

BECHUANALAND PROTECTORATE.

No. 42 of 1946.

(Promulgated 18th October, 1946.)

PROCLAMATION

By His Excellency The High Commissioner
Entitled the Bechuanaland Protectorate Income Tax
Proclamation, 1946.

Whereas it is expedient to fix the rates of normal and super income tax to be levied in the Bechuanaland Protectorate in respect of the year of assessment ending on the thirtieth day of June, 1946, and to amend the law relating to income tax:

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

1. In terms of sub-section (2) of section *five* and sub-section (3) of section *seventeen* respectively of the Bechuanaland Protectorate Income Tax (Consolidation) Proclamation, 1940, as amended (hereinafter referred to as "the principal law"), the rates of normal and super tax to be levied for the year of assessment ending the thirtieth day of June, 1946, shall be as follows:

Rates of
normal tax
and Super
tax.

Normal Tax.

(a) In so far as normal tax is concerned in respect of the taxable income for the period from the first day of July, 1945, up to and including the thirtieth day of June, 1946—

(i) in the case of public companies as defined in sub-section (2) of section *eighteen* of the principal law for each pound of such income, four shillings and sixpence;

(ii) in the case of private companies as defined in sub-section (2) of section *eighteen* of the principal law, the rate to be levied shall be the rate applicable to unmarried persons under sub-paragraph (iii) hereof;

(iii) in the case of persons other than those referred to in sub-paragraph (i), for each pound of such income, eighteenpence increased by one-thousandth of a penny for each pound of such income in excess of one pound, subject to a maximum rate of three shillings and threepence in every pound: Provided that for a married

person the rate for each pound shall be fifteenpence increased by one-thousandth of a penny for each pound of such income in excess of one pound, subject to a maximum rate of three shillings in every pound: Provided further that the net amount arrived at by calculation in accordance with the provisions of this subparagraph shall be subject, after the deduction of the abatements under subsections (1), (2) and (3) of section *seven* of the principal law, to a surcharge of forty-five per centum in the case of married persons and fifty per centum in the case of unmarried persons;

(iv) in the case of any person, not being a married person or a company, in addition to any tax determined in accordance with subparagraph (iii), three pounds if such income exceeds two hundred and fifty pounds: Provided that this amount shall be reduced by one pound for each dependant of such person: Provided further that the net amount arrived at by calculation in accordance with the provisions of this subparagraph shall not be subject to the deduction of the abatement under sub-section (4) of section *seven*.

Super Tax.

(b) In so far as super tax is concerned, for each pound of the income subject to super tax, two shillings increased by one four-hundredth of a penny for each pound of such income in excess of one pound, subject to a maximum rate of seven shillings and sixpence in every pound: Provided that there shall be added to the amount of tax calculated in accordance with the preceding provisions of this paragraph a sum equal to twenty-five per centum of the net amount arrived at after deducting the abatement provided for in sub-section (1) of section *twenty-three* of the principal law from the amount of the tax so calculated.

Amendment of section 7 of Proclamation No. 7 of 1940 as amended by section 3 of Proclamation of No. 59 of 1941.

2. Section *seven* of the principal law is hereby amended—

(a) by the substitution for subparagraph (a) of sub-section (1) of section *seven* and the first line of subparagraph (b) of the same sub-section of the following:—

“(a) public companies, as defined in sub-section (2) of section *eighteen* of the principal law, the sum of forty-five pounds;

(b) persons other than those in subparagraph (a)”—

(b) by the insertion in sub-section (3), after the words “eighteen years” of the words, “or, if he was wholly dependent for his maintenance upon the taxpayer, over the age of twenty-one years”.

3. Section *eight* of the principal law is hereby amended—

Amendment of section 8 of Proclamation No. 7 of 1940, as amended by section 7 of Proclamation No. 29 of 1944.

(a) by the addition at the end of sub-section (4), of the words “including the cost to him of livestock or produce donated by him to any other person, together with such other expenditure incurred by him in connexion with the livestock or produce so donated as may have been allowed to him as a deduction in the determination of his taxable income, whether in the current or any previous year of assessment under the provisions of this or any previous Income Tax Proclamation.”;

(b) by the addition at the end of paragraph (c) of sub-section (6) of the words “and if livestock or produce has been donated by any farmer (including any company) during any year of assessment, the value of the livestock or produce held by such farmer at the beginning of that year of assessment shall be reduced by the cost to him of the livestock or produce so donated, together with such other expenditure incurred by him in connexion with such livestock or produce as may have been allowed to him as a deduction in the determination of his taxable income, whether in the current or any previous year of assessment under the provisions of this or any previous Income Tax Proclamation.”; and

(c) by the deletion of the proviso to sub-section (12) and the substitution of the following provisos:—

“Provided that no deduction under paragraphs (c) and (f) of sub-section (1) of section *thirteen* shall be allowed in respect of any machinery, articles or plant for which a deduction under this sub-section has been allowed; Provided further that the total amount allowable as deductions to any farmer under this sub-section in any year of assessment shall not exceed an amount equal to thirty per centum of the gross income derived by him from farming operations during that year of assessment.”

Amendment of section 10 of Proclamation No. 7 of 1940, as amended by section 4 of Proclamation No. 59 of 1941.

4. Section *ten* of the principal law is hereby amended by the substitution for paragraph (ii) of sub-section (3), of the following paragraphs:—

“(ii) every married person whose taxable income does not exceed three hundred pounds in any year of assessment, or, if the period of assessment is less than a full year, an amount which bears to three hundred pounds the same ratio as the period assessed bears to one year; and

(iii) every other person, excepting a private company, whose taxable income does not exceed two hundred and fifty pounds in any year of assessment, or, if the period of assessment is less than a full year, an amount which bears to two hundred and fifty pounds the same ratio as the period assessed bears to one year.”

Amendment of section 13 of Proclamation No. 7 of 1940.

5. Section *thirteen* of the principal law is amended by the substitution in sub-paragraph (a) of the definition of “capital expenditure” in paragraph (v) of sub-section (e) for the word “two”, of the word “five”.

Insertion of section 28A in Proclamation No. 7 of 1940.

6. The following section is hereby inserted in the principal law after section *twenty-eight*:—

“Duty of persons submitting accounts in support of returns, or preparing accounts for other persons.

28A. (1) If any person submits in support of any return furnished by him under this Proclamation, any balance sheet, statement of assets and liabilities or account prepared by any other person, he shall together with such balance sheet, statement or account, submit a certificate or statement by such other person recording the extent of the examination by such other person of the books of account and of the documents from which the books of account were written up, and recording in so far as may be ascertained by such examination, whether or not the entries in such books and documents disclose the true nature of any transaction, receipt, accrual, payment or debit.

(2) Any person who has prepared any balance sheet, statement of assets and liabilities or account for any other person shall at the request of such other person, furnish him with the certificate or statement required under sub-section (1).”

7. Section *twenty-nine* of the principal law is hereby amended—

Amend-
ment of
section 29
of Pro-
clamation
No. 7
of 1940.

(a) by the addition at the end of sub-section (1) of the words “ and if any such deeds, plans, instruments, books, accounts, lists or documents are not in the English language, the Collector may by notice in writing require the taxpayer to produce at such time and place as may be appointed, at the taxpayer’s expense, a translation in English prepared and certified by a sworn translator or a person other than a sworn translator approved by the Collector.”;

(b) by the substitution for sub-section (3) of the following sub-sections:

“(3) Any officer engaged in carrying out the provisions of this Proclamation who has in relation to the affairs of a particular person been authorised thereto by the Collector in writing or by telegram, may, for the purposes of the administration of this Proclamation—

(a) without previous notice, at any time during the day enter any premises whatsoever and on such premises search for any moneys, books, records, accounts or documents;

(b) in carrying out any such search, open or cause to be removed and opened, any article in which he suspects any moneys, books, records, accounts or documents to be contained;

(c) seize any such books, records, accounts or documents as in his opinion may afford evidence which may be material in assessing the liability of any person for any tax;

(d) retain any such books, records, accounts or documents for as long as they may be required for any assessment or for any criminal or other proceedings under this Proclamation.

(4) Any authorised person exercising any power under sub-section (3), shall on demand produce the written authority furnished to him by the Collector.

(5) The person to whose affairs any books, records, accounts or documents seized under sub-section (3) relate, shall be entitled to examine and make extracts from them during office hours under such supervision as the Collector may determine.”

Amendment of section 31 of Proclamation No. 7 of 1940.

8. Section *thirty-one* of the principal law is hereby amended by the addition of the following sub-section:

“(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.”

9. Section *thirty-three* of the principal law is hereby amended—

Amendment of section 33 of Proclamation No. 7 of 1940.

(a) by the insertion in the first line before the word “Any” of the figure “(1)”, by the addition at the end of paragraph (c) of the word “or”, and the insertion after the said paragraph of the following paragraphs:—

“(d) fails to show in any return made by him any portion of the gross income received by or accrued to or in favour of himself or fails to disclose to the Collector, when making such return, any material facts which should have been disclosed; or

(e) fails to show in any return prepared or rendered by him on behalf of any other person any portion of the gross income received by or accrued to or in favour of such other person or fails to disclose to the Collector, when preparing or making such return, any facts, which, if so disclosed, might result in increased taxation; or

(f) not being a person whose gross income consists solely of salary, wages or similar compensation for personal service, without just cause shown by him, fails to retain for a period of five years from the date of the last entry therein all ledgers, cash books, journals, cheque books, invoices and all other books of account relating to any trade carried on by him and recording the details from which his returns for the assessment of taxes under this Proclamation were prepared; or

(g) submit or furnishes a false certificate or statement under section *twenty-eight A*”;

(b) by the addition at the end thereof of the following sub-section:—

“(2) Any person who has been convicted under the provisions of sub-section (1) of failing to furnish any return, information or reply shall, if he fails within any

period deemed by the Collector to be reasonable and of which notice has been given to him by the Collector to furnish the return, information or reply in respect of which the offence was committed, be guilty of an offence and shall be liable to a fine of five pounds for each day during which such default continues or to imprisonment without the option of a fine for a period not exceeding three months."

10. Section *thirty-five* of the principal law is hereby amended—

Amend-
ment of
section 35
of Pro-
clamation
No. 7
of 1940.

(a) by the substitution for sub-sections (1), (2) and (3) of the following sub-sections:—

"(1) A taxpayer shall be required to pay, in addition to the tax chargeable in respect of his taxable income or income subject to super tax—

(a) if he makes default in rendering a return in respect of any year of assessment, an amount equal to twice the tax chargeable in respect of his taxable income or income subject to super tax for that year of assessment; or

(b) if he omits from his return any amount which ought to have been included therein, an amount equal to twice the difference between the tax as calculated in respect of the taxable income or income subject to super tax returned by him and the tax properly chargeable in respect of his taxable income or income subject to super tax as finally determined after including the amount omitted;

(c) if he makes any incorrect statement in any return rendered by him which results or would, if accepted, result in the assessment of the normal or the super tax at an amount which is less than the tax properly chargeable, an amount equal to twice the difference between the tax as assessed in accordance with the return made by him and the tax properly chargeable if the incorrect statement had not been made.

(2) The additional amounts of tax for which provision is made under this section shall be chargeable in cases where the taxable income or income subject to super tax or any part thereof is estimated by

the Collector in terms of section *thirty-four* or agreed with the taxpayer in terms of the proviso to sub-section (2) of the said section as well as in cases where such taxable income or income subject to super tax or any part thereof is determined from accounts rendered by the taxpayer.

(3) 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 or incorrect statement 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 additional charge as he may think fit.”;

(b) by the addition at the end thereof, of the following sub-sections:—

“(5) Any taxpayer who in determining his taxable income or income subject to super tax, as disclosed by his return, deducts or sets off any amount, the deduction or set-off whereof is not permissible under the provisions of this Proclamation or any amendment thereof, or shows as an expenditure or loss any amount which he has not in fact expended or lost, shall be deemed for the purposes of this section to have omitted such amount from his return.

(6) Any taxpayer who wilfully fails to disclose in any return made by him any facts which should be disclosed and the disclosure of which would result in the taxation of the taxpayer's income on an amount which is higher than the amount upon which such income would be taxable on such return, shall be deemed, for the purposes of this section, to have omitted from his return the amount by which the former amount exceeds the latter.

(7) If in any year of assessment in which the determination of the taxable income of the taxpayer does not result in an assessed loss, he is entitled to the set-off of a balance of assessed loss from the previous year of assessment and such balance is less than it would have been had it been calculated on the basis of the returns rendered by him, he shall be deemed, for the purposes of this section, to have omitted from his return for the first mentioned year of assessment an

amount equal to the difference between the amount at which such balance is finally determined and the amount at which it would have been determined on the said basis.

(8) This section shall be deemed to have taken force and effect as from the 1st day of July, 1939."

11. The following section is hereby substituted for section *fifty-nine* of the principal law:

Substitution of section 59 of Proclamation No. 7 of 1940.

"Refunds. 59. (1) If it is proved to the satisfaction of the Collector that any amount paid by a taxpayer was in excess of the amount properly chargeable under this Proclamation, the Collector may authorise a refund to such taxpayer of any tax overpaid: Provided that no amount paid in respect of an assessment made in accordance with the practice generally prevailing at the time when that assessment was made and accepted by the taxpayer shall be deemed to have been otherwise than properly so chargeable.

(2) The Collector shall not authorise any refund under this section unless the claim therefor is made within two years after the date when the assessment was made."

12. The following section is hereby inserted in the principal law after section *fifty-nine*:

Insertion of section 59A in Proclamation No. 7 of 1940.

"Transactions, operations satisfied— 59A. (1) Whenever the Collector is

or schemes for purpose of avoiding liability for or reducing amounts of taxes on income.

(a) that any transaction, operation or scheme (whether entered into or carried out before or after the commencement of this Proclamation) has been entered into or carried out for the purpose of avoiding liability for the payment of any tax, duty or levy on income (including any such tax, duty or levy imposed by a previous Proclamation) or reducing the amount thereof, and has the effect of avoiding liability for the payment of any tax, duty or levy on income or of reducing the amount thereof, the liability for any tax, duty or levy on income and the amount thereof may be determined as if the transaction, operation or scheme had not been entered into or carried out;

(b) that any agreement or any change in the shareholding in any company, as a direct or indirect result of which income has been received by or has accrued to any company during any year of assessment, has at any time before or after the commencement of the Bechuanaland Protectorate Income Tax Proclamation, 1946, been entered into or affected by any person solely or mainly for the purpose of utilizing any balance of assessed loss incurred by the company, in order to avoid liability on the part of any person for the payment of any tax, duty or levy on income, or to reduce the amount thereof, the set-off of any such balance against any such income may be disallowed.

(2) Any decision of the Collector under sub-section (1) shall be subject to objection and appeal, and in proceedings relating thereto, whenever it is proved that the transaction, operation, scheme, agreement or change in shareholding in question would result in the avoidance of liability for payment of any tax, duty or levy on income or in the reduction of the amount thereof, it shall be presumed, until the contrary is proved—

(a) in the case of any such transaction, operation or scheme, that it was entered into or carried out for the purpose of avoiding such liability or of reducing the amount thereof; and

(b) in the case of any such agreement or change in shareholding, that it has been entered into or effected solely or mainly for the purpose of utilizing the balance of assessed loss in question in order to avoid such liability or to reduce the amount thereof.”

Substitution of section 60 of Proclamation No. 7 of 1940.

13. The following section is hereby substituted for section *sixty* of the principal law:

“Offences. 60. (1) Any person who with intent to evade or to assist any other person to evade assessment or taxation—

(a) makes or causes or allows to be made any false statement or entry in any return rendered in terms of

this Proclamation; or signs any statement or return so rendered without reasonable grounds for believing the same to be true; or

(b) gives any false answer, whether verbally or in writing, to any request for information made under this Proclamation by the Collector or any person duly authorised by him or any officer referred to in section *three*; or

(c) prepares or maintains or authorises the preparation or maintenance of any false books of account or other records or falsifies or authorises the falsification of any books of account or records; or

(d) makes use of any fraud, art or contrivance whatsoever, or authorises the use of any such fraud, art or contrivance;

shall be guilty of an offence and shall be liable to a fine not exceeding five hundred pounds or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(2) Whenever in any proceedings under this section it is proved that any false statement or entry is made in any return rendered under this Proclamation by or on behalf of any taxpayer or in any books of account or other records of any taxpayer, that taxpayer shall be presumed, until the contrary is proved, to have made or to have caused or allowed to be made that false statement or entry with intent to evade assessment or taxation, and any other person who made any such false statement or entry shall be presumed, until the contrary is proved, to have made such false statement or entry with intent to assist the taxpayer to evade assessment or taxation."

14. The following section is hereby inserted in the principal law after section *sixty-four*:

64A. (1) The High Commissioner may enter into an agreement with the Government of any other country, whereby arrangements are made with such Government with a view to the prevention, mitigation or discontinuance of the levying, under the laws of

Insertion of
section 64A
in Pro-
clamation
No. 7
of 1940.

"Preven-
tion of, or
relief from,
double
taxation.

the Bechuanaland Protectorate and of such other country of income tax in respect of the same income or to the rendering of reciprocal assistance in the administration of, and in the collection of taxes under, the income tax laws of the Bechuanaland Protectorate and of such other country.

(2) As soon as may be after the conclusion of any such agreement the arrangements thereby made shall be notified by notice by the High Commissioner in the *Gazette*, whereupon until such notice is cancelled by the High Commissioner, the arrangements notified therein shall, so far as they relate to immunity, exemption or relief in respect of Bechuanaland Protectorate income tax, have effect as if enacted in this Proclamation, but only if and for so long as such arrangements, so far as they relate to immunity, exemption or relief in respect of income tax levied or leviable in such other country have the effect of law in such country.

(3) The High Commissioner may at any time cancel any such notice by notice in the *Gazette*, and the arrangements notified in such earlier notice shall cease to have effect upon a date fixed in such latter notice, but the cancellation of any notice shall not affect the validity of anything previously done thereunder.

(4) The duty imposed by any law to preserve secrecy with regard to income tax shall not prevent the disclosure, to any authorised officer of the country mentioned in any notice issued in terms of sub-section (2), of the facts knowledge of which is necessary to enable it to be determined whether immunity, exemption or relief ought to be given or which it is necessary to disclose in order to render or receive assistance in accordance with the arrangements notified in such Notice."

Commence-
ment of
certain
amend-
ments.

15. The amendments effected by this Proclamation shall, except where otherwise provided or where it otherwise appears from the amendments, first take effect in respect of assessments for the year of assessment ending upon the thirtieth day of June, 1946.

16. This Proclamation shall be cited as the short title.
Bechuanaland Protectorate Income Tax Proclamation, 1946.

GOD SAVE THE KING.

Given under my Hand and Seal at Pretoria this
Ninth day of October, One thousand Nine hundred
and Forty-six.

E. BARING,
High Commissioner.

By Command of His Excellency
the High Commissioner.

H. E. PRIESTMAN,
Administrative Secretary.