

BECHUANALAND PROTECTORATE.

(No. 31 of 1949.)

(Promulgated 19th August, 1949.)

PROCLAMATION

BY HIS EXCELLENCY THE HIGH COMMISSIONER
Entitled the Bechuanaland Protectorate Native Tax
Proclamation, 1949.

Whereas it is expedient to make provision for the payment and collection of Native Tax in the Bechuanaland Protectorate:

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

1. In this Proclamation, unless the context ^{Definitions.} otherwise requires, the following terms shall have the meanings therein respectively assigned to them, that is to say:—

“Chief” means the Chief or Regent over any tribal area who has been recognised in that capacity by the High Commissioner and confirmed therein by the Secretary of State;

“District” means any Magisterial District established as such by the High Commissioner by notice in the *Gazette*;

“District Officer” means the District Officer in charge of the District and includes any Assistant District Officer posted to the District;

“headman” means any native recognised as such in accordance with section *eleven* of the Bechuanaland Protectorate Native Administration Proclamation, 1943 (No. 32 of 1943);

“native” means any male aboriginal belonging to any tribe in Africa south of the Equator, including any person of mixed race living as a member of any native community, tribe, kraal, or location who on the first day of ^{January} ~~July~~ in any year is of the apparent age of eighteen or more years provided that the progeny of a legal marriage between a male European and a native female shall not be included in this definition;

“Territory” means the territory of the Bechuanaland Protectorate;

“the tax” means the tax imposed by this Proclamation;

“year” means the period ~~from the first day of April in any one year, to the thirty-first day of March in the following year.~~

Proc. 81/53.

Obligation to pay tax.

Recd) R2.

Proc 8/53

Proc 8/53

2. (1) Every native shall pay to the District Officer or to the Chief of the District in which such native resides, or to any other duly authorised person, for the purposes of the Bechuanaland Protectorate Government, a tax at the rate of ~~one pound eight shillings~~ per annum for the year ending on the thirty-first day of March, 1949, and for each succeeding year.

(2) The tax payable under this Proclamation for each year shall become due on the first day of ~~April~~ of that year but shall not be payable until one month after the date or in the case of a native first becoming liable to the tax after the first day of ~~April~~ within one month of his so becoming liable.

Penalty for non-payment.

3. Except in so far as he may be exempted under section *twelve* of this Proclamation any native who fails to make payment of the tax in accordance with the provisions of section *two* of this Proclamation within three months of the date on which such tax becomes payable by him shall on conviction be liable to a penalty not exceeding five pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding three months.

Provided that for the year 1949 no prosecution shall be instituted for the non-payment of tax under this section before the first day of October, 1949.

Obligation to pay tax not discharged by payment of fine or imprisonment.

4. The imposition of any fine or order of imprisonment as mentioned in section *three* of this Proclamation shall not relieve any native from payment of the tax due and payable by him, but the tax for the non-payment of which any native has been convicted may be treated as a judgment debt and be recoverable as such under the provisions of section *six* of this Proclamation.

Joinder of Counts.

5. Two or more contraventions of this Proclamation by the same native may be tried together or separately provided that no native shall be convicted more than once in respect of the tax due and payable for any one year, and provided that no native shall in any one year be sentenced to fines exceeding in all ten pounds or to imprisonment exceeding in all six months for contravention of section *two*.

Court may order attachment and sale of movable property or attachment of salary or wages for payment of tax.

6. (1) Upon the conviction of any native for a contravention of section *two* of this Proclamation if it be shown to the satisfaction of the Court before which such native is convicted that he has sufficient property to pay the tax owing by him without being deprived of his means of subsistence, the Court may issue an order to

attach sufficient moveable property of the accused and to sell the same and to apply the proceeds to the payment of the tax owing by the accused and it shall then become the duty of the Chief to assist in the execution of such order. Any money realised by the sale over and above the amount in this section mentioned and the expenses of the sale shall be returned to the accused.

(2) The District Officer may in such circumstances issue a warrant requiring the Messenger of the Court or any member of the police to attach sufficient moveable property to satisfy the exigencies of the said warrant.

(3) (a) In the case of the conviction of any native as aforesaid, if it is shown to the satisfaction of the Court that he has not sufficient property to pay the tax owing by him but is in receipt of salary or wages through employment, the Court may order the attachment of any salary or wages actually due to such native by any person residing, carrying on business or employed within the district to the amount necessary to cover the tax due by such native, and may order such other person to pay to the Messenger of the Court so much of the salary or wages appearing at the time of making the order to be due and payable in respect of the tax due by the aforesaid native, and may enforce the order as if it were a judgment of that Court.

(b) No such order in respect of salary or wages shall be granted unless the Court is satisfied upon sworn information that sufficient means will, after the satisfaction of the order, be left to the native in default to maintain himself and those dependent on him.

(c) If, after any such order in respect of salary or wages has been granted, it is shown to the satisfaction of the Court that sufficient means to maintain himself and those dependent upon him will not, after satisfaction of such order be left to the said native, the Court shall vary or set aside such order in such manner that the order will only affect the balance (if any) of such salary or wages over and above such sufficient means.

7. Any native reasonably suspected of having contravened the provisions of section two of this Proclamation may be arrested without warrant by any District Officer or police officer or any person whom a District Officer or police officer may authorise for such purpose.

Arrest
without
warrant.

Proc. 51/55

Accomplices.

8. Any person who shall assist any native in contravening or in an attempt to contravene the provisions of section two of this Proclamation shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five pounds or in default of payment to imprisonment with or without hard labour for any period not exceeding three months.

Production of tax receipt on demand.

9. A receipt in such form as the Resident Commissioner may from time to time approve for the amount of the tax paid by any native shall be given to such native in acknowledgment of the payment made by him, and any receipts so given shall be kept by such native and produced for inspection on demand made by any person appointed to collect the said tax or by any police

Proc 48/50 ~~officer.~~ *or at a police station within 7 days of such demand*

Offences.

10. (1) Any person forging or defacing any receipt as mentioned in the last preceding section shall be guilty of an offence and on conviction shall be liable to a fine not exceeding twenty pounds or in default of payment to imprisonment with or without hard labour for a period not exceeding six months.

(2) Any native in possession of such a receipt belonging to another native who represents it to be his own shall be guilty of an offence and on conviction shall be liable to a fine not exceeding ten pounds or in default of payment to imprisonment with or without hard labour for a period not exceeding three months.

(3) Any native who disposes in any way to another native of a receipt given to him in acknowledgment of the payment of his tax with intent that such other native may thereby evade payment of the tax due and payable by him shall be guilty of an offence and on conviction shall be liable to the penalties provided in sub-section (2) of this section.

(4) Any Chief, headman or collector of tax or other person who in the course of collecting or under colour of collecting tax—

- (a) without the permission of the Resident Commissioner demands from any person an amount in excess of the tax to which such person is liable under this Proclamation;
- (b) withholds for his own use or otherwise any portion of the tax collected;
- (c) renders false returns, whether verbal or in writing, of the amounts collected or received by him;

- (d) wilfully misrepresents the taxable capacity of any community or person from which or from whom he is authorised to collect taxes;
- (e) embezzles or otherwise misappropriates any tax received by him,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding fifty pounds or to imprisonment with or without hard labour for a period not exceeding three years, and any amount in respect of which any person has been convicted under paragraphs (b) or (e) of this subsection may be recovered by execution against such person's property.

(5) The provisions of sub-section (4) (a) of this section shall not apply in any case where the Resident Commissioner at the request of a Tribe, and with the approval of the High Commissioner has allowed the Chief to collect a levy for some approved purpose for the benefit of such Tribe under such conditions as the Resident Commissioner with the approval of the High Commissioner may impose.

(b) See Procl 48/20

11. Notwithstanding anything in this Proclamation contained—

Natives domiciled elsewhere.

- (a) where a native though resident in the Territory is domiciled in the Union of South Africa, the Mandated Territory of South West Africa, Basutoland or Swaziland he shall on production of proof that he has paid tax for the current year in the country of his domicile, be exempt from payment of the tax for that year;
- (b) where a native though resident in the Territory is domiciled in some country other than the Territory, the Union of South Africa, the Mandated Territory of South West Africa, Basutoland or Swaziland, he may in the discretion of the Resident Commissioner, on production of proof that he has paid tax for the current year in the country of his domicile, be granted total or partial exemption from payment of the tax for that year.

12. (1) Any native who shall prove to the satisfaction of the District Officer in whose District he resides that he is unable on account of poverty to pay the tax without being deprived of his means of subsistence, may be exempted in whole or in part by such District Officer after consultation with the Chief from payment of the tax.

Exemptions.

(2) Any native under the age of twenty-one years who produces to the District Officer a certificate from the principal of any recognised school, certifying that he has regularly attended such school during any year for which the tax is payable shall be exempted by the District Officer from payment of the tax.

(3) Where any person is exempted from payment of the tax under this section the District Officer shall deliver to him a certificate of such exemption. Every such certificate of exemption shall be valid only in respect of the tax for the year for which it is granted.

Tax to be paid in money.

13. The tax shall be paid in money.

Appointment of Collectors.

14. The Resident Commissioner may appoint any native chief as collector of tax within any area. The person so appointed shall receive from a District Officer or other official, books containing the forms of receipt approved by the Resident Commissioner and it shall be his duty to pay and deliver to the District Officer or other official the amount of tax represented by the receipts issued by him under section *nine* of this Proclamation and to account for the remainder of the said receipt forms.

Remuneration of Collectors.

15. In any district to which the Bechuanaland Protective Native Treasuries Proclamation, 1938 (No. 35 of 1938), is not applied, a sum of two shillings on each tax paid in respect of the current year and a sum of one shilling on each arrear tax paid to the District Officer (wherever any such tax may have been collected) may be paid to the said chiefs in consideration of the services rendered in the collection of tax subject to the provisions of section *seventeen* of this Proclamation.

Provided that out of such remuneration the Resident Commissioner may direct that payment shall be made to collectors employed by any such Chief in respect of their services at such rates as the Resident Commissioner may, after consultation with the Chief, decide, and in the event of his so directing may withhold the amount of such payment from the remuneration to be paid to the said Chief in order that such amount may be paid to the collectors:

Provided further that the High Commissioner may from time to time, by notice in the *Gazette*, vary the rates of remuneration to be paid to Chiefs under this section.

16. At the commencement of each year or as soon as possible afterwards any Chief appointed to collect the tax as aforesaid shall furnish to the District Officer or an official appointed by him a complete list of—

List of Taxpayers.

- (a) the names of the persons who will become liable for the first time to the payment of the tax;
- (b) the names of all payers of the tax who have died or removed from the area in which he was appointed collector in the previous year.

17. Any Chief so appointed shall be responsible for the due and proper collection of the tax within the area for which he is appointed, and in the event of the collection thereof being made in a careless or improper manner the Resident Commissioner may reduce or withhold the remuneration allowed to such Chief and in addition may with the approval of the High Commissioner remove such Chief from his position as collector of the tax, and appoint some other person or persons in his place and stead to whom shall be paid such remuneration as the Resident Commissioner may allow.

Responsibility of Collectors.

18. The High Commissioner may by notice in the *Gazette* for any period in any portion of the Territory suspend the payment of the tax or reduce the amount thereof either generally or in respect of any class of persons should it appear expedient to him so to do.

Suspension of tax.

19. There shall be kept by each District Officer or by some person deputed by him a register in such form as the Resident Commissioner may direct in which shall be entered the name of each payer of the tax and the years in respect of which he has paid, and such register shall on its production in Court from the proper custody be taken as *prima facie* evidence of the facts therein stated.

Tax Registers.

20. Any person who not being authorised under this Proclamation so to do, shall collect or attempt to collect any tax, shall be guilty of an offence and on conviction shall be liable to a fine not exceeding fifty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding nine months.

Un-
authorised
collection
of tax.

21. The High Commissioner may from time to time make regulations with penalties for the breaches thereof providing for the collection of the tax and the exemption of persons therefrom and defining the duties and responsibilities of Chiefs

Regulations.

and other persons in respect of the payment of such tax and generally for the carrying out of this Proclamation.

Repeal of
Procla-
mation
No. 17 of
1949.

22. The Bechuanaland Protectorate Native Tax (Amendment) Proclamation, 1949 (No. 17 of 1949), is hereby repealed.

Savings.

23. Notwithstanding the repeal of the Bechuanaland Protectorate Native Tax Proclamation, 1932 (No. 1 of 1932) by the Bechuanaland Protectorate Native Graded Tax Proclamation, 1949 (No. 16 of 1949), any act done, liability incurred, penalty imposed or proceedings pending under the said Proclamation (No. 1 of 1932) shall not be affected by such repeal and payment of any sums due thereunder prior to the first day of April, 1949, may be enforced and non-payment thereof imposed in the same manner as if the said Proclamation had not been repealed.

Short title
and com-
mencement.

24. This Proclamation may be cited as the Bechuanaland Protectorate Native Tax Proclamation, 1949, and shall be deemed to have commenced and come into operation on the first day of April, 1949.

GOD SAVE THE KING.

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

E. BARING,

High Commissioner.

By Command of His Excellency
the High Commissioner.

W. A. W. CLARK,

Chief Secretary.