for a consideration which cannot be valued;
- (b) otherwise than by way of a transaction at arm's length; or
- (c) prior to being brought into use in his or her business, the amount which the Commissioner General considers to be equal to the market value of the property at the time it was acquired;

**"residential building"** means any building or structure or part thereof which the Commissioner General is satisfied is in use as a dwelling house or for any purposes ancillary thereto.

#### **FOURTH SCHEDULE**



## **SPECIAL CLASSES OF COMPANIES AND BUSINESS**

(Section 55)

### **PART I**

#### **Botswana Meat Commission (paragraphs 1-3)**

#### **1. Gross income**

The gross income of the Botswana Meat Commission (hereinafter referred to as "the Commission") for any tax year shall comprise the aggregate of-

- (a) the gross proceeds of sale by the Commission of-
  - (i) its products from the slaughtering of livestock; and
  - (ii) cattle sold on the hoof; and
- (b) any amounts recovered by way of insurance against loss or damage to such livestock or products, during the tax year.

#### **2. Taxable income**

Subject to paragraph 3, the taxable income of the Commission for any tax year shall be ascertained by deducting from the gross income of that tax year all direct marketing expenses incurred during that tax year by the Commission in the marketing of its products by way of-

- (a) bank exchange;
- (b) charges incurred for the handling and storage of its products outside Botswana;
- (c) cartage and railway and shipping freight charges;
- (d) insurance premiums in respect of such cartage and freightage;
- (e) sales commission;
- (f) survey and inspection fees charged and government taxes imposed outside Botswana;
- (g) advertising and sales promotion expenses; and
- (h) royalties paid in respect of trade marks and labels, and shall be a proportion of the amount remaining after deducting such expenses (hereinafter referred to as "the remainder") calculated as follows-
  - (i) where the remainder does not exceed three million pula, one-tenth of the remainder;
  - (ii) where the remainder exceeds three million pula but does not exceed six million pula, the sum of one-fifth of such part of the remainder as exceeds three million and three hundred thousand pula;
  - (iii) where the remainder exceeds six million pula but does not exceed nine million pula, the sum of three-tenths of such part of the remainder as exceeds six million pula and nine hundred thousand pula; or
  - (iv) where the remainder exceeds nine million pula, the sum of one-third of such part of the remainder as exceeds nine million and one million eight hundred thousand.

### **3. Special deductions**

From the amount calculated in paragraph 2 there shall be deducted in ascertaining the taxable income of the tax year therein referred to an allowance to the extent approved by the Minister in respect of expenditure incurred in connection with development projects approved by the Minister for the time being responsible for agriculture, with the concurrence of the Minister.

## **PART II**

### ***Members of the Botswana Development Corporation Limited Group of Companies (paragraphs 1-3)***

#### **1. Interest on loans made within group**

(1) In this Part "member of the Botswana Development Corporation Limited group of companies", as defined in section 2, is referred to as "member of the Development Corporation".

(2) Where a member of the Development Corporation lends money to another member of the Development Corporation there shall be included in the gross income of the member lending the money in any tax year only such amount of interest on the loan which has been actually paid to such member by the borrowing member of the Development Corporation.

(3) In ascertaining the chargeable income or the assessed loss for any tax year of a member of the Development Corporation to whom a loan has been granted under subparagraph (2) there shall be deducted any amount of interest paid on such loan.

#### **2. Interest on loans payable to persons outside group**

Where a person, other than a member of the Development Corporation, lends money to a member of the Development Corporation and such member (in this paragraph referred to as "the lending member of the Development Corporation") in turn lends such money to another member of the Development Corporation, then, in ascertaining the chargeable income or determining the assessed loss of the lending member of the Development Corporation for any tax year, there shall be deducted any expenditure incurred by way of interest on the loan made to the lending member of the Development Corporation, whether or not any interest has accrued on the loan made to the other member of the Development Corporation.

#### **3. Offsetting of losses incurred within group**

(1) Subject to subparagraph (2), where in any tax year a member of the Development Corporation has incurred any assessed loss, such member may, during the current tax year, by notice in writing to the Commissioner General, elect that the whole or any part of the assessed loss shall be deducted in ascertaining the chargeable income of one or more of the other members of the Development Corporation and such member shall be notified accordingly by the member making the election.

(2) Any member, in relation to whom an assessed loss is to be deducted in ascertaining his or her chargeable income in accordance with the provisions of subparagraph (1), may by notice in writing to the Commissioner General make a claim within three months of the notification of the election that such assessed loss shall be deducted in ascertaining his or her chargeable income for that tax year and the Commissioner General may make any reduced assessment required to give effect to the provisions of this paragraph:

Provided that the aggregate of deductions allowed under this paragraph for that year for the assessed loss shall not exceed the amount of such assessed loss.

(3) For the purposes of section 46 any assessed loss referred to under subparagraph (1) shall be reduced by such amount of assessed loss deducted under subparagraph (2) and, in ascertaining the chargeable income for any subsequent tax year of the member of the Development Corporation

incurring such assessed loss, no deduction shall be made in respect of any portion of the assessed loss deducted in accordance with the provisions of subparagraph (2).

(4) For the purposes of subparagraphs (1) and (2) an assessed loss incurred in any tax year means an assessed loss incurred in the tax year for which the election is made and does not include-

- (a) any assessed loss, or part thereof, incurred in any preceding tax year; or
- (b) any assessed loss, or part thereof, which has been deducted under section 46 in ascertaining the chargeable income for any tax year.

**PART III**  
***Person Carrying on Business of Insurance***  
***including Re-insurance (paragraphs 1-3)***

**1. Insurance other than life insurance**

The chargeable income derived by any person from the carrying on in Botswana of an insurance business other than life insurance business shall be ascertained by deducting from the sum of all premiums (including premiums on re-insurance) accrued to such person during any tax year in respect of the insurance of any risk, and other amounts accrued from the carrying on of such business, the sum of-

- (a) the total amount of the liability incurred in respect of premiums on re-insurance;
- (b) the actual amount of the liability incurred in respect of any claims during the tax year in respect of that business of insurance, less the value of any claims recovered under any contract of insurance, guarantee, security or indemnity;
- (c) the expenditure, not being expenditure falling under paragraph (a) or (b), incurred in respect of that business of insurance in accordance with sections 39 to 48;
- (d) such deduction as may be allowed by the Commissioner General in respect of unexpired risks:

Provided that the deduction allowed under this paragraph in respect of any tax year shall be included in the assessable income of the following tax year;

- (e) such deductions as may be allowed by the Commissioner General in respect of claims which have been intimated but not paid:

Provided that the deduction allowed under this paragraph in respect of any tax year shall be included in the assessable income of the following tax year; and

- (f) such deduction as may be allowed by the Commissioner General in respect of claims which have not been intimated or paid:

Provided that the deduction allowed under this paragraph in respect of any tax year shall be included in the assessable income of the following tax year.

**2.**

Payments into a Statutory Reserve Solvency Account established under the Insurance Industry Act, will be deductible in ascertaining chargeable income and payments out of such fund will be included in gross income.

**3.**

The Commissioner General may recognize the establishment of a claims equalization account for tax purposes, transfers into the account being deductible in ascertaining chargeable income, and transfers out being included in gross income.

## **FIFTH SCHEDULE DEDUCTION OF TAX BY EMPLOYERS**

*(Section 56)*

### ARRANGEMENT OF PARAGRAPHS

#### PARAGRAPH

1. Definitions
2. Registration of employers
3. Deduction of tax
4. Tax deduction tables
5. Variations from tax deduction tables
6. Liability to deduct tax not abated by other rights or obligations
7. Payment to or recovery by Commissioner General
8. Payment of remuneration free of tax
9. Certificate of remuneration and tax deducted
10. Personal liability of employer and employee
11. Employer to keep records
12. Tax remittance returns
13. Employer's annual return of deductions and remittances
14. Representative employers

#### **1. Definitions**

In this Schedule-

**"employee"** means any person (other than a company) who, in respect of an employment receives remuneration from an employer, and includes any person to whom remuneration accrues-

- (a) as a director of a company;
- (b) from a former employer or from an approved superannuation fund; or
- (c) as a dependant of a deceased person where such remuneration accrues to that dependant as a consequence of the former employment of that deceased person;

**"employer"** means any person who pays remuneration to any employee and includes-

- (a) a representative employer; and
- (b) the trustee of an approved superannuation fund;

**"remuneration"** means any amount accrued to an employee by way of-

- (a) wages, salary, leave pay, fee, commission, bonus, gratuity or compensation;
- (b) commutation of moneys due under any contract of employment or service; or
- (c) pension, lump sum payment or other benefit but does not include any amount accrued to any resident individual in respect of services rendered where such amount does not exceed the annual rate of P600;

(d) any other cash and non cash employee benefits;

**"representative employer"** means-

- (a) in the case of a company, the public officer or, in the case of a company in liquidation or under judicial management, the liquidator or judicial manager, as the case may be;
- (b) in the case of a partnership, the precedent partner or the agent of the partnership;
- (c) where the employer is the Government, a local authority or other similar authority, or a body corporate or unincorporate (not being a company or a partnership), the person responsible for paying remuneration on behalf of such employer;
- (d) in the case of an employer in respect of whose taxable income a representative taxpayer is chargeable to tax, the representative taxpayer; or
- (e) in the case of a non-resident employer, the agent having authority to pay remuneration on behalf of such employer,

but nothing in this definition shall be construed as relieving any employer from any duty or liability imposed upon him or her by this Schedule.

## **2. Registration of employers**

(1) Every person who pays or becomes liable to pay remuneration to any employee shall register as an employer with the Commissioner General.

(2) Every employer who has not registered as an employer before the commencement of this Act shall register with the Commissioner General in the prescribed form-

- (a) within 30 days after the commencement of this Act; or
- (b) in the case of a person who becomes an employer after the commencement of this Act, within 30 days after the end of the month in which he or she became an employer.

(3) Every employer who changes his or her business address or ceases to be an employer shall notify the Commissioner accordingly within 30 days of such change of address or of his or her ceasing to be an employer, as the case may be.

## **3. Deduction of tax**

(1) Every employer shall, unless the Commissioner General otherwise authorizes, deduct tax in accordance with this Schedule.

(2) Subject to paragraph 5, the amount of tax to be deducted shall be determined in accordance with tax deduction tables prescribed by the Commissioner under paragraph 4.

(3) Where an employer deducts from a resident employee's remuneration the employee's current contribution to an approved superannuation fund, the amount of tax to be deducted shall be calculated on the balance of remuneration remaining after deducting that contribution:

Provided that the deduction for any such contribution shall be based on an annual rate not exceeding 15 per cent of the employee's remuneration.

## **4. Tax deduction tables**

(1) The Commissioner General shall prescribe tax deduction tables (in this Schedule referred to as "the tables") which shall come into force on the date of commencement of this Act.

(2) The tax to be deducted in accordance with the tables prescribed under this paragraph shall take into account the rates of tax payable under section 59.

(3) In the case of a resident individual tax shall be deducted by a reference to Table I of the Eighth Schedule.

(4) The tables shall specify the manner of calculations of the tax to be deducted from any payments or remuneration by way of-

- (a) annual and other bonuses;
- (b) overtime;
- (c) leave pay; and
- (d) other payments of an abnormal nature.

(5) In the event of any variation of the rates of tax payable in relation to any tax year to which this Act applies, the Commissioner General shall prescribe new tables to take into account such variations and shall, by notice published in the *Gazette*, specify the date upon which such tables shall come into force.

(6) Notwithstanding subparagraph (4)(d), where a payment of remuneration is to be made to an employee by way of-

- (a) bonus, gratuity, compensation or other lump sum on termination of his or her employment; or
- (b) lump sum payment by a superannuation fund on his or her retirement, the employer shall, not less than 15 days prior to the date such payment is to be made, apply to the Commissioner General for a direction as to the amount of tax, if any, which shall be deducted therefrom, and the employer shall comply with that direction.

## **5. Variations from tax deduction tables**

(1) The employer shall, at the written request of an employee, deduct from his or her remuneration an amount of tax greater than that required to be deducted under the tables.

(2) Where, in respect of any tax year, the Commissioner General is of the opinion that the amount of tax required to be deducted by an employer in accordance with the tables from the remuneration payable to any employee will be substantially less than the amount of tax which is likely to be charged for that tax year he or she may direct the employer by notice in writing to deduct such greater amount than is prescribed in the tables as appears to the Commissioner General to be appropriate to the circumstances of that employee, and the employer shall comply with that direction.

(3) Where, in respect of any tax year, an employee is of the opinion that the amount of tax required to be deducted by his or her employer in accordance with the tax tables will be substantially greater than the amount of tax which is likely to be charged for that tax year, he or she may apply in the prescribed form to the Commissioner General for the issue of a direction under subparagraph (2) and if the Commissioner General is satisfied that it would be reasonable to do so he or she may direct the employer by notice in writing to deduct either no tax or such lesser amount than is prescribed in the tables as appears to the Commissioner General to be appropriate to the circumstances of that employee, and the employer shall comply with that direction.

(4) A request by an employee to an employer under subparagraph (1) or a direction made by the Commissioner General to an employer under subparagraph (2) or (3) may be withdrawn at any time by notice in writing given to the employer and upon receipt of any such notice the employer shall

deduct tax in accordance with the tables.

(5) Nothing in subparagraph (3) shall be construed so as to authorize the repayment to an employee by the employer of any amount of tax which has been deducted.

(6) Any request under subparagraph (1), direction under subparagraph (2) or (3), or notice of withdrawal under subparagraph (4) shall be complied with by the employer on and after the pay day next succeeding a period of seven days following the receipt by him or her of the request, direction or notice.

## **6. Liability to deduct tax not abated by other rights or obligations**

The liability of any employer to deduct tax under this Schedule shall not be abated or extinguished by reason of-

- (a) the fact that the employer has a right or is, otherwise than in terms of any law, under an obligation to deduct any other amount from the employee's remuneration and such right or obligation shall, notwithstanding anything to the contrary contained in any other law, be deemed to refer only to the balance of remuneration remaining after tax has been deducted; or
- (b) the provisions of any law which may provide that the amount of remuneration shall not be reduced or be subject to attachment.

## **7. Payment to or recovery by Commissioner General**

Any tax deducted under this Schedule shall-

- (a) be due and payable within the time specified in section 98; and
- (b) when it becomes due and payable, be a debt due to the Government and if unpaid shall bear interest at the rate specified in section 101 and may be recovered in the manner provided in section 102.

## **8. Payment of remuneration free of tax**

(1) Any agreement between an employer and an employee whereby the employer agrees to pay, as remuneration to an employee, an amount expressed to be free of tax, shall be deemed to be an agreement providing for payment to the employee of such an amount of remuneration as, after deduction of tax in accordance with the table appropriate to that employee, would leave an amount equal to the remuneration paid.

(2) In any case to which subparagraph (1) applies-

- (a) the employer shall be liable to pay to the Commissioner General an amount equal to the difference between the remuneration deemed to be paid and the amount of the remuneration paid;
- (b) such amount shall be deemed to be tax to be deducted under this Schedule; and
- (c) the employee shall be deemed to have received as employment income the amount deemed to have been paid by the employer.

## **9. Certificate of Remuneration and tax deducted**

(1) Every employer who has deducted any tax under this Schedule in any tax year shall, within the time and in relation to the period of employment specified in subparagraph (2), furnish to every employee or former employee to whom remuneration has been paid a certificate in the prescribed

form the contents of which shall include-

- (a) the total remuneration accrued to that employee or former employee; and
- (b) the total of the amounts of tax deducted from such remuneration.

(2) The certificate referred to in subparagraph (1) shall specify the period of employment to which it relates and shall be furnished to the employee or former employee-

- (a) where the employer has not ceased to be an employer in relation to that employee at the end of the tax year, within 31 days after the end of the tax year;
- (b) where the employer has ceased to be an employer in relation to that former employee but has continued to be an employer in relation to other employees, on the date of cessation of the employment of that person;
- (c) where the employer has ceased to be an employer in relation to all employees, within 15 days after the date on which he or she ceased to be an employer; or
- (d) notwithstanding sub-subparagraph (a), (b) or (c), as and when directed by the Commissioner General, and where an employee, other than a casual employee to whom subparagraph (3) applies, is employed by the same employer for more than one period in any tax year the employer shall furnish a certificate in respect of each such period.

(3) Where the Commissioner General so directs for the purposes of subparagraph (2), an employer shall be deemed not to have ceased to be an employer in relation to any of his or her casual employees who are likely to be re-employed from time to time by such employer in a tax year.

(4) Any employee or former employee who has not received a certificate within the time specified in subparagraph (2) shall apply to the employer forthwith for such certificate to be furnished and in the event of such certificate not being furnished within a further period of 15 days he or she shall notify the Commissioner General of such failure by the employer to furnish the certificate.

(5) Every employee, when furnishing his or her tax return for any tax year, shall attach to such return the certificate furnished under this paragraph.

(6) The certificate to be furnished under this paragraph by an employer to an employee or former employee may be delivered-

- (a) by hand to such employee or his or her authorized agent;
- (b) by registered letter addressed to that employee at his or her usual or last known postal address; or
- (c) where the taxable income of that employee is not chargeable to tax in his or her name, by hand or registered letter addressed to the person so chargeable.

(7) In the event of inability to deliver a certificate under subparagraph (6), the employer shall retain such certificate and forward it to the Commissioner General with the return required under paragraph 13.

(8) At the request of an employee or former employee an employer may issue a duplicate certificate in the prescribed form.

(9) The Commissioner General may control the issue to employers of stocks of unused certificates and may prescribe conditions in regard to the manner in which they shall be used or as to the surrender of unused stocks.

(10) Every employer shall furnish to the Commissioner General, within 31 days after the end of the



tax year, a return in the prescribed form giving details of all certificates used during the tax year.

(11) Where an employer uses a mechanical accounting system the Commissioner General may, subject to such conditions as he or she may impose, authorize the use by that employer of certificates in a form other than that prescribed.

(12) If any employer to whom subparagraph (11) applies fails to comply with any condition imposed by the Commissioner General, the Commissioner General may withdraw his or her authorization of the use of the certificates referred to therein and the employer shall forthwith or from any date specified by the Commissioner General cease to use such certificates.

(13) Any certificate bearing the name or the trade name of any employer shall, unless the contrary is proved, be deemed to have been issued by such employer where such certificate-

- (a) is in the form prescribed by the Commissioner General and was supplied by the Commissioner General to and for the use of such employer; or
- (b) is in a form authorized by the Commissioner General under subparagraph (11) for use by such employer.

## **10. Personal liability of employer and employee**

(1) Where in any tax year an employer fails to deduct any tax under paragraph 3, he or she shall, in addition to any penalty for which he or she may be liable, be personally liable to pay to the Commissioner General within the time specified in section 98, the amount which he or she has failed to deduct.

(2) Where an employer pays to the Commissioner General the amount of tax which he failed to deduct, such amount shall be deemed to have been deducted under this Schedule.

(3) The employer shall be entitled to recover from the employee any amount paid to the Commissioner General under subparagraph (2).

(4) Where, in relation to any payment of remuneration, an employer has failed to deduct tax under paragraph 3 but the Commissioner General is satisfied-

- (a) that such failure to deduct tax was not due to any intent to postpone payment or to avoid the employer's obligations under this Schedule and that there is reasonable probability of recovering the tax from the employee by means other than under this Schedule; or
- (b) that tax deducted under this Schedule from earlier or later payments of remuneration is sufficient to meet the amount of tax which he or she has failed to deduct, the Commissioner General may absolve the employer from his or her liability under subparagraph (1).

(5) Where an employer pays any amount to the Commissioner General under this paragraph, he or she shall not be required to include any such amount in a certificate under paragraph 9 unless he or she recovers that amount from that employee.

(6) Where the Commissioner General is satisfied that any amount of tax which has been set off under section 61 pursuant to a certificate under paragraph 9 has not been deducted by the employer, the employer and the employee shall be jointly and severally liable to pay to the Commissioner General the amount which has been so set off and such amount shall be recoverable under section 102:

Provided that where the Commissioner General is satisfied that the employee alone was responsible for the incorrect amount being shown on the employee's tax certificate, the employer shall be absolved from liability under this subparagraph.

(7) Where it is proved to the satisfaction of the Commissioner General that any amount of tax has been deducted from the remuneration of an employee, notwithstanding that the employer has failed to pay such amount to the Commissioner General, no action shall be taken by the Commissioner General for the recovery thereof from the employee.

#### **11. Employer to keep records**

Every employer shall, in respect of each of his or her employees, maintain a record showing, in relation to each tax year-

- (a) the amounts of remuneration accrued to that employee; and
- (b) the amounts of tax deducted from such remuneration and such record shall be kept available for examination by the Commissioner General as and when required.

#### **12. Tax remittance returns**

Every employer shall, when making any payment under section 98, furnish a tax remittance return in the prescribed form:

Provided that in respect of the final month of a tax year or the month in which he or she ceases to be an employer such return shall be lodged with the return required under paragraph 13.

#### **13. Employer's annual return of deductions and remittances**

- (1) Every employer shall in respect of any tax year-
  - (a) within 31 days after the end of that tax year; or
  - (b) where he or she ceases to be an employer during that tax year, within 31 days after such cessation, or within such further time as the Commissioner General may allow, furnish to the Commissioner General a return, in the prescribed form, showing the total amount of tax deducted by him or her in respect of all his or her employees during that tax year and the total payments of such tax which have been made the Commissioner General.

(2) The return referred to in subparagraph (1) shall be accompanied by the first carbon copy or such other copy as may be approved by the Commissioner General of all certificates issued under paragraph 9.

(3) In the event of there being any difference between the total amount of tax deducted and the total payments of such tax made to the Commissioner General, the employer shall be required to account to the Commissioner General for such difference.

#### **14. Representative employers**

(1) Every representative employer, in relation to any remuneration paid by him or her in his or her representative capacity to any employee, shall be subject to the same duties and liabilities under this Schedule as if such remuneration had been paid by him or her in his or her personal capacity.

(2) Any tax which should be deducted by a representative employer under this Schedule, any interest due by him or her under section 101 or fine imposed under section 124 or 125 on him or her shall be recoverable from him or her, but to the extent only of any assets of the person whom he or she represents which may be in his or her possession or may come to him or her while acting in his or her representative capacity.

(3) The executor of the estate of any deceased employer or the trustee of the estate of any insolvent employer shall fulfil such obligations of that employer under this Schedule as were not

fulfilled at the time of his or her death or insolvency.

## **SIXTH SCHEDULE** **DEDUCTION OF TAX FROM PAYMENTS DUE UNDER CERTAIN CONTRACTS**

*(Section 57)*

### ARRANGEMENT OF PARAGRAPHS

#### PARAGRAPH

1. Notice to be given to Commissioner General
2. Direction for deduction
3. Amount to be deducted
4. Liability under this Act
5. Certificate of amount of tax deducted
6. Record to be kept of payments made and tax deducted
7. Tax remittance returns
8. Annual return of deductions and remittances
9. Personal liability where failure to deduct tax

#### **1. Notice to be given to Commissioner General**

Where any person enters into a contract under which payments will be made to which this Schedule applies, and where the total of such payments will exceed P5,000, that person shall notify the Commissioner General in writing within 30 days from the date of entering into the contract-

- (a) the nature of the contract;
- (b) its likely duration;
- (c) the name, address and taxpayer identification number of the person to whom payments are to be made;
- (d) the amount estimated to be payable under the contract,

and in this paragraph "a contract" means a single contract or a series of contracts.

#### **2. Direction for deduction**

Any person upon making any payment to which this Schedule applies, shall deduct tax in accordance with paragraph 3.

#### **3. Amount to be deducted**

(1) The amount of tax to be deducted by the person making any payments under a contract relating to construction operations shall be three per cent of the total amount payable under the contract.

(2) Any person responsible for deducting tax from payments made to a subcontractor under this Schedule may apply to the Commissioner General in the prescribed form, specifying the amount payable to the subcontractor, and the Commissioner General may direct that the person responsible for making payments to the applicant under this Schedule, deduct tax on only so much of the amount as reduced by the payments to be made by the applicant to the subcontractor as furnished in the application made by him or her.

(3) Upon an application by any person, affected by the provisions of this Schedule, the Commissioner General may, if satisfied that the person has complied with his or her obligations under

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the Act, issue a tax certificate to the taxpayer for purposes of tax to be deducted under this Schedule, and a copy of the certificate shall be issued to the person responsible for deducting tax from the payments to the applicant.

(4) The tax certificate issued in terms of subparagraph (3) may either vary the amount of tax to be deducted under this Schedule or direct that no tax need be deducted from payments to which this Schedule applies and such certificate shall be valid only for the duration of the contract in respect of which it has been issued.

(5) Any exclusion in terms of subparagraphs (2), (3) and (4) shall not relieve any person from any other obligation or tax payment imposed on him or her by this Act.

#### **4. Liability under this Act**

No deduction of tax under this Schedule from any payment made to any person shall relieve that person from the obligations to furnish any tax return under or from any other obligations imposed by this Act.

#### **5. Certificate of amount of tax deducted**

Every person who has deducted any tax under paragraph 2 shall, by the due date of payment of withholding tax under section 99, furnish to the person to whom payment was made a certificate in the prescribed form showing the amount of the payment made and the tax which has been deducted therefrom.

#### **6. Record to be kept of payments made and tax deducted**

Every person making any payment to which this Schedule applies shall maintain a record showing, in relation to each tax year the amounts of tax deducted from such payments, and such record shall be kept available for examination by the Commissioner General as and when required.

#### **7. Tax remittance returns**

Every person when making any payment under section 99 shall furnish a tax remittance return in the prescribed form.

#### **8. Annual return of deductions and remittances**

(1) Every person to whom this Schedule applies shall, in respect of each tax year, within 31 days after the end of that tax year or within such further time as the Commissioner General may allow, furnish to the Commissioner General a return in the prescribed form showing the total amount of tax deducted by him or her during the tax year and the total payments of such tax which has been made to the Commissioner General.

(2) The return referred to in subparagraph (1) shall be accompanied by the first carbon copy of all certificates issued under paragraph 5.

(3) In the event of there being any difference between-

(a) the total amount of tax deducted; and

(b) the total payments of such tax made to the Commissioner General,

that person shall be required to account to the Commissioner General for any such difference.

#### **9. Personal liability where failure to deduct tax**

(1) Where any person fails to deduct any tax under paragraph 2 he or she shall, in addition to any

penalty for which he or she may be liable, be personally liable to pay to the Commissioner General within the time specified in section 99 the amount which he or she has failed to deduct.

(2) Where any person pays to the Commissioner General the amount of tax which he failed to deduct, such amount shall be deemed to have been deducted under this Schedule.

(3) The person making such payment to the Commissioner General under subparagraph (1) shall be entitled to recover such amount from the person to whom a payment was made under the contract.

(4) Where, in relation to any payment to which this Schedule applies, any person has failed to deduct tax under paragraph 2 but the Commissioner General is satisfied that-

- (a) the failure to deduct tax was not due to any intent to postpone or to avoid that person's obligations under this Schedule and that there is reasonable probability of recovering the tax from the payee by means other than under this Schedule; or
- (b) that tax deducted under this Schedule from earlier or later payments is sufficient to meet the amount of tax which he or she has failed to deduct,

the Commissioner General may absolve the person who should have deducted tax from his or her liability under subparagraph (1).

**SEVENTH SCHEDULE**  
**DEDUCTION OF TAX FROM DIVIDENDS PAID TO RESIDENTS AND NON-RESIDENTS,**  
**AND FROM INTEREST, COMMERCIAL ROYALTIES, ENTERTAINMENT FEES AND**  
**MANAGEMENT OR CONSULTANCY FEES PAID TO NON-RESIDENTS**

*(Section 58)*

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

- 1. Person making payment to deduct tax
- 2. Amount to be deducted
- 3. Liability of resident
- 4. Certificate of amount of tax deducted
- 5. Record to be kept of payments made and tax deducted
- 6. Tax remittance returns
- 7. Annual return of deductions and remittances
- 8. Personal liability where failure to deduct tax

**1. Person making payment to deduct tax**

Every person who makes any payment to which this Schedule applies shall deduct tax in accordance with paragraph 2.

**2. Amount to be deducted**

Except as provided in section 60, the amount of tax to be deducted shall be-

- (a) 15 per cent of each payment of dividend made to a resident;
- (b) 15 per cent of each payment of dividend, interest, commercial royalty or management or consultancy fee made to a non-resident; or

- (c) 10 per cent of each payment of entertainment fee made to a non-resident.
- (d) 10 per cent of interest to a resident in excess of P1,500 in a quarter of a year.

### **3. Liability of resident**

No deduction of tax under this Schedule from any payment of dividend made to a resident shall relieve that person from the obligation to furnish any tax return under or from any other obligations imposed by this Act.

### **4. Certificate of amount of tax deducted**

Every person who has deducted any tax under paragraph 1 shall furnish to the person to whom payment is made a certificate, in the prescribed form, showing the amount of the payment made and the tax which has been deducted therefrom within 15 days after the end of the month during which the tax was deducted.

### **5. Record to be kept of payments made and tax deducted**

Every person making any payment to which this Schedule applies shall maintain a record showing, in relation to each tax year-

- (a) the payments of dividends made to each resident and tax deducted from such payments; and
- (b) the payments of dividends, interest, commercial royalties, entertainment fees, or management or consultancy fees made to each non-resident and tax deducted from such payments,

and such record shall be kept available for examination by the Commissioner General as and when required.

### **6. Tax remittance returns**

Every person when making any payment under section 100 shall furnish a tax remittance return in the prescribed form.

### **7. Annual return of deductions and remittances**

(1) Every person to whom this Schedule applies shall, in respect of each tax year, within 31 days after the end of that tax year or within such further time as the Commissioner General may allow, furnish to the Commissioner General a return in the prescribed form showing the total amount of tax deducted by him or her during the tax year and the total payments of such tax which have been made to the Commissioner General.

(2) The return referred to in subparagraph (1) shall be accompanied by the first carbon copy of all certificates issued pursuant to paragraph 4.

- (3) In the event of there being any difference between-
  - (a) the total amount of tax deducted; and
  - (b) the total payments of such tax made to the Commissioner General,

that person shall be required to account to the Commissioner General for any such difference.

### **8. Personal liability where failure to deduct tax**

- (1) Where any person fails to deduct any tax under paragraph 1, he or she shall, in addition to any

penalty for which he or she may be liable, be personally liable to pay to the Commissioner General within the time specified in section 100 the amount which he or she has failed to deduct.

(2) Where any person pays to the Commissioner General the amount of tax which he or she failed to deduct, such amount shall be deemed to have been deducted under this Schedule.

(3) The person making such payment to the Commissioner General under subparagraph (1) shall be entitled to recover such amount from the person to whom a payment to which this Schedule applies was made.

(4) Where any person has failed to deduct tax as required under paragraph 1 but the Commissioner General is satisfied that-

- (a) the failure to deduct such tax was not due to any intent to postpone payment or to avoid that person's obligations under this Schedule and that there is reasonable probability of recovering the tax from the payee by means other than under this Schedule; or
- (b) that tax deducted under this Schedule from earlier or later payments is sufficient to meet the amount of tax which he or she has failed to deduct,

the Commissioner General may absolve the person who should have deducted tax from his or her liability under subparagraph (1).

## **EIGHTH SCHEDULE RATES OF TAX FOR 2006/2007 AND SUBSEQUENT TAX YEARS**

*(section 59)*

**TABLE I**

<i>Taxable Income</i>	<i>Tax</i>
0 - 30,000	0
30,000 - 60,000	0 + 5% of excess over P30,000
60,000 - 90,000	1,500 + 12.5% of excess over P60,000
90,000 - 120,000	5,250 + 18.75% of excess over P90,000
120,000 and above	10,875 + 25% of excess over P120,000

Table I applies to resident individuals.

**TABLE II**

<i>Taxable Income</i>	<i>Tax</i>
0 - 60,000	5% of every Pula
60,000 - 90,000	3,000 + 12.5% of excess over P60,000
90,000 - 120,000	6,750 + 18.75% of excess over P90,000

Over 120,000

12,375 + 25% of excess over P120,000

Table II applies to non-resident individuals, trusts falling under section 14(2) and estates of deceased persons.

**TABLE III**

1. Resident company	Basic company tax	15%
	Additional company tax	10%
2. Non-resident company	All taxable income	25%
3. Botswana Meat Commission	All taxable income	15%
4. Pension and Provident Fund not approved by the Commissioner General	Investment income as defined in terms of Section 51(3)	7.5%
5. Dividends accruing outside Botswana	Gross income	15%
6. Persons not included in paragraphs 1 - 5 above	Taxable income	25%
7. International Financial Services Company:		
(a)	Income arising from approval financial transactions with non-residents, International Financial Service Centre Companies and Specified Collective Investment Undertakings	15%
(b)	Any other income	25%

**TABLE IV**

<i>Taxable Income in P</i>	<i>Tax</i>
0 - 15,000	0
15,000 - 60,000	0 + 5% of excess over 15,000
60,000 - 90,000	2,250 + 12.5% of excess over P30,000
90,000 - 120,000	6,000 + 18.75% of excess over P60,000
Over 120,000	11,625 + 25% of excess over P120,000

Table IV applies to net aggregate gains of individuals.

**NINTH SCHEDULE**



## **BOARD OF ADJUDICATORS**

*(Section 90)*

1. For the purposes of Part XII, the Minister may by notice in the *Gazette* appoint three suitable persons to serve as members of the Board of Adjudicators, and two persons as alternative members, and shall appoint one of their number to be the Chairman of the Board.

2. Members of the Board shall be appointed for a period of five years, but shall be eligible for reappointment.

3. Vacancies in the Board, for any reason, may be filled by appointments made by the Minister in the same manner as in paragraph 1, and temporary vacancies may be filled by temporary appointments made in the same manner.

4. At any meeting of the Board, the Chairman and any other member shall form a quorum, and in the event of an equal division of opinion amongst those present, the Chairman shall have a casting vote.

5. The members of the Board shall receive such remuneration and travelling and other allowances out of public funds as the Minister shall determine.

6. The Board shall have the following powers-

- (a) power to summon to attend at the hearing of an appeal any person who in its opinion is or might be able to give evidence relevant to the subject of the appeal;
- (b) power to examine on oath or otherwise any person summoned or required to give evidence;
- (c) power to require any person to produce any books or documents which are in his or her custody or under his or her control and which the Board considers necessary for the purposes of the appeal;
- (d) power to grant reimbursement of any reasonable expenses incurred in connection with his or her attendance by any person summoned to attend;
- (e) all the powers of a magistrate with regard to the enforcement of attendance of witnesses hearing evidence on oath and punishment for contempt of court;
- (f) power to admit or reject evidence adduced, whether or not admissible under the provisions of any written law for the time being in force relating to the admissibility of evidence;
- (g) power to postpone the hearing of an appeal where the Board is satisfied that, owing to sickness, accident or other reasonable cause the appellant has been prevented from attending on the date fixed for the hearing; and
- (h) such other powers as the Minister may, by regulations, prescribe.

## **TENTH SCHEDULE**

*(Section 35)*

1. Any amount accruing to any person from the disposal of the following properties shall not be included in gross income under section 35(1) and section 35(2), and the provisions of this Schedule shall not apply to gains from the disposal of such property-

- (a) any property of a business, other than land and buildings thereon, in respect of which an allowance has been granted under Part II of the Third Schedule in ascertaining chargeable

income for any tax year;

- (b) any property referred to in section 31;
- (c) the principal private residence of any individual who is the owner of such residence:

Provided that-

- (i) proceeds derived from the disposal of a principal private residence, shall only be exempt from tax if the proceeds from the gains of the disposal are re-invested in a property used for residential purposes within a period of 24 months of the disposal thereof; or
  - (ii) if the proceeds are not so re-invested in residential property, the exemption shall be granted only in respect of the disposal of the first principal private residence.
- (d) subject to paragraph 1A, any shares or units in or debentures of a resident company which is a public company under section 130 of the Act, or any shares, units or debentures that are actually traded on the Botswana Stock Exchange:

Provided that the exemption granted under this paragraph shall exclude proceeds of sale of shares or units in or debentures of a company undertaken by any investment company or similar company or any other company for the purpose of earning profits in the ordinary course of business;

- (e) immovable property owned by a company the shares of which are wholly owned by one or more of the following funds, where such property is disposed of within three months of the date of acquisition by such funds of all the shares of that company-
- (i) an approved provident fund;
  - (ii) an approved superannuation fund;
  - (iii) the Motor Vehicle Insurance Fund;
  - (iv) a statutory life insurance fund;
- (f) any property which represents a qualifying foreign participation as defined under section 2.
- (g) any bonds and debentures issued by the Government of Botswana, Bank of Botswana, a statutory body and special purpose vehicles formed by the Government of Botswana for the securitization of public debt;
- (h) any shares in an International Financial Services Centre company.

**1A.** A company that has released for trading 49 per cent or more of its equity shares on the Botswana Stock Exchange shall have the entire stock of its equity shares eligible for exemption.

**2.** Where any class of property is disposed of in consequence of the re-structure or merger of two or more resident companies (including a subsidiary company of such companies), and where the Commissioner General is satisfied that the re-structure or merger is carried out in such manner that the beneficial ownership of the shares of the companies concerned in the re-structure or merger remains unchanged and that no shareholder benefits at the expense of another, the disposal of the property shall not be deemed to take place at market value but shall be deemed to take place at a value which is not greater than the cost of such property to the company disposing of it.

**3.** Where any class of property is disposed of as a consequence of the re-organisation of a resident company, including a re-structure or merger as in paragraph 2, and the Commissioner General is satisfied that the sole object of the re-organisation, re-structure or merger is the offer of its

shares for listing on the Botswana Stock Exchange, the disposal of the property shall not be deemed to take place at market value but shall be deemed to take place at a value which is not greater than the cost of such property to the person disposing of it:

Provided that an application for listing of the shares is made to the Botswana Stock Exchange within a period of one month after the completion of the re-organisation, re-structure or merger, and the application is successful before the expiration of 12 months from the date of application.

4. Subject to the provisions of paragraphs 5, 6, and 7, in ascertaining the gain of any person in any tax year on disposal of any property to which section 35(1) applies, there shall, upon due claim and subject to such evidence as the Commissioner General may require, be deducted from the amount included in the chargeable income of such person under section 40-

- (a) the cost of acquiring the property disposed of including any expenditure wholly, exclusively and necessarily incurred for the purposes of the acquisition;
- (b) the cost of any improvements to the property effected by the person disposing of it or if any improvements were effected or to be effected by any other person under an agreement, the amount in respect of such improvements which was included under section 34(1)(c) in the gross income of the person disposing of such property;
- (c) any expenditure wholly, exclusively and necessarily incurred for the disposal;
- (d) if a leasehold property is disposed of by a lessee, any expenditure, including any premium paid, incurred by the lessee in obtaining the leasehold, the cost of any improvements effected to the property by him or her or any amount paid by him or her of the required improvements under the terms of the lease and any expenditure wholly, exclusively and necessarily incurred by him or her in disposing of the property:

Provided that no allowance shall be made under this subparagraph in respect of-

- (i) any expenditure or any proportion thereof if for the same or any other tax year an allowance is or can be made in respect of it under section 41(1)(g)(i) to the extent to which such amounts have not been included in the gross income of such person under section 28(2)(c)(iii) for the tax year; and
- (ii) any premiums allowed as a deduction under section 41(1)(f);
- (e) if the property disposed of is immovable property, the deduction ascertained in accordance with paragraph 8 hereof:

Provided that a sale of shares of a company owning immovable property as the dominant underlying asset of the company shall be deemed to be a sale of the immovable property; and

- (f) in the case of any property other than property referred to in subparagraph (e), 25 per cent of the difference between the chargeable income accruing from such disposal under section 40 and the total of any other deduction allowable under this paragraph:

Provided that the provisions of this paragraph shall not apply to any amount which would otherwise be deducted, in ascertaining the chargeable income of an international financial services centre company, under section 140(2) in respect of any specified foreign exchange loss.

5.(1) Subject to subparagraph (2), where any property disposed of by any person was acquired by him or her by way of gift or inheritance, the cost of acquisition of the property shall be-

- (a) where the property was acquired before 1st July, 1982, the market value as at 1st July,

1982; and

- (b) where the property was acquired on or after 1st July, 1982, the market value as at the date of acquisition.

(2) In the determination of market value for the purposes of subparagraph (1) account may be taken of any expenses incurred and taxes or duties paid in respect of any gift or inheritance, but excluding, in the case of inheritance succession duty and the proportion of estate duty (if any) attributable to the property disposed of.

**6.** (1) Subject to the provisions of subparagraph (2) where an amount accruing to any person on the disposal of a property is in respect of immovable property acquired by such person before 1st July, 1982 there shall be added to the cost of acquisition and the cost of any improvements effected thereto before that date whether by the person making the disposal or any other person under agreement, an amount compounded at the rate of 10 per cent of such cost for every 12 months from the date on which the property was acquired or the improvements thereto were effected, as the case may be, up to 30th June, 1982.

(2) Where a loss is incurred by a person on the disposal of a property by virtue of the application of the provisions of subparagraph (1), such loss shall be reduced by so much of the amount which has been added as a result of which a loss has been incurred.

**7.** For the purposes of paragraph 8 herein, the cost to any person of immovable property disposed of by him or her shall-

- (a) where the property is property acquired by him or her before 1st July, 1982, be the cost as ascertained under the provisions of paragraph 6 above as at 1st July, 1982;
- (b) where the property was acquired by him or her after 1st July, 1982, be the actual cost of acquisition; and
- (c) where property was acquired by way of gift or inheritance, be the cost as ascertained under paragraph 5.

**8.**(1) The deduction referred to in paragraph 4(e) shall be ascertained by-

- (a) applying the percentage difference between the cost of living index at the date of acquisition of the property or 1st July, 1982, whichever is later, and the cost of living index at the date of disposal to the cost of the property as ascertained under paragraph 7; and
- (b) by applying the percentage difference between the cost of living index as at the date, after 1st July, 1982, when any improvements were completed to the property and the cost of living index at the date of disposal of the property to the cost of the said improvements.

(2) The cost of living index for any day shall be the national cost of living index for the month in which it occurs.

**9.** Where the property disposed of is a business sold as a going concern the person disposing of the business shall furnish the Commissioner General with a breakdown of the price at which the property was disposed of showing the value apportioned to each asset and the net aggregate gain or loss of such person shall be ascertained by ascertaining the gain or loss on each such asset.

**10.** Where any property disposed of by any person in accordance with the provisions of paragraph 4 consists of bonus shares, debentures, securities or any other property falling to be treated as a dividend under this Act, the cost of acquisition of such property shall be the amount included in the assessable income of such person as dividend as defined in section 2.

**11.** Where an amount accruing to any person on the disposal of property is in respect of farming

property, there shall, in addition to such allowance as may be allowed under paragraph 4, be deducted from such amount so much of the aggregate of any assessed loss (other than deductions of expenditure of a capital nature allowed under Part IV of the Third Schedule which have been included in such loss) in the tax year in which the property was disposed of and the five preceding tax years in relation to his or her business of farming which has not been deducted or fully deducted under sections 46, 47 and 48 in ascertaining chargeable income under section 39(1).

**12.** (1) The net aggregate gain of any person for any tax year shall be the amount by which the aggregate amount of gains exceeds the aggregate amount of any losses for that year:

Provided that if the aggregate amount of losses incurred in any tax year exceeds the aggregate amount of gains in that year, such excess loss shall be deducted from the excess of aggregate gains over aggregate losses, if any, accruing in the next succeeding tax year.

(2) For the purposes of this paragraph "loss" means the amount by which the total deductions under this Schedule exceeds the chargeable income under section 40.

**13.** Where in ascertaining the gain accruing to or the loss incurred by any person the Commissioner General is not satisfied that the value of the property at the date of acquisition or the date of disposal as declared by that person is a true and accurate value, he or she may substitute the market value of the said property at the relevant time as ascertained by him or her for such declared value.

**14.** (1) In respect of any tax year, where any person reinvests the whole of his or her original investment in and all or part of the gain from the disposal of any immovable property of a business, within a year of his or her disposal of that property, in another immovable property for his or her business he or she may, upon a claim made by him or her and subject to such evidence as the Commissioner General may require, be permitted to treat so much of the gain so reinvested as a gain accruing only upon the disposal of the property in which it was reinvested:

Provided that so much of his or her original gain as was not reinvested shall be taken into account in ascertaining the net aggregate gain or loss of that person under paragraph 12 in respect of the tax year in which it accrued to him or her.

(2) A claim under subparagraph (1) shall not be valid unless it is made within 12 months of the date of the disposal of the first-mentioned property.

## **ELEVENTH SCHEDULE TRANSITIONAL PROVISIONS**

*(Sections 113, 114 and 115)*

### **PAYMENT OF ESTIMATED INCOME TAX BY DESIGNATED COMPANY DURING CURRENT TAX YEAR OF ASSESSMENT**

A company designated by the Commissioner General under section 113 shall calculate the amount of its estimated tax-

- (a) for the first tax year, by 31st March in that year, and shall pay that tax in four instalments of 30 per cent of the estimated tax for each of the first three instalments and 10 per cent for the last instalment on or before 31st March, 30th June, in that tax year and 30th September and 31st December, in the following tax year;
- (b) for the second tax year, by 31st December in that year, and shall pay that tax in four instalments of 20 per cent, 30 per cent, 30 per cent and 20 per cent of the estimated tax on or before 31st December, 31st March, 30th June, in that tax year and 30th September in the

following tax year; and

- (c) for the third tax year, by 30th September in that year, and shall pay that tax in four instalments of 10 per cent of the estimated tax for the first instalment and 30 per cent of the estimated tax for each of the remaining three instalments on or before 30th September, 31st December, 31st March and 30th June respectively in that tax year.

## **TWELFTH SCHEDULE (paragraphs 1-11)**

*(Section 43)*

### **1. Mining capital allowance**

In ascertaining the business chargeable income of any person for any tax year from a business of mining, there shall be deducted from his or her business assessable income an allowance to be known as a mining capital allowance, computed in accordance with 100 per cent of the mining capital expenditure made in the year in which such expenditure was incurred with unlimited carry forward of losses.

### **2. Separate calculations for different mines**

Where separate and distinct mining operations are carried on in mines which are not contiguous, the deduction to be allowed shall be calculated separately and shall not be transferable between such operations, except expenditure on a license or lease which has been relinquished by the mining company.

### **3. Balancing allowance and balancing charge**

Where a mine to which this Part applies is disposed of or the mineral concession in respect thereof is terminated in any tax year, the provisions of paragraphs 2 and 3 of Part V of the Third Schedule shall apply; and the references therein to allowances shall be deemed to relate to the mining capital allowances granted in respect of the mining capital expenditure in relation to that mine.

### **4. Mining profits**

Mining profits, other than profits from diamond mining, shall be taxed according to the following formula-

$$\text{Annual tax rate} = 70 - \frac{1500}{X}$$

where X is the profitability ratio, given by taxable income as a percentage of gross income:

Provided that the tax rate shall not be less than the company rate (current 25 per cent) made up of 15 per cent basic company tax rate and 10 per cent additional company tax rate.

### **5. Head office expenses**

Head office expenses allowed as a deduction in ascertaining gross revenue from mineral licence shall be limited to 1.5 per cent of gross income for the year of assessment and an excess of such expense above the limit shall be treated and taxed as a dividend.

### **6. Foreign controlled company**

Where a foreign controlled resident company has a foreign debt-to-equity ratio in excess of 3 to 1 at any time during the year of assessment, the amount of interest paid by the resident company during that year on that part of the debt that exceeds the ratio shall be disallowed as a deduction and

an amount so disallowed shall be treated and taxed as a dividend.

## **7. Foreign based company**

Where a foreign based company grants a loan to an affiliated company resident in Botswana, at an interest rate which the Commissioner General considers to be in excess of the market rate which a borrower dealing at arm's length with a lender would pay for that type and currency of loan, that part of interest payment which exceed the market rate shall be disallowed as a deduction and the amount of interest so disallowed shall be treated and taxed as a dividend.

## **8. Royalty payments**

Royalty payments made by the mining company under the provisions of the Mines and Minerals Act during any year of assessment shall be allowed as a deduction in the computation of the company's chargeable income in the year of assessment.

## **9. Withholding taxes**

The rate of withholding taxes shall be-

- (a) 15 per cent on each payment of dividend made to a resident;
- (b) 15 per cent on each payment of dividend, interest, commercial royalty, management or consultancy fee made to a non resident; and
- (c) 10 per cent on each payment of entertainment fee made to a non resident.

## **10. Request of documents**

(1) The Commissioner General may request the company to furnish such documents as he or she may require to show that all minerals sold or disposed by the company in any year of assessment have been valued at a fair market price for the purpose of determining the company's income tax liability for the year.

(2) Where the Commissioner General is not satisfied that the minerals were sold at a fair market price, he or she may make a determination as to the appropriate valuation of the minerals for income tax purposes.

## **11. Application**

(1) The provisions of this Schedule, with exception to diamond mining, shall not be subject to negotiations under section 54 or any other section of the Act.

(2) Any mining company which is subject to the existing mining tax agreement may continue to operate under the terms of such agreement or make a once only election to come under the provisions of this Schedule by written notice to the Commissioner General, not later than 30th June, 1999.

(3) Where a company makes an election to be taxed under this Schedule, the provisions of the mining tax agreement shall not be applicable.

## DATA PROTECTION ACT, 2018

No. 32



of 2018

## ARRANGEMENT OF SECTIONS

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**An Act to regulate the protection of personal data and to ensure that the privacy of individuals in relation to their personal data is maintained; to establish the Information and Data Protection Commission; and to provide for all matters incidental thereto.**

*Date of Assent:* 03.08.2018

*Date of Commencement:* ON NOTICE

ENACTED by the Parliament of Botswana.

### PART I — *Preliminary*

1. This Act may be cited as the Data Protection Act, 2018 and shall come into operation on such a date as the Minister may, by Order published in the *Gazette*, appoint.

Short title and commencement

2. In this Act, unless the context otherwise requires —  
“biometric data” means any information stemming from the statistical analysis of biological data;

Interpretation

“block” in relation to personal data, means the operation to suspend modification of data or suspend or restrict the provision of information to a third party when such provision is suspended or restricted in accordance with this Act;

“Commission” means the Information and Data Protection Commission established under section 4;

“Commissioner” means the Commissioner of the Information and Data Protection Commission appointed under section 6;

“consent” means any freely given, specific and informed expression of the wishes of the data subject, by which the data subject agrees to the processing of personal data relating to him or her;

“data controller” means a person who alone or jointly with others, determines the purposes and means of which personal data is to be processed, regardless of whether or not such data is processed by such person or agent on that person’s behalf;

“data processor” means a person who processes data on behalf of the data controller;

“data protection representative” means a person who is appointed by the data controller, which person shall independently ensure that personal data is processed in a correct and lawful manner;

“data subject” means an individual who is the subject of personal data;

“direct marketing” means directly reaching a market, customers or potential customers on a personal basis or mass media basis, and it includes attempting to locate, contact, offer and make incentives to consumers, through communication medium such as phone calls, private meetings infomercials, magazines or advertisements;

“file” means any structured set of personal data which is accessible according to specific criteria, whether centralised or dispersed on a functional or geographical basis, regardless of its format or media;

“filing system” means a structured set of personal data which is accessible according to specific criteria, whether centralised, decentralised or disposed on a functional or geographical basis;

“genetic data” personal data relating to the inherited or acquired characteristics of a natural person which give unique information about the physiology or the health of that natural person and which result, in particular, from an analysis of a biological sample from the natural person in question;

“identity card number” means the number that appears in the National Identity Card issued in accordance with the National Registration Act;

“personal data” means information relating to an identified or identifiable individual, which individual can be identified directly or indirectly, in particular by reference to an identification number, or to one or more factors specific to the individual’s physical, physiological, mental, economic, cultural or social identity; and “data” shall be construed accordingly;

“processing of personal data” means any operation or a set of operations which is taken in regard to personal data, whether or not it occurs by automatic means, and includes the collection, recording, organisation, storage, adaptation, alteration, retrieval, gathering, use, disclosure by transmission, dissemination or otherwise making information available, alignment or combination, blocking, erasure or destruction of such data; and “processing” shall be construed accordingly;

“recipient” means a person to whom personal data is provided, but does not include —

- (a) a person who received data in the framework of a particular legal proceeding; and
- (b) the Commissioner, when the personal data is provided in order to perform the duty to supervise, control or audit;

“sensitive personal data” means personal data relating to a data subject which reveals his or her —

- (a) racial or ethnic origin;
- (b) political opinions;
- (c) religious beliefs or philosophical beliefs;
- (d) membership of a trade union;
- (e) physical or mental health or condition;
- (f) sexual life;
- (g) filiation; or
- (h) personal financial information,

and includes —

- (a) any commission or alleged commission by him or her of any offence;
- (b) any proceedings for any offence committed or alleged to have been committed by him or her, the disposal of such proceedings, or the sentence of any court in such proceedings; and
- (c) genetic data, biometric data and the personal data of minors;

“third country” means a State that is not included in the Order made under section 48;

“third party” means a person other than the data subject, the data controller, the data processor, the data protection representative and such other person authorised by the data controller or data processor;

“transborder flow” means the international flow of personal data which can either be transmitted by electronic or other forms of transmission, including satellite; and

“Tribunal” means the Information and Data Protection Appeals Tribunal established under section 45.

3. (1) This Act shall apply to the processing of personal data entered in a file by or for a data controller —

Application

(a) in Botswana; or

(b) where the data controller is not in Botswana, by using automated or non-automated means situated in Botswana, unless those means are used only to transmit personal data:

Provided that when the recorded personal data is processed by non-automated means, it forms part of a filing system or is intended to form part of a filing system.

(2) This Act shall not apply to the processing of personal data —

(a) in the course of a purely personal or household activity; and

(b) by or on behalf of the State where the processing —

(i) involves national security, defence or public safety,

(ii) is for the prevention, investigation or proof of offences, the prosecution of offenders or the execution of sentences or security measures,

(iii) is for economic or financial interest, including monetary, budgetary and taxation matters, and

(iv) is for a monitoring, inspection or regulatory function connected with the exercise of functions under subparagraphs (i), (ii) and (iii).

(3) This Act is exempt from application to the processing of personal data specified under subsection (2) (b), to the extent that adequate security safeguards have been established in specific legislation for the protection of such personal data.

## PART II — *Information and Data Protection Commission*

4. (1) There is hereby established a body to be known as the Information and Data Protection Commission.

Establishment of Information and Data Protection Commission

(2) The Commission shall be a public office, and the provisions of the Public Service Act shall apply to the Commission and its officers.

Cap. 26:01

5. (1) The Commission shall do all such things as are necessary to protect the personal rights of individuals with regard to their personal data, and shall ensure the effective application of and compliance with this Act, in particular, to the right to protection of personal data, access, rectification, objection and cancellation of such data.

Functions and powers of Commission

Cap. 17:01

(2) Without derogating from the generality of subsection (1), the Commission shall —

- (a) ensure compliance with the provisions of the Statistics Act —
  - (i) with regard to the collection of statistical data and statistical secrecy, and
  - (ii) to issue precise instructions and give opinions on the security safeguards in place, for files set up for purely statistical purposes;
- (b) instruct a data controller to take such measures which are necessary to ensure that the processing of personal data is in accordance with this Act;
- (c) provide guidance and instructions on appropriate measures to ensure the security of personal data;
- (d) conduct research and studies, and promote educational activities relating to protection of personal data;
- (e) provide information to persons on their rights connected to the processing of personal data;
- (f) receive reports and claims from a data subject or his or her representative in regard to a violation of this Act, and to take such remedial action as is necessary or as may be prescribed;
- (g) investigate complaints from data subjects and respond to queries of such complaints;
- (h) monitor and adopt any authorisation for transborder flow of personal data, and to facilitate international cooperation on the protection of personal data;
- (i) create and maintain a public register of all data controllers;
- (j) obtain information from data controllers, which information is necessary for the exercise of its functions;
- (k) prepare and disseminate a code of practice for data controllers;
- (l) issue, where applicable, instructions required to bring processing operations in line with the principles of this Act;
- (m) publicise the existence of personal data files, and regularly publish a list of such files, and any other information that the Commission deems necessary;
- (n) record all directions received from the Minister in the course of the year; and
- (o) perform any other functions that may be conferred on it by the Minister.

Staff of  
Commission

**6.** (1) The Commission shall consist of a Commissioner, Deputy Commissioner and such other officers as may be necessary for the proper functioning of the Commission.

(2) The Minister shall appoint the Commissioner and the Deputy Commissioner, and the Commissioner shall appoint other officers of the Commission.

(3) The Commissioner shall be responsible for the direction and administration of the Commission.

7. The Commissioner may, in the performance of the functions of the Commission —

Powers of  
Commissioner

- (a) authorise any officer of the Commission to conduct an investigation of any alleged breach of the provisions of this Act;
- (b) require any person, at any specific time, to provide any information required in the process of an investigation conducted under this Act;
- (c) order or direct an officer of the Commission to block, erase or distribute personal data, whichever is applicable; or
- (d) do all such things as are necessary to protect the personal rights of individuals with regard to their personal data.

8. The Commissioner and any officer and employee of the Commission shall, before assuming their duties, take an oath of secrecy before the Minister in such form as may be prescribed, to carry out their duties with equity and impartiality and in accordance with the provisions of this Act.

Oath of secrecy

9. The Minister may give the Commission directions of a general or specific nature regarding the exercise of its powers and the performance of its functions, which directions shall not be inconsistent with this Act or with the obligations of the Commission, and the Commission shall give effect to any such direction.

Direction by  
Minister

### PART III — *Information and Data Protection Commission's Specific Powers in Relation to Processing of Personal Data*

10. (1) The Commissioner shall be entitled to obtain from the data controller, on request made in writing —

Right of access  
to information  
by  
Commissioner

- (a) access to personal data that is processed; and
- (b) any information or documentation relating to the processing of personal data, and security safeguards of such processing:

Provided that where the personal data is processed for the purpose of compliance with a legal obligation to which the data controller is subject, the Minister may prescribe procedures for purposes of the implementation of paragraph (a).

(2) The Commissioner shall at the time of the request made under subsection (1), specify the time in which a data controller shall respond to that request.

(3) Without prejudice to any written law, any person who does not comply with the request made by the Commissioner under subsection (1), or the time specified to respond to such request under subsection (2), commits an offence and is liable to a fine not exceeding P100 000 or to imprisonment for a term not exceeding three years, or to both.

(4) Where the Commissioner has made a request under subsection (1), and obtains sufficient information in order to conclude that the processing of personal data is unlawful, the Commissioner may prohibit the data controller from processing personal data in any other manner than by storing that data.

(5) In the exercise of the functions of the Commission under this section, the Commissioner may appoint officers for the purposes of inspection, and such officers shall have the same powers to enter and search any premises as are vested in a police officer.

(6) An officer appointed under subsection (5) shall produce an identification card, issued by the Commissioner, to an owner or occupier of any premises.

Commissioner  
to seek  
rectification

**11.** (1) Where the Commissioner concludes, as a consequence of information received in terms of section 10, that the personal data that is processed is incomplete or incorrect, the Commissioner shall order the data controller to complete or correct the processing of such data.

(2) If the personal data is not completed or corrected in terms of subsection (1), or if the matter is urgent, the Commissioner may prohibit the data controller to continue processing the personal data in any other manner than by storing that data.

Order to delete  
personal data

**12.** (1) Where the Commissioner decides that personal data has been unlawfully processed, the Commissioner shall, by notice made in writing, order the data controller to delete the personal data.

(2) If the data controller is aggrieved by the decision of the Commissioner, the data controller may, within 30 days of receipt of the notice referred to under subsection (1), appeal against such decision to the Appeals Tribunal.

Collaboration  
with other  
bodies

**13.** The Commission shall, before taking a decision to exercise its functions under section 5 (2) (b) and (k), which may significantly impact on the operation of any Government Department or of any public or private body, consult a third party who may be directly affected by the decision and the Commission shall give reasons for the decision made.

#### PART IV — *Requirements and Criteria for Processing Data*

Requirements  
for processing

**14.** A data controller shall ensure that —

- (a) personal data is processed fairly and lawfully, and where appropriate, the data is obtained with the knowledge or consent of the data subject;
- (b) personal data that is collected is adequate and relevant in relation to the purposes of its processing;
- (c) to the extent necessary for processing, personal data is accurate, complete and kept up-to-date;
- (d) personal data is collected for specific, explicitly stated and legitimate purposes;
- (e) personal data is not processed for any purpose that is incompatible with the specified, explicitly stated and legitimate purposes;
- (f) personal data is protected by reasonable security safeguards against risks such as loss, unauthorised access, destruction, use, modification or disclosure;

- (g) where data is incomplete or incorrect, all reasonable measures are taken to complete, correct, block or delete the personal data, having regard to the purposes for which it is processed;
- (h) personal data is not kept for a period longer than is necessary, having regard to the purposes for which it is processed; and
- (i) personal data is processed in accordance with good practice.

15. Personal data shall not be disclosed, made available or otherwise used for purposes other than those specified, except —

Limitation to processing

- (a) with the consent of the data subject; or
- (b) as may be authorised by any written law.

16. Personal data may be processed where —

Criteria for processing

- (a) the data subject has given his or her consent in writing;
- (b) processing is necessary for the performance of a contract to which the data subject is party, or in order to take steps at the request of the data subject prior to entering into a contract;
- (c) processing is necessary for compliance with a legal obligation to which the data controller is subject;
- (d) processing is necessary in order to protect the vital interests of the data subject;
- (e) processing is necessary for the performance of an activity that is carried out in the public interest or in the exercise of an official authorisation vested in the data controller or in a third party to whom the data is disclosed; or
- (f) processing is necessary for a purpose that concerns a legitimate interest of the data controller, or of a third party to whom personal data is provided, except where such interest is overridden by the interest to protect the fundamental rights and freedoms of the data subject and in particular the right to privacy.

17. (1) Notwithstanding section 14, personal data may be processed for historical, statistical or scientific purposes.

Processing for other purposes

(2) The data controller shall, when processing data in accordance with subsection (1), ensure that —

- (a) there are appropriate security safeguards in place where personal data processed for historical, statistical or scientific purposes may be kept for a period longer than is necessary, having regard to the purposes for which it is processed; or
- (b) personal data kept for historical, statistical or scientific purposes is not used for any decision concerning the data subject.

18. (1) Subject to subsection (2), where personal data is processed for purposes of direct marketing, the data controller shall, at no cost, inform the data subject of his or her right to oppose the processing.

Processing for direct marketing

(2) Where the data subject gives a notice of objection to the processing of his or her personal data for direct marketing, the personal data of the data subject shall not be processed for such purpose.



(3) A data controller who processes data despite the objection of the data subject under subsection (2), commits an offence and is liable to a fine not exceeding P500 000 or to imprisonment for a term not exceeding nine years, or to both.

Revocation of consent

**19.** (1) Where the processing of personal data takes place with the consent of the data subject, the data subject may at any time, in writing, revoke his or her consent for legitimate grounds compelling him or her at that particular time.

(2) The grounds referred to under subsection (1) shall be legitimate, reasonable and compelling.

#### PART V — *Processing of Sensitive Personal Data*

Prohibition for processing of sensitive personal data

**20.** Subject to the provisions of this Part, a person shall not process sensitive personal data, except where —

- (a) the processing is specifically provided for under this data Act;
- (b) the data subject has given his or her consent in writing;
- (c) the data subject has made the data public;
- (d) the processing is —
  - (i) necessary for national security,
  - (ii) necessary for the purposes of exercising or performing any right or obligation which is conferred or imposed by law on the data controller in connection with employment, or
  - (iii) authorised by any other written law, for any reason of substantial interest to the public; or
- (e) the processing is necessary to protect the vital interest of a data subject or another person in a case where —
  - (i) consent cannot be given by or on behalf of the data subject,
  - (ii) the data controller cannot be reasonably expected to obtain consent of the data subject, or
  - (iii) consent by or on behalf of the data subject has been unreasonably withheld.

Safeguards for processing sensitive personal data  
Processing by bodies or entities

**21.** A data controller, shall where sensitive personal data is processed, ensure that appropriate security safeguards are adopted.

**22.** (1) A body of persons or an entity, not being a commercial body or entity, which has political, philosophical, religious or trade union objects may, in the course of its legitimate activities and with appropriate guarantees, process sensitive personal data relating to the political, philosophical, religious or trade union objects, whichever is applicable, concerning —

- (a) the members of that body or entity; or
- (b) any other person who by reason of the objects of the body or entity, the body or entity regularly exchanges information with.

(2) The sensitive personal data processed under subsection (1) may be provided to a third party only on the written consent of the data subject.

**23.** (1) A health professional or other person who is subject to the obligation of professional secrecy, may process sensitive personal data for health or medical purposes, where the processing is necessary for —

- (a) preventive medicine and the protection of public health;
- (b) medical diagnosis;
- (c) health care; or
- (d) the management of health and hospital care services.

(2) For the purposes of this section, a “health professional” means a person registered under the Botswana Health Professions Act, the Nurses and Midwives Act, or any other person under the personal direction or supervision of the health professional and person who is directly authorised to perform such functions.

**24.** (1) Sensitive personal data may be processed for research, scientific and statistics purposes:

Provided that the processing is compatible with specified, explicitly stated and legitimate purposes.

(2) To determine whether the processing of sensitive personal data is necessary under subsection (1), the following shall be satisfied —

- (a) in the case of research and scientific purposes, that the Commissioner has approved the processing on the advice of a committee responsible for research and scientific ethics in an institution recognised by the Commissioner; and
- (b) in the case of statistics, the processing is necessary for the purposes provided under the Statistics Act.

**25.** (1) The processing of genetic data and biometric data, if it is processed for what it reveals or contains, is prohibited, except where the processing is in accordance with section 20.

(2) Where genetic data and biometric data is processed for medicinal purposes and the consent of the data subject has been granted, such data shall be processed, only if, a unique patient identification number is given to the data subject, which patient identification number is different from any other identification number possessed by the data subject.

**26.** (1) Sensitive personal data may be processed for legal purposes, where it is necessary —

- (a) in connection with any legal proceedings, including prospective legal proceedings;
- (b) for the purpose of obtaining legal advice;
- (c) for the purposes of establishing, exercising or defending legal rights; or
- (d) for the administration of justice.

Processing for health or medical purposes

Cap. 61:02  
Cap. 61:03

Processing for research, scientific and statistics purposes

Processing of genetic and biometric data

Processing for legal purposes or by Government

(2) Sensitive personal data may be processed by the National Assembly, any Government Department or Ministry, if it is necessary —  
 (a) for the exercise of any function of the National Assembly; or  
 (b) for the exercise of any function of the Government Department or Ministry,  
 and such processing is compatible with specified, explicitly stated and legitimate purposes.

(3) The Minister responsible for constitutional affairs may, by Order published in the *Gazette* —

- (a) exclude the application of subsection (1) (d) and subsection (2) in such cases as may be specified; or
- (b) specify further conditions that are to be satisfied to enable the processing under subsection (1) (d) and subsection (2).

Processing of  
identity card

27. A data subject's identity card number may, in the absence of the data subject's consent, only be processed where such processing is clearly justifiable, having regard to —

- (a) the purpose of the processing;
- (b) the importance of a secure identification; or
- (c) any valid reason, as may be prescribed.

#### PART VI — *Data Collection, Right to Access and Duties of Data Controller*

Information for  
data subject

28. The data controller or data processor shall, where personal data is obtained directly from the data subject, provide the following information to the data subject, except where the data subject already has the information —

- (a) the identity and habitual residence or principal place of business of the data controller or data processor;
- (b) the purpose of the processing for which the personal data is intended;
- (c) the existence of the right to object to the intended processing, if the processing of the personal data is obtained for the purposes of direct marketing;
- (d) taking into account the specific circumstances the data is processed, any other additional information, if the information is necessary to ensure fair processing for the data subject, which information may include —
  - (i) the recipient or category of recipients of the data,
  - (ii) whether the reply to any question made to the data subject is obligatory or voluntary, as well as the possible consequence of failure to reply, and
  - (iii) the existence of the right to access, rectify, and where applicable, the right to delete the data concerning him or her; or

(e) any other information necessary for the specific nature of the processing, to guarantee fair processing in respect of the data subject.

**29.** (1) Where personal data is not obtained directly from the data subject, the data controller or data processor shall, except where the data subject already has the information, at least provide the information listed in section 28.

Data collected  
from other  
sources

(2) The information referred to under subsection (1) shall be provided —

- (a) at the time of undertaking the recording of personal data; or
- (b) if a disclosure to a third party is foreseen, not later than the time when the personal data is first disclosed.

(3) The data controller or data processor may not provide the information required under subsection (1) —

- (a) if any other law provides for the registration or disclosure of any such personal data, and appropriate security safeguards are adopted;
- (b) if the personal data is required for —
  - (i) processing for statistical purposes,
  - (ii) purposes of historical or scientific research, or
  - (iii) purposes of medical examination of the population, with a view to protect and promote public health; or
- (c) if the provision of such information will be impossible or would involve a disproportionate effort.

**30.** (1) A data subject shall have the right to —

Rights of data  
subject

- (a) obtain from a data controller or data processor, confirmation of whether or not the data controller or data processor has personal data relating to him or her;
- (b) receive communication of personal data relating to him or her within a reasonable time, from the time of request, and at a reasonable charge, if any;
- (c) be given a reason for refusal of a request made under paragraph (a) or (b);
- (d) challenge the refusal for requests made under paragraphs (a) and (b) and submit a complaint in accordance with section 42 (1); and
- (e) challenge personal data relating to him or her by submitting a complaint in accordance with section 42 (1), and if the challenge is successful, have the personal data deleted, rectified, completed or amended, whichever is required:

Provided that where the data subject is for any reason unable to challenge personal data relating to him or her then his or her next of kin may submit a complaint on his or her behalf.

(2) Subsection (1) (a) and (b) shall not apply when the personal data is processed solely for the purpose of scientific research or is kept in a personal form for a period which does not exceed the period necessary for the sole purpose of compiling statistics:

Provided that this subsection shall not apply where the personal data is used for taking a measure or decision regarding any particular individual or where there is a risk of breaching the privacy of the data subject.

Authorisation  
to process

**31.** (1) A person who has access to personal data and is acting under the authorisation of the data controller or the data processor, which person includes the data processor, shall process personal data only as instructed by the data controller or the data processor, as the case may be, without prejudice to any duty or restriction imposed by law.

(2) A person who contravenes subsection (1), commits an offence and is liable to a fine not exceeding P20 000 or to imprisonment for a term not exceeding one year, or to both.

(3) A person who processes personal data without authorisation under this section, commits an offence and is liable to a fine not exceeding P100 000 or to imprisonment for a term not exceeding three years, or to both.

Safeguards for  
processing of  
personal data

**32.** (1) A data controller, a data processor or a person acting under authorisation of the data controller or the data processor, shall, in order to safeguard the security of personal data, take appropriate technical and organisational security measures necessary to protect personal data from —

- (a) negligent or unauthorised destruction;
- (b) negligent loss; or
- (c) alteration, unauthorised access and any other unauthorised processing of personal data.

(2) A data controller, a data processor or a person acting under authorisation of the data controller or the data processor, shall when undertaking the measures under subsection (1), ensure an appropriate level of security by taking into account —

- (a) technological development of processing personal data, and the costs for implementing the security measures; and
- (b) the nature of the personal data to be protected and the potential risks involved.

(3) Where the data controller or data processor outsources the processing of personal data, the data controller or data processor shall choose a data processor who gives sufficient guarantees regarding the technical and organisational security measures in place for the processing to be done, and shall ensure that the measures are complied with.

(4) The Commissioner may issue appropriate standards relating to information for security safeguards for all categories of processing personal data.

Notification of  
breach to  
safeguards

**33.** (1) The data controller shall, without delay, notify the Commissioner of any breach to the security safeguards of personal data.

(2) The data processor shall, without delay, notify the data controller of any breach to the security safeguards of personal data, which the data processor holds on behalf of the data controller.

(3) A person who contravenes this section commits an offence and is liable to a fine not exceeding P100 000 or to imprisonment for a term not exceeding three years, or to both.

**34.** (1) The data controller shall notify the Commissioner before carrying out any wholly or partially automated processing operation or set of such operations which are intended to serve a single purpose or several related purposes.

Obligation to  
notify  
Commissioner

(2) Subsection (1) shall not apply to operations which have the sole purpose of keeping a register that is intended to provide information to the public by virtue of any law, which register is open for public inspection.

(3) The notification under subsection (1) may specify —

- (a) the name and address of the data controller or data processor;
- (b) the purpose of the processing;
- (c) a description of the category or categories of a data subject and of the personal data or categories of personal data relating to the data subject;
- (d) the recipient or categories of recipients to whom personal data can be disclosed to;
- (d) proposed transfers of personal data to a third country;
- and
- (f) a general description allowing a preliminary assessment to be made of the appropriateness of the measures taken under section 32 to ensure security of processing:

Provided that the data controller shall notify the Commissioner of any changes affecting the information referred to under this subsection and the Minister may prescribe any matter related to the form of such notification.

**35.** (1) The Commissioner may exempt a notification required under section 34 (1), where the Commissioner is satisfied that —

Exemption  
from  
notification

- (a) the personal data being processed has no apparent risk of infringement to the rights of the data subject;
- (b) the purposes of the processing, the category of processing, the category of a data subject, the category of a recipient, and the data retention period are specified; and
- (c) the data controller has appointed a data protection representative, and the data controller has notified the Commissioner of such appointment.

(2) Where an exemption is granted under subsection (1), the data controller shall disclose any information required for processing under section 28.

(3) A public body shall not be exempted from notification under section 34 (1), for any processing undertaken by that body.

Data protection  
representative

**36.** (1) A data controller may appoint a data protection representative, and shall thereupon notify the Commissioner of such appointment.

(2) A data protection representative appointed under subsection (1) shall —

- (a) be a person who holds the requisite qualifications; and
- (b) keep a list of the processing carried out, which list shall be immediately accessible to any person applying for access.

(2) Where a data protection representative is removed, the data controller shall notify the Commissioner of such removal.

(3) Where a data protection representative has been appointed, the notification required under section 34 (1) shall not be required.

(4) A data protection representative shall —

- (a) ensure that the data controller processes personal data in a lawful and correct manner and in accordance with good practice, and where the data protection representative identifies any inadequacies, he or she shall bring these to the attention of the data controller; and
- (b) assist the data subject to ensure that his or her rights under the Act are protected.

(5) Where the data protection representative has reason to suspect that the data controller is contravening the rules applicable for processing personal data, and if rectification is not implemented as soon as practicable after such contravention is pointed out, the data protection representative shall notify the Commissioner.

(6) The data protection representative may consult with the Commissioner where there is doubt as to how the rules applicable to processing of personal data are to be applied.

Register  
maintained by  
data protection  
representative

**37.** (1) A data protection representative shall maintain a register of the processing conducted on behalf of the data controller.

(2) The data protection representative shall, at the instruction of the data controller, provide the information referred to under section 34 (3) (a) to (e) to any person who requests for it, if that information has not been notified to the Commissioner in terms of section 34.

Mandatory  
notification

**38.** (1) An exemption for notification under section 35 (1) shall not apply to processing of personal data that involves a particular risk of improper interference with the rights and freedoms of the data subject, and notification of such processing shall be submitted to the Commissioner, prior to its processing.

(2) The Minister may prescribe the processing operations involving particular risks referred to under subsection (1).

Register  
maintained by  
Commissioner

**39.** The Commissioner shall maintain a register of processing operations notified under section 34 (1), and the register shall contain the information listed under section 34 (3).

40. (1) A data controller or data protection representative, if instructed by the data controller, shall provide to any person who requests for it —
- (a) any information required under section 34 (3); or
  - (b) any information relating to the processing of personal data that is not notified to the Commissioner under section 34 (3).
- (2) This section shall not apply to the information specified under section 34 (2).

Information provided by data controller or data protection representative

#### PART VII — *Investigations and Enforcement*

41. (1) The Commissioner may, either on his or her own initiative or upon receipt of information or a complaint from any person, commence an investigation, where the Commissioner has reasonable grounds to suspect that —

Investigation by Commissioner

- (a) there is interference with the protection of personal data;
  - (b) the rights of a data subject are being infringed upon; or
  - (c) personal data is not processed in accordance with this Act.
- (2) For the purposes of investigations under this section, any officer of the Commission delegated to investigate may —
- (a) enter any premises used or apparently used by a data controller, at any reasonable time and search for any record, document or thing that the investigator considers relevant to the investigation;
  - (b) inspect and make copies, or take extracts from, and where necessary in an appropriate case, take possession of such record, document or thing; and
  - (c) direct the data controller or any relevant person, in writing, to —
    - (i) produce the relevant evidence to the investigator as specified in the direction,
    - (ii) give the investigator explanations or further information about the relevant evidence, or
    - (iii) attend before the investigator at a reasonable time and place specified in the direction, and answer under oath, questions relating to the matter.
- (3) Section 10 (6) applies to an investigator who enters any premises under this section.

42. (1) A person may submit a complaint in writing, to the Commissioner —

Complaints

- (a) alleging interference with the protection of personal data; or
  - (b) against a decision made under this Act, of which the data subject or his or her next of kin is aggrieved.
- (2) The Commissioner may, where he or she is satisfied that there is a need to investigate a complaint brought under subsection (1), direct an investigation to be conducted in terms of section 41.

43. (1) Where the Commissioner is satisfied that any person has interfered or is interfering with the protection of personal data, the Commissioner may serve the person with an enforcement notice, requiring that person —

Enforcement notice



- (a) to take such steps as may be specified in the enforcement notice, within the time specified therein; or
- (b) within a period specified in the notice, to stop —
  - (i) processing the personal data specified in the notice, or
  - (ii) processing personal data for the purpose or in a manner specified in the notice.

(2) An enforcement notice referred to under subsection (1) shall contain a statement indicating the nature of the interference with the protection of personal data, and the reasons for the decision to issue the enforcement notice.

Variation or  
revocation of  
enforcement  
notice

**44.** (1) The Commissioner may vary or revoke an enforcement notice at his or her own instance, or by request made in application by the person issued with the notice.

(2) The Commissioner may vary or revoke an enforcement notice if he or she is satisfied that, due to a change in circumstances, all or any of the provisions of the notice need not be complied with.

(3) An application to vary or revoke an enforcement notice under subsection (1) shall be in such manner and upon payment of such fee as may be prescribed.

Appeals  
Tribunal

**45.** (1) There shall be established an Information and Data Protection Appeals Tribunal to adjudicate over matters brought before the Tribunal for breach of any of the provisions of this Act.

(2) The Tribunal established under subsection (1) shall consist of —

- (a) a Chairperson, who shall be a High Court judge, a retired High Court judge or a legal practitioner who qualifies to be appointed as a High Court judge; and
- (b) two other persons who, in the opinion of the Minister, represent the interests of data subjects and of data controllers.

(3) The members of the Tribunal shall be appointed by the Minister for a term of three years, and shall be eligible for re-appointment for a further term of three years.

(4) The members of the Tribunal shall be paid such allowances as shall be determined by the Minister.

Appeals

**46.** (1) A person aggrieved by the decision of the Commissioner to —

- (a) serve him or her with an enforcement notice; or
- (b) refuse to vary or revoke an enforcement notice, may, within 30 days of such decision, appeal to the Appeals Tribunal established under section 45.

(2) In determining an appeal under this section the Tribunal may —

- (a) dismiss the appeal; or
- (b) reverse, amend or vary the decision of the Commissioner.

Proceedings of  
Tribunal

**47.** (1) The Tribunal shall sit as and when it has received a complaint.

(2) The Tribunal may call such witnesses or request the production of such documents as is necessary for the conduct of the proceedings before the Tribunal.

(3) A witness appearing before the Tribunal shall be entitled to the same allowances as those of a witness in proceedings before a magistrates' court.

(4) Subject to the provisions of this Act, the Tribunal may regulate its own procedure.

#### PART VIII — *Miscellaneous Provisions*

**48.** (1) The transfer of personal data from Botswana to another country is prohibited.

Transborder  
flow of  
personal data

(2) Notwithstanding the generality under subsection (1), the Minister may, by Order published in the *Gazette*, designate the transfer of personal data to any country listed in such Order.

**49.** (1) Without prejudice to section 48, and subject to the provisions of this Act, the transfer of personal data that is undergoing processing or intended processing, to a third country may only take place if the third country to which the data is transferred ensures an adequate level of protection.

Transfer of  
personal data  
to third country

(2) The adequacy of the level of protection of data by a third country referred to under subsection (1) shall be assessed by the Commissioner in the light of all the circumstances surrounding a data transfer operation or a set of data transfer operations, and particular consideration shall be given to —

- (a) the nature of the data;
- (b) the purpose and duration of the proposed processing operation;
- (c) the country of origin and country of final destination;
- (d) the rule of law, both general and sectoral, in force in the third country in question; and
- (e) the professional rules and security safeguards which are complied with in that country.

(3) The Commissioner shall decide whether a third country ensures adequate security safeguards.

(4) The transfer of personal data to a third country that does not ensure adequate security safeguards is prohibited.

(5) Notwithstanding subsection (4), a transfer of personal data to a third country that does not ensure adequate security safeguards may be effected by the data controller if the data subject has given his or her consent to the proposed transfer or if the transfer —

- (a) is necessary for the performance of a contract between the data subject and the data controller or the implementation of pre-contractual measures taken in response to the data subject's request;
- (b) is necessary for the performance or conclusion of a contract concluded or to be concluded in the interests of the data subject between the data controller and a third party;

- (c) is necessary or legally required for the public interest, or for the establishment, exercise or defence of a legal claim;
- (d) is necessary in order to protect the vital interests of the data subject; or
- (e) is made from a register that according to any law, is intended to provide information to the public and which is open for public inspection.

(6) Notwithstanding subsection (1), the Commissioner may authorise a transfer or a set of transfers of personal data to a third country that does not ensure an adequate level of security safeguards within the meaning of subsection (2):

Provided that the data controller provides adequate safeguards, which may result by means of appropriate contractual provisions, with respect to the protection of the privacy and fundamental rights and freedoms of individuals and with respect to their exercise.

Protection from  
personal  
liability

**50.** No matter or thing done or omitted to be done by the Commissioner or any officer of the Commission shall, if the matter or thing is done or omitted to be done *bona fide* in the course of the operations of the Commission, render the Commissioner or officer or any person acting under the direction of the Commissioner, personally liable to an action, claim or demand.

Offences and  
penalties

**51.** (1) A person who processes personal data in contravention of this Act commits an offence and is liable to a fine not exceeding P300 000 or to imprisonment for a term not exceeding seven years, or to both.

(2) A person who processes sensitive personal data in contravention of this Act commits an offence and is liable to a fine not exceeding P500 000 or to imprisonment for a term not exceeding nine years, or to both.

(3) A data controller who processes personal data in contravention of this Act commits an offence and is liable to a fine not exceeding P500 000 or to imprisonment for a term not exceeding nine years, or to both.

(4) A data controller who processes sensitive personal data in contravention of this Act commits an offence and is liable to a fine not exceeding P1 000 000 or to imprisonment for a term not exceeding 12 years, or to both.

(5) A data controller who does not inform a data subject of the rights conferred on the data subject under this Act commits an offence and is liable to a fine not exceeding P100 000 or to imprisonment for a term not exceeding three years, or to both.

(6) Where a data controller does not implement the security safeguards under section 32, the data controller shall be liable to a fine of P500 000 or to imprisonment for a term not exceeding nine years, or to both.

Compensation  
for damages

**52.** (1) A data subject may institute an action for damages against a data controller who processes data in contravention of this Act.

(2) An action under this section shall be commenced within a period of 12 months from the date when the data subject became aware or could have become aware of such contravention, whichever is earlier.

**53.** (1) The Minister may make regulations prescribing anything under this Act which is to be prescribed or which is necessary for the better carrying out of the objects and purposes of this Act or to give force and effect to its provisions.

Regulations

(2) Without derogating from the generality of subsection (1), regulations may provide for —

- (a) additional criteria for the processing of personal data;
- (b) procedures for the implementation of access to personal data;
- (c) processing operations; and
- (d) a code of practice or rules relating to the processing of data.

**54.** (1) The processing of personal data by any person, which was ongoing before the commencement of this Act or is ongoing and does not conform to the provisions of this Act, shall, within a period of 12 months from the commencement of this Act, be made by such person to conform to the provisions of this Act.

Transitional provisions

(2) A person who does not comply with subsection (1) commits an offence and is liable to the penalties set out under section 51.

PASSED by the National Assembly this 12th day of July, 2018.

BARBARA N. DITHAPO,  
*Clerk of the National Assembly.*



## FINANCIAL INTELLIGENCE ACT, 2022

No. 2



of 2022

### ARRANGEMENT OF SECTIONS

#### PART I — *Preliminary*

##### SECTION

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2. Interpretation

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3. Conflict with other laws
4. Continuation of Agency
5. Appointment of Director General
6. Functions of Agency
7. Security screening of Director General, etc.

#### PART III — *National Coordinating Committee on Financial Intelligence*

8. Continuation of National Coordinating Committee on Financial Intelligence
9. Functions and duties of Committee
10. Declaration of terrorist or terrorist group
11. Meetings of Committee
12. Sub-committees of Committee

#### PART IV — *Duty to Implement Programmes and Identify Customers*

13. Obligations to conduct risk assessment
14. Obligation to implement programmes to combat commission of financial offence
15. Obligation to implement group-wide programmes
16. Duty to conduct customer due diligence
17. Reliance on third party for customer due diligence measures
18. Obligation relating to agents for money or value transfer services
19. Duty to conduct ongoing customer due diligence
20. Identification of customer
21. Enhanced due diligence
22. Enhanced due diligence measures relating to prominent influential persons

## A.4

23. Enhanced due diligence measures relating to beneficiaries of life insurance services
24. Enhanced due diligence measures relating to cross border correspondent banking
25. Prohibition of anonymous accounts
26. Prohibition of shell banks
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65. Savings
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**An Act to re-enact with amendments the Financial Intelligence Act; to continue the establishment of the Financial Intelligence Agency and re-constitute the National Coordinating Committee on Financial Intelligence as a high level committee; to provide for third parties to perform certain customer due diligence measures on behalf of specified parties; to enable the Financial Intelligence Agency to initiate an analysis of information based on information in its own possession or information received from other sources to establish a suspicious transaction, and for matters connected therewith and incidental thereto.**

*Date of Assent:* 25.02.2022

*Date of Commencement:* 25.02.2022

ENACTED by the Parliament of Botswana.

PART I — *Preliminary*

1. This Act may be cited as the Financial Intelligence Act, 2022. Short title
2. In this Act, unless the context otherwise requires — Interpretation
  - “accountable institution” means a person referred to in Schedule III;
  - “act of terrorism” has the same meaning assigned to it under the Counter-Terrorism Act; Cap. 08:08
  - “Agency” means the Financial Intelligence Agency continued under section 4;
  - “anonymous account” means an account which cannot be linked to any person or be traced to any customer;
  - “ammunition” has the same meaning assigned to it under the Arms and Ammunition Act; Cap. 24:01
  - “arms” has the same meaning assigned to it under the Arms and Ammunition Act;
  - “beneficial owner” means a natural person who ultimately owns or controls a customer or a natural person on whose behalf a transaction is being conducted, including a natural person who exercises ultimate effective control over a legal person or arrangement, such that —



## A.6

- (a) in relation to a legal person —
- (i) is a natural person who either directly or indirectly holds such percentage of shares, as may be prescribed, voting rights or other ownership interest:

Provided that to the extent that there is doubt as to whether the person identified hereunder is the beneficial owner or where no natural person is identified as the beneficial owner, the natural person exercising control of the legal person through other means shall be the beneficial owner, or

- (ii) is a person who holds the position of senior managing official where no natural person was identified as a beneficial owner in terms of subparagraph (i);
- (b) in relation to a trust, is —
- (i) the settlor,
- (ii) a trustee,
- (iii) a protector, if any,
- (iv) a beneficiary of a trust, or a class of beneficiaries, where the individuals benefiting from the trust have yet to be determined, or
- (v) any other natural person exercising ultimate effective control over the trust by means of direct or indirect ownership or by other means, such as when he or she has the power, alone or jointly with another person or with the consent of another person, to —
- (aa) dispose of, advance, lend, invest, pay or apply trust property or property of the trust,
- (bb) vary or terminate the trust,
- (cc) add or remove a person as a beneficiary or from a class of beneficiaries,
- (dd) appoint or remove a trustee or give another person control over the trust, or
- (ee) direct, withhold consent or overrule the exercise of a power referred to in subparagraphs (aa) – (dd);
- (c) in relation to other legal arrangements similar to trusts, is the natural person holding equivalent or similar positions to those referred to in paragraph (b); and
- (d) in the case of insurance, is the ultimate beneficiary of proceeds of a life insurance policy or other related investment services when an insured event covered by the policy occurs;

“business relationship” means any arrangement made between a customer and a specified party or accountable institution where the purpose or effect of the arrangement is to facilitate an occasional, frequent, habitual or regular course of dealing between the customer and specified party or accountable institution;

- “cash” means coin and paper money of Botswana or of another country that is designated as a legal tender and that circulates as, and is customarily used and accepted as, a medium of exchange in the country of issue;
- “close associate” means a person who is closely connected to another person socially, professionally or through business interests or activities;
- “Committee” means the National Coordinating Committee on Financial Intelligence continued under section 8;
- “comparable body” means a body outside Botswana with functions similar to those of the Agency;
- “competent authority” means a public authority with designated responsibilities for combating financial offences;
- “competent United Nations body” means —
- (a) the Security Council Sanctions Committee established pursuant to the following Resolutions —
    - (i) Resolution 1267 of 1999,
    - (ii) Resolution 1989 of 2011, and
    - (iii) Resolution 2253 of 2015;
  - (b) the Security Council Sanctions Committee established pursuant to Resolution 1988 of 2011;
  - (c) the Security Council Sanctions Committee established pursuant to Resolution 1718 of 2006; and
  - (d) the Security Council when it acts under Chapter VII of the Charter of the United Nations in adopting targeted financial sanctions related to the prevention, suppression, disruption and financing of the proliferation of weapons of mass destruction;
- “correspondent banking” means the provision of banking services by one bank to another;
- “councillor” has the same meaning assigned to it under the Local Government Act; Cap. 40:01
- “credible sources” means any independent and reliable source of information such as international institutions, authoritative publications and mutual evaluation or detailed assessment reports;
- “customer” includes, a natural person, unincorporated body, legal arrangement, legal person or body corporate who has entered into or is in the process of entering into a —
- (a) business relationship; or
  - (b) single transaction,
    - with a specified party or an accountable institution;
- “customer due diligence” means the process where relevant information about the customer is collected and evaluated for any potential risk of commission of a financial offence;
- “designated person” means any person, entity or group that has been designated by a competent United Nations body as a person, entity or group against whom member states must take action for the prevention and combating of any activity specified in the applicable resolution;

## A.8

- Cap. 23:02 “Director General” means the Director General of the Agency;  
“Directorate” means the Directorate of Intelligence and Security Service established under the Intelligence and Security Service Act;
- “Egmont Group” means an international body of financial intelligence units that serves as a platform for the secure exchange of expertise and financial intelligence to combat financial offences;
- “enhanced due diligence” means higher level of due diligence required to mitigate the increased risk of commission of financial offence;
- Cap. 46:04 “financial institution” includes a bank as defined under the Banking Act, a building society as defined under the Building Societies Act or a non-bank financial institution as defined under the Non-Bank Financial Institutions Regulatory Authority Act;
- Cap. 42:03 “financial offence” means money laundering, financing of terrorism, financing of proliferation or financing illicit dealing in arms or ammunition;
- Cap. 46:08 “fund” has the same meaning assigned to it under the Proceeds and Instruments of Crime Act;
- Cap. 08:03 “group-wide” means a group that consists of a parent company or any other legal person exercising control and coordinating functions over the members of the group for the application of group supervision, together with branches or subsidiaries that are subject to anti-money laundering or counter financing of terrorism policies and procedures at the group level;
- “guidance notes” means guidance, instructions or recommendations issued by the Agency or supervisory authority to assist a specified party or an accountable institution to comply with the provisions of this Act;
- “high risk business” means a business —
- (a) incorporated in a high risk jurisdiction;
  - (b) having a business relationship with a business situated in a high risk jurisdiction;
  - (c) dealing in goods, services or commodities that present a high risk for financial offence;
  - (d) that has a business relationship with other businesses that appear on the sanction list;
  - (e) that is subject to or has been a subject of an investigation by an investigatory or supervisory authority; or
  - (g) that is managed by a person who is the subject of an investigation by an investigatory or supervisory authority;
- “high risk jurisdiction” means a country that —
- (a) is identified by the Financial Action Task Force or any such similar body as having no or weak regime on anti-money laundering, counter-financing of proliferation and counter illicit dealing in arms or ammunition;
  - (b) is subject to sanctions, embargos or similar measures issued by the United Nations Security Council; or

- (c) provides funding or support for terrorist activities or finances proliferation or illicit dealings in arms or ammunition or a country that allows high risk business;
- “immediate member of the family” means a spouse, son, daughter, sibling or parent;
- “*Kgosi*” has the same meaning assigned to it under the Bogosi Act; Cap. 41:01
- “illicit dealing in arms or ammunition” means a contravention of any of the provisions of Parts IV to VI of the Arms and Ammunition Act;
- “investigatory authority” means an authority empowered by an Act of Parliament to investigate or prosecute unlawful activities;
- “judicial officer” has the same meaning assigned to it under the Penal Code; Cap. 08:01
- “legal arrangement” means trusts or other similar arrangement;
- “money laundering” has the same meaning assigned to it under the Proceeds and Instruments of Crime Act;
- “non-profit organisation” means a Society registered under the Societies Act; Cap. 18:01
- “NBC weapons” means —
- (a) nuclear explosive device as defined in the Nuclear Weapons (Prohibition) Act; Cap. 24:05
  - (b) biological or toxin weapons as defined in the Biological and Toxin Weapons (Prohibition) Act; or Cap. 24:06
  - (c) chemical weapons as defined in the Chemical Weapons (Prohibition) Act; Cap. 24:04
- “national risk assessment” means appropriate steps that the country takes to identify and assess financial offence risk for the country on an ongoing basis, in order to —
- (a) inform potential changes to the country’s anti-money laundering, counter financing of terrorism, counter financing of proliferation regime and counter illicit dealings in arms or ammunition, including legislative changes and other measures; and
  - (b) assist in allocation and prioritisation of anti-money laundering, counter financing of terrorism, counter financing of proliferation and counter illicit dealings in arms or ammunition resources;
- “nationally listed person” means a person, entity or structured group that the Minister has by order, issued under section 10 (2), listed as a person, entity or group against whom authorities in Botswana must take action for the prevention and combating of terrorism, terrorism financing or financing of proliferation;
- “proliferation” has the same meaning assigned to it under the Counter Terrorism Act;
- “prominent influential person” means a person who is or has been entrusted with public functions within Botswana or by a foreign country, his or her close associates or immediate member of the family or an international organisation and includes —

**A.10**

- (a) a President;
- (b) a Vice-President;
- (c) a Cabinet Minister;
- (d) a Speaker of the National Assembly;
- (e) a Deputy Speaker of the National Assembly;
- (f) a member of the National Assembly;
- (g) a Councillor;
- (h) a senior government official;
- (i) a judicial officer;
- (j) a *Kgosi*;
- (k) a senior executive of a private entity where the private entity is of such turnover as may be prescribed;
- (l) a senior executive of a public body;
- (m) a senior executive of a political party;
- (n) senior executives of international organisations operating in Botswana; or
- (o) such person as may be prescribed;

Cap. 31:05

“property” has the same meaning assigned to it under the Proceeds and Instruments of Crime Act;

“protector” has the same meaning assigned to it under the Trust Property Control Act;

“risk assessment” in relation to specified party, means the undertaking of appropriate steps to identify, assess and understand the risk of financial offence to which its business is subject;

“risk management systems” means policies, technologies, procedures and controls, informed by a risk assessment, that enable a specified party to establish the risk indicators used to characterise customers, products and services to different categories of risk (low, medium or high risk) with the aim of applying proportionate mitigating measures in relation to the potential risk of financial offence in each category of risk established;

“senior executive of a political party” means any person who is the president, vice-president, chairperson, deputy-chairperson, secretary or treasurer of such political party or who is a member of the committee or governing body thereof, or who holds in such political party any office or position similar to any of those mentioned above;

“senior executive of a private entity” means a director, controlling officer, partner or any person who is concerned with the management of the private entity’s affairs;

“senior executive of a public body” means a senior officer of an organisation, establishment or body created by or under any enactment and includes any company in which Government has equity shares or any organisation or body where public moneys are used;

- “senior government official” means a public officer in senior management appointed under the Public Service Act or any senior officer appointed under any enactment; Cap. 26:01
- “senior management” with respect to a legal person or legal arrangement means a director, controlling officer, partner, protector, trustee or any person who is concerned with the management of its affairs;
- “settlor” has the same meaning assigned to it under the Trust Property Control Act; Cap. 31:05
- “shell bank” has the same meaning assigned to it under the Banking Act; Cap. 46:04
- “simplified due diligence” means the lowest level of due diligence that can be completed on a customer;
- “specified party” means a person listed in Schedule I to this Act, including branches or subsidiaries of that person;
- “supervisory authority” means a competent authority designated under Schedule II with responsibilities aimed at ensuring compliance by specified parties or accountable institutions, except that the Agency shall act as supervisory authority for a specified party or accountable institution that does not have a supervisory authority;
- “suspicious transaction” means a transaction which —
- (a) is inconsistent with a customer’s known legitimate business, personal activities or with the normal business for the type of account which the customer holds;
  - (b) gives rise to a reasonable suspicion that it may involve the commission of a financial offence;
  - (c) gives rise to a reasonable suspicion that it may involve property connected to the commission of a financial offence or involves property used to commit a financial offence whether or not the property represents the proceeds of an offence;
  - (d) is made in circumstances of unusual or unjustified complexity;
  - (e) appears to have no economic justification or lawful objective;
  - (f) is made by or on behalf of a person whose identity has not been established to the satisfaction of the person with whom the transaction is made; or
  - (g) gives rise to suspicion for any other reason;
- “tip off” means to inform a person suspected of committing a financial offence that —
- (a) a suspicious transaction has been reported; or
  - (b) he or she is under investigation for commission of a financial offence, where the tipping off is likely to prejudice —
    - (i) the investigation, or
    - (ii) the investigation to the person suspected of committing a financial offence;
- “transaction” means an arrangement between a customer and a specified party or accountable institution, and includes the following —

A.12

- (a) a deposit, withdrawal or transfer between accounts, opening an account, issuing a passbook, renting a safe deposit box, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit or other monetary instrument or investment security or any other payment, transfer or delivery by or through or to any person by whatever means effected;
- (b) an arrangement between persons; or
- (c) a proposed transaction;

“trust” has the same meaning assigned to it under Trust Property Control Act;

“trustee” has the same meaning assigned to it under the Trust Property Control Act;

“trust and company service provider” means a person or business that is not covered under this Act, and which as a business, provides any of the following services —

- (a) formation agent of legal persons;
- (b) acting or arranging for another person to act as a director or secretary of a company, a partner of a partnership or a similar position in relation to other legal persons;
- (c) providing a registered office, business address or accommodation, correspondence or administrative address for a legal person, a partnership or any other arrangement;
- (d) acting as or arranging for another to act as a trustee or a trust or performing the equivalent function for another form of legal arrangement;
- (e) acting as or arranging for another person to act as a nominee shareholder for another person;

“ultimate effective control” means where ownership or control is exercised through a chain of ownership or by means of control other than direct control;

Act No. 3  
of 2021

“virtual asset” has the same meaning assigned to it under the Virtual Assets Act; and

“virtual asset service provider” has the same meaning assigned to it under the Virtual Assets Act.

Conflict with  
other laws

**3.** In the event of any conflict or inconsistency between the provisions of this Act and any other law on combating the commission of financial offences, the provisions of this Act shall take precedence.

Continuation  
of Agency

**4.** (1) The Financial Intelligence Agency is hereby continued under this section.

(2) The Agency shall consist of a Director General and such other officers of the Agency, as may be necessary for the proper performance of the functions of the Agency.

(3) The Agency shall be a public office and accordingly, the provisions of the Public Service Act shall with such modifications as may be necessary, apply to the Director General and to officers of the Agency.

(4) Subject to the provisions of this Act, the Agency shall not, in the performance of its functions, be subject to the direction or control of any other person or authority.

**5.** (1) There shall be a Director General who shall be appointed by the President on such terms and conditions as the President may, on the recommendation of the Minister, determine.

Appointment  
of Director  
General

(2) The Director General shall be a person of recognised experience in one or more of the following disciplines —

- (a) finance;
- (b) law enforcement;
- (c) law; or
- (d) any other related field.

(3) A person appointed as a Director General shall hold office for a five year renewable term or until he or she attains the age of 60 years, whichever is the earlier.

(4) A person holding the office of Director General may be removed from office for —

- (a) inability to perform the functions of his or her office arising from infirmity of body, mind or any other cause;
- (b) gross misconduct; or
- (c) incompetence.

(5) The provisions of section 113 (3), (4) and (5) of the Constitution shall apply with necessary modifications to the removal of a person holding office of Director General.

(6) The Director General shall be responsible for the direction and administration of the Agency.

(7) The Director General shall appoint in writing, an officer of the Agency as an examiner for the purposes of determining compliance with this Act.

**6.** (1) The Agency shall be the central entity responsible for requesting, receiving, analysing and disseminating, spontaneously or when requested, to an investigatory authority, supervisory authority, comparable body or competent authority, disclosures of financial information —

Functions of  
Agency

- (a) concerning a suspicious transaction;
- (b) required by or under any enactment in order to counter the commission of a financial offence; or
- (c) related to the financing of an act of terrorism, proliferation of NBC weapons or illicit dealing in arms or ammunition.

(2) For the purposes of subsection (1), the Agency shall —

- (a) collect, process, analyse and interpret all information disclosed to it and obtained by it under this Act;
- (b) inform, advise and collaborate with an investigatory authority or supervisory authority in accordance with this Act;
- (c) forward financial intelligence reports to an investigatory authority;
- (d) give guidance to a specified party, regarding the performance by the specified party of duties under the Act;



- (e) provide feedback to a specified party or accountable institution regarding a report made in accordance with this Act;
  - (f) exchange information with a comparable body or competent authority;
  - (g) call for and obtain further information from persons or bodies that are required to supply or provide information in terms of this Act or any law;
  - (h) communicate the list of high risk countries to specified parties, accountable institutions and supervisory authorities;
  - (i) advise on concerns about weaknesses in the anti-money laundering, counter financing of terrorism systems of other countries, in such manner as may be prescribed;
  - (j) direct a specified party or an accountable institution to apply specific counter-measures, appropriate to the identified risks —
    - (i) when requested to do so by the Financial Action Task Force, or
    - (ii) independently of any request by the Financial Action Task Force; and
  - (k) develop standards or criteria applicable to the reporting of suspicious transactions that shall take into account other existing and future pertinent national and international standards.
- (3) In furtherance of the functions of the Agency, the Director General may —
- (a) consult with and seek such guidance from law enforcement officers, Government agencies and such other persons as the Agency considers desirable; or
  - (b) conclude memoranda of understanding with other local or foreign government agencies, or other institutions and such other persons as the Agency considers desirable.
- 7. (1)** A person shall not be appointed as Director General or officer of the Agency unless —
- (a) a security screening investigation with respect to that person has been conducted by the Directorate; and
  - (b) the Directorate is satisfied that the person may be so appointed without the possibility of such a person posing a security risk or acting in a manner prejudicial to the objectives or functions of the Agency.
- (2) The Directorate shall, where it is satisfied that a person meets the requirements set out in subsection (1), issue a certificate with respect to the person in which it is certified that such a person has passed a security clearance.
- (3) The Director General or an officer of the Agency may at any time determined by the Minister, be subjected to a further security screening investigation in accordance with subsection (1).
- (4) The Directorate shall withdraw a certificate issued under subsection (2) where an investigation under subsection (3) reveals that the Director General or officer is a security risk or has acted in a manner prejudicial to the objectives or functions of the Agency.

(5) Where the Directorate withdraws a certificate issued under subsection (2) —

- (a) the Director General or officer shall be suspended from performing any functions of the Agency;
- (b) subject to the provisions of section 5 (5) of this Act, the Director General shall be removed from office and the office of the Director General shall become vacant;
- (c) the office of the officer shall become vacant; and
- (d) a new Director General or officer shall be appointed.

PART III — *National Coordinating Committee on  
Financial Intelligence*

**8.** (1) The National Coordinating Committee on Financial Intelligence is hereby reconstituted and continued under this section.

(2) The committee shall consist of the following —

- (a) the Permanent Secretary to the President, who shall be the Chairperson; and
- (b) the Commander Botswana Defence Force, who shall be the Deputy Chairperson,
- (c) representatives, at Permanent Secretary level, from the following entities —
  - (i) the Ministry responsible for finance,
  - (ii) the Ministry responsible for presidential affairs and public administration,
  - (iii) the Ministry responsible for international cooperation,
  - (iv) the Ministry responsible for immigration,
  - (v) the Ministry responsible for defence,
  - (vi) the Ministry responsible for trade,
  - (vii) the Attorney General’s Chambers,
  - (viii) the Directorate of Public Prosecutions,
  - (ix) the Directorate of Intelligence and Security Service,
  - (x) the Directorate on Corruption and Economic Crime,
  - (xi) the Botswana Police Service,
  - (xii) the Chemical, Biological, Nuclear, Radiological Weapons Management Authority,
  - (xiii) the Office of the Receiver,
  - (xiv) the Non-Bank Financial Institution Regulatory Authority,
  - (xv) the Companies and Intellectual Property Authority,
  - (xvi) the Botswana Unified Revenue Service,
  - (xvii) the Bank of Botswana,
  - (xviii) the Financial Intelligence Agency, and
  - (xix) other representatives from any other entity assigned to deal with anti-money laundering, counter financing of terrorism and counter proliferation financing.

(3) The Office of General Counsel shall be the secretariat to the Committee.

Continuation  
of National  
Coordinating  
Committee on  
Financial  
Intelligence

## A.16

Functions and  
duties of  
Committee

- 9.** (1) The Committee shall oversee the implementation of United Nations Security Council Resolutions and successor Resolutions relating to —
- (a) the prevention and suppression of terrorism;
  - (b) countering financing of terrorism;
  - (c) countering financing of proliferation; and
  - (d) any other threat to international peace and security as may be determined by the United Nations Security Council acting under Part VII of the United Nations Charter.
- (2) Without derogating from the generality of subsection (1), the Committee shall with respect to declaration of terrorists and terrorists groups under section 10 —
- (a) consider and recommend to the Minister persons, entities or structured groups that meet the national listing criteria;
  - (b) consider applications for delisting from the national list;
  - (c) consider applications for unfreezing of property frozen in error;
  - (d) consider application for exemptions from sanctions measures by a nationally listed person, entity or structured group;
  - (e) conduct an annual review of all the entries in the National List to determine whether they remain relevant or appropriate and make modifications to the list including —
    - (i) the removal of individuals, entities or structured groups considered to no longer meet the designation criteria,
    - (ii) the modifications to those whose entries lack identifiers necessary to ensure effective implementation of the measures imposed upon them,
    - (iii) the removal of reportedly deceased individuals and entities and groups confirmed to have ceased to exist where credible information regarding death or cessation of existence is available, and
    - (iv) determine the status and location of frozen assets;
  - (f) to co-ordinate the national risk assessment to identify, assess and mitigate the risk of commission of a financial offence emerging from development of new products and new business practices, including new delivery mechanisms, and the use of new or developing technologies;
  - (g) issue Guidelines for the effective implementation of targeted financial sanctions and other sanctions measures;
  - (h) conduct outreach activities; and
  - (i) prepare reports to the relevant United Nations Sanctions Committee or other institutions on measures taken in Botswana to implement the United Nations Security Council applicable resolutions.”
- (3) The duties of the Committee, with respect to policy, shall be to —
- (a) assess the effectiveness of policies and measures to combat financial offences;
  - (b) make recommendations to the Minister for legislative, administrative and policy reforms in respect to financial offences;

- (c) promote coordination among the Agency, investigatory authorities, supervisory authorities and other institutions with a view to improving the effectiveness of existing policies and measures to combat financial offences;
- (d) formulate policies to protect the international reputation of Botswana with regard to financial offences;
- (e) generally advise the Minister in relation to such matters relating to financial offences, as the Minister may refer to the Committee; and
- (f) to co ordinate the national risk assessment to identify, assess and mitigate the risk of commission of a financial offence emerging from development of new products and new business practices, including new delivery mechanisms, and the use of new or developing technologies.

(4) For the purposes of this section, “applicable resolutions” means the current United Nations Security Council Resolutions and future successor Resolutions related to combating and preventing terrorism, terrorist financing or the proliferation of weapons of mass destruction issued under Chapter VII of the United Nations Charter, including but not limited to the following Resolutions —

- (a) Resolution 1267 of 1999;
- (b) Resolution 1373 of 2001;
- (c) Resolution 2253 of 2015;
- (d) Resolution 1718 of 2006;
- (e) Resolution 1874 of 2009;
- (f) Resolution 2087 of 2013;
- (g) Resolution 2094 of 2013;
- (h) Resolution 2231 of 2015;
- (i) Resolution 2270 of 2016;
- (j) Resolution 2321 of 2016; and
- (k) Resolution 2356 of 2017.

**10.** (1) The Minister may, on the recommendation of the Committee declare a person or structured group as a terrorist or terrorist group where —

- (a) the person, entity or structured group has been convicted of an offence under the Counter Terrorism Act; or
- (b) based on intelligence information, the Committee has reasonable grounds to believe that —
  - (i) a person, entity or structured group is engaged in terrorism,
  - (ii) the person, entity or structured group is owned wholly or jointly or is controlled directly or indirectly by a nationally listed person or a designated person; or
  - (iii) the person, entity or structured group is acting on behalf of or at the direction of a nationally listed person or a designated person.

(2) A declaration made under subsection (1) shall be made by Order published in the *Gazette*.

(3) For purposes of subsection (1), a person or structured group is engaged in terrorism if the person or structured group commits an act of terrorism or commits any offence under Counter Terrorism Act.

Declaration of  
terrorist or  
terrorist group

## A.18

(4) Notwithstanding subsection (1), a terrorist or terrorist group declared as such under this section may include an individual or entity on the United Nations Security Council Sanctions List related to combating and preventing terrorism, terrorist financing or the proliferation of weapons of mass destruction issued under Chapter VII of the United Nations Charter.

(5) A terrorist or terrorist group designated as such by the United Nations Security Council referred to in subsection (4) extend to a person or group notwithstanding any rights granted to or obligations imposed under an existing contract made prior to the designation.

Meetings of  
Committee

**11.** (1) The Committee shall meet at least once per quarter for the transaction of business.

(2) Notwithstanding the provisions of subsection (1), the Committee shall meet when the Chairperson so directs.

(3) There shall preside at the meeting of the Committee —

(a) The Chairperson;

(b) in the absence of the Chairperson, the Deputy Chairperson; or

(c) in the absence of the Chairperson and the Deputy Chairperson, a member of the Committee selected for purposes of that meeting by the members present.

(4) The Committee —

(a) shall regulate its meetings and proceedings in such manner as it thinks fit;

(b) may request advice and assistance from such persons as it considers necessary to assist it to perform its functions;

(c) may appoint committees from amongst its members to assist it in the performance of its functions; and

(d) may co-opt any person whether for a particular period or in relation to a particular matter to be dealt with by the Committee.

(5) At any meeting of the Committee, a quorum shall be constituted by not less than two thirds of the members.

Sub-committees  
of Committee

**12.** The Committee may for the purpose of performing its functions, establish such sub-committees as it considers appropriate and may delegate to any such sub-committee any of its functions as it considers necessary.

### PART IV — *Duty to Implement Programmes and Identify Customers*

Obligation to  
conduct risk  
assessment

**13.** (1) A specified party shall conduct an assessment of the risk of commission of financial offences and take appropriate measures to manage and mitigate the identified risks relating to —

(a) business relationships and transactions;

(b) pre-existing products, practices, and delivery mechanisms;

(c) development of new products, new business practices, new business procedures, new technologies and delivery mechanisms, and such risk assessments should be conducted prior to their launch or use; and

(d) life insurance services.

(2) A specified party shall keep an up to date record in writing of the steps it has taken under subsection (1), unless its supervisory authority notifies it in writing that such a record is not required.

(3) A supervisory authority shall not give notification referred to under subsection (2) unless it considers that the risk of commission of a financial offence applicable to the sector in which the specified party or accountable institution operates are clear and understood.

(4) A specified party shall provide the risk assessment it has prepared under subsection (1), the information on which that risk assessment was based and any record required to be kept under subsection (2), to its supervisory authority or a competent authority upon request.

(5) A specified party shall upon written request by a competent authority or self-regulatory body provide the risk assessment information in such manner as may be prescribed.

(6) A specified party shall assess its risk assessment at regular intervals and following any significant developments which might affect the risk to which it is subject, and shall where necessary update the risk assessment.

(7) A specified party that fails to conduct a risk assessment or to take the appropriate measures to manage and mitigate the risk of a commission of a financial offence identified in the risk assessment is liable to an administrative fine not exceeding P1 000 000, as may be imposed by a supervisory authority.

(8) A specified party that fails to take such measures as are reasonably necessary to ensure that neither it nor a service offered by it, is capable of being used by a person to commit or to facilitate the commission of a financial offence is liable to an administrative fine not exceeding P1 000 000, as may be imposed by a supervisory authority.

**14.** (1) A specified party shall implement programmes which have regard to risks identified in its risk assessment, commensurate to the size of the business and shall in that regard —

- (a) designate an anti-money laundering and counter financing of terrorism compliance officer, at management level, who will be in charge of the implementation of internal programmes and procedures, including maintenance of records and reporting of suspicious transactions, and ensure that the compliance officer has at all times, timely access to customer identification data, transaction records and other relevant information;
- (b) establish procedures to ensure high standards of integrity of employees and a system to evaluate the personal, employment and financial history when hiring employees;
- (c) maintain on-going employee training programme with regard to the specified party's obligations under this Act;

Obligation to implement programmes to combat commission of financial offence

- (d) develop and maintain independent audit function to examine and evaluate any policies, processes, procedures and controls developed in accordance with this section to ensure compliance with measures taken by the specified party to comply with the Act and the effectiveness of those measures;
  - (e) implement and maintain a customer acceptance policy, internal rules, programmes, policies, processes, procedures or such controls as may be prescribed to protect its system from financial offences.
- (2) A compliance officer designated under subsection (1) shall —
- (a) be a fit and proper person;
  - (b) not have been convicted of a serious offence in Botswana;
  - (c) not have been convicted outside Botswana of a serious offence, which, if committed in Botswana would have been a serious offence;
  - (d) not be an unrehabilitated insolvent;
  - (e) not be the subject of an investigation by a supervisory authority or an investigatory authority; and
  - (f) not have been a person holding a senior management position in a company which is disqualified from trading by a professional body or supervisory authority.
- (3) Programmes referred to in subsection (1) shall be consistent with guidance notes issued under section 49 (1) (c).
- (4) A specified party that fails to implement programmes to counter the risk of a commission of a financial offence is liable to an administrative fine not exceeding P5 000 000, as may be imposed by a supervisory authority.
- (5) For purposes of this section, “serious offence” has the same meaning assigned to it under Proceeds and Instruments of Crime Act.
- 15.** (1) A specified party shall implement group-wide programmes to counter the risk of a commission of a financial offence consistent with guidance notes issued under section 49 (1) (c) which should be applicable and appropriate to all branches and majority owned subsidiaries of the group.
- (2) A specified party shall maintain throughout its group, controls and procedures for —
- (a) protection of personal data in accordance with the Data Protection Act; and
  - (b) sharing of information required for —
    - (i) customer due diligence,
    - (ii) preventing or managing risk associated with the commission of a financial offence with other members of the group; and
  - (c) safeguarding the confidentiality and use of information exchanged, including to prevent a tip off.
- (3) A specified party shall apply measures referred to in section 14 (1) to all branches and majority owned subsidiaries of the group.

(4) A specified party shall provide group-level compliance, audit, and anti-money laundering and counter financing of terrorism functions with customer, account, and transaction information from branches and majority owned subsidiaries when necessary for anti-money laundering and counter financing of terrorism purposes.

(5) The information provided under subsection (4) shall include information and analysis of transactions or activities which appear unusual and may include a suspicious transaction report, its underlying information, or the fact that a suspicious transaction report has been submitted.

(6) Branches and majority owned subsidiaries of the group shall receive information referred to under subsection (4) from group-level functions when relevant and appropriate to risk management.

(7) A specified party shall regularly review and update policies, controls and procedures established and applied under this section.

(8) Where the laws of a foreign country permit, a specified party shall apply Botswana measures for countering commission of financial offences —

- (a) on a foreign branch; or
- (b) on a majority-owned subsidiary operating in a foreign country, where Botswana counter financial offence measures are more strict than the measures of the foreign country.

(9) Where the laws of the foreign country referred to above do not permit the application of Botswana measures for countering commission of financial offences on the foreign branch or on majority-owned subsidiary operating in a foreign country, any member of the group shall —

- (a) inform its supervisory authority accordingly; and
- (b) take additional measures to handle the risk of commission of financial offences effectively.

(10) A specified party shall ensure that information relevant for the prevention and management of risk of commission of financial offences is shared as appropriate between members of its group, subject to any restrictions on sharing information imposed by or under any enactment.

**16.** (1) A specified party shall conduct customer due diligence measures —

- (a) when establishing a business relationship with a customer;
- (b) carrying out an occasional transaction equal to or in excess of the prescribed amount;
- (c) when carrying out a transaction or occasional transaction equal to or in excess of the prescribed amount on behalf or on the instruction of a customer or any person, whether conducted as a single transaction or several transactions that appear to be linked;
- (d) when carrying out a domestic or international wire transfer;

Duty to  
conduct  
customer due  
diligence



- (e) when there is doubt about the veracity or adequacy of previously obtained customer identification data; and
- (f) where there is suspicion of the commission of a financial offence.

(2) A specified party shall, in complying with the requirements to conduct customer due diligence measures, ensure that the extent of the measures taken reflect —

- (a) the risk assessment carried out in terms of section 13; and
- (b) its assessment of risk arising in any particular case.

(3) In assessing the nature and level of risk in a particular case, the specified party shall take into account, among other things, the following —

- (a) the purpose of the account, transaction or business relationship;
- (b) the value of assets to be deposited by a customer or size of the transaction undertaken by the customer;
- (c) the regularity and duration of the business relationship; and
- (d) frequency of occasional transactions conducted by a customer.

(4) A specified party that fails to conduct customer due diligence is liable to an administrative fine not exceeding P1 000 000, as may be imposed by a supervisory authority.

Reliance on third party for customer due diligence measures

**17.** (1) Subject to a risk assessment, the duty imposed on a specified party to identify a customer under section 16, may be performed by a third party on behalf of a specified party.

(2) Where a specified party appoints a third party to conduct customer due diligence on its behalf, the specified party shall ensure that —

- (a) the third party performs the duties imposed on the specified party under sections 16 (1) (a)-(c), 20 (1) (a)-(c), and 31 (3) of this Act; and
- (b) the third party is regulated, supervised and monitored for compliance with customer due diligence and record-keeping requirements as set out in sections 16 and 31 of this Act.

(3) A specified party that relies on a third party shall provide the supervisory authority with such particulars of the third party as may be prescribed.

(4) A specified party that appoints a third party to conduct customer due diligence on its behalf is liable to a fine not exceeding P1 000 000, as may be imposed by the supervisory authority, where the third party fails to perform duties imposed on the third party under this section.

Obligation relating to agents for money or value transfer services

**18.** (1) With respect to provision of money or value transfer service, a specified party that relies on an agent shall —

- (a) ensure that the agent is licenced or registered by a competent authority;
- (b) maintain a current list of agents, which is accessible to competent authorities in the countries in which the specified party and the agent operate; and

(c) include the agent in its counter commission of financial offence programmes and monitor compliance with the programmes.

(2) A specified party that fails to comply with the provisions of this section is liable to an administrative fine not exceeding P1 000 000, as may be imposed by a supervisory authority.

**19.** (1) A specified party shall, on an ongoing basis, conduct customer due diligence with respect to an existing business relationship which is subject to the requirements of customer identification and verification, including periodic review of accounts to maintain current information and records relating to the customer and beneficial owners.

Duty to  
conduct  
ongoing  
customer  
diligence

(2) Where a specified party engages with a prospective customer to establish a business relationship, the specified party shall obtain information to reasonably enable the specified party to determine whether future transactions to be performed in the course of the business relationship concerned are consistent with the specified party's understanding of risk of money laundering related to the prospective customer and knowledge of such customer, including information describing the source of the funds which the prospective customer expects to use throughout the course of the business relationship in concluding transactions in the course of the business relationship.

(3) A specified party that fails to comply with the provisions of this section is liable to an administrative fine not exceeding P1 500 000, as maybe imposed by a supervisory authority.

**20.** (1) A specified party shall, where required to conduct customer due diligence in terms of section 16 and before establishing a business relationship or carrying out a transaction —

Identification  
of customer

(a) establish and verify the identity of a customer, unless the identity of that customer is known and has been verified by the specified party;

(b) establish and verify the identity of the beneficial owner;

(c) collect information to enable understanding of the anticipated purpose and intended nature of the business relationship or transaction; and

(d) obtain approval of senior management where the business relationship or transaction is established in a high risk jurisdiction or involves a high risk business.

(2) Where the customer is acting on behalf of another person, the specified party shall —

(a) establish the identity of the person on whose behalf the customer is acting;

(b) verify the customer's authority to establish the business relationship or to conclude the transaction on behalf of that other person; and

(c) verify the other person's identity on the basis of documents or information obtained from a reliable source which is independent of both the customer and the person on whose behalf the customer is acting.

(3) Where another person is acting on behalf of the customer, the specified party shall establish and verify —

- (a) the identity of the person acting on behalf of the customer;
- (b) that other person's authority to act on behalf of the customer; and
- (c) the other person's identity on the basis of documents or information obtained from a reliable source which is independent of both the customer and the person on whose behalf the customer is acting.

(4) The authority to act on behalf of another person under this section shall be in a prescribed manner.

(5) Where a specified party had established a business relationship with a customer before the coming into force of this Act, the specified party shall take into account whether and when customer due diligence measures have been previously applied and the adequacy of the data obtained or as may be specified in any guidelines issued under this Act, apply the customer due diligence measures on that customer on the basis of materiality and risk factors such as the type and nature of the customer, nature of the business relationship, products or transactions.

(6) Proof of identity of a customer under this section shall be through —

- (a) production of a National Identity Card for citizens;
- (b) production of a passport for non-citizens;
- (c) production of a refugee identity card issued under the Refugees (Recognition and Control) Act;
- (d) in relation to a company —
  - (i) a certificate of incorporation or a certificate of registration,
  - (ii) trading licence, and
  - (iii) ownership and control structure and directors;
- (e) a deed of trust; or
- (f) such other identity document as the Minister may prescribe.

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(7) A person who transacts business with a specified party or accountable institution using false identification documents commits an offence and is liable to a fine not exceeding P500 000 or to imprisonment for a term not exceeding 10 years or to both.

(8) A specified party that fails to comply with the provisions of this section is liable to an administrative fine not exceeding P1 000 000, as may be imposed by the supervisory authority.

(9) For purposes of this section, "verify" means establishing the truth of information received from the customer on the basis of documents or information obtained from a reliable source which is independent of the person whose identity is being verified except that for subsection (3), information need not be from a source which is independent of the person whose identity is being verified.

(10) Where a specified party —

- (a) has not reported a suspicious transaction under section 38; and
- (b) forms a reasonable suspicion that continuing the customer due diligence process will tip off the customer,

the specified party shall discontinue the customer due diligence process and instead report a suspicious transaction.

**21.** (1) A specified party shall, in accordance with its risk management system conduct enhanced due diligence —

Enhanced due diligence

- (a) in any case identified by the specified party, through a risk assessment, as one where there is a high risk of commission of a financial offence or from information provided to the specified party by a supervisory authority from the risk assessment or as part of supervision;
- (b) in any business relationship or transaction established in high risk jurisdiction or at the instance of an international organisation;
- (c) when undertaking a transaction for a high risk business;
- (d) if the specified party has established that the customer or prospective customer is a prominent influential person in accordance with section 22;
- (e) in any case where the transaction —
  - (i) is complex and unusually large, or there is an unusual pattern of transactions, or
  - (ii) has no apparent economic or legal purpose;
- (f) from transactions relating to beneficiaries of life insurance or other investment related insurance policies in accordance with section 23;
- (g) in relation to a specified party that is a financial institution, when providing correspondent banking services in accordance with section 24;
- (h) in any case where the Financial Action Task Force has advised that measures should be taken in relation to a country as the country poses a threat to the international financial system; and
- (i) in any case where the Agency has reasonable belief that there is a risk that financial offences are being carried on in the country.

(2) A specified party that fails to comply with the provisions of this section is liable to an administrative fine not exceeding P1 500 000, as may be imposed by the supervisory authority.

**22.** (1) A specified party shall, in accordance with its risk management systems and compliance programme, establish whether a customer or beneficial owner of a customer is a prominent influential person.

Enhanced due diligence measures relating to prominent influential persons

(2) Where a specified party determines, in accordance with its risk management systems and compliance programme, that a customer with whom it engages to establish a business relationship or the beneficial owner of that customer is a prominent influential person, the specified party or accountable institution shall —

- (a) obtain senior management approval before establishing the business relationship;
- (b) take reasonable measures to establish the source of wealth and source of funds of a customer and beneficial owner identified as a prominent influential person; and
- (c) conduct enhanced ongoing monitoring of the business relationship.

## A.26

Enhanced due diligence measures relating to beneficiaries of life insurance services

**23.** (1) Where a person is a beneficiary of a life insurance service a specified party shall, in accordance with its risk management systems and compliance programme, establish —

- (a) the identity of the beneficiary at the time of payout;
- (b) the identity of the beneficial owner if the beneficiary is a legal person or arrangement; or
- (c) before any payment is made under the life insurance, whether one or more beneficiaries is a prominent influential person or whether beneficial owner of the beneficiary of the life insurance policy is a prominent influential person.

(2) A specified party shall, at the inception stage, obtain sufficient information concerning the beneficiary to satisfy itself that it will be able to verify the identity of the beneficiary at the time of payout.

(3) Where a specified party establishes that a beneficiary is a prominent influential person or beneficial owner of a beneficiary is a prominent influential person, the specified party shall obtain approval of senior management before it pays out any sums under the insurance policy.

(4) A specified party shall conduct enhanced ongoing monitoring of the business relationship relating to provision of life insurance services.

(5) Where a beneficial owner of a beneficiary is a prominent influential person and has been identified to be high risk, a specified party shall conduct enhanced due diligence on the business relationship with the policy holder and consider reporting a suspicious transaction to the Agency.

Enhanced due diligence measures relating to cross-border correspondent banking

**24.** (1) A financial institution that provides cross-border correspondent banking services shall, in addition to measures required under section 20 —

- (a) gather sufficient information about a respondent bank to understand the nature of the respondent's bank business;
- (b) determine, from publicly available information from credible sources, the reputation of the respondent bank it proposes to enter into a correspondent banking relationship with, including —
  - (i) the quality of supervision to which the respondent bank is subject, and
  - (ii) whether the respondent bank has been subject to —
    - (aa) investigation with respect to the commission of a financial offence, or
    - (bb) regulatory action for non-compliance with counter financial offence measures;
- (c) assess the respondent institution's counter financial offence controls;
- (d) be satisfied that the respondent bank has conducted customer due diligence on the customers having direct access to accounts of the correspondent financial institution;
- (e) be satisfied that a respondent bank does not permit its accounts to be used by a shell financial institution;

- (f) be satisfied that the respondent bank has provided relevant customer due diligence information upon request to a correspondent financial institution;
  - (g) obtain approval from senior management before establishing a new correspondent relationship; and
  - (h) have clear understanding of the counter financial offence responsibilities of each correspondent financial institution.
- (2) With respect to a “payable through” account, a financial institution shall be required to ensure that the respondent bank —
- (a) has performed customer due diligence obligations on a customer that has direct access to the accounts of the correspondent financial institution; and
  - (b) is able to provide relevant customer due diligence information upon request to the correspondent financial institution.
- (3) For the purposes of subsection (2), a “payable through” account means correspondent accounts that are used directly by a third party to transact business on their own behalf.

**25.** (1) A specified party shall not establish or maintain an anonymous account or any account in a fictitious or false name.

Prohibition of anonymous accounts

(2) A specified party that fails to comply with the provisions of this section is liable to —

- (a) an administrative fine not exceeding P10 000 000;
  - (b) a suspension or revocation of licence as the case may be; or
  - (c) both penalties provided under paragraphs (a) and (b),
- as may be imposed by the supervisory authority.

(3) A person who authorises the establishment or maintenance of an anonymous account or any account in a fictitious or false name, contrary to the provisions of this section, commits an offence and is liable to fine not exceeding P 5000 000 or to imprisonment for a term not exceeding 10 years or to both.

**26.** (1) A specified party shall not establish or maintain a relationship with a shell bank.

Prohibition of shell banks

(2) A specified party shall not establish, maintain, administer, or manage a correspondent account in Botswana for, or on behalf of, a foreign shell bank.

(3) A specified party that fails to comply with the provisions of this section commits an offence and is liable to —

- (a) an administrative fine not exceeding P20 000 000;
  - (b) a suspension or revocation of licence as the case may be; or
  - (c) both penalties provided under paragraphs (a) and (b),
- as may be imposed by a supervisory authority.

(4) A person who authorises —

- (a) the establishment or maintenance of a shell bank, contrary to the provisions of subsection (1); or

Prohibition of establishing or maintaining business relationship with terrorist or member of terrorist group

(b) the establishment, maintenance, administration, or management of a correspondent account in Botswana for, or on behalf of, a foreign shell bank, contrary to the provisions of subsection (2), commits an offence and is liable to fine not exceeding P5000 000 or to imprisonment for a term not exceeding 10 years or to both.

**27.** (1) A specified party or accountable institution shall not establish or maintain a business relationship with a designated or nationally listed person.

(2) A specified party shall not establish, maintain, administer, or manage a correspondent account in Botswana for, or on behalf of a designated or nationally listed person.

(3) A specified party or accountable institution that fails to comply with the provisions of this section is liable to —

- (a) to an administrative fine not exceeding P20 000 000;
- (b) to a suspension or revocation of licence as the case may be; or
- (c) to both penalties provided under paragraphs (a) and (b), as may be imposed by the supervisory authority.

Simplified customer due diligence measures

**28.** (1) A specified party may apply simplified customer due diligence measures to a particular business relationship or transaction where the risk of commission of a financial offence is considered to be low taking into account —

- (a) the risk assessment carried out in terms of section 13;
- (b) any guidance notes issued by a supervisory authority under section 49 (1) (c); and
- (c) a National Risk Assessment.

(2) A specified party under subsection (1) may —

- (a) verify the identity of the customer and the beneficial owner after the establishment of the business relationship;
- (b) reduce the frequency of customer identification updates;
- (c) reduce the degree of on-going monitoring and scrutinising of transactions; and
- (d) not require specific information or carry out specific measures to understand the purpose and intended nature of the business relationship, but shall infer the purpose and nature from the type of transaction or business relationship established.

(3) A specified party shall not carry out simplified customer due diligence measures where —

- (a) there is suspicion of a commission of a financial offence;
- (b) in terms of its risk assessment, the business relationship or transaction no longer poses a low risk of a commission of a financial offence;
- (c) if it doubts the veracity or accuracy of any documents or information previously obtained for the purposes of identification or verification; or
- (d) any of the conditions set out in section 21 apply.

- 29.** (1) A specified party shall monitor —
- (a) a complex transaction, unusual transaction or unusual pattern of transactions, which has no apparent economic or apparent lawful purpose;
  - (b) a business relationship formed in a high risk jurisdiction; and
  - (c) transactions for high risk businesses.
- (2) A specified party that fails to comply with the provisions of this section is liable to an administrative fine not exceeding P1 500 000, as may be imposed by the supervisory authority.

Monitoring complex, unusual and high risk transactions

- 30.** (1) Where a specified party is unable to —
- (a) conclude a transaction in the course of a business relationship or perform any act to give effect to a single transaction; and
  - (b) obtain the information contemplated in section 20; or
  - (c) establish and verify the identity of the customer or other relevant person in accordance with section 20,
- the specified party shall terminate an existing business relationship with a customer upon written notice to the customer.
- (2) A specified party that terminates an existing business relationship in accordance with subsection (1) shall report such business relationship as a suspicious transaction to the Agency.

Failure to complete customer due diligence

#### PART V — *Keeping of Records*

- 31.** (1) A specified party shall maintain records obtained through customer due diligence measures, accounts files and business correspondence and results of any analysis undertaken including records of —
- (a) the identity of the customer;
  - (b) if the customer is acting on behalf of another person —
    - (i) the identity of the person on whose behalf the customer is acting, and
    - (ii) the customer's authority to act on behalf of that other person;
  - (c) if another person is acting on behalf of the customer;
    - (i) the identity of that other person, and
    - (ii) that other person's authority to act on behalf of the customer;
  - (d) the manner in which the identities of the persons referred to in paragraphs (a), (b) and (c) were established;
  - (e) the nature of the business relationship or transaction;
  - (f) the amount involved in the transaction and the parties to the transaction;
  - (g) all accounts that are involved in a transaction concluded by a specified party in the course of a business relationship or single transaction;
  - (h) the name of the person who obtained the information referred to under paragraphs (a), (b) and (c) on behalf of the specified party; and

Keeping of records



**A.30**

- (i) any document or copy of a document obtained by the specified party in order to verify a person's identity.
  - (2) Records kept in terms of subsection (1) may be kept in electronic form.
  - (3) A specified party shall ensure that all customer due diligence information and transaction records are kept up to date and made available swiftly to a competent authority upon appropriate authority.
- Period of record keeping
- 32.** (1) A specified party shall, for 20 years —
- (a) from the date a transaction is concluded maintain all records on domestic and international transactions; and
  - (b) after the termination of a business relationship or an occasional transaction keep records obtained through customer due diligence measures, account files and business correspondences and the results of any analysis undertaken.
- (2) Notwithstanding the generality of subsection (1), an investigatory authority may by request in writing, require a specified party to keep and maintain a record referred to under section 31 for such longer period as may be specified in the request.
- Records kept by third party
- 33.** (1) The duty imposed under section 31 on a specified party may be performed by a third party on behalf of the specified party.
- (2) Where a specified party appoints a third party to perform duties imposed under section 31, the specified party shall forthwith provide the supervisory authority with such particulars of the third party as may be prescribed.
- (3) Where a third party fails to perform the duties imposed under section 31 the specified party shall be liable for the failure.
- Admissibility of electronic records  
Cap. 11:06
- 34.** An electronic record kept in accordance with section 31 shall, subject to the Electronic Records (Evidence) Act, be admissible as evidence in court.
- Offences relating to records
- 35.** (1) A specified party that fails to keep records in accordance with sections 31 and 32 is liable to an administrative fine not exceeding P500 000, as may be imposed by the supervisory authority.
- (2) A person who destroys or removes any record, register or document kept in accordance with this Part commits an offence and is liable to a fine not exceeding P500 000 or to imprisonment for a term not exceeding 10 years or to both.
- Access to records of specified party
- 36.** (1) An examiner of the Agency or supervisory authority shall have access to any record kept in accordance with section 31 and may make extracts from or copies of any such records.
- (2) The Agency or a supervisory authority, may at any time cause to be carried out on the business premises of a specified party an examination and an audit of its books and records to check whether the specified party is complying with the requirements of this Act, or any guidelines, instructions or recommendations issued under this Act.
- (3) For the purposes of subsection (2), an examiner may —

- (a) by request in writing or orally require the specified party or any other person whom the Agency or supervisory authority reasonably believes has in its possession or control a document or any other information that may be relevant to the examination to produce the document or furnish the information as specified in the request;
- (b) examine, and make copies of or take extracts from, any document or thing that he considers may be relevant to the examination;
- (c) retain any document it deems necessary; and
- (d) orally or in writing, require a person who is or apparently is an officer or employee of the specified party to give information about any document that an examiner considers may be relevant to the examination.

(4) The specified party, its officers and employees shall give the examiner full and free access to the records and other documents of the specified party as may be reasonably required for the examination.

(5) A person who —

- (a) intentionally obstructs the examiner in the performance of any of his duties under this section; or
- (b) fails, without reasonable excuse, to comply with a request of the examiner in the performance of the examiner's duties under this section,

commits an offence and is liable to a fine not exceeding P500 000 or to imprisonment for a term not exceeding 10 years or to both.

(6) For the purposes of this section, an “examiner” means a person designated as such in writing by the Agency or the supervisory authority.

(7) Notwithstanding the provisions of subsections (1) to (6), an authorised officer of an investigatory authority may apply to court for a warrant to exercise powers set out under this section.

(8) The court shall issue a warrant under subsection (7) where it is satisfied, from information on oath or affirmation, that there are reasonable grounds to believe that the records may assist the investigatory authority to prove the commission of a financial offence.

**37.** The Agency may initiate an analysis of information on its own initiative based on information in its possession or information received from other sources to ascertain whether a transaction is a suspicious transaction.

Analysis of  
information

#### PART VI — *Reporting Obligation and Cash Transactions*

**38.** (1) A specified party or accountable institution shall, within such period as may be prescribed, report a suspicious transaction to the Agency.

Reporting of  
suspicious  
transactions

(2) A specified party or accountable institution shall report a suspicious transaction —

- (a) during the establishment of a business relationship;

(b) during the course of the business relationship; or

(c) when conducting occasional transactions.

(3) An attorney, conveyancer, notary public or accountant shall report a suspicious transaction when, on behalf of or for a client, he or she engages in a financial transaction in relation to the following activities —

(a) buying and selling of real estate;

(b) managing client money, securities or assets;

(c) managing bank savings or securities accounts;

(d) organisation of contributions for the creation, operation or management of companies; or

(e) creation, operation or management of legal persons or arrangements, trusts and the buying and selling of shares.

(4) Nothing in subsection (3) shall be construed as restricting an attorney from reporting a suspicious transaction of which he or she has acquired knowledge in privileged circumstances if the transaction is communicated to the attorney with a view to the furtherance of a criminal or fraudulent purpose.

(5) For the purposes of this section, “attorney” has the same meaning assigned to it under the Legal Practitioners Act.

(6) A specified party or accountable institution that fails to comply with the provisions of this section is liable to —

(a) an administrative fine not exceeding P5 000 000;

(b) a suspension or revocation of licence as the case may be; or

(c) both penalties provided under paragraphs (a) and (b),

as may be imposed by the supervisory authority.

**39.** (1) Notwithstanding the provisions of section 38, a specified party shall, within such period, report to the Agency, prescribed particulars concerning a transaction concluded with a customer where in terms of the transaction an amount of cash equal to or in excess of such amount as may be prescribed —

(a) is paid by the specified party to the customer, to a person acting on behalf of the customer or to a person on whose behalf the customer is acting; or

(b) is received by the specified party or from the customer, the person acting on behalf of the customer or a person on whose behalf the customer is acting.

(2) A specified party that fails to comply with the provisions of this section is liable to an administrative fine not exceeding P1 000 000, as may be imposed by a supervisory authority.

**40.** (1) A person who carries on, is in charge of, manages, or is employed by a business, shall make a report to the Agency, of any transaction which he or she has reason to believe may be a suspicious transaction.

(2) A person who accepts any payment in cash in excess of such amount as may be prescribed or an equivalent amount in foreign currency shall report such particulars as may be prescribed to the Agency.

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Cash transactions above prescribed limit

General reporting

**41.** Subject to the Customs Act and Excise Duty Act, the Botswana Revenue Service Authority shall forward to the Agency records of cash or any bearer negotiable instrument in excess of the prescribed limit, conveyed into or out of Botswana, in such form as may be prescribed.

Conveyance  
of cash  
Cap. 50:02  
Cap. 50:01

**42.** (1) A financial institution that through electronic transfer, receives into or sends out of Botswana money equal to or in excess of the prescribed amount on behalf or on the instruction of a customer or any person, shall report to the Agency such particulars of the transfer as may be prescribed.

Wire transfer

(2) A financial institution shall not undertake a wire transfer otherwise than in the manner as may be prescribed.

(3) A financial institution that fails to comply with the provisions of this section is liable to an administrative fine not exceeding P5 000 000, as may be imposed by the supervisory authority.

**43.** A suspicious transaction report made under this Part shall be in such form as may be prescribed, and shall include —

Content of  
suspicious  
transaction  
report

- (a) the identification of the customer and other party to the transaction;
- (b) the description of the nature of the transaction;
- (c) the amount of the transaction;
- (d) circumstances giving rise to the suspicion;
- (e) the business relationship of the customer to the person making the report;
- (f) where the customer is an insider, whether such customer is still affiliated with the specified party;
- (g) any voluntary statement as to the origin, source or destination of the proceeds;
- (h) the impact of the suspicious transaction on the financial soundness of the specified party; and
- (i) the names of all the officers, employees or agents dealing with the transaction.

**44.** A specified party, accountable institution or person who makes a report under this Part may continue with or carry out the transaction in respect of which the report has been made unless the report is made in terms of section 20 (10) or the Agency directs otherwise.

Continuation  
of transaction

**45.** The Director General shall, where he or she has reasonable grounds to suspect that a transaction may involve the commission of a financial offence, direct in writing, a specified party, an accountable institution, the person who made the report or the person or bodies who have connections with such transactions —

Interruption  
of transaction  
by Agency

- (a) not to proceed with the transaction for such period not exceeding 15 working days as shall be stated in the notice;
- (b) to monitor the account; and
- (c) to submit a monitoring report to the Agency within 10 working days,

in order to allow the Agency, to make the necessary enquiries concerning the transaction, or if the Agency deems it appropriate, to inform and advise an investigatory authority.

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Offences relating to reporting

**46.** (1) A specified party or accountable institution that fails to make a report under this Part or continues with a transaction in contrary to the provisions of section 45 is liable to —

- (a) an administrative fine not exceeding P5 000 000;
  - (b) a suspension or revocation of licence or registration as the case may be; or
  - (c) both penalties provided under paragraphs (a) or (b),
- as may be imposed by the supervisory authority.

(2) A person who fails to make a report under this Part or continues with a transaction in contravention of section 45 commits an offence and is liable to a fine not exceeding P3 000 000 or to imprisonment for a term not exceeding 20 years, or to both.

(3) A person who knows or suspects that a suspicious transaction report is being made to the Agency shall not disclose to any other person information or any other matter which is likely to prejudice any proposed investigation or disclose that the Agency has requested further information under section 52 (1).

(4) A person who contravenes the provision of subsection (3) commits an offence and is liable to a fine not exceeding P2 000 000 or to imprisonment for a term not exceeding 15 years, or to both.

Indemnity of person making report

**47.** (1) Any civil or criminal proceedings shall not lie against any person for having —

- (a) reported in good faith, any suspicion he or she may have had, whether or not the suspicion proves to be well founded following investigation; or
- (b) supplied any information to the Agency pursuant to a request made under section 52 (1).

(2) No evidence concerning the identity of a person who has made, initiated or contributed to a report under this Part or who has furnished additional information concerning the report shall be admissible as evidence in proceedings before a court unless the person testifies at the proceedings.

Offences for non-compliance

**48.** A member of senior management of a specified party or accountable institution who fails to comply with anti-money laundering and counter financing of terrorism measures under this Act, commits an offence and is liable to a fine not exceeding P250 000, or imprisonment for a term not exceeding five years, or to both.

### PART VII — *Referral, Suspension and Exchange of Information*

Obligations of supervisory authorities

**49.** (1) A supervisory authority shall —

- (a) through its licensing or registration requirements, implement measures, including fit and proper measures to prevent criminals from —
  - (i) holding controlling interest,
  - (ii) performing management function, or
  - (iii) being a beneficial owner, of the applicant;

- (b) regulate and supervise a specified party or accountable institution for compliance with this Act including through on-site examinations;
  - (c) in consultation with the Agency, establish and issue guidance notes, and provide feedback to help a specified party or accountable institution comply with this Act;
  - (d) maintain statistics concerning compliance measures adopted or implemented by the specified party or accountable institution and sanctions imposed on such specified party or accountable institution, under this Act;
  - (e) conduct risk-based supervision of anti-money laundering, counter-financing of an act of terrorism and counter-financing of proliferation and counter illicit dealing in arms or ammunition on a specified party;
  - (f) review the assessment of the money laundering, terrorist financing and financing of proliferation risk profile of a specified party or accountable institution, including risks of non-compliance periodically, and when there are major events or developments in the management and operations of a specified party or accountable institution;
  - (g) identify, assess and understand international and domestic money-laundering, terrorist financing and proliferation financing risks in the sector;
  - (h) apply consolidated group supervision to all aspects of business conducted by the group, as may be prescribed; and
  - (i) ensure that the frequency and intensity of on-site and off-site is determined on the basis of —
    - (i) financial offence risks,
    - (ii) internal controls and procedures associated with the institution or group, and
    - (iii) documented financial offence risks present in the country.
- (2) A supervisory authority may —
- (a) issue a directive, penalising a specified party by imposing an appropriate, prescribed fine where the specified party has without reasonable excuse, failed to comply in whole or in part with any obligations under this Part; or
  - (b) enter into an agreement with a specified party to implement an action plan to ensure compliance of the specified party's obligations under this Act.
- (3) With respect to supervision of a non-profit organisation, a supervisory authority shall —
- (a) undertake outreach and educational programmes to raise and deepen awareness among non-profit organisations as well as the donor community about the potential vulnerabilities of a non-profit organisation to commission of a financial offence risks and the measures that a non-profit organization can take to protect themselves against such abuse;

- (b) work with a non-profit organization to develop and refine best practices to address commission of financial offence risks and vulnerabilities, to protect such a non-profit organisation from financial offence abuse;
- (c) conduct targeted supervision and monitoring on a non-profit organisation at risk of commission of a financial offence abuse; and
- (d) monitor the compliance on a non-profit organisation with the provisions of this Act, including applying risk based measures to such a non-profit organisation.

4. With respect to a specified party that relies on a third party, that is part of the same financial group, a supervisory authority shall ensure that —

- (a) the group applies —
  - (i) customer due diligence and record-keeping requirements, in accordance with sections 16, 20, 22 and 31 of this Act, and
  - (ii) programmes to combat commission of a financial offence, in accordance with section 14 of this Act; and
- (b) the implementation of customer due diligence and record-keeping requirements and anti money laundering, counter financing of terrorism and counter financing of proliferation programmes are supervised at a group level; and
- (c) a higher country risk is adequately mitigated by the group’s anti money laundering, counter financing of terrorism and counter financing of proliferation policies.

**50.** Any person responsible for licensing a specified party or an accountable institution who negligently fails to take such reasonable measures referred to in section 49 (1) (a) commits an offence and is liable to a fine not exceeding P250 000 or imprisonment for a term not exceeding five years, or to both.

Offence for failure to prevent criminals from holding controlling interest

Obligations of accountable institutions

- 51.** (1) An accountable institution shall —
- (a) with respect to a non-profit organisation —
    - (i) have relevant documentation that explains its intended purpose and objectives,
    - (ii) maintain proper record keeping of financial statements and issue annual financial statements that provide detailed breakdown of income and expenditure, and make the financial statements swiftly available to a competent authority upon appropriate authority,
    - (iii) have controls in place to ensure that all funds are fully accounted for and utilised in a manner consistent with intended purposes and objectives,
    - (iv) maintain a record of domestic and international transactions,
    - (v) apply specific counter measures proportionate to the risk as may be directed by the supervisory authority,

- (vi) hold basic information on other regulated agents and service providers of the non-profit organisation, including investment advisors, managers, donor, accountants and tax advisors,
  - (vii) conduct transactions through regulated financial channels, wherever feasible,
  - (viii) identify a person who owns, controls or direct their activities including a senior officer, board member and a trustee, and
  - (ix) take reasonable measures to confirm the identity, credentials and good standing of beneficiaries and associate non-profit organisations and that they are not involved with or using the charitable funds to finance acts of terror or support terrorists or terrorist organisations; and
- (b) with respect to a trustee of a trust, obtain and hold adequate, accurate and current information on the identity of —
- (i) the settlor,
  - (ii) a trustee,
  - (iii) a protector, if any,
  - (iv) a beneficiary of a trust, a class of beneficiaries or any other natural person exercising ultimate effective control over a trust, and
  - (v) other regulated agents of, and service providers to the trust, including investment advisors or managers, donor, accountants and tax advisors.

(2) For purposes of this section, associate non-profit organisation includes foreign branches of an international non-profit organisation, and a non-profit organisation with which partnerships have been arranged.

(3) Any record obtained and maintained under this section shall be kept for 20 years.

(4) An accountable institution that fails to comply with the provisions of this section is liable to —

- (a) an administrative fine not exceeding P500 000;
- (b) cancellation of registration or licencing, as the case may be; or
- (c) to both penalties provided under paragraphs (a) and (b),

as may be imposed by the supervisory authority.

**52.** (1) The Agency may, for the purposes of assessing whether any information should be disseminated to an investigatory or supervisory authority, request further information in relation to a suspicious transaction from —

- (a) the specified party or person who made the report;
- (b) any other specified party that is, or appears to be involved in the transaction;
- (c) an investigatory authority;
- (d) a supervisory authority;
- (e) any other administrative agency of the Government; or
- (f) an accountable institution which made the report.

Receipt of  
information  
by Agency



(2) The information requested under subsection (1) shall be provided without a court order within a reasonable time but not later than 10 working days after the request is made.

(3) Where any information referred to under subsection (1) is required to be supplied to the Agency within a specified period, the Agency may, at the request of the person or body concerned, extend such period.

(4) A person who refuses to supply information requested under this section commits an offence and is liable to a fine not exceeding P1 000 000 or to imprisonment to a term not exceeding 10 years or to both.

Referral of  
information  
by Agency

**53.** (1) Where the Agency, on the basis of its analysis and assessment of information received by it, has reasonable grounds to suspect that the information would be relevant to the national security of Botswana, the Agency shall disclose the information to the Directorate.

(2) The Agency shall record in writing, the reasons for its decision to disclose information in accordance with subsection (1).

(3) Where the Agency becomes aware of information which may be relevant to —

- (a) the functions of any supervisory authority;
- (b) investigation or prosecution being conducted by an investigatory authority; and
- (c) a possible corruption offence, as defined in the Corruption and Economic Crime Act,

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the Agency shall disclose the information to the supervisory authority or investigatory authority concerned.

(4) “information” in relation to a financial transaction or the import and export of currency or monetary instruments includes —

- (a) the name of the person or the importer or exporter or any other person or entity acting on their behalf;
- (b) the name and address of the place of business where the transaction occurred or the address of the port of entry into Botswana where the importation or exportation occurred;
- (c) the date of the transaction, importation or exportation;
- (d) the amount and type of currency or monetary instruments involved or in the case of a transaction, if no currency or monetary instruments are involved, the value of the transaction or the value of the funds that are the subject of the transaction;
- (e) in the case of a transaction, the transaction number and the account number if any; and
- (f) such other identification information as may be prescribed.

(5) Where any information falling within subsections (1) and (4) was provided to the Agency by a body outside Botswana on terms of confidentiality, the Agency shall not disclose the information without the consent of the body that provided the information.

(6) The Agency may request a supervisory authority to rebut information indicating that a specified party has as a result of a transaction concluded by or with the specified party, received or is about to receive the proceeds of a financial offence.

(7) Information requested under subsection (6) shall be provided without a court order and within such time limits as may be prescribed.

**54.** A supervisory authority shall where in the course of the exercise of its functions, it receives or otherwise becomes aware of any information suggesting the possibility of a commission of a financial offence, advise the Agency.

Referral of information by supervisory authority

**55.** (1) The Agency shall be the only body in Botswana which shall seek recognition by the Egmont Group or comparable body to exchange financial intelligence information on the basis of reciprocity and mutual agreement.

Membership of international financial organisation

(2) The Agency may exchange expertise and financial intelligence with other members of the Egmont Group or comparable body in accordance with the conditions for such exchanges established by the Egmont Group.

(3) Without prejudice to subsections (1) and (2), where the Agency becomes aware of any information which may be relevant to the functions of a comparable body, it may disclose the information to the comparable body under conditions of confidentiality.

(4) Where a request for information is received from a comparable body, the Agency shall disclose any relevant information in its possession to the comparable body, on such terms of confidentiality as may be agreed between the Agency and the comparable body.

(5) The Agency shall maintain a record in such form as may be prescribed, of —

- (a) statistics on the number of information disclosed to a comparable body;
- (b) the number of requests of financial information from a comparable body;
- (c) suspicious transactions reports received and disseminated;
- (d) investigations of financial offence;
- (e) prosecutions and convictions of financial offences;
- (f) property frozen, seized and confiscated regarding financial offences; and
- (g) mutual legal assistance or other international requests for co-operation.

**56.** A certificate issued by the Agency that information specified in the certificate was reported to the Agency shall be admitted in evidence in court without proof or production of the original report.

Certificate issued by Agency

**57.** (1) No person shall be entitled to information held by the Agency except information disclosed in accordance with this Act.

Information held by Agency

(2) A person shall not disclose confidential information held by or obtained by the Agency except —

- (a) within the scope of that person's power and duties in terms of any legislation;
  - (b) for the purposes of carrying out the functions of this Act; and
  - (c) with the permission of the Director General.
- (3) A person who contravenes the provisions of subsection (2) commits an offence and is liable to a fine not exceeding P1 000 000 or to imprisonment to a term not exceeding 10 years or to both.

PART VIII — *General Provisions*

Confidentiality  
by Director  
General, etc.

- 58.** (1) The Director General and other officers of the Agency shall —
- (a) before they begin to perform any duties under this Act, take an oath of confidentiality in such form as may be prescribed; and
  - (b) during and after their relationship with the Agency, maintain the confidentiality of any confidential information acquired in the discharge of their duties under this Act.
- (2) Any information from which an individual or body can be identified, which is acquired by the Agency in the course of carrying out its functions shall not be disclosed by the Director General or other officer of the Agency, except where the disclosure is necessary —
- (a) to enable the Agency to carry out its functions;
  - (b) in the interests of the prevention or detection of any other offence;
  - (c) in connection with the discharge of any international obligation to which Botswana is subject; or
  - (d) pursuant to an order of court.
- (3) Where the Director General or officer of the Agency contravenes this section he or she commits an offence and is liable to a fine not exceeding P50 000 or to imprisonment for a term not exceeding three years, or to both.

Confidentiality  
by third parties

- 59.** (1) A person shall not disclose confidential information received from the Agency.
- (2) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P1 000 000 or to imprisonment for a term not exceeding five years, or to both.

Indemnity of  
Director  
General, etc.

- 60.** (1) No matter or thing done or omitted to be done by the Director General, an officer of the Agency, supervisory authority, a specified party, accountable institution, relevant government agency or department shall, if the matter or thing is done or omitted to be done *bona fide* in the course of the operations of the Agency, supervisory authority, a specified party, accountable institution, government agency or department, shall render the Director General, the officer of the Agency, the specified party, accountable institution, government agency or department its directors or senior management personally liable to an action, claim or demand.

(2) The Director General, officer of the Agency, a specified party, accountable institution, relevant government agency or department, its directors or senior management who receives or makes a report under this Act shall not incur liability for any breach of confidentiality or any disclosure made in compliance with this Act.

**61.** (1) The Minister may by order published in the *Gazette*, amend the Schedule I and III to this Act.

Power to  
amend  
Schedules

(2) The Minister shall, before amending Schedule I and III, give the affected persons at least 60 days' written notice to submit to the Minister written submissions on the proposed amendment.

**62.** (1) The Director General shall, on or before 31st March in each year, or by such later date as the Minister may allow, submit to the Minister a report on the activities of the Agency in the previous year.

Annual report

(2) A report referred to in subsection (1) shall be laid in Parliament by the Minister within three months of receipt.

**63.** (1) The Minister may make regulations prescribing anything under this Act which is to be prescribed or which is necessary or convenient to be prescribed for the better carrying out of the objects and purposes of this Act, or to give force and effect to its provisions.

Regulations

(2) Without prejudice to the generality of subsection (1), regulations may provide for —

- (a) reporting obligations of a specified party and accountable institution;
- (b) regulatory obligations of a supervisory authority;
- (c) measures to ensure the security of information disclosed by or to the Agency;
- (d) internal rules to be formulated and implemented under sections 13, 14 and 15; or
- (e) the manner and form which a specified party and an accountable institution shall keep records required under this Act.

(3) Any person who contravenes the provisions of the Regulations made under this Act, where a penalty is not provided, commits an offence and is liable to —

- (a) a fine not exceeding P100 000;
- (b) imprisonment for a term not exceeding five years;
- (c) both penalties specified at paragraphs (a) and (b); or
- (d) such administrative fine not exceeding P100 000, as may be imposed by a supervisory authority.

**64.** (1) The Financial Intelligence Act (hereinafter referred to as “the repealed Act”) is hereby repealed.

Repeal of  
Cap. 08:07

**65.** (1) Notwithstanding the repeal effected under section 64, any instrument made under the repealed Act shall continue to have effect, as if made under this Act, to the extent that it is not inconsistent with this Act.

Savings

(2) Any person who is an officer or employee of the Agency immediately before the coming into operation of this Act shall continue in office for the period for which, and subject to the conditions under which he or she was appointed as an officer in the public service.

(3) Any enquiry or disciplinary proceedings which, before the coming into operation of this Act, were pending shall be continued or enforced by or against the Agency in the same manner as they would have been continued or enforced before the coming into operation of this Act.

(4) Any legal proceedings in respect of any offence committed or alleged to be committed under the repealed Act shall be carried out or prosecuted as if commenced under this Act.

(5) Any fines imposed by a supervisory authority under the repealed Act, shall continue as if imposed under this Act.

(6) Any decision or action taken or purported to have been taken or done by the Director General or supervisory authority under the provisions of the repealed Act, shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been taken or done under the corresponding provisions of this Act.

SCHEDULE I  
Specified Parties  
(section 2)

1. An attorney as defined in the Legal Practitioners Act, Cap. 61:01, when preparing for or carrying out transaction for clients concerning the following —
  - (a) buying and selling of real estate;
  - (b) managing of client money, securities or other assets;
  - (c) management of bank, savings or securities accounts;
  - (d) organisation of contributions for creation, operation or management of companies; and
  - (e) creating, operating or management of legal persons or arrangements and buying and selling of business entities.
2. An accountant as defined under the Accountants Act, Cap. 61:05, when preparing for or carrying out transaction for clients concerning the following —
  - (a) buying and selling of real estate;
  - (b) managing of client money, securities or other assets;
  - (c) management of bank, savings or securities accounts;
  - (d) organisation of contributions for creation, operation or management of companies; and
  - (e) creating, operating or management of legal persons or arrangements and buying and selling of business entities.
3. A registered professional as defined under the Real Estate Professionals Act, Cap. 61:07, when involved in transactions for client concerning buying and selling of real estate.
4. A bank as defined under the Banking Act, Cap. 46:04
5. A bureau de change as defined under the Bank of Botswana Act, Cap. 55:01
6. A building society as defined under the Building Societies Act, Cap. 42:03
7. A casino as defined under the Gambling Act, Cap. 19:01
8. A Non-Bank Financial Institution as defined in the Non-Bank Financial Institutions Regulatory Authority Act, Cap. 46:08
9. A person running a lottery under the Lotteries and Betting Act, Cap. 19:02
10. The Botswana Postal Services established under the Botswana Postal Services Act, Cap. 72:01
11. A precious stones dealer as defined under the Precious and Semi-Precious Stones (Protection) Act, Cap. 66:03
12. A semi-precious stones dealer as defined under the Precious and Semi-Precious Stones (Protection) Act, Cap. 66:03
13. Botswana Savings Bank established under Botswana Savings Bank Act, Cap. 56:03
14. Citizen Entrepreneurial Development Agency
15. Botswana Development Corporation
16. National Development Bank established under the National Development Bank Act, Cap. 74:05
17. A car dealership
18. A Money or value transfer services provider

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19. An electronic Payment Service Provider
20. A trust and company service provider
21. A savings and credit co-operative
22. A precious metal dealer as defined under the Unwrought Precious Metals Act,  
Cap. 20:03
23. A virtual asset service provider.

SCHEDULE II  
Supervisory Authorities  
(*section 2*)

1. The Bank of Botswana established under the Bank of Botswana Act, Cap. 55:01
2. The Real Estate Advisory Council established under the Real Estate Professionals Act, Cap. 61:07
3. The Gambling Authority established under the Gambling Act, Cap. 19:01
4. The Law Society of Botswana established under the Legal Practitioners Act, Cap. 61:01
5. Non-Bank Financial Institutions Regulatory Authority, established under the Non-Bank Financial Institutions Regulatory Authority Act, Cap. 46:08
6. Registrar of Societies established under the Societies Act, Cap. 8:01
7. Botswana Institute of Chartered Accountants established under the Accountants Act, Cap. 61:05
8. The Botswana Accountancy Oversight Authority established under the Financial Reporting Act, Cap. 46:10
9. The Diamond Hub
10. The Director of Cooperative Development established under Co-operative Societies Act, Cap. 42:04
11. The Master of the High Court
12. The Department of Mines



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**SCHEDULE III**

**Accountable Institutions**  
*(section 2)*

- (1) Any society, association or non-profit organisation registered under the Societies Act or any other law
- (2) a trustee

PASSED by the National Assembly this 3rd day of February, 2022.

**BARBARA N. DITHAPO,**  
*Clerk of the National Assembly.*