

# BECHUANALAND PROTECTORATE.

No. 70 of 1922.

[Promulgated 20th October, 1922.]

## PROCLAMATION

BY HIS ROYAL HIGHNESS THE HIGH COMMISSIONER  
Entitled the Bechuanaland Protectorate Income Tax  
Proclamation, 1922.

Whereas it is expedient to provide for the raising of revenue in the Bechuanaland Protectorate (herein after referred to as "the territory") by the imposition of a tax on incomes;

Now therefore under and by virtue of the powers in me vested I do hereby declare proclaim and make known as follows:—

1. The provisions of this Proclamation shall not apply to any person who is subject to the tax imposed by Proclamation No. 9 of 1909 or any law amending the same.

### CHAPTER I.

#### ADMINISTRATION.

2. (1) For the administration of this Proclamation the High Commissioner may appoint a Collector of Income Tax (herein after referred to as the "Collector") and an Assistant Collector of Income Tax (herein after referred to as "Assistant-Collector").

(2) An Assistant Collector shall, under the control of the Collector, perform such general official duties as he is required to perform by this Proclamation or by the Collector, and shall in case of illness, absence, or temporary incapacity of the Collector, act in his name and on his behalf, and while so acting shall have and may exercise all the powers conferred, and shall perform the duties imposed, upon the Collector under this Proclamation.

(3) Any office under this Proclamation may be held in conjunction with any other office in the Public Service.

(4) A notification in the *Gazette* that any person appointed to an office herein named has been so appointed shall be conclusive evidence of such appointment without further proof.

3. The Collector may, with the approval of the Resident Commissioner, delegate to any officer in the Public Service any duties, powers, and functions by this Proclamation conferred or imposed upon him other than such power of delegation.

4. (1) Every person appointed or employed in the carrying out of the provisions of this Proclamation shall preserve, and aid in preserving, secrecy with regard to all matters that may come to his knowledge in his official capacity in the performance of his duties in connection with those provisions, and shall not communicate any such matter to any other person except in the performance of his duties under this Proclamation or by order of a competent Court of Justice.

(2) Every person so appointed or employed shall, before acting under this Proclamation, take and subscribe before an Assistant Commissioner, Resident Magistrate, or Justice of the Peace such oath of fidelity or secrecy as may be prescribed.

(3) Every person who, in contravention of the true intent of the oath of fidelity or secrecy taken by him and without lawful excuse, reveals any matter or thing which has come to his knowledge in his official capacity shall be guilty of an offence and shall be liable on conviction to imprisonment for any term not exceeding two years with or without hard labour.

(4) If any person acts in the execution of his office before he has taken the prescribed oath he shall be guilty of an offence and shall be liable to a fine not exceeding ten pounds or in default of payment, to imprisonment for a period not exceeding three months.

## CHAPTER II.

### INCOME TAX.

5. (1) There shall be charged, levied, and collected throughout the territory, subject to such conditions and to such exemptions and abatements as are herein after provided, an income tax at the rate and calculated in the manner herein after specified in respect of any taxable income received by or accrued to or in favour of any person during the year ended the thirtieth day of June 1922.

(2) If for any year thereafter the levying of an income tax is authorized by Proclamation the provisions of this Proclamation shall apply, except in so far as it may be amended.

(3) The rate to be levied shall be fixed annually by Proclamation, but the rate so fixed for any year shall be deemed to continue in force until the next such annual determination if, owing to the distribution or cessation of the income prior to such determination, the collection of the tax leviable upon any income received or accrued during that period cannot be postponed.

6. For the purposes of this Chapter—

“gross income” means the total amount, other than receipts or accruals proved by the taxpayer to be of a capital nature, received by or accrued to or in favour of any person in any year or period assessable under this Chapter from any source within the territory, or deemed to be within the territory, and includes rents, interest, salaries, stipends, wages, allowances, the estimated annual value of any quarters or board or residence or any other benefit or advantage of any kind granted in respect of employment, whether in money or otherwise, and any pension, stipend, charge, or annuity;

An amount shall be deemed to be derived from a source within the territory if it is received by or accrues to or in favour of any person ordinarily resident or carrying on business within the territory, and is received or accrues from any country outside the territory where, owing to the fact that such person is not domiciled or ordinarily resident therein, the amount is not chargeable with income tax;

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

“taxable income” means the amount remaining after deducting from the income of any person all the amounts, other than abatements, allowed as deductions under this Chapter;

“taxable amount” means the amount remaining after deducting from any taxable income any abatement allowed under this Chapter;

the taxable amount shall be the amount upon which the tax to be paid by any person shall be calculated.

### ABATEMENTS.

7. (1) The abatement to be deducted from the taxable income of any person, other than a company, for the purpose of determining the taxable amount of such person, shall be calculated in the manner set out in this section.

(2) Subject to the provisions of sub-sections (3), (4) and (5) of this section, the abatement allowable in any case shall be the total of such of the following allowances as are applicable:—

(a) In the case of every such taxpayer

(i) who during any portion of the period in respect of which the assessment is made was married or

(ii) who, during the whole of the period in respect of which such assessment is made, was widowed or divorced, but maintained during any portion of that period a child of his own or a step-child who was, or would have been, had he lived, under the age of eighteen years on the last day of the year of assessment in respect of which, or portion of which, the assessment is made,

a sum of five hundred pounds, provided that in the case of any married person who shall have been separated under

a judicial order or written agreement throughout the period in respect of which the assessment is made, and shall not have maintained during any portion of that period a child of his own or a step-child who was, or would have been, had he lived, under the age of eighteen years on the last day of the year of assessment in respect of which, or portion of which, the assessment is made, the allowance applicable shall be as provided in paragraph (b) next following;

- (b) in the case of all other persons to whom paragraph (a) of this sub-section does not apply, a sum of three hundred pounds;
- (c) any sum, not exceeding fifty pounds, paid by the taxpayer during the period in respect of which a return is made, as premiums upon policies under which he, his wife or his minor children are insured against death, accident or sickness;
- (d) any fees or subscriptions, not exceeding ten pounds in the aggregate, paid by the taxpayer during the period in respect of which a return is made to any friendly or benefit society;
- (e) the sum of fifty pounds for each child or step-child of the taxpayer maintained by him who was, or would have been, if he had lived, under the age of eighteen years on the last day of the year of assessment, in respect of which, or a portion of which, the assessment is made;
- (f) a sum of thirty pounds for each dependent of the taxpayer.

(3) In any case in which the period assessed is less than one year, the total of the allowances applicable to any taxpayer under the last preceding sub-section shall be reduced proportionately.

(4) The total of the allowances applicable to any person under the last two preceding sub-sections shall be subject to reduction as follows:—

- (a) In the case of every such taxpayer as is referred to in paragraph (a) of sub-section (2) of this section to whom the allowance of five hundred pounds is applicable, the reduction shall be by one pound for every completed ten pounds by which the taxable income of such person exceeds six hundred pounds, or, when the period assessed is less than twelve months, by which it exceeds so much of six hundred pounds as is proportionate to the period assessed;
- (b) in the case of all other persons to whom paragraph (a) of this sub-section does not apply, the reduction shall be by one pound for every completed pound by which the taxable income of any such person exceeds three hundred pounds, or, when the period assessed is less than twelve months, by which it exceeds so much of three hundred pounds as is proportionate to the period assessed;

and the amount as so reduced shall be the abatement to be deducted for income tax purposes.

(5) In any case in which any person resident in the territory derives an income from a source within the Union of South Africa the abatement to be made shall be a proportion of the total allowances in terms of sub-section (2) of this section in the ratio that the taxable income derived from sources within the territory bears to the total taxable income derived from sources within the territory and the Union of South Africa combined.

(6) The term "dependent" in relation to any taxpayer shall mean any person incapacitated by old age or infirmity from maintaining himself or any child, other than the child or step-child of such taxpayer, under the age of eighteen years on the last day of the year of assessment; provided that such person or child, as the case may be, has been maintained throughout the year of assessment at the expense of such taxpayer.

8. There shall be deducted from the amount of income tax assessed in any year the amount of poll tax paid for that year by any person under the Bechuanaland Protectorate Poll Tax Proclamation, 1922.

9. The rates of income tax in respect of incomes received or accrued during the year ended the thirtieth day of June, 1922, shall be as follows:—

- (a) In the case of companies, for each pound of taxable amount one shilling and sixpence; [provided that in the case of companies wherein
- (i) not more than ten of the largest shareholders hold ninety per cent. of the shares; and
  - (ii) restrictions are imposed upon the right to transfer shares; and
  - (iii) no invitation has been issued to the public to subscribe for any shares or debentures,
- the rate chargeable shall be that applicable to persons other than companies;]

Provided further that the last preceding proviso shall not apply in the case of any company wherein not less than ninety per cent. of the shares are held by a company or companies not falling within the terms of that proviso;]

- (b) in the case of persons other than companies—
- (i) when the taxable amount does not exceed twenty-four thousand pounds, for each pound of taxable amount one shilling and as many two-thousandths of a penny as there are pounds in that amount;
  - (ii) when the taxable amount exceeds twenty-four thousand pounds, for each pound of taxable amount, two shillings.

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

(2) Every person carrying on pastoral, agricultural or other farming operations shall be required to include in the return rendered by him for income tax purposes the values of all live stock and produce held by him and not disposed of at the beginning and end of each year of assessment. Provided that the Collector shall allow such reduction to be made from the values of live stock held by any taxpayer at the end of any year of assessment as may seem to him to be fair and reasonable having regard to the risks of mortality attaching to such live stock.

(3) The value to be placed upon such live stock (other than live stock acquired by purchase for stud purposes) shall be—

- (a) in the case of live stock acquired by the taxpayer by purchase, either the purchase price paid or such standard value as is applicable to such live stock;
- (b) in the case of live stock acquired by the taxpayer otherwise than by purchase the standard value applicable to such live stock.

(4) The standard value applicable to any class of live stock shall be, at the option of the taxpayer, either—

- (a) such standard value as may be fixed by regulation by the High Commissioner under this Proclamation for that class of live stock; or
- (b) such standard value as may be adopted by the taxpayer in respect of that class of live stock in the first return (rendered by him in terms of this section) in which live stock of that class is included.

(5) The exercise of the option under the last preceding sub-section shall be binding upon the taxpayer in respect of all subsequent returns for income tax purposes, and a standard value fixed by him in accordance with paragraph (b) of that sub-section, may not be varied by him in any such subsequent return, save with the consent and approval of the Collector, and upon such terms as the Collector may require.

(6) The value to be placed upon live stock acquired by purchase for stud purposes shall be the purchase price paid for that live stock.

(7) The value to be placed upon produce included in any return shall be such fair and reasonable value as the Collector may fix.

(8) Any decision of the Collector under this section shall be subject to objection and appeal as provided by this Proclamation.

11. Income received or accrued—

(1) by virtue of any contract made within the territory for the sale of goods, whether such goods have been delivered or are to be delivered in or out of the territory;

(2) from any service rendered or work or labour done in the carrying on in the territory of any business, trade, profession, or occupation, whether the payment for such service or work or labour is made, or is to be made, by a person resident in or out of the territory, and wherever payment for such service or work or labour is made or is to be made; and the salaries and emoluments payable to any person in the service of the Bechuanaland Protectorate Administration in respect of his office whether such person is resident in the territory or not,

shall be deemed to be income received or accrued from a source within the territory.

12. There shall be exempt from the tax—

(a) the revenues of building and friendly societies and life assurance companies;

(b) the receipts of companies or societies carrying on business but not for the purpose of profit or gain which is to be divided amongst or credited to the shareholders or members thereof, except as regards the receipts from investments of such societies;

(c) the revenue of all ecclesiastical, charitable, and educational institutions of a public character;

(d) the salaries and emoluments payable in respect of their offices to Consuls of foreign countries and members of their staffs who are not British subjects nor permanently resident in the territory;

(e) the salaries and emoluments payable to all persons in the service of the Imperial Government (otherwise than under the Bechuanaland Protectorate Government) or the Government of the Union of South Africa in respect of their offices, whether the service be naval, military, or other service;

(f) war pensions or gratuities, whether granted from Imperial funds or by the Government of any British Dominion, Possession, or Protectorate;

(g) dividends and interest on debentures or debenture stock received or accrued from any company in respect of which income tax has been paid by such company;

(h) income on which income tax has been paid in the territory;

(i) interest on sums deposited in the Post Office Savings Bank of the territory;

(j) interest received by or accruing to or in favour of any person from stock or securities (including Treasury bills) issued by the Imperial Government or the Government of the Union of South Africa subject to a condition that such interest shall be exempt from income tax;

provided that, notwithstanding these exemptions, all amounts which fall under sub-sections (g) and (h) shall be set out by the taxpayer in the return rendered by him.

The exemptions provided by sub-sections (a), (b), and (c) shall not extend to the salaries, wages, allowances, or pensions of persons employed by any such society, institution, or company, although the same may be paid wholly or in part out of the income, revenue or funds thereof.

13. In the case of persons whose business extends to any other country, the taxable income shall be the sum which shall bear the same proportion to the whole net profits as the assets in the territory bear to the total assets of such person; provided that where the Collector on the one hand, or the taxpayer on the other hand, deems such method of estimating the income for taxation to be inequitable or inexpedient, the Collector or taxpayer may claim the right to an assessment on the actual profits derived from sources in the territory.

14. (1) Every company which is subject to income tax, and which pays interest upon or in respect of debentures, or debenture stock, shall be entitled to deduct from each amount of interest paid to the holder of any such debenture or debenture stock the proportionate amount of income tax paid by such company in respect of the total of such interest; provided that the Collector shall refund to the holder resident in the territory such amount of any income tax so deducted as such holder would not have been chargeable with if such deduction had not been made.

(2) For the purposes of this section "interest upon or in respect of debentures or debenture stock" shall include any interest payable under and by virtue of a debenture or debenture trust-deed whether in the form of a mortgage or any other instrument or document acknowledging indebtedness.

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

- (a) losses and outgoings actually incurred in the territory by the taxpayer in the production of his income, and including also such expenses incurred outside the territory in the production of the taxable income as the Collector may allow; provided such losses or outgoings are not of a capital nature;
- (b) sums expended for the repairs of property occupied for the purpose of trade or in respect of which income is receivable, and sums expended for the repair of machinery, implements, utensils, and articles employed by the taxpayer for the purposes of his trade; such sums shall be the actual expenditure incurred by the taxpayer during the year of assessment;
- (c) such sum as the Collector may think just and reasonable as representing the diminished value by reason of wear and tear during the year of assessment of any machinery, implements, utensils, and articles used by the taxpayer for the purposes of his trade; provided that where a deduction has been allowed under paragraph (b) of this sub-section the Collector shall take into consideration the sum allowed under that paragraph in determining the sum to be allowed under this paragraph; provided that in no case shall any allowance be made for the depreciation of buildings or other structures or works of a permanent nature;
- (d) any sum contributed during the year of assessment by way of current contributions to any duly established superannuation, pension, widows' or orphans' fund by any person holding any office or employment where the making of such a contribution is a condition of the holding of such office or employment;
- (e) in respect of income from mining operations an allowance for the redemption of capital expenditure in lieu of the allowance in paragraph (c) of this sub-section. The regulations may prescribe means for determining this allowance;

(2) There shall be set off any loss made in any previous year of assessment which is established to the satisfaction of the Collector.

16. Where a taxpayer, either alone or with other persons, carries on or is interested as a partner (otherwise than as a member of a company the capital whereof is divided into shares) in more than one trade in the territory, and makes a profit in one or more of such trades and a loss other than a loss of a capital nature in another or others, such taxpayer shall be entitled to deduct the sum of the losses from that of the profits.

17. (1) For the purposes of income tax payable under this Proclamation income shall be assessable without any deduction for income tax (including supertax) payable in the United Kingdom.

(2) Any person who has paid by deduction or otherwise, or is liable to pay income tax under this Proclamation for any year of assessment on any part of his income and who proves to the satisfaction of the Collector of Income Tax that he has paid income tax in the United Kingdom for that year in respect of the same part of his income, shall be entitled to relief from income tax under this Proclamation paid or payable by him on that part of his income at a rate equal to the amount by which the rate of tax appropriate to his case under this Proclamation exceeds half the appropriate rate of United Kingdom tax. If, however, the rate of tax appropriate to his case under this Proclamation exceeds the appropriate rate of United Kingdom tax he shall be entitled to relief at a rate equal to half the appropriate rate of United Kingdom tax.

(3) For the purposes of this section a certificate issued by or on behalf of the Commissioners of Inland Revenue in the United Kingdom shall be receivable in evidence to show what is the appropriate rate of United Kingdom tax in any particular case.

(4) For the purposes of this section the expression "rate of tax" when applied to income tax paid or payable in the territory means the rate determined by dividing the amount of the income tax paid or payable for the year (before the deduction of the relief granted under this section) by the amount of the income in respect of which the tax paid or payable in the territory has been charged for that year except that where the income tax paid or payable in the territory is charged on an amount other than the ascertained amount of the actual profits the rate of tax shall be determined by the Collector of Income Tax.

18. (1) No deduction shall in any case be made in respect of any of the following matters:—

- (a) The cost incurred in the maintenance of any taxpayer, his family, or establishment;
- (b) domestic or private expenses;
- (c) any loss or expense which is recoverable under any insurance contract or indemnity;
- (d) income tax;
- (e) income carried to any reserve fund or capitalized in any way;
- (f) any expenses incurred in respect of any amounts received or accrued which are not included in the term "income" as defined in this Chapter.

(2) No deduction shall, as regards income derived from any trade, be made in respect of any of the following matters:—

- (a) Any moneys not wholly or exclusively laid out or expended for the purposes of trade;
- (b) the rent or value or cost of repairs of any premises not occupied for the purposes of the trade, or of any dwelling-house or domestic premises except such part thereof as may be occupied for those purposes;
- (c) interest which might have been made on any capital employed in the trade;
- (d) any debts owed to the taxpayer, except such as are proved to the satisfaction of the Collector to be bad or doubtful, deductions for doubtful debts being made according to a value estimated by the Collector;
- (e) debenture interest.

19. For the purposes of this Chapter, the expression "trade" shall include every profession, trade, business, employment, or calling.

## CHAPTER III.

### GENERAL PROVISIONS.

#### PART I.

##### RETURNS AND ASSESSMENTS.

20. (1) The Collector shall annually give public notice in the prescribed manner that all persons liable to taxation personally, or in any representative capacity, under the provisions of this Proclamation, are required to furnish within thirty days after the date of such notice, or within such further time as the Collector may for good cause allow, returns for the assessment of the tax. Such notice shall state the places at which the prescribed forms may be obtained and it shall be the duty of all such persons, and of all persons required by this Proclamation to furnish such returns to apply for the prescribed forms of returns. Any such person failing to furnish such return shall not be relieved from any penalty by reason only of his having received no notice to furnish the same, or of the prescribed form not having been delivered to him, but the Collector may, if he deem it so advisable, cause forms to be delivered or sent by post to any person.

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

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

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

(5) If any person fails to make such return, the Collector may appoint a person to make a return on behalf of such person, and the return made by the person so appointed shall be, for all the purposes of this Proclamation, the return of the person liable to make the same.

(6) The returns furnished by or on behalf of every person required to furnish returns under this Proclamation shall contain such particulars, be in such form, and be furnished to the Collector at such time as may be prescribed or publicly notified.

(7) The Collector may, when and so often as he thinks necessary, require any person to make fuller or further returns respecting any matter of which a return is authorized or prescribed by this Proclamation.

(8) All returns required to be furnished under this Proclamation shall be delivered at, or sent by post to, the prescribed address. Any such return shall, if marked with the words "Income Tax" and "On His Majesty's Service" be carried and delivered free of postal or other charges by the postal department.

(9) Returns of income to be made by any person shall be based on the amount of gross income which was received by, or accrued to or in favour of, the person making the return during the twelve months which ended the thirtieth day of June preceding the date of the notice calling for returns; provided that where the income of a person cannot be conveniently returned for such period the Collector may, in his discretion, accept returns made up to a date agreed to by him; provided that where the income of a person has been assessed upon a period ending upon a date other

than the thirtieth day of June the returns to be rendered subsequently shall be for each succeeding period of twelve months ending upon such other date; and provided further that where the income of a person cannot be conveniently returned for such period the Collector may, in his discretion, accept returns made up to a date agreed to by him.

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

(11) Persons carrying on any business in partnership shall be liable to make a joint return as partners in respect of such business, together with such particulars as may from time to time be prescribed, and each such partner shall be separately and individually liable for the rendering of the joint return and for the furnishing of such particulars, but they shall be liable to tax only in their separate individual capacities.

21. Every person carrying on any trade, or business, in the territory shall keep a proper record of his transactions in the English language, and for the purposes of this section a proper record shall include books containing all such entries relating to and exhibiting the nature of his transactions as (regard being had to the occupation of the person concerned and the scale on which his trade or business is carried on) might reasonably be expected or required to be kept. Every person who fails to keep a proper record of his transactions as required by this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred pounds or in default of payment to imprisonment with or without hard labour for a period not exceeding one year.

22. (1) For the purpose of obtaining full information in respect of any income of any taxpayer or of any part thereof, the Collector may require any person to produce for examination by the Collector, or by any person appointed by him for that purpose, at such time and place as may be appointed by the Collector in that behalf, any deeds, plans, instruments, books, accounts, trade lists, stock lists, or documents that may be deemed necessary for the purposes of this Proclamation.

(2) The Collector may, by notice in writing, require any person entitled to or in receipt of any income (whether on his own behalf, or as a public officer of a company, or as an agent or trustee of any person), or any person whomsoever that the Collector may deem able to furnish information, to attend at a time and place to be named by the Collector, for the purpose of being examined by him on oath respecting the income of any person, or any transactions or matters affecting the same, or any of them or any part thereof. Any person so attending may be allowed by the Collector any reasonable expenses necessarily incurred by such person in so attending.

(3) Every person to whom a form of return is sent by the Collector shall complete the same in accordance with the requirements of the Collector and shall return it to the Collector at such time and place as the Collector may direct.

23. (1) The income of a woman married with or without community of property and not separated from her husband under a judicial order or written agreement, shall, for the purposes of this Proclamation, be deemed to be income accrued to her husband, and shall be included by him in returns of income required to be rendered by him under this Proclamation; provided that in the event of the death or insolvency of the husband during any year in respect of which such income is chargeable, the income of the wife for the period elapsing between the date of such death or insolvency and the last day of the year of assessment shall be taxable as the separate income of such wife; provided further that, if either the husband or the wife makes written application to the Collector, returns of income may be rendered by such husband and wife separately, and assessments may be levied upon

each separately of an amount of tax proportionate to the share of the combined incomes returned by each; provided also that the total amount so assessed upon the husband and the wife together shall not be less than the total amount which would have been assessed upon the husband alone if the incomes of both husband and wife had been included in one return, as required by this section.

(2) Any amount payable by way of alimony or allowance by one spouse to the other under any judicial order or written agreement of separation shall be returned as separate income of the spouse to whom the payment is made, and shall be assessable only in the hands of such spouse.

24. (1) Every person shall, if required, by the Collector, furnish to him, in such form and at such times as may be prescribed or as the Collector may require, returns of all or any particular class of persons employed by him, and the earnings salaries wages allowances or pensions whether in money or otherwise, paid or allowed to each person so employed.

(2) Every person carrying on business in the territory shall, in such manner and form and at such times as may be prescribed or the Collector may require, furnish to the Collector returns showing—

- (a) all payments made to any person in respect of any share or interest in such business;
- (b) all moneys received by him from any person on deposit for any fixed time or period with or without interest;
- (c) all such other information in his possession with regard to the income received by, or accruing to or in favour of, such person as may be prescribed or may be required by the Collector.

25. Any person, whether liable for taxation under this Proclamation or not, to whom any notice or request for information is sent by the Collector or by any officer acting under the authority of the Collector, shall comply with the terms of that notice or furnish the information so requested under pain of the penalties for default under the next succeeding section.

26. Any person who—

- (1) fails or neglects to furnish any return as and when required by this Proclamation or the regulations or by the Collector, under the powers conferred by this Proclamation or by the regulations; or
- (2) without just cause shown by him, refuses or neglects to attend and give evidence as and when required by the Collector, or any officer duly authorized by him, or to answer truly and fully any questions put to him, or to produce any books or papers required of him by the Collector or any such officer; or
- (3) obstructs or hinders any officer in the discharge of his duties under this Proclamation;

shall be guilty of an offence, and liable on conviction to a fine not exceeding one hundred pounds, or, in default of payment, to imprisonment with or without hard labour for a period not exceeding one year, and may be further sentenced by the convicting court to a fine not exceeding ten pounds in respect of each day during which any such default continues after the conviction.

27. In every case in which any taxpayer makes default in furnishing any return, or if the Collector is not satisfied with the return furnished by any taxpayer, the Collector may make an assessment in such sum as in the Collector's judgment ought to be charged in accordance with this Proclamation, and thereupon shall give notice thereof to the taxpayer to be charged, and such taxpayer shall be liable to pay the tax upon the same. Such assessment shall be subject to objection and appeal, as provided by this Proclamation, and the taxpayer, if he has made default, shall not be entitled to any costs on such objection or appeal: provided that if it appears to the Collector that any person is unable from any cause to furnish an accurate return of his income, the Collector may agree with such person what shall be the taxable amount of such income.

28. (1) Any taxpayer who makes default in rendering a return in respect of any year of assessment shall be chargeable in respect of his taxable income for such year of assessment with a double rate of tax, and any taxpayer who omits from his return any amount which should have been included therein shall be chargeable with an amount equal to the difference between the tax as calculated in respect of the taxable income returned by him and the tax properly chargeable in respect of his taxable income as finally determined after including the amounts omitted, and shall be required to pay this amount in addition to the tax properly chargeable in respect of his true taxable income.

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

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

29. (1) The particulars of every assessment, and the amount of tax payable thereon, shall be entered in an assessment register, which shall be kept in the office of the Collector.

(2) Upon entering any assessment in any assessment register, the Collector shall give notice of the assessment to the taxpayer whose income has been assessed.

(3) Such notice shall be in the form prescribed, and shall be sent to such person by post in a registered letter or envelope, or delivered to such person in such other manner as the Collector may consider necessary or convenient.

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

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

## PART II.

### REPRESENTATIVE TAXPAYERS.

31. For the purposes of this Proclamation, "representative taxpayer" means—

- (1) in respect of the income of any company, the public officer thereof;
- (2) in respect of the income of every person permanently or temporarily absent from or resident out of the territory, the agent of such person, and for the purpose of this Proclamation every person in the territory having the receipt, management or control of income on behalf of any person absent or resident as aforesaid, or remitting or paying income to or receiving moneys for such person shall be deemed to be the agent of such person;
- (3) in respect of the income of any trust, or any minor, or mentally disordered and defective person or any other person under legal disability, the trustee, guardian, curator or other person entitled for the time being to the receipt, management, disposal or control of such income, or remitting or paying to, or receiving moneys on behalf of, such person under disability;

- (4) in respect of income paid under the decree or order of any court to any receiver or other person, such receiver or person whoever may be entitled to the benefit of such income, and whether or not it accrues to any person on a contingency or an uncertain event;
- (5) in respect of any person who dies during any year of assessment, or who dies after the close of any year of assessment, but before rendering a return of his income for such year of assessment, the executor or administrator of the estate of such person;

but nothing herein contained shall be construed as relieving any person from any liability, responsibility or duty imposed upon him by this Proclamation.

32. Every representative taxpayer as regards the income to which he is entitled in his representative capacity, or of which in such capacity he has the management, receipt, disposal, remittance, payment or control, shall be chargeable with the taxation imposed by this Proclamation, and be subject in all respects to the same duties, responsibilities and liabilities as if the income were income received by or accruing to or in favour of him beneficially, except that no representative taxpayer (not being a public officer of a company) shall, save as provided by section *thirty-four*, be personally liable for the payment of any tax beyond the amount of the income of which he has in such capacity aforesaid the management, receipt, disposal or control: provided that nothing herein contained shall, in any case where the representative taxpayer acts as an agent or trustee or in any other capacity for several persons, prevent him from claiming that each agency or trust or other capacity shall be treated separately for the purpose of claiming any exemption or deduction provided by this Proclamation.

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

34. Every representative taxpayer shall be personally liable for any tax if, while it remains unpaid—

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

35. (1) Where a shareholder or a member of a company is absent from the territory, such company shall, for the purposes of this Proclamation, be deemed to be the agent for such shareholder or member, and shall, as regards such shareholder or member and in respect of any income received by or accruing to him or in his favour as shareholder or member, have and exercise all the powers, duties and responsibilities of an agent for a taxpayer absent from the territory.

(2) Every company assessed for any tax shall be entitled to deduct from any dividends becoming payable within twelve months after the payment of such tax an amount calculated at the same rate per pound as the rate at which the company has been assessed: provided that nothing in this sub-section contained shall be construed as affecting the validity of any agreement or contract containing an express stipulation to the contrary.

36. The Collector may, if he think necessary, declare any person to be the agent of any other person, and the person so declared an agent shall be the agent for the purposes of this Proclamation.

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

38. Every company carrying on business or having an office in the territory shall at all times be represented by an individual residing therein. That individual shall be appointed by the company or by an agent or attorney who has authority to appoint such a representative for the purposes of this Proclamation, and the following provisions shall have effect—

- (1) the representative shall be called the public officer of the company, and shall be appointed, in the case of a company which at the commencement of this Proclamation so carries on business or has an office in the territory, within two months after such commencement, and in the case of a company which thereafter begins to carry on business or has an office in the territory, within one month after so beginning to carry on business or acquiring the office; in default of any such appointment, the public officer of any company shall be such managing director, director, secretary or other officer of the company as the Collector may designate for that purpose;
- (2) every company shall also, within the period prescribed in respect of it by sub-section (1) appoint a place within the territory at which any notices or other instruments under this Proclamation affecting the company may be served or delivered, or to which any such notices or documents shall be sent;
- (3) no appointment shall be deemed to have been made under sub-section (1) or (2) until notice thereof, specifying the name of the public officer and an address for service or delivery of notices and documents, has been given to the Collector;
- (4) every company shall keep the office of public officer constantly filled, and shall at all times maintain a place for the service or delivery of notices in accordance with sub-section (2) of this section; every change of public officer or of the place of service or delivery of notices shall be notified to the Collector within fourteen days of such change taking effect;
- (5) any company which makes default in appointing a public officer or appointing a place for service or delivery of notices, in accordance with this Proclamation, or in keeping the office of public officer constantly filled, or in maintaining a place for the service or delivery of notices, or which fails to notify to the Collector any change of public officer or of the place for the service or delivery of notices, and every person who acts within the territory as agent or manager or representative of such company, shall be liable to a fine not exceeding five pounds for every day during which the default continues;
- (6) every notice, process or proceeding which under this Proclamation may be given to, served upon or taken against any company, may be given to, served upon or taken against its public officer; and if at any time there is no public officer, then any such notice, process or proceeding may be given to, served upon or taken against any officer or person acting or appearing to act in the management of the business or affairs of such company or as agent for such company;
- (7) every public officer shall be answerable for the doing of all such acts, matters or things as are required to be done under this Proclamation by a taxpayer, and in case of default, shall be liable to the penalties provided in respect of defaults by a taxpayer;
- (8) everything done by any public officer which he is required to do in his representative capacity shall be deemed to have been done by the company which he represents;
- (9) the absence or non-appointment of a public officer shall not exonerate any company from the necessity of complying with the provisions of this Proclamation; but the company shall in all respects be subject to and liable to comply with the provisions of this Proclamation as if there were no requirement to appoint such officer.

### PART III.

#### OBJECTIONS AND APPEALS.

39. (1) Objections to any assessment made under this Proclamation may be made within twenty-one days after the date of the assessment notice or within such further time as the Collector or the Income Tax Appeal Court (herein after referred to as "the Court") may for good cause allow, in the prescribed manner and under prescribed terms, by any taxpayer who is aggrieved by any assessment in which he is interested.

(2) Subject to the provisions of the last preceding sub-section no objection shall be entertained by the Collector which is not delivered at his office or posted to him in sufficient time to reach him on or before the last day appointed for lodging objections, unless the taxpayer satisfies the Collector that reasonable grounds exist for the delay in lodging his objections.

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

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

(5) Where no objections are made to any assessment, or where objections have been allowed or withdrawn, such assessment or altered or reduced assessment, as the case may be, shall subject to the right of appeal herein after provided be final and conclusive.

(6) Notwithstanding any provision to the contrary in any law contained the Court of Resident Commissioner shall be the Income Tax Appeal Court for the purpose of this Proclamation: provided however that any case pending in the Court of Resident Commissioner under this Proclamation (whether such case be an appeal or a case stated for the determination of a question of law under section *forty-three*) may be removed to the Special Court of the Bechuanaland Protectorate by the Court of Resident Commissioner on its own mere motion or on application to it by the Collector or by the taxpayer concerned, and upon such removal the said Special Court shall have and exercise the same jurisdiction in respect of any case so removed as is conferred by this Proclamation on the Court of Resident Commissioner.

40. The burden of proof that any income is exempt from or not liable to any tax chargeable under this Proclamation, or is subject or entitled to any deduction or abatement, shall be on the person claiming such exemption, non-liability, or deduction.

41. (1) Any taxpayer dissatisfied with any decision of the Collector, as notified in the notice of alteration or reduction of an assessment or disallowance of an objection, or with any other decision which is subject to objection or appeal, as provided by this Proclamation, may appeal therefrom to the Court. Unless the taxpayer gives notice of such appeal within the period prescribed by sub-section (2), his objection shall be deemed to be determined.

(2) Notice of such appeal shall be in writing and shall be lodged with the Collector within twenty-one days after the date of the notice mentioned in sub-section (4) of section *thirty-nine*, or within such further time as the Collector or the Court may for good cause allow.

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

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

(5) So many days before the date fixed for the hearing of an appeal as the Court may direct the Collector shall send to the taxpayer, or to his duly authorized attorney or representative, a written notice of the time and place appointed for the hearing of such appeal. The hearing of an appeal may be adjourned by the Court from time to time to any time and place that may seem convenient.

(6) The sittings of the Court for the hearing of such appeals shall not be public, and the Court shall at any time, on the application of the appellant, exclude from such sitting, or require to withdraw therefrom, all or any persons whomsoever whose attendance shall not be necessary for the hearing of the appeal under consideration; provided, however, that the Court may authorize the publication of the legal considerations on which any judgment is based.

(7) The Controller, or any person authorized by him, may appear in support of the assessment on the hearing of any appeal, and the appellant and any person who is interested in such appeal may appear in person or by his counsel, solicitor or agent.

(8) The Court may alter or order the alteration of, the assessment book in accordance with the decision given on any appeal, but may only make an order as to costs when the claim of the Collector is held to be unreasonable or the grounds of the appeal therefrom to be frivolous.

42. The obligation to pay and the right to receive and recover any tax chargeable under this Proclamation shall not, unless the Collector shall so direct, be suspended by any appeal or pending the decision of the Court under the next succeeding section; but if any assessment is altered on appeal or in conformity with any such decision, a due adjustment shall be made, for which purpose amounts paid in excess shall be refunded and amounts short paid shall be recoverable.

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

44. The Resident Commissioner or any officer acting in that capacity and the President and any member of the Special Court of the Bechuanaland Protectorate shall not, solely on account of their liability to be assessed under this Proclamation, be deemed to be interested in any matter upon which they may be called upon to adjudicate thereunder.

#### PART IV.

##### PAYMENT AND RECOVERY OF TAX.

45. Any tax chargeable under this Proclamation shall be paid on such days and at such places as may be notified by the Collector; provided that nothing herein contained shall take away the right of any taxpayer to pay his tax either through the post or personally at the chief office of the Collector.

46. Subject to the provisions of this Proclamation the taxes leviable shall be payable—

- (1) by the representative taxpayer in respect of any income received or controlled by him in such representative capacity;
- (2) in respect of every other income and in all other cases by the person by whom the income is received, or to whom or in whose favour it accrues, or who is legally entitled to the receipt thereof.

47. Any tax shall, when it becomes due or is payable, be deemed to be a debt due to the Government, and shall be payable to the Collector in the manner and at the time and place prescribed, and may be sued for and recovered by action in any Court of competent jurisdiction by the Collector suing on behalf of the Government.

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

(2) In any action or proceeding for the recovery of any tax it shall not be competent for the defendant to question the correctness of the assessment book or any certified extract therefrom.

49. Any tax due and payable under the provisions of this Proclamation shall be a first charge upon the assets of the person by whom such tax is due.

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

## PART V.

### MISCELLANEOUS.

51. If it is proved to the satisfaction of the Collector that the amount paid by any person is in excess of the amount properly chargeable under this Proclamation, the Collector may authorize a refund to such person of any tax overpaid; provided, however, that no such refund may be authorized unless the claim therefor is made within two years after the date when the payment was made.

52. Any person—

(a) who knowingly and wilfully makes any false statement in any return, or makes any false answer, whether verbally or in writing, for the purpose of evading, or enabling any other person to evade, assessment or taxation; or

(b) who by any falsehood, wilful neglect, fraud, art or contrivance whatever, evades or attempts to evade assessment or taxation;

shall be guilty of an offence, and liable on conviction to a fine not exceeding one hundred pounds or in default of payment thereof to imprisonment with or without hard labour for a period not exceeding one year. Where the offence was as described in paragraph (b) of this section, the offender shall be liable, in addition to the imprisonment imposed, to be assessed and charged twice the amount of the tax to which he would otherwise be liable.

53. (1) Where a person is convicted of such an offence as is described in paragraph (b) of the last preceding section, there shall be two sentences imposed; the first in the usual form of adjudging the accused to pay the penalty imposed, and the second adjudging the accused to pay twice the amount of the tax of which he has sought to evade or avoid the payment.

(2) The first sentence shall forthwith be enforceable, but the second sentence shall not be formally recorded until the amount of the tax of which the accused has attempted to evade or avoid payment has been ascertained by the Collector, who shall, as soon as practicable, proceed to ascertain and fix the same.

(3) The Collector shall give notice to the accused of the amount so ascertained and if the accused, within fourteen days after such notice, or within such further time as the Collector or the Court may for good cause allow, gives the Collector notice of objection to such amount, he shall be entitled to have such objection heard and determined by the Court.

(4) At any time after such amount has been ascertained by the Collector, or, upon the accused's objection, by the Court, the second sentence may be formally recorded, adjudging the accused to pay twice the amount so ascertained or determined, and shall be forthwith enforceable.

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

(2) Any notice required or authorized under this Proclamation to be served upon any person shall be sufficiently and effectually served—

- (a) if personally served upon him; or
- (b) if left at his usual or last place of abode or office or place of business in the territory; or
- (c) if sent in a registered letter addressed to such usual or last known place of abode, office, place of business or postal address;

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

55. The High Commissioner may make regulations not inconsistent with the provisions of this Proclamation, for all or any of the following purposes, that is to say—

- (1) prescribing the duties of all persons engaged or employed in the administration of this Proclamation;
- (2) defining the limits of areas within which such persons are to act;
- (3) prescribing the forms of returns to be furnished to the Collector, and by whom the same shall be made, and the time and mode of making and furnishing the same;
- (4) providing that, to avoid duplicate payment in the territory in any case in respect of the same year or period, the Collector may make allowance or refund as he shall deem just, and in such manner as may be prescribed;
- (5) prescribing the procedure to be observed in the conduct and hearing of objections and appeals before the Court, and if necessary specifying the districts or places for which the Court shall hear objections;

and generally for giving effect to the objects and purposes of this Proclamation. The regulations may prescribe penalties to which any person convicted of any contravention thereof or failure to comply therewith shall be liable, not exceeding a fine of twenty pounds, or, in default of payment, imprisonment with or without hard labour for a period not exceeding three months.

56. In this Proclamation unless inconsistent with the context—

- “agent” includes any partnership, company, or any other body of persons, whether incorporated or not, which is acting as an agent;
- “company” includes any association incorporated or registered under any law in force in any part of the territory relating to companies, banking companies or insurance companies, or under a special law, and further includes any such association which, though incorporated or registered outside the territory, carries on business or has an office or place of business therein;
- “mining operations” and “mining” include every method or process by which any mineral is won from the soil or from any substance or constituent thereof;
- “person” includes any partnership, any company and any body of persons whether incorporated or not;
- “prescribed” means prescribed by or under the authority of this Proclamation and, in the case of a prescribed form, means a form substantially as prescribed or to the effect thereof;
- “regulation” means a regulation lawfully made and in force under this Proclamation;
- “tax” or “taxation” means any tax or duty leviable under this Proclamation;

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

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

“this Proclamation” includes the regulations;

“year of assessment” means any period in respect of which any tax or duty leviable under this Proclamation is chargeable.

57. All offences under this Proclamation may be prosecuted in the Court of the Assistant Commissioner or Magistrate or Assistant Resident Magistrate within whose jurisdiction they shall have been committed and any Assistant Commissioner or Magistrate or Assistant Resident Magistrate may impose any penalty provided for by this Proclamation.

58. This Proclamation may be cited as the Bechuanaland Protectorate Income Tax Proclamation 1922, and shall have force and take effect from the date of its publication in the *Gazette*.

GOD SAVE THE KING.

Given under my Hand and Seal at Pretoria this Sixteenth day of October One thousand Nine hundred and Twenty-two.

ARTHUR FREDERICK,  
High Commissioner.

By Command of His Royal Highness the  
High Commissioner.

H. J. STANLEY,  
Imperial Secretary.