

BECHUANALAND PROTECTORATE.

NO. 39 OF 1949.

(Promulgated 21st October, 1949.)

PROCLAMATION

BY HIS EXCELLENCY THE HIGH COMMISSIONER
Entitled the Bechuanaland Protectorate Income Tax
(Amendment) Proclamation, 1949.

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 ended on the thirtieth day of June, 1949, 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* ^{Rates of Normal Tax and Super Tax.} 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 rate of normal and super tax to be levied for the year of assessment ended the thirtieth day of June, 1949, shall be as follows:—

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, 1948, up to and including the thirtieth day of June, 1949—

- (i) in the case of public companies as defined in sub-section (2) of section ~~eighteen~~ ^{sixteen} of the principal law for each pound of such income, five shillings;
- 755/49 (ii) in the case of private companies as defined in section *two* of this Proclamation, 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 taxable income not exceeding sixteen thousand pounds, eighteen pence increased by one one-thousandth of a penny for each pound

of such income in excess of one pound, and for each pound of the taxable income over and above sixteen thousand pounds, fifty pence:

Provided that for a married person the rate for each pound of the taxable income not exceeding sixteen thousand pounds shall be fifteen pence increased by one-thousandth of a penny for each pound of such taxable income in excess of one pound, and for each pound of the taxable income over and above sixteen thousand pounds, forty-seven pence:

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 rebates under subsection (1) of section *seven* of the principal law, to a surcharge of forty per centum in the case of married persons and fifty per centum in the case of unmarried persons:

SUPER TAX.

- (b) In so far as super tax is concerned, for each pound of the income subject to super tax not exceeding sixteen thousand pounds, two shillings increased by one four-hundredth of a penny for each pound of such income subject to super tax in excess of one pound, and for each pound of the income subject to super tax over and above sixteen thousand pounds, eight shillings and eight pence:

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 forty-five per centum in the case of married persons and fifty per centum in the case of unmarried persons of the net amount arrived at after deducting the rebate provided for in subsection (1) of section *twenty-three* of the principal law from the amount of the tax so calculated:

Provided further that there shall be deducted from the amount of tax payable any amount of tax proved to have been paid by the taxpayer in the country of origin by deduction or otherwise on the dividends included in his income subject to super tax.

2. The principal law is hereby amended by the insertion of the following new sections after section *fifteen*:—

“ SPECIAL PROVISIONS RELATING TO
COMPANIES.

16. (1) For the purposes of this Proclamation a company shall be recognised as either a public or a private company in respect of each year of assessment, and the Collector shall, upon the request of any company, inform that company whether it is recognised as a public company or as a private company.

(2) Subject to the provisions of section *sixteen* (A), the following companies shall be recognised as public companies:—

- (a) any company, all classes of whose shares are publicly quoted on the specified date by a stock exchange in the list issued under its authority, if the Collector is satisfied that—
 - (i) the stock exchange is a recognised and bona fide stock exchange under adequate control; and
 - (ii) the rules and regulations of the stock exchange for granting and continuing a quotation for the purchase and sale of shares provide for full protection of the interests of the public in regard to dealing in the shares of the company; and
 - (iii) the memorandum and articles of association of the company contain no such restrictions on the right to acquire or transfer any of its shares as are likely to preclude the members of the public from becoming shareholders in any class of the company's shares; and
 - (iv) the public is substantially interested as shareholders in every class of the shares issued by the company; or

(b) any company (not being a company whose memorandum and articles of association restrict the right to transfer its shares or prohibit an invitation to the public to subscribe for any of its shares) in respect of which the Collector is satisfied that—

(i) the public is substantially interested as shareholders in every class of the shares issued by the company; and

(ii) the business of the company is conducted and its profits are distributed in such a manner that no person enjoys or receives or is entitled to enjoy or receive, by reason of shareholding, participation in the management or otherwise, any advantage which would not be enjoyed or received by him if the company had been under the control of a board of directors acting in the best interests of all its shareholders and had been one which could have been recognised as a public company under paragraph (a) of this sub-section; or

(c) any company which the Collector is satisfied was incorporated to serve a specified purpose, beneficial to the public or a section of the public, if under the constitution of the company no shareholder is entitled to participate in the profits or income of the company to an extent greater than seven per centum per annum on the nominal value of his shareholding; or

(d) any insurance society or company; or

(e) any society or company, registered under the Co-operative Agricultural Societies Acts of the Territories of Southern Africa; or

(f) any public utility company established by or under a special Proclamation or Act of Parliament.

(g) See Page 31/50

(3) A company which, at the specified date, is not recognised as a public company shall be recognised as a private company.

16 (A). If, owing to changes in the constitution or shareholding of any company which has been recognised as a public company under paragraph (a), (b) or (c) of sub-section (2) of section *sixteen*, or for any other reason, the Collector is no longer satisfied as to the matters of which in terms of the paragraph under which that company has been so recognised he is required to be satisfied, or if the company ceases to comply with the requirements of that paragraph, the Collector may notify the company that it shall, as from the next succeeding specified date be recognised as a private company."

Determina-
tion of
company's
status.

3. Section *eighteen* of the principal law is hereby amended by the deletion of sub-section (2).

Amendment
of section 18
of Procla-
mation No.
7 of 1940.

4. Section *twenty* of the principal law is hereby amended by the substitution of the word "*sixteen*" for the word "*eighteen*" in the third line.

Amendment
of section 20
of Procla-
mation No.
7 of 1940.

5. Section *twenty-one* of the principal law is hereby amended by the deletion of paragraphs (c) and (d) of sub-section (3).

Amendment
of section 21
of Procla-
mation No.
7 of 1940.

6. Section *sixty-six* of the principal law is hereby amended by—

Amendment
of section 66
of Procla-
mation No.
7 of 1940.

(a) the substitution of the following new definition for "company":—

" 'company' includes—

- (a) any association incorporated or registered under any law in force in the Territory; or
- (b) any association which is incorporated or registered outside the Territory but carries on business or has an office or place of business in the Territory."

(b) the insertion after the definition of "regulation" of the following definitions:—

" 'shareholder' in relation to any company means the registered shareholder in respect of any share, except that where some person other than the registered shareholder is entitled, whether by virtue of any provision in

the memorandum or articles of association of the company or under the terms of any agreement or contract, or otherwise, to all or part of the benefit of the rights of participation in the profits or income attaching to the shares so registered such other person, to the extent that he is entitled to such benefits, shall also be deemed to be a shareholder;

'specified date' for any year of assessment means the last day of such year or if the accounts of any company are accepted under the proviso to sub-section (10) of section *twenty-eight* to a different date, such other date or, in the case of any company which has been required to furnish an interim return in terms of sub-section (2) of that section, the date up to which such return has been rendered."

Short title and commencement. 7. This Proclamation shall be cited as the Bechuanaland Protectorate Income Tax (Amendment) Proclamation, 1949, and shall be deemed to have first commenced and come into operation in respect of assessments for the year of assessment ended upon the thirtieth day of June, 1949.

GOD SAVE THE KING.

Given under my Hand and Seal at Pretoria this Eleventh day of October, 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.