

**THE SELEBI-PIKWE TAX AGREEMENT RATIFICATION
(AMENDMENT) ACT, 1972**

No. 34



of 1972

AN ACT TO AMEND THE SELEBI-PIKWE TAX AGREEMENT RATIFICATION ACT, 1970, BY ADDING BCL (SALES) LIMITED AS A PARTY TO THE TAX AGREEMENT AND TO MAKE CONSEQUENTIAL AMENDMENTS.

Date of Assent: 2.11.72

Date of Commencement:

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Selebi-Pikwe Tax Agreement Short title Ratification (Amendment) Act, 1972.

2. The tax agreement entered into between the Government, Ratification Bamangwato Concessions Limited, Botswana RST Limited and BCL (Sales) Limited on the 1st of March, 1972 and set out in the Schedule to this Act is ratified.

SCHEDULE

AGREEMENT

THIS AGREEMENT is made the 1st day of March, One thousand Nine hundred and Seventy-Two BETWEEN THE MINISTER FOR THE TIME BEING RESPONSIBLE FOR FINANCE AND DEVELOPMENT PLANNING FOR AND ON BEHALF OF THE GOVERNMENT OF THE REPUBLIC OF BOTSWANA (hereinafter called "The Government") of the first part, BAMANGWATO CONCESSIONS LIMITED (hereinafter called "BCL") whose registered office is at Tswana House, the Mall, Gaborone

in the Republic of Botswana of the second part, **BOTSWANA RST LIMITED** (hereinafter called "BRST") a company incorporated in the Republic of Botswana and having its registered office at Tswana House aforesaid of the third part and **BCL (SALES) LIMITED** (hereinafter called "BCL Sales") a company incorporated in the Republic of Botswana and having its registered office at Tswana House aforesaid of the fourth part.

WHEREAS the Government, BCL and BRST at Gaborone on the 5th day of MARCH, 1970, entered into an Agreement (which Agreement as amended by the amending Agreement (as hereinafter defined) is hereinafter called the principal Agreement) which is set out in the Schedule to the Selebi-Pikwe Tax Agreement Ratification Act, 1970.

WHEREAS the Government, BCL and BRST at Gaborone on the 22nd day of JUNE, 1971, entered into an Agreement (herein called the amending Agreement) to amend the Agreement dated 5th day of MARCH, 1970, by prescribing therein the date upon which commercial production shall be deemed to commence, which amendment is set out in the Selebi-Pikwe Tax Agreement Ratification (Amendment) Act, 1971.

WHEREAS BCL Sales has been established for the purpose of purchasing copper/nickel matte from BCL and marketing minerals derived therefrom.

WHEREAS BCL Sales desires to accede to and become subject to the rights and obligations of the principal Agreement.

AND WHEREAS the Government, BCL, BRST and BCL Sales desire further to amend the principal Agreement the better to express their common intentions.

NOW IT IS HEREBY AGREED as follows:

1. BCL Sales accedes to the principal Agreement and acknowledges itself to be bound by all the terms and conditions of the principal Agreement, as amended by this Agreement.

2. The Government, BCL and BRST consent to such accession and agree that BCL Sales shall have all the rights and obligations conferred or imposed on it by the principal Agreement as amended by this Agreement.

3. The Government will introduce legislation for this Agreement to be ratified by Parliament and will use its best endeavours to cause such legislation to be passed on or before 31st December, 1972.

4. The principal Agreement shall be read and construed as amended in the following respects: —

(a) in clause 1 by the insertion —

(i) after the definition of "the current Act" of — "BCL/BCL Sales" means BCL and BCL Sales jointly and severally and, in the context

- of income, taxable income, revenues, costs, assets, liabilities or any other financial expression means the joint income, taxable income, revenues, costs, assets, liabilities or such other financial expression of BCL and BCL Sales consolidated in such manner as is in the opinion of the auditors of BCL proper and accords with the principles of sound accountancy;”,
- (ii) after the definition of “production cost” of – ““taxable income from the operations” means taxable income calculated in accordance with the Act and this Agreement but in respect of all amounts from the operations (whether the location of the source of any such amount is in or out of Botswana) received by or accrued to BCL/BCL Sales;”, and
 - (iii) in the first line of the definition of “production cost” immediately after “cost of production” of “by BCL/BCL Sales”;
- (b) in clause 1 by the deletion —
- (i) of the whole of the text of the definition of “the operations” and the substitution therefor of – ““the operations” means mining operations carried on by BCL within the area and all exploration carried out by BCL within Botswana, and processing, servicing, financial, administrative and marketing operations in or out of Botswana of BCL/BCL Sales related to such mining operations or such exploration;”,
 - (ii) in the definition of “sales revenue” of “BCL” and the substitution therefor of “BCL/BCL Sales”,
 - (iii) in the second line of the definition of “production cost” of “BCL” and the substitution therefor of “BCL/BCL Sales”, and
 - (iv) in the definition of “production cost” of the comma after the word “depreciation” in the seventh line and of “it is proper to make according to” in the tenth line and the substitution therefor of “are proper and accord with”;
- (c) in the heading to Part II and in clauses 4 up to and including 9 by the substitution of “BCL/BCL Sales” for “BCL” wherever it shall occur and of “BCL/BCL Sales” for “BCL’s” wherever it shall occur, except —
- (i) in the first sentence of clause 4 (B) there shall be substituted in place of the words “BCL’s liability” the words “BCL’s or BCL Sales’ liability”,
 - (ii) in clause 6 (B) (i) no such substitution shall be made in the phrase “during which BCL commences commercial Production”,
 - (iii) in clause 6 (D) no such substitution shall be made,

- (iv) in clause 7 no such substitution shall be made in the phrase “(unless the Government and BCL agree in writing)”,
 - (v) in clause 8 (A) no such substitution shall be made in the phrase “any payments made by BCL as contribution”,
 - (vi) in clause 9 (iii) there shall be substituted in place of the words “shall not apply to BCL” the words “shall not apply to BCL or BCL Sales”, and
 - (vii) in clause 9 (iv) there shall be substituted in place of the words “neither BCL nor BRST” the words “neither BCL nor BCL Sales nor BRST”;
- (d) in Part II by the deletion of “income” and the substitution therefor of “taxable income” in the following four places – in the penultimate line of clause 4 (A); in the fourth line of clause 5; in the fifteenth line of clause 6 (A); and in the second line of clause 8 (B);
 - (e) in clause 4 (B) by the deletion of the second sentence and the substitution therefor of “The expression “taxable income” where hereinafter used in this Part of this Agreement means taxable income from the operations and all other expressions shall be similarly restricted so as to relate only to the ‘operations’”;
 - (f) in sub-clause (b) of clause 6 (A) (i) by the deletion of the full stop and the substitution therefor of “and”;
 - (g) in clause 6 (D) (i) (c) by the deletion of sub-clause (c) and the substitution therefor of
 - “(c) the date upon which BCL’s Pikwe mine is first capable of attaining a weekly rate of extraction of 38,000 metric tonnes of ore per week;”;
 - (h) in clause 6 (D) (ii) by the deletion of the words “and BCL” and the substitution therefor of “BCL, BCL Sales and BRST”;
 - (i) in clause 8 by the addition of the following sub-clause —
 - “(C) There shall be allowed, as a credit against any Botswana income tax payable by BCL/BCL Sales in respect of any foreign income, 50% of any sum which has been paid by BCL/BCL Sales in respect of foreign tax on such foreign income and for which BCL/BCL Sales is not reimbursed:

Provided that the amount of the credit to be allowed for a year of assessment shall not exceed 50% of the total Botswana income tax attributable to such foreign income:

Provided further that, in computing the amount of such foreign income for the purposes of Botswana income tax, no deduction shall be made for any foreign tax payable on such foreign income or on

any other taxable income: and Provided further that, if BCL/BCL Sales at any time recovers any amount of foreign tax in respect of which it has previously been allowed a credit under this sub-clause, the amount of such credit allowed shall constitute taxable income of BCL/BCL Sales for the year of assessment in which such amount is recovered.

For the purposes of this sub-clause:—

“Botswana income tax” means income tax payable under the Act and this Agreement;

“foreign country” means any country outside Botswana as to which there are not in force treaty or other arrangements affording BCL/BCL Sales substantial and effective relief against double taxation in relation to income tax;

“foreign income” means any amount included in taxable income for a year of assessment and derived from a foreign country; and

“foreign tax” means any income tax payable under the law of a foreign country.”;

- (j) in clause 10 by the substitution of the words “the taxable income and operating profit margin of BCL/BCL Sales” for the words “its income and operating profit margin”;
- (k) in the heading to Part III and in the first sentence of clause 11 (A) by the substitution of the words “BCL, BCL Sales and BRST” for the words “BCL and BRST”;
- (l) the second sentence of clause 11 (A) shall be deleted in its entirety and there shall be substituted therefor “The expression “interest” where hereinafter used in this Part of this Agreement means interest payable by BCL or BCL Sales or BRST on monies borrowed by BCL, BCL Sales or BRST and applied for the purposes of the operations.”;
- (m) in clause 11 (B) by the insertion immediately after “BCL” of “, BCL Sales”;
- (n) in clause 11 (C) by the insertion immediately after “BCL” of “or BCL Sales”;
- (o) in clause 11 (D) by the insertion immediately after “BCL” of “nor BCL Sales”;
- (p) in clause 11 (E) by the deletion of “(B) and (C)” and the substitution therefor of “(B), (C) and (F)”;
- (q) in clause 12 by the insertion immediately after “this Agreement BRST” of “or BCL”, immediately after “holding in BCL” of “or BCL Sales

respectively" and immediately after "Act to BRST" of "or BCL respectively";

- (r) in clause 13 by making the existing text thereof sub-clause (A) of clause 13 and by the addition of the following sub-clause – "(B) Subject to the provisions of its Memorandum and Articles of Association as at the date of its registration relating to the payment of dividends, BCL Sales may pay such dividends as may seem to its Board of Directors to be appropriate.";
- (s) in clause 14 by the substitution of "capital; and" for "capital." at the end of sub-clause (ii) and by the addition of the following sub-clause – "(iii) BCL Sales shall be regarded as a public company so long as BCL owns all of its equity share capital."; and
- (t) by the addition of the following clauses —
 - "15. BCL Sales agrees to be bound by all acts of BCL in terms of this Agreement.
 - 16. BCL Sales undertakes that it shall maintain its residence and principal office in Botswana.
 - 17. It is agreed by the parties hereto that BCL Sales shall cease to be a party to this Agreement at such time as it ceases to participate actively in the operations."

IN WITNESS WHEREOF the parties hereto have hereunder set their hands.
SIGNED at Gaborone as of the day and year first above written
For and on behalf of THE GOVERNMENT OF THE REPUBLIC OF
BOTSWANA

Q.K.J. MASIRE,
*Vice-President and Minister responsible for
Finance and Development Planning.*

As witnesses:

- 1. H.C.L. HERMANS
- 2. I.G. CORMACK

SIGNED at Gaborone as of the day and year first above written
For and on behalf of BAMANGWATO CONCESSIONS LIMITED

B.D. NAPPER,
Director.

As witnesses:

- 1. W. LOEBER LANDAU
- 2. C.J.P. JOUBERT

SIGNED at Gaborone as the day and year first above written
For and on behalf of BCL (SALES) LIMITED

B.D. NAPPER,
Director.

As witnesses:

1. W. LOEBER LANDAU
2. C.J.P. JOUBERT

SIGNED at Gaborone as of the day and year first above written
For and on behalf of BOTSWANA RST LIMITED

B.D. NAPPER,
Director.

As witnesses:

1. W. LOEBER LANDAU
2. C.J.P. JOUBERT

Passed by the National Assembly this 19th day of September, 1972.

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