

## MINERAL RIGHTS TAX ACT, 1972

No. 29



of 1972

### **AN ACT TO PROVIDE FOR THE IMPOSITION OF A TAX ON MINERAL RIGHTS, AND TO AMEND THE INCOME TAX (CONSOLIDATION) PROCLAMATION, 1959 AND FOR MATTERS INCIDENTAL THERETO.**

*Date of Assent:* 30.10.1972

*Date of Commencement:*

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Mineral Rights Tax Act, 1972. Short title
2. (1) In this Act unless the context otherwise requires — Inter-pretation
  - “Collector” means the Collector of Income Tax;
  - “effective date” means the 1st July, 1972;
  - “holder of mineral rights” has the same meaning as in the Mines and Minerals Act;
  - “mineral rights” has the same meaning as in the Mines and Minerals Act;
  - “Minister” means the Minister responsible for Finance and Development Planning.
- (2) For the purposes of paragraph (d) of subsection (6) of section 3, a person shall be deemed to have control of a company —
  - (a) if he exercises, or is able to exercise or is entitled to acquire, control, whether direct or indirect, over the company’s

affairs, and in particular, but without prejudice to the generality of the preceding words, if he possesses, or is entitled to acquire, the greater part of the share capital or voting power in the company, or

- (b) if he possesses, or is entitled to acquire, either —
  - (i) the greater part of the issued share capital of the company, or
  - (ii) such part of that capital as would, if the whole of the income of the company were in fact distributed to the members, entitle him to receive the greater part of the amount so distributed, or
  - (iii) such redeemable share capital as would entitle him to receive on its redemption the greater part of the assets which, in the event of a winding up, would be available for distributing among members, or
- (c) if in the event of a winding up he would be entitled to the greater part of the assets available for distribution among members.

(3) Where two or more persons together satisfy any of the conditions in paragraphs (a) to (c) of subsection (2) above, they shall be taken to have control of the company.

(4) In subsection (2) above “member” includes any person having a share or interest in the capital or income of the company, and, for the purposes of that subsection, a person shall be treated as entitled to acquire anything which he is entitled to acquire at a future date, or will at a future date be entitled to acquire; and, for the purposes of paragraphs (b) (iii) and (c) of that subsection, any loan creditor may be treated as a member (and the references to share capital as including loan capital).

(5) For the purposes of subsections (2) and (3) above, there shall be attributed to any person any rights or powers of a nominee for him, that is to say, any rights or powers which another person possesses on his behalf or may be required to exercise on his direction or behalf.

(6) For the purposes of subsections (2) and (3) above, there may also be attributed to any person all the rights and powers of any company of which he has, or he and associates of his have, control or any two or more such companies, or of any associate of his or of any two or more associates of his, including those attributed to a company or associate under subsection (5) above, but not those attributed to an associate under this subsection.

(7) For the purposes of subsection (6) above, "associate" means, in relation to a person —

- (a) any relative or partner of the person,
- (b) the trustee or trustees of any settlement in relation to which the person is, or any relative of his (living or dead) is or was, a settlor, and
- (c) where the person is interested in any shares or obligations of a company which are subject to any trust, or are part of the estate of a deceased person, any other person interested therein.

**3.** (1) There shall be charged, levied, and paid by every person who on the effective date was the holder of mineral rights, a tax in respect of such rights in the year commencing with the effective date, and in each succeeding year there shall be charged, levied, and paid by every person who on the anniversary of the effective date was the holder of such rights, a tax in respect thereof.

Charge of  
Mineral  
Rights Tax  
and Rates.

(2) The tax provided for by this section (hereinafter in this Act referred to as "the mineral rights tax") shall in respect of each year of tax be charged, levied and paid at whichever is the higher of the following rates —

- (a) a rate of R40 for every square kilometre of land or part thereof over which mineral rights were held on the effective date or as the case may be on the anniversary of the effective date (hereinafter in this Act referred to as "the area rate"); or
- (b) a rate of 10% of the value of the mineral rights held on the effective date or as the case may be on the anniversary of the effective date (hereinafter in this Act referred to as "the *ad valorem* rate").

(3) Every person who on the effective date was the holder of mineral rights shall before the 31st December, 1972 furnish to the Collector in the form set forth in the First Schedule hereto a tax return (hereinafter in this Act referred to as "the first tax return") specifying, *inter alia* :—

- (a) the area of land over which such person held mineral rights on the effective date, the nature of such rights and where such land was located;
- (b) when such person acquired such mineral rights, the manner in which they were acquired, and where such mineral rights were acquired for consideration the nature and amount of such consideration; and

(c) his estimate of the open market value of such rights immediately before the effective date.

(4) The estimate of the open market value of mineral rights immediately before the effective date made pursuant to paragraph (c) of subsection (3) of this section shall subject to the provisions of subsections (7) and (8) of this section be conclusive evidence of the value of the mineral rights to which it refers:—

(a) for the purpose of determining whether the tax payable in respect of such rights shall be levied at the area rate or the *ad valorem* rate; and

(b) in the event that tax is payable at the *ad valorem* rate for the purposes of determining the amount of tax due.

(5) Whenever, after the effective date, a transaction takes place relating to mineral rights the Collector shall assess the open market value of such mineral rights and the value of such mineral rights as so assessed is hereinafter in this Act referred to as their “transfer value”.

(6) For the purposes of the preceding subsection a transaction relating to mineral rights shall, unless the Collector in any particular case otherwise determines, be deemed to have taken place if:—

(a) mineral rights or any part thereof are sold or otherwise transferred by the holder thereof to any other person; or

(b) the holder of mineral rights grants to any other person an option to purchase his mineral rights or any part thereof or extends the period within which such option may be exercised; or

(c) the holder of mineral rights grants to any other person in respect of the area over which his rights extend or any part thereof a licence or authority to prospect or leases his right to mine, or enters into any contract with any other person to mine, in any such area or part thereof; or

(d) shares in a company which is the holder of mineral rights are issued, sold, charged, or otherwise transferred, or any agreement is made by, or in connection with, such company and in consequence of such transaction or agreement the company is no longer controlled by the person or persons who controlled the company before such transaction took place or such agreement was made.

(7) Where the Collector has pursuant to the provisions of subsection (5) of this section assessed the transfer value of any

mineral rights that value shall (unless the transfer value is again assessed in consequence of a second or subsequent transaction relating to the same mineral rights):-

- (a) determine whether the tax payable in respect of such mineral rights shall be levied at the area rate; and
- (b) in the event that tax is or becomes payable at the *ad valorem* rate, determine the amount of tax due on the next and subsequent anniversaries of the effective date.

(8) Where, in consequence of a second or subsequent transaction relating to the same mineral rights the transfer value of mineral rights is reassessed, the provisions of subsection (7) of this section shall apply to such reassessment as they apply to the first assessment of such transfer value.

(9) Where immediately before the assessment of the transfer value of any mineral rights pursuant to subsection (5) of this section the amount of tax payable in respect of such mineral rights (whether payable at the area rate or the *ad valorem* rate) had been determined by reference to the first tax return:-

- (a) in any case in which the tax payable in respect of such mineral rights for the year of tax commencing on the anniversary of the effective date next following such assessment is greater than the tax which was payable before such assessment, the person who made the first tax return shall be assessed to and pay an additional tax for each preceding year of tax since the effective date in an amount equal to the difference between the tax payable by reference to the transfer value of such mineral rights and the tax which was payable by reference to the first tax return; or
- (b) in any case in which the tax payable in respect of such mineral rights for the year of tax commencing on the anniversary of the effective date next following such assessment is less than the tax which was payable before such assessment the person who made the first tax return shall be entitled to a refund of tax for each preceding year of tax since the effective date in an amount equal to the difference between the tax payable by reference to the transfer value of such mineral rights and the tax which was payable by reference to the first tax return.

(10) Where mineral rights or any part thereof are sold or otherwise transferred by the holder thereof to any other person and

the vendor or transferor defaults in the payment of any tax for which he was liable before such sale or transfer or defaults in the payment of any tax for which he was liable before such sale or transfer or defaults in the payment of any tax which becomes due on the assessment of the transfer value of such mineral rights in consequence of such sale or transfer, the purchaser or transferee of such rights shall be liable to the tax in respect of which the vendor or transferor was in default.

- (11) (a) Any person liable to pay mineral rights tax shall be entitled for the year of tax commencing on the effective date, and in subsequent years for the year of tax commencing on the anniversary of the effective date, to set off against his liability to tax for that year approved expenditure actually incurred by him or by any other person on his behalf in the income tax year immediately preceding the effective date or as the case may be in the income tax year immediately preceding the anniversary of the effective date.
- (b) For the purposes of paragraph (a) of this subsection "approved expenditure" means any expenditure, approved by the Mining Commissioner, incurred on a programme of prospecting in the area over which the person liable to pay tax held mineral rights on the effective day or, as the case may be, on the anniversary of the effective day, to the extent that such expenditure incurred on prospecting would be allowed under the provisions of the Income Tax (Consolidation) Proclamation, 1959 as a deduction in calculating taxable income from prospecting operations in such area.
- (c) Where before the commencement of this Act expenditure on prospecting has been incurred, the Mining Commissioner may, if he considers it to be reasonable so to do approve retrospectively such expenditure for the purposes of this subsection.
- (d) Notwithstanding the provisions of paragraph (a) of this subsection, where the Collector of Income Tax is satisfied that any person liable to pay mineral rights tax makes up his accounts for a period of twelve months ending on some day other than the 30th June the Collector may in his discretion allow as a set-off against tax approved expenditure incurred in the last such twelve-month period immediately preceding the effective date and in any subsequent year in

the last such twelve-month period immediately preceding the anniversary of the effective date.

**4.** (1) The mineral rights tax shall be administered by the Collector. Admini-  
stration and  
Regulations

(2) The Minister may make regulations for the purpose of giving effect to the provisions of this Act relating to the mineral rights tax and without prejudice to the generality of the foregoing such regulations may make provision for:-

- (a) returns and assessments;
- (b) representative taxpayers;
- (c) objections and appeals including appeals to the High Court;
- (d) payment and recovery of tax; and
- (e) penalties by way of fine or imprisonment for any offence against the regulations.

(3) Until such time as regulations shall have been made pursuant to subsection (2) of this section, and save in any case in which the provisions of this Act are inconsistent therewith, the provisions of Parts IV to VIII of the Income Tax (Consolidation) Proclamation 1959, other than the provisions listed in the Second Schedule hereto, shall apply in relation to the mineral rights tax as though, subject to such formal modifications as the sense of the provisions may require, references therein to the taxes provided for under that Proclamation were references to the mineral rights tax and references therein to "income" were references to "mineral rights" or, as the sense may require, any matter appertaining to mineral rights.

**5.** The Income Tax (Consolidation) Proclamation, 1959 is hereby amended by - Amendment  
of Sections  
7 and 10 of  
the Income  
Tax  
(Consoli-  
dation)  
Proclamation,  
1959

(i) adding in section 7 immediately following subparagraph (d) a new subparagraph (dd) as follows -

“(dd) any amount received or accrued after the 30th June, 1972 in respect of the disposal of any interest in mineral rights over land situate in Botswana or the disposal of any share or interest in the capital or income of a company holding such mineral rights:

Provided that the disposal shall be deemed to be for a consideration equal to the open market value of such interests or shares if, in the opinion of the Collector -

- (i) the disposal was for a consideration which cannot be valued, or
- (ii) the disposal was otherwise than by way of a bargain made at arm's length:

Provided further that, if in respect of the disposal of such interests or share a loss accrues to the person making the disposal, such loss shall not be deducted from his income save only from income accruing to him on some other disposal of any such interests or share and other provisions of this Part relating to amounts allowed to be deducted or set-off in ascertaining taxable income shall not apply to such loss.

For the purposes of this paragraph:—

“disposal” means either disposal or part disposal”; and

- (ii) adding in subsection (1) of section 10 immediately following paragraph (f) a new paragraph (g) as follows—
  - “(g) any such transaction as is described in paragraph (dd) of section 7.”.

Form ITM.1

**THE FIRST SCHEDULE**  
(Section 3)  
**MINERAL RIGHTS TAX**  
**FIRST TAX RETURN**

To: ..... In any enquiry, please  
quote  
Representative Taxpayer for .....

.....  
.....  
.....  
As representative taxpayer for the above-named company, you are required under the provisions of the Mineral Rights Tax Act, 1972 to complete this form, including the declaration below, and return it to me with supporting documents before the 31st December, 1972. If the space provided in this form under any item is inadequate for your statement of required information, a separate statement referenced to that item should be attached to the form when it is returned to me.

Collector of Income Tax,  
Private Bag 13,  
GABORONE.

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**DECLARATION BY REPRESENTATIVE TAXPAYER**

I, (insert full name)....., in my capacity as representative taxpayer for the above-named company, declare that all information called for in this form of return has been fully and truly stated and that this return and supporting documents contain full and accurate details relating to all mineral rights held by the company on 1st July, 1972 over land in Botswana.

Signature:.....  
Address for service of notices .....

.....  
.....  
.....  
Date: .....

**ITEM 1: AREA OF LAND OVER WHICH MINERAL RIGHTS HELD**

State here, in square kilometres, the total area of land in Botswana over which the company held mineral rights of any description on 1st July, 1972.

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**ITEM 2: LOCATION OF LAND OVER WHICH MINERAL RIGHTS HELD**

Attach a referenced map, or referenced maps, drawn on a scale of not less than 1 centimetre to 2 kilometres and showing clearly, either by distinctive colours or by other means of identification, the location of all areas of land in Botswana over which the company held mineral rights of any description on 1st July, 1972.

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**ITEM 3: DESCRIPTION OF MINERAL RIGHTS HELD**

State here, for each area of land identified on the map(s) required under Item 2, the class or classes of mineral rights held by the company.

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**ITEM 4: MANNER OF ACQUISITION OF MINERAL RIGHTS HELD**

State here, for each parcel of mineral rights held over land in Botswana by the company on 1st July, 1972:-

- (a) the date on which the mineral rights were acquired -
  - (b) from whom the mineral rights were acquired -
  - (c) the manner of acquisition of the mineral rights -
  - (d) the nature and amount of the consideration which passed on acquisition of the mineral rights -
- 

**ITEM 5: OPEN MARKET VALUE OF MINERAL RIGHTS HELD**

State here your estimate, given on behalf of the company, of the open market value as at 30th June, 1972 of all mineral rights of any description held over land in Botswana by the company on 1st July, 1972.

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## THE SECOND SCHEDULE

(Section 4)

Provisions of Parts IV to VIII inclusive of the Income Tax (Consolidation) Proclamation, 1959 excluded from the scope of section 4(3) –

Section 31 subsections (1)(b), (4), (13), (14), (15), (16), (17).

Section 32 the entire section.

Section 35 the entire section.

Section 36 the entire section.

Section 37 the entire section.

Section 38A subsections (2), (3).

Section 39 subsection (3).

Section 40 subsection (7).

Section 42 subsection (5).

Section 48 the entire section.

Section 58A the entire section.

Section 58B the entire section.

Section 59 the entire section.

Section 60 subsection (3), (4).

Section 65 the entire section.

Section 68 the entire section.

Section 69 the entire section.

Section 69A the entire section.

Section 70 the entire section.

Section 71 the entire section.

Passed by the National Assembly this day, the 14th September, 1972.

I.P. GONTSE,  
*Clerk of the National Assembly.*