

INCOME TAX ACT, 1973

No. 10



of 1973

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**AN ACT TO CONSOLIDATE AND AMEND THE LAW
RELATING TO THE IMPOSITION, ASSESSMENT AND
COLLECTION OF A TAX ON INCOMES**

Date of Assent: 21.6.73.

Date of Commencement: 1.6.73.

ENACTED by the Parliament of Botswana.

PART I

PRELIMINARY

1. This Act, which may be cited as the Income Tax Act, 1973, shall come into force on the 1st July, 1973, and shall apply to the assessment of income of the tax year ending on the 30th June, 1974, and of subsequent tax years.

*Short title,
commence-
ment and
application*

2. In this Act, unless the context otherwise requires -
“accounting period”, in relation to any person, means the period for which the person makes up the accounts of his business;
“agent” includes any partnership, company or other body of persons, corporate or unincorporate, which is acting as an agent;
“Appeals Committee” means an Income Tax Appeals Committee constituted under the Eleventh Schedule.

*Inter-
pretation*

“approved benefit fund” means a fund which, in respect of any tax year, the Commissioner is satisfied is a permanent fund *bona fide* established for the purpose of providing sickness, accident or unemployment benefits for its members, or mainly for such a purpose, and also for the purpose of providing benefits for the widows, children, dependants or nominees of deceased members;

“approved superannuation fund” means a superannuation, pension, provident, widows’ or orphans’ fund established by law or a fund approved by the Commissioner, where in respect of a tax year he is satisfied that the fund is –

(a) a permanent fund *bona fide* established for the purpose of providing pensions, annuities or other benefits for employees on retirement from employment, or for widows, children, dependants or nominees of deceased employees, or for both such purposes;

(b) a fund, the rules of which provide that –

(i) all annual contributions of a recurrent nature to the fund shall be in accordance with specified scales;

(ii) membership of the fund throughout the period of employment shall be a condition of the employment by the employer of all persons of the class or classes specified therein who enter his employment on or after the date upon which the fund comes into operation;

(iii) persons who immediately prior to the date upon which the fund comes into operation were employed by the employer and who on such date fall within the class or classes specified may, on application made within twelve months from the date upon which the fund comes into operation, be permitted to become members thereof on such conditions as may be specified in the rules of the fund;

(iv) the fund will invest in Botswana such part of its assets as may from time to time be prescribed by the Minister under section 131;

(v) the fund will be administered in such a manner as to preclude the employer from controlling the management or assets of the fund and from deriving any monetary advantage from moneys paid into or out of the fund; and

(vi) the Commissioner shall be notified of all amendments of the rules; and

(c) being administered in accordance with the rules of such fund,

and in this definition –

- (A) nothing shall preclude the Commissioner from approving a fund by reason only that the rules of the fund provide for the return in certain circumstances of contributions paid to the fund;
- (B) “member” means a person who as an employee contributes, or in respect of whom contributions to the fund are made, and “membership of the fund” shall be construed accordingly;

“assessable income” means assessable income as defined in section 36;

“assessed loss” means an assessed loss determined under section 80;

“assessment”, in relation to any person, means a determination by the Commissioner –

- (a) of the amount of taxable income upon which tax is chargeable;
 - (b) of the amount of any loss allowable as a deduction in a subsequent tax year; or
 - (c) that no tax is chargeable,
- and includes an additional assessment, a reduced assessment or a provisional assessment;

“associated company”, in relation to the exemption under the Second Schedule of dividends paid by any such company to a resident public company, means a company in which a resident public company holds more than fifty per centum of every class of equity share;

“associated person” means –

- (a) in relation to any individual carrying on mining operations, any relative or partner of that individual; and
- (b) in relation to any company carrying on mining operations, any other company if either of those companies has control, directly or indirectly, of the other or if both such companies are controlled, directly or indirectly, by the same person or persons;

“building society” means a building society registered under the Building Societies Proclamation, 1961;

(36 of 1961)

“business” means any business, trade, venture, profession or vocation and includes the letting of any property; and in the case of –

- (a) a company, all amounts accrued to that company shall be deemed to have accrued from one business;
- (b) a person other than a company, where separate businesses are carried on by that person, all amounts accrued therefrom shall be deemed to have accrued from separate

sources unless, upon application by that person, the Commissioner is satisfied that it is reasonable that more than one of the business activities should be treated as constituting one source and in such event all amounts accrued therefrom shall be deemed to have accrued from one business:

Provided that nothing in paragraphs (a) or (b) of this definition shall apply to amounts accrued from farming or mining;

“chargeable income” means chargeable income as ascertained in accordance with Part VI;

“child”, in relation to an individual, includes a lawfully adopted child and a step-child;

“Commissioner” means the Commissioner of Taxes appointed under section 3 (1);

“company” includes –

(a) any body corporate;

(b) any specified corporation; and

(c) any association or society whether incorporated or registered or not,

but does not include a partnership;

“Deputy Commissioner” means the Deputy Commissioner of Taxes appointed under section 3 (1);

“dividend” means any amount distributed, whether in cash or otherwise, by a company to its shareholders; and in this definition the expression “amount distributed” includes –

(a) in relation to a company that is being wound up or liquidated, any amount distributed other than an amount representing a return of capital;

(b) in relation to a company that is not being wound up or liquidated, any profits distributed, whether of a capital nature or not, including an amount equal to the nominal value of any bonus shares, debentures or securities awarded to the shareholders;

(c) in the event of the partial reduction of the capital of a company, any cash or the value of any property which is given to a shareholder in excess of the amount by which the nominal value of the shares of that shareholder is reduced; and

(d) in the event of the reconstruction of a company, any cash or the value of any property which is given to a shareholder in excess of the nominal value of the shares held by him before the reconstruction,

and where a dividend consists of property other than cash it shall be deemed to be of an amount equal to the market value of the property at the time of the distribution of the dividend;

“employment” means any employment in which the relationship of master and servant subsists, or an appointment or office, whether public or not and whether or not that relationship subsists; and the terms “employee” and “employer” shall, save for the purposes of the Seventh Schedule, be construed accordingly;

“employment income”, in relation to any person, means the gross amount, whether in cash or otherwise, accrued or deemed to have accrued to such person from employment;

“equity share capital”, in relation to the share capital of a company, means its issued share capital excluding any part thereof which does not carry any right to participate beyond a specified amount in any distribution by way of dividend or capital made by the company; and the expression “equity share” shall be construed accordingly;

“executor” means the executor, administrator or other person administering or managing the estate of a deceased person;

“farming” means the carrying on of farming operations commercially for the purpose of profit-making by sale and includes livestock, agricultural and pastoral farming;

“gross income” means gross income as defined in section 9;

“industrial building” means any building –

- (a) which contains and is used solely or mainly for the purpose of operating machinery;
- (b) which is on the same premises as any building to which paragraph (a) applies and in respect of which the Commissioner is satisfied that depreciation is caused by reason of the operation of machinery installed in that other building;
- (c) in respect of which the Commissioner is satisfied that depreciation is caused by reason of the use of chemicals, corrosive substances, furnaces of any kind or any substance or thing directly used in the particular business of which the building forms an integral and essential part;
- (d) erected and used for carrying out industrial research, including scientific experiments, into new or improved methods of manufacture;
- (e) in respect of which, by reason of the nature of the business carried on, the Commissioner is satisfied is used for industrial purposes; or
- (f) erected and used as an hotel,

and includes any structure or work of a permanent nature directly related or attached to such a building;

“livestock” includes cattle, sheep, goats, horses, donkeys, mules, pigs and poultry;

“marital status” means the status of a married person or an unmarried person;

“married person” means any person who –

(a) is married, by law or custom, and is not separated; or

(b) is widowed, divorced or separated, but who is wholly or substantially maintaining a dependent child of the marriage or former marriage throughout the tax year, and the terms “married man”, “married woman” and “unmarried person” shall be construed accordingly; and in this definition “dependent child” means a child who, on the last day of the tax year, was –

(i) not over the age of eighteen years; or

(ii) not over the age of twenty-four years and who was receiving full-time education at or from a school, college, university or other educational establishment or from a tutor, or was serving under articles or indentures with a view to qualifying in a trade or profession;

“mineral” means any constituent of the crust of the earth whether lying on the surface of the earth or which can be obtained by mining, digging, drilling, quarrying or other operations and includes precious metals, precious stones, semi-precious stones, oil shale, natural oil, natural gas, bituminous shale and salt but does not include –

(a) water; and

(b) soil, sand, clay, gravel or stone (other than limestone or marble) if these mineral substances are extracted for the purposes of agriculture, fencing, building, road making or other construction activities;

“mining capital expenditure” means expenditure incurred by any person in carrying on mining operations –

(a) on the acquisition of a mineral, mining or prospecting right or mining or prospecting information from another person; and the expenditure incurred in such acquisition shall be deemed to be the amount for which such property was disposed of, or deemed to have been disposed of, for purposes of section 30;

(b) on preparing a site for such mining operations;

(c) on buildings, structures, works of a permanent nature,

other improvements, plant or machinery necessary for the carrying on of such operations;

- (d) on providing, or by way of contribution to the cost of providing, water, light or power for use on, access to or communication with the site of mining operations carried on or to be carried on by that person;
- (e) on residential accommodation and welfare facilities for employees;
- (f) on general administration and management directly connected with such mining operations, including vehicles, office machinery and furniture and any interest payable on any loan utilized to finance such operations whether incurred prior to or during the carrying on of such operations or during any period in which such operations are not carried on; and
- (g) on capital assets acquired for use in relation to prospecting operations carried on by the miner after commencement of mining operations;

“Mining Commissioner” means the Mining Commissioner appointed under the Mines and Minerals Act, 1967; (50 of 1967)

“mining operations” means mining operations carried on by any person on a mining property in Botswana for the extraction of minerals from their natural site and their treatment, transportation or storage;

“mining or prospecting information” means geological, geophysical or technical information, being information that relates to the presence, absence or extent of deposits of minerals in an area or is likely to be of assistance in determining the presence, absence or extent of such deposits, and has been obtained from prospecting or mining for minerals;

“mining or prospecting right” means a mining right or prospecting right acquired under the Mines and Minerals Act, 1967, or an authority as the holder of mineral rights or from such holder of mineral rights to mine or prospect for minerals in Botswana, and includes any rights in respect of buildings or other improvements on the land concerned that are acquired with the mining or prospecting rights; (50 of 1967)

“Minister” means the Minister for the time being responsible for finance;

“partnership assessed loss” means an assessed loss calculated in the same manner as partnership chargeable income;

“partnership chargeable income” means the gross income of the partnership calculated as if the partnership were a person chargeable to tax less any amounts which would be exempt

- under Part V and all deductions which would be allowable to such person under Part VI in respect of such gross income;
- “person” includes an individual, a trustee, the estate of a deceased person, a company, a partnership and every other juridical person;
- “prescribed” means prescribed by or under the authority of this Act;
- (81 of 1959) “previous Act” means the Income Tax (Consolidation) Proclamation, 1959;
- “prospecting operations” means any of the following –
- (a) geological mapping, geophysical surveys, systematic search for areas containing minerals and search by drilling or other means for minerals within those areas; and
 - (b) search for ore within or in the vicinity of an ore body by drives, shafts, cross-cuts, winzes, rises and drilling, preliminary to the establishment of a mine, but does not include operations in the course of working a mine;
- “public servant” means an employee of Government or of any specified corporation;
- “regulation” means a regulation made under this Act;
- “relative” in relation to an individual, means –
- (a) his spouse;
 - (b) any ancestor, lineal descendant, brother, sister, uncle, aunt, nephew, niece, stepfather, stepmother, stepchild or adopted child of the taxpayer or his spouse, and in the case of an adopted child his adopter; and
 - (c) the spouse of any relative mentioned in paragraph (b) of this definition;
- “representative taxpayer” means –
- (a) in relation to a company, the public officer of that company;
 - (b) in relation to the estate of a deceased person, a person under a legal disability, a trust or a settlement, the trustee of that person;
 - (c) in relation to a non-resident, any person appointed under section 23 to act as agent on his behalf;
 - (d) in relation to tax due and payable by a deceased person at the date of his death, the executor of the estate of that deceased person; and
 - (e) in relation to tax due and payable at the commencement of liquidation or judicial management of a company which is being wound up or has been placed under judicial

management, the liquidator or judicial manager of that company;

“resident in Botswana”, in relation to a tax year, means –

- (a) in the case of an individual, that –
 - (i) his permanent place of abode is in Botswana;
 - (ii) he is a citizen of Botswana, notwithstanding that he may be absent for the purposes of education, the performance of duties on behalf of the Government or for such other purposes as, in the opinion of the Commissioner, are likely to be temporary;
 - (iii) he is in receipt of a pension in respect of past services performed in Botswana;
 - (iv) he is physically present in Botswana for not less than one hundred and eighty-three days in that tax year, whether or not he maintains a place of abode in Botswana;
 - (v) he maintains a place of abode and is physically present in Botswana for not less than one hundred and eighty-three days in that tax year: and for the purposes of this subparagraph he shall be deemed to be physically present in any part of that period notwithstanding that he is temporarily absent for business, recreation or similar purposes; or
 - (vi) he is physically present in Botswana for any period of time in that tax year and such period is continuous with a period of physical presence in the immediately preceding or immediately succeeding tax year, provided he is treated as resident for such preceding or succeeding tax year under subparagraph (v);
- (b) in the case of a company, that its registered office or place of incorporation is in Botswana;
- (c) in the case of an estate of a deceased person, that immediately prior to his death the deceased person maintained his permanent place of abode in Botswana or was a citizen of Botswana; and
- (d) in the case of a trust, that the trust was established in Botswana,

and –

- (A) the terms “resident” and “non-resident” in relation to a person, mean that such person is resident or not resident in Botswana, as the case may be, and when used as nouns mean a person who is resident or not resident in Botswana, as the case may be;

(B) in computing any period of time under subparagraphs (iv) and (v) of paragraph (a) a part of a day shall be counted as a day;

“residential accommodation and welfare facilities for employees” in relation to mining capital expenditure of any person carrying on a business of mining, means –

(a) residential accommodation provided by that person at or adjacent to the site of the mining operations, being accommodation provided for the use of employees of that person engaged on mining operations on that site or operations connected with such mining operations and for the use of dependants of such employees; and

(b) health, educational, recreational or other similar facilities or facilities for the provision of meals provided by that person at or adjacent to the site of the mining operations being facilities that –

(i) are provided principally for the welfare of such employees or of dependants of such employees; and

(ii) are not conducted for the purpose of profit-making by that person or any other person, .

and includes structures and works of a permanent nature carried out directly in connexion with such accommodation or facilities including the provisions of water, light, power, access or communications;

“retirement annuity insurance” means a policy of insurance under which –

(a) annuity benefits are payable –

(i) to the insured upon retirement from employment or occupation at an age not less than fifty-five years;

(ii) to the insured where by reason of infirmity of body or mind he becomes incapable of carrying on his employment or occupation prior to attaining the age of fifty-five years; or

(iii) to the widow, children, dependants or nominees of the insured in the event of his death prior to retirement; and

(b) payments of premiums cease upon benefits becoming payable;

“scientific research” means any activity in the field of natural or applied science for the extension of knowledge;

“separated”, in relation to a person, means a person who is living apart from his or her spouse under –

(a) an order of a court of competent jurisdiction;

- (b) any written agreement of separation ; or
- (c) any other circumstances whereby the separation is likely to be permanent;

“specified corporation” means –

- (a) the Botswana Development Corporation Limited;
- (b) the Botswana Housing Corporation;
- (c) the Botswana Power Corporation;
- (d) the National Development Bank;
- (e) the Water Utilities Corporation; and
- (f) any other corporation which the Minister may declare, by notice in the Gazette, to be a specified corporation for the purposes of this Act;

“stock” includes anything produced, manufactured, purchased or otherwise acquired for the purposes of manufacture, sale or exchange, or the proceeds from the disposal of which form, or will form, any part of gross income, and in the case of a business of farming shall include livestock and produce;

“tax” means the tax charged under this Act and for the purposes of recovery of tax includes any penalty, interest, fee or other charge imposed under this Act; and any reference to tax payable under the laws of another country means a tax of a substantially similar nature to the tax charged under this Act;

“taxable income” means taxable income as ascertained in accordance with Part VII;

“tax year” means a period of twelve months beginning on the 1st July and ending on the 30th June;

“trustee” means a person appointed or constituted trustee by act of parties, by order or declaration of a court or by operation of law and includes –

- (a) an executor, administrator, tutor or curator;
- (b) a liquidator or judicial manager;
- (c) any person having or taking upon himself the administration or control of any property subject to a trust;
- (d) any person acting in any fiduciary capacity; and
- (e) any person having the possession, control or management of the property of a person under any legal or other disability.

PART II

ADMINISTRATION

3. (1) For the administration of this Act and the management of the tax imposed thereunder there shall be appointed a Commissioner of Taxes and a Deputy Commissioner of Taxes and such other officers as may be necessary for such purposes. Appointment
of officers

(2) The Commissioner shall perform the duties imposed and may exercise all the powers conferred upon him under this Act.

(3) The Deputy Commissioner shall, under the control of the Commissioner, perform such official duties as he is required to perform by the Commissioner, and shall on any occasion when the Commissioner is unable to perform any of his functions under subsection (2) act in his own name and while so acting shall perform the duties imposed and may exercise the powers conferred upon the Commissioner under this Act.

(4) A notification in the Gazette that a person has been appointed to any office referred to in subsection (1) shall be conclusive evidence of such appointment.

Delegation by
Commissioner

4. (1) The Commissioner may delegate to any person employed in carrying out the provisions of this Act any powers, functions or duties conferred or imposed upon the Commissioner by this Act other than the power of delegation conferred by this section and the powers conferred by Part XIV in relation to offences.

(2) In this Part "any person employed in carrying out the provisions of this Act" shall include any person whose services, under agreement with the Government, are provided by any other government or international agency to assist with the administration of this Act.

Secrecy

5. (1) Subject to this section, every person appointed under or employed in carrying out the provisions of this Act shall regard and deal with all documents and information relating to any person, and all confidential instructions in respect of the administration or management of this Act which may come into his possession or to his knowledge in the course of his duties, as secret.

(2) Any person appointed by competent authority to audit the assessments and accounts of the Commissioner shall, for the purposes of this section, be deemed to be a person employed in carrying out the provisions of this Act.

(3) Nothing in this section shall apply to the disclosure of any confidential information –

- (a) to the Minister or any other person where such disclosure is necessary for the purposes of this Act;
- (b) for the purposes of a prosecution under this Act;
- (c) to any person being a consultant to or officer employed by the Government who is approved by the Minister to receive such confidential information;
- (d) to the Master of the High Court for the purposes of the Death Duties Proclamation; or
- (e) to any authorized officer of the government of a country with which an agreement for the avoidance of double taxation exists, for the purposes of that agreement,

(Cap. 84)

and any information obtained by the Commissioner in the performance of his duties under this Act may be used by him for the purposes of any other fiscal law administered by him.

(4) Every person appointed under or employed in carrying out the provisions of this Act and every person to whom confidential information is disclosed under paragraph (a) or (c) of subsection (3), except the Minister, shall make an oath or declaration of secrecy in the manner and form prescribed.

6. (1) Subject to this Act, the Commissioner may from time to time prescribe the form of any notice, tax return or other return required for the purposes of this Act, and where any form has been so prescribed such form of notice or return shall be used for such purposes.

Forms of
notices and
returns

(2) Any notice given by the Commissioner under this Act may be signed by any officer authorized by him in that behalf, and any notice purporting to be signed on behalf of the Commissioner shall, unless the contrary is proved, be presumed to have been signed by an officer so authorized.

(3) Every form, notice or other document issued, served or given by the Commissioner under this Act shall be sufficiently authenticated if the name or title of the Commissioner, or the officer authorized in that behalf, is printed, stamped or written thereon.

7. Where under this Act any notice or other document is required or authorized to be served on or given to any person by the Commissioner, then such notice or other document shall be sufficiently served –

Service of
notices or
documents

- (a) in the case of a person other than a company or a partnership, if personally served on him or, where the Commissioner is satisfied that such service is not practicable, by such of the following methods as appears to the Commissioner to be the most satisfactory –
 - (i) left at his usual or last place of abode or office or place of business in Botswana;
 - (ii) sent by post to such place of abode, office or place of business or to his usual or last known postal address in Botswana; or
 - (iii) sent by post in care of the District Commissioner, or Chief in the area in which his usual or last place of abode or place of business is situate;
- (b) in the case of a company if –
 - (i) personally served on the public officer of the company;
 - (ii) left at the company's address appointed under section 127 for service of notices under this Act; or
 - (iii) where no address for service of notices has been ap-

pointed under section 127, left at or sent by post to any office or place of business of the company in Botswana; or

(c) in the case of a partnership if –

- (i) personally served on the precedent partner or agent of the partnership;
- (ii) left at the partnership's address appointed under section 128 for service of notices; or
- (iii) where no address for service of notices has been appointed under section 128, left at or sent by post to any office or place of business of the partnership in Botswana.

PART III

IMPOSITION OF INCOME TAX

DIVISION I – CHARGE TO TAX

Charge to tax, general

8. (1) Subject to this Act, tax shall be charged for each tax year on the taxable income of every person for that tax year.

(2) The persons chargeable to tax shall be those persons specified in Division II of this Part.

(3) Subject to Part VIII, the taxable income of any person shall be ascertained in accordance with Parts IV, V, VI and VII.

(4) The tax payable by any person shall be calculated in accordance with Part IX.

Scope of charge to tax

9. Subject to Parts IV and VIII, the gross income of every person for each tax year shall be the total amount, whether in cash or otherwise, accrued or deemed to have accrued to him in that tax year from every source situate or deemed to be situate in Botswana but shall not include any amount of a capital nature except to the extent specified in this Act.

Amounts accrued, meaning of

10. (1) For the purposes of this Act, an amount shall accrue to a person –

- (a) in the case of employment, when it is received by him;
- (b) in the case of a business, in relation to which the Commissioner is satisfied that a commercially recognized system of accounting is regularly followed, when it is credited in the books of account of such person; or
- (c) in any other case, when it becomes due and payable to him.

(2) Where an amount that would otherwise have accrued to a person under subsection (1) (a) is not paid to him but is reinvested, accumulated, capitalised, carried to any reserve, or otherwise dealt with on his behalf or as he directs, it shall be deemed to have accrued to him on the date it is so dealt with.

Amounts deemed to have accrued in Botswana

11. An amount accrued to any person shall be deemed to have accrued from a source situate in Botswana where it has accrued to such person in respect of —

- (a) any contract made by such person in Botswana for the sale of goods, whether such goods have been or are to be delivered in or out of Botswana;
- (b) any service rendered or work done by such person in Botswana, whether the payment therefor is made by a resident or a non-resident and wherever payment is made;
- (c) any service rendered or work done by such person out of Botswana under a contract of employment with the Government;
- (d) any pension, bonus, gratuity or compensation granted to such person in respect of past services –
 - (i) by the Government; or
 - (ii) where such past services were performed in Botswana, by any other person,
 and wherever payment is made or the funds from which payment is made are situate:

Provided that where any pension, bonus, gratuity or compensation to which subparagraph (ii) applies is payable in respect of past services performed partly in Botswana and partly elsewhere, only such part of such pension, bonus, gratuity or compensation as, in the opinion of the Commissioner, is reasonable shall be deemed to have accrued in Botswana;
- (e) any business carried on by such person, being a resident, as owner or charterer of any aircraft, wherever such aircraft may be operated;
- (f) any service rendered or work done out of Botswana by such person, being a resident, as an officer or a member of the crew of any aircraft referred to in paragraph (e), wherever payment is made;
- (g) the disposal by such person 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; or
- (h) the disposal by such person of mining or prospecting information or mining or prospecting rights over land situate in Botswana.

DIVISION II – PERSONS CHARGEABLE TO TAX

12. Subject to this Part, the taxable income of any person shall be charged to tax in the name of that person. Persons chargeable, general

13. (1) Any amount accrued to a married woman, including any amount deemed under section 14, 15 or 16 to have so accrued, Married women

shall be deemed to have accrued to her husband and shall be included in his gross income:

Provided that where a married woman is a resident and her husband is a non-resident any amount accrued to her shall be deemed to have accrued to an unmarried person chargeable to tax in her own name and shall be included in her gross income.

(2) Subsection (1) shall not apply to any amount accrued to a woman after the death of her husband or her divorce or separation from him.

Minor children

14. (1) Where, by reason of any donation, settlement or other disposition (in this section referred to as "a settlement") made by any person (in this section referred to as "the settlor") for the benefit of a minor child, any amount has accrued to that child, such amount shall, during the minority of that child or until the prior death of the settlor, be deemed to have accrued to the settlor and shall be included in his gross income.

(2) In this section a settlement does not include any donation which the Commissioner is satisfied has been made pursuant to and in accordance with customary tradition by a citizen of Botswana.

Settlements and wills

15. (1) Where any deed of donation, settlement or other disposition (in this section referred to as "the settlement") made by any person (in this section referred to as "settlor") contains a stipulation to the effect that the beneficiaries therein, or one or more of them, shall not receive any amount accrued under the settlement until the happening of an event, whether fixed or contingent, any such amount as would, but for the stipulation, have accrued to the beneficiaries, shall, until the happening of that event, or the prior death of the settlor, be deemed to have accrued to the settlor and shall be included in his gross income.

(2) Where any person has made, in a will or other testamentary disposition, a stipulation to the effect that the beneficiaries therein, or one or more of them, shall not receive any amount accrued under such will or disposition until the happening of an event, whether fixed or contingent, any such amount as would, but for the stipulation, have accrued to the beneficiaries shall, until the happening of that event, be deemed to have accrued to the trust and shall be included in the gross income of the trust and the taxable income ascertained therefrom shall be charged to tax in the name of the trustee.

Revocable trusts

16. Where any deed of donation, settlement or other disposition (in this section referred to as "the settlement") made by any person (in this section referred to as "the settlor") contains a stipulation that the right of any person to receive any amount accrued under the

settlement may be revoked by the settlor or conferred upon some other person, such amount as is subject to the stipulation shall be deemed to have accrued to the settlor and shall be included in his gross income.

17. Any amount accrued to a person and not included in any assessment made prior to his death shall be included in his gross income and the taxable income ascertained therefrom shall be charged to tax in the name of his executor in the same amount as would have been charged if that person had not died. Deceased persons

18. (1) Any amount accruing to the estate of a deceased person before there is a beneficiary entitled to the immediate benefit thereof shall be included in the gross income of the estate and the taxable income ascertained therefrom shall be charged to tax in the name of the executor. Estates of deceased persons

(2) Any amount accruing to the estate of a deceased person on or after the date on which there is a beneficiary entitled to the immediate benefit thereof, other than as a legatee, shall be deemed to have accrued to the beneficiary and shall be included in his gross income.

(3) Where a beneficiary of the estate of a deceased person is a legatee any amount accruing in respect of the property of which he is the legatee, on and after the date of the handing over of the property, or on and after the date of the completion of the administration of the estate, whichever is the earlier, shall accrue to or be deemed to accrue to such legatee and shall be included in his gross income.

(4) For the purposes of this section —

(a) a beneficiary shall be deemed to be entitled to the immediate benefit of any amount accrued to the estate of a deceased person on and after the date of completion of the administration of the estate; and

(b) the date of completion of the administration of the estate means the date upon which the whole of the debts relating to the estate of the deceased person have been ascertained and paid or provided for.

19. Subject to this Part, any amount accrued to a person being a minor, a mentally defective person or any other person under a legal disability shall be included in his gross income and the taxable income ascertained therefrom shall be charged to tax in the name of the trustee in the same amount as would have been charged if that person had not been legally disabled. Legally disabled persons

20. (1) Any amount accrued to a trust for the benefit of any person shall be included in the gross income of the trust and the taxable income ascertained therefrom shall, except in a case to which Trusts

section 15 (2) applies, be charged to tax in the name of the trustee in the same sum as would have been charged if such amount had been included in the gross income of such person.

(2) In this section “trust” includes –

- (a) a will or other testamentary disposition; and
- (b) a deed of donation, settlement or other disposition.

Insolvent persons

21. Where a person becomes insolvent –

- (a) any amount accrued to that person in his own right after the date of sequestration and prior to the date sequestration ceases (in this section referred to as “the period of insolvency”) shall be included in the gross income of that person; and
- (b) any amount accrued in respect of the estate of that person held by his trustee during the period of insolvency shall be included in the gross income of the estate and the taxable income ascertained therefrom shall be charged to tax in the name of the trustee.

Partnerships

22. (1) A partnership shall not be charged to tax in its own name but all amounts accrued thereto in any tax year shall be charged on the partners in such tax year in accordance with this section.

(2) The chargeable income of a partner for any tax year shall –

- (a) include an amount equal to that proportion of the partnership chargeable income of that tax year which the amount of the net partnership profit or income to which he is entitled under the partnership agreement, ascertained under that agreement, bears to the net partnership profit or income; or
- (b) be calculated after deducting an amount equal to that proportion of the partnership assessed loss of that tax year which the amount of the net partnership loss for which he is responsible under the partnership agreement, ascertained under that agreement, bears to the net partnership loss.

Non-resident persons

23. (1) The taxable income of a non-resident shall, where it is not charged to tax directly on him, be charged to tax on his agent in the same amount as would have been charged on the non-resident.

(2) For the purposes of this section “agent”, in relation to a non-resident, means a resident who has the management or control of property in Botswana of such non-resident or who is appointed by the non-resident to act on his behalf.

Responsibility of representative taxpayers

24. Any person in whose name the taxable income of a deceased person, an estate of a deceased person, a person under a legal disability, a non-resident or any other person is chargeable, shall be responsible for doing all such things as are under this Act required to be done by a person liable to tax.

PART IV

ASCERTAINMENT OF GROSS INCOME

DIVISION I – ACCOUNTING PERIODS AND RECORDS

25. (1) Where any person carries on a business he shall, subject to this section, regularly make up the accounts of that business for a period of twelve months. Substituted accounting periods

(2) Where any person regularly makes up the accounts of his business –

(a) for the tax year; or

(b) for a period of twelve months ending on a date other than 30th June,

then, in respect of any tax year, his taxable income shall be calculated by reference to such accounts for that tax year or period of twelve months ending within that tax year:

Provided that, where, in relation to the tax year immediately preceding the commencement of this Act, the taxable income has been calculated by reference to accounts regularly made up by that person for a period of twelve months ending after 30th June in that tax year then, in respect of each subsequent tax year, his taxable income shall be calculated by reference to accounts for the same accounting period.

(3) Where any person makes up the accounts of his business for a period less than twelve months, the Commissioner may, subject to such adjustments as he considers necessary to avoid loss of tax, determine the taxable income of the tax year in which such accounting period ends by reference to such accounts and to the accounts for the immediately preceding or immediately succeeding accounting periods in such manner as appears to him to be reasonable.

(4) Where any person makes up the accounts of his business for a period greater than twelve months, the Commissioner may, subject to such adjustments as he considers necessary to avoid loss of tax, determine the taxable income of the tax year in which such accounting period ends, and the taxable income of each previous tax year in which any part of the accounting period falls, by reference to such accounts and to the accounts for preceding or succeeding accounting periods in such manner as appears to him to be reasonable.

(5) References in this Act to a tax year shall include references to any other period by reference to which taxable income for such tax year is to be calculated.

26. (1) Every person carrying on any business shall keep a proper record in English or in Setswana of his business transactions. Maintenance of proper record of transactions and methods of accounting

(2) In this section “a proper record” means such records or books of account as the Commissioner considers reasonable to reflect the

true and full nature of the transactions of the business, regard being had to the nature of the activities concerned and the scale on which they are carried on.

(3) The Commissioner may, in the case of any person or class of persons, direct the method of accounting or the manner in which payments should be made or commercial transactions recorded.

DIVISION II – GROSS INCOME

Gross income, general **27.** (1) Subject to Part VIII, the gross income of every person for each tax year shall be ascertained in accordance with this Part.

(2) Where gross income is derived from more than one source, the amount accrued from each source shall be ascertained separately.

Business, general **28.** (1) Subject to this Act, the gross income of any person for any tax year insofar as it is derived from a business shall be the gross amount, whether in cash or otherwise, accrued or deemed to have accrued therefrom during that tax year.

(2) The gross income referred to in subsection (1) shall include –

(a) any excess of the value of any stock, ascertained under the First Schedule, held and not disposed of at the end of that tax year over the value of any stock, so ascertained, held and not disposed of at the beginning of that tax year;

(b) any amount accrued under any contract of insurance or indemnity against loss of profits or by way of compensation or damage for loss of profits;

(c) any amount accrued by way of recovery or reimbursement of –

(i) any expenditure or loss; or

(ii) any bad or doubtful debt, which has been allowed as a deduction under Part VI;

(d) any amount accrued by way of subsidy for or in relation to the carrying on of a business;

(e) any amount accrued after the cessation of a business which, if it had accrued prior to cessation, would have been included in the gross income from that business but where such amount relates to any stock realised after the cessation of business, it shall be deemed to be an amount equal to the excess of the amount accrued for that stock over the value of that stock at the date of cessation, ascertained under the First Schedule;

(f) the amount of any balancing charge or recovery charge ascertained under the Third Schedule; and

(g) the market value of any benefit, whether or not convertible into cash, accruing in the course of business.

(3) Subject to section 30 and Part VIII, where a person carries on a business in and out of Botswana, the amount which shall be

deemed to have accrued to him from a source situate in Botswana in respect of that business shall be such sum as appears to the Commissioner to be reasonable having regard to –

- (a) the nature of the operations carried on in and out of Botswana;
- (b) the turnover of the business in and out of Botswana;
- (c) the situation and value of the assets employed in the business;
- (d) the market value of any stock imported into or exported from Botswana; and
- (e) any other matters which appear to him to be relevant.

29. (1) Where, in relation to a business of farming carried on by any person there have been granted in previous years – *Business, farming*

- (a) capital allowances under Part IV of the Third Schedule; or
- (b) deductions under paragraph 17 of the First Schedule to the previous Act,

any amount accrued to such person during any tax year in respect of such allowances or deductions on disposal of the property in relation to which they were allowed shall be included in the gross income of that person for that tax year derived from the business of farming and the provisions of Part VI of the Third Schedule shall not apply to such disposal.

(2) Where, in any tax year, a person engaged in the raising of cattle, sheep or goats in an area which is a drought stricken area disposes of such livestock during a period of drought he may elect by notice in writing to the Commissioner in the prescribed form, that the amount of his chargeable income of that tax year attributable to his farming business be allocated equally between that tax year and the next two succeeding tax years and, notwithstanding the provisions of this Act, his chargeable income attributable to his farming business of each of those tax years shall be ascertained accordingly.

(3) Any election made under subsection (2) shall be irrevocable.

(4) In this section –

“drought stricken area” means any area in Botswana which the Minister, by order, declares to be a drought stricken area for the purpose of this Part;

“period of drought” in relation to a drought stricken area means a period prescribed by the Minister, by order, as a period of drought in respect of a drought stricken area.

30. (1) Subject to Part VIII, where a person carries on a business of mining, the gross income of that person for any tax year from mining operations shall – *Mines and minerals*

- (a) include all amounts accrued to him during that tax year from all mining and prospecting operations carried on by him; and

(b) notwithstanding section 9, be deemed to include all amounts, whether in cash or otherwise, accrued to him or to any associated person during that tax year from processing, marketing, servicing, financial or administrative operations whether –

(i) any such operation is carried on in or out of Botswana; or

(ii) the source of any such amount is situate in or out of Botswana,

to the extent to which the Commissioner is of the opinion that such amounts are related to the mining operations.

(2) The gross income of any person, whether or not carrying on a business of mining, for any tax year shall be deemed to include all amounts, whether in cash or otherwise, accrued to him during that tax year –

(a) by way of royalty, premium or other consideration, however described, for the right to extract minerals from land situate in Botswana; or

(b) in respect of the disposal of any share or interest in the capital or income of a company holding mineral rights over land situate in Botswana.

(3) The gross income of any person, not being a person carrying on a business of mining, for any tax year shall be deemed to include all amounts, whether in cash or otherwise, accrued to him during that tax year in respect of the disposal of any interest in mineral rights or any mining or prospecting information or any mining or prospecting rights over land situate in Botswana.

(4) Where a disposal is made to which subsection (2) (b) or subsection (3) applies and, in the opinion of the Commissioner, the disposal was –

(a) for a consideration which cannot be valued; or

(b) made otherwise than by way of a transaction at arm's length, the disposal shall be deemed to have been made for a consideration which the Commissioner considers to be equal to the market value of such interest, share or rights at the date such disposal was made.

Employment
income

31. (1) The employment income of any person for any tax year shall include –

(a) any amount accrued by way of wages, salary, leave pay, fee, commission, bonus or gratuity;

(b) any amount accrued in commutation of moneys due under any contract of employment or service;

(c) any travelling, entertainment or other allowance to the extent to which it does not represent moneys wholly, ex-

clusively and necessarily expended for the purposes of the employment;

- (d) the annual value of any quarters or residence provided for an employee, not being a public servant, whose employment income, excluding such value, exceeds the annual rate of six thousand rand:

Provided that the amount to be included under this paragraph shall not exceed twenty percentum of the excess of the employment income, including the value of the quarters or residence provided, over six thousand rand or, where the period in respect of which the quarters or residence are provided in the tax year is less than twelve months, such amount as bears to six thousand rand the same ratio as that period bears to twelve months;

- (e) subject to subsection (2), the value of any other benefit or advantage granted to an employee, not being a public servant, in respect of his employment; and
- (f) the amount of any balancing charge ascertained under the Third Schedule.

(2) The employment income of any person for any tax year shall not include –

- (a) the value of any free medical attention provided or medical attention paid for by the employer; or
- (b) the value of any free passage by air, rail, road or sea provided for an employee, his wife or his dependent children pursuant to the terms of his employment.

(3) For the purposes of this section the value of any quarters or residence provided shall be deemed to be the sum of –

- (a) an amount equal to the total of all expenditure of a recurrent nature incurred thereon by the employer during the tax year; and
- (b) if the quarters or residence are owned by the employer, ten percentum of the capital cost thereof or, where the period for which the quarters or residence are provided in the tax year is less than twelve months, such amount as bears to that sum the same ratio as that period bears to twelve months,

less any amount payable by the employee as rent for the quarters or residence in the tax year.

(4) Where, on retirement from an employment an amount accrues to any person by way of bonus, gratuity or compensation in respect of that employment, such amount shall be included in the employment income of that person and, for the purposes of ascertaining his taxable income, such amount shall be deemed to have accrued –

- (a) where the employment has continued for a period of less than three years, on the date upon which the amount was received by him; or
- (b) where the employment has continued for a period of three years or more, in three successive equal annual instalments, the last of such instalments being deemed to have accrued on the date upon which the amount was received by him:

Provided that where any such amount accrues to a person in respect of past services performed partly in Botswana and partly elsewhere, only such part of such amount as is deemed under the proviso to section 11 (*d*) to have accrued in Botswana shall be included in his employment income.

32. (1) The gross income of any person for any tax year insofar as it is derived from dividends or interest shall include any dividends deemed to have been distributed by a private company under section 126, and —

- (a) in the case of a resident, any dividends or interest accrued to him from the currency area of which Botswana forms part (in this section referred to as “the currency area”); and
- (b) in the case of a non-resident, any dividends or interest accrued to him from Botswana.

(2) Notwithstanding the provisions of Parts V, VI and VII where gross income to which subsection (1) relates accrues to a non-resident the tax which is to be deducted under the Ninth Schedule shall be a final charge in relation to such gross income and such gross income shall not form part of the assessable income of such non-resident.

(3) Where a loan is made by a resident to a person resident in the currency area outside Botswana, either free of interest or at a rate of interest lower than the commercial rate generally prevailing at the time the loan was made, and the Commissioner is of the opinion that the loan is not one between independent persons dealing at arm’s length with each other, interest shall be deemed to have accrued to the resident at such commercial rate as the Commissioner deems reasonable in the circumstances.

(4) In this Act —

- (a) a dividend shall be deemed to have accrued from a source in any country where it is distributed by a company which is resident in that country;
- (b) interest shall be deemed to have accrued from a source in any country where the person paying the interest has a permanent establishment in that country, in connexion with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment;

- (c) the term “permanent establishment” shall include –
- (i) a place of management;
 - (ii) a branch;
 - (iii) an office;
 - (iv) a factory;
 - (v) a workshop;
 - (vi) a mine or other place of extraction of natural resources;
 - (vii) a building site or construction project which exists for more than twelve months,
- and a resident of that country shall be deemed to have a permanent establishment in that country.

33. The gross income of any person for any tax year insofar as it is derived from rents or premiums in relation to land, buildings or other property shall include – Rents and premiums

- (a) the gross rent payable to him by a lessee of any property;
- (b) any premium or other consideration, however described, payable to him by a lessee for the right of use or occupation of any property; and
- (c) in the case of any person to whom, in terms of any agreement relating to the grant to any other person of the right of use or occupation of land or buildings, or by reason of the cession of any rights under any such agreement, there has accrued in that tax year the right to have improvements effected on the land or to the buildings by any other person –
 - (i) the amount stipulated in the agreement as the value of the improvements or as the amount to be expended on the improvements; or
 - (ii) if no amount is so stipulated, such amount as, in the opinion of the Commissioner, is a fair and reasonable value of the improvements.

34. (1) The gross income of any person for any tax year shall include any amount accrued to him from the sale by him of any property acquired by him for the purpose of profit-making by sale. Other provisions relating to gross income

- (2) Where any person becomes entitled to –
- (a) a lump sum payment from an approved superannuation fund;
 - (b) a payment representing the commutation of a pension or annuity from an approved superannuation fund or a retirement annuity insurance;
 - (c) a return of contributions paid by him to an approved superannuation fund; or
 - (d) a policy of insurance which is ceded or otherwise made over to or in favour of him by an approved superannuation fund, one-half (or such other proportion as the Minister may from time to

time, by order, prescribe) of the excess over one-third of the amount of such payment or return of contributions or of the surrender value of such policy, as the case may be, shall be included in the gross income of that person and shall be deemed to have accrued in three successive equal annual instalments, the last of such instalments being deemed to have accrued on the date upon which the amount became due and payable or the policy was ceded to him:

Provided that —

- (i) this subsection shall not apply where, during the same tax year, any such amount or policy of insurance is transferred to another approved superannuation fund other than as a current contribution thereto; and
- (ii) where, in respect of past contributions made partly as a resident and partly as a non-resident, a person becomes entitled to an amount to which this subsection applies, only such part thereof as, in the opinion of the Commissioner, is reasonable shall be deemed to have accrued in Botswana.

Transactions
designed to
avoid liability
to tax

35. (1) This section shall apply where any transaction, operation or scheme (hereinafter in this section referred to as a “transaction”), including a transaction involving the alienation of property, which has been entered into or carried out whether before or after the commencement of this Act, has the effect of avoiding, reducing or postponing the liability to tax of any person for any tax year, and the Commissioner is of the opinion —

- (a) that the purpose or one of the purposes of the transaction was such avoidance, reduction or postponement; and
- (b) that the transaction —
 - (i) was entered into or carried out by means or in a manner which would not normally be employed in the entering into or carrying out of a transaction of the nature of the transaction in question; or
 - (ii) has created rights or obligations which would not normally be created between independent persons dealing at arm’s length under a transaction of the nature of the transaction in question.

(2) In any case to which subsection (1) applies the Commissioner shall determine the liability to tax referred to therein —

- (a) as if the transaction had not been entered into or carried out; or
- (b) in such other manner as he deems appropriate to counteract such avoidance, reduction or postponement as would otherwise be effected by the transaction.

(3) Where any agreement in relation to, or any change in, the shareholding in any company has been entered into or effected, whether

before or after the commencement of this Act, and the Commissioner is of the opinion that the purpose or one of the purposes of such agreement or change was to utilize an assessed loss or any balance of an assessed loss incurred by the company, in order to avoid or reduce the liability to tax of the company or any other person for any tax year, a deduction in respect of such assessed loss or balance of assessed loss shall not be allowed.

PART V

ASCERTAINMENT OF ASSESSABLE INCOME

36. The assessable income of every person from any source for each tax year shall be his gross income from that source for that tax year less any amount exempt from tax under this Part.

Assessable
income,
general

37. The persons and classes of gross income specified in Parts I and II of the Second Schedule shall be exempt from tax to the extent specified therein.

Exemption
from tax

PART VI

ASCERTAINMENT OF CHARGEABLE INCOME

38. (1) The chargeable income of every person for each tax year shall be ascertained in accordance with this Part.

Deductions
allowable,
general

(2) In ascertaining the chargeable income of any person for any tax year there shall, upon due claim and subject to such evidence as the Commissioner may require, be deducted from the assessable income of such person all expenditure wholly, exclusively and necessarily incurred by that person during the tax year in the production of his assessable income.

(3) Subject to this Act, where such assessable income accrues in respect of more than one source of gross income, the expenditure incurred by that person and any other deductions to which he may be entitled under this Part in relation to each such source shall be deducted only from that part of the assessable income which accrues from that source.

(4) Where the expenditure deductible under this Part for any tax year relates to assessable income from more than one source of gross income and it is necessary in order to give effect to any of the provisions of this Part to apportion such expenditure between such sources, the Commissioner shall make such apportionment as appears to him to be reasonable.

(5) Where the expenditure incurred by any person, other than a company, which is deductible under this Part for any tax year has been apportioned to any source of income under subsection (4), and such apportioned amount exceeds the amount of assessable income of that person which accrues from that source, the excess shall not be deducted in ascertaining the chargeable income of that person for that tax year.

(6) For the purposes of this Part, where amounts accrued to a

Deductions
allowable,
specific

person are deemed to have accrued to some other person, any expenditure incurred by either person in relation to such amounts shall be deemed to have been incurred by the person to whom such amounts are deemed to have accrued.

39. (1) Subject to this Part and notwithstanding the generality of section 38 (2), the deductions allowed from the assessable income of any person for any tax year shall include —

- (a) any allowance to which that person is entitled in respect of capital expenditure under the Third Schedule;
- (b) any excess of the value of any stock, ascertained under the First Schedule, held and not disposed of by that person at the beginning of the tax year over the value of any stock, so ascertained, held and not disposed of at the end of that tax year;
- (c) any legal expenses incurred by that person during the tax year in respect of any claim, dispute or action at law arising in the course or by reason of the ordinary operations undertaken by him in the course of carrying on a business;
- (d) where such person is an employer, any amount contributed by him during the tax year to an approved benefit fund or an approved superannuation fund established for the benefit of his employees:

Provided that —

- (i) in respect of any lump sum contribution, the Commissioner may determine that such amount shall be deducted in a number of successive equal annual deductions, the first such deduction being allowed in the tax year in which such contribution was made; and
 - (ii) in respect of an annual contribution of a recurrent nature, the deduction allowable shall not exceed an amount equal to ten per centum of the employment income which accrued from that employer during the tax year to the employees who were members of the fund in that tax year;
- (e) where such person is an employer, any amount paid by him by way of annuity during the tax year to —
 - (i) a former employee who has retired from employment by that employer by reason of age or infirmity; or
 - (ii) any person who was dependent for his maintenance upon a former employee of that employer where the former employee is deceased;
 - (f) (i) an allowance in respect of any premium or other consideration, however described, incurred by that person for the right of use or occupation of any land or buildings, or for the right of use of any plant, machinery,

patent, design, trade mark, copyright or any other property where such land, buildings or other property is used or occupied in the production of his assessable income;

- (ii) the allowance referred to in subparagraph (i) shall consist of a number of successive annual deductions equal to the amount of the premium or consideration divided by the number of years for which that person is entitled to such use or occupation, or one twenty-fifth of that amount, whichever is the greater, the first such deduction being allowed in the tax year in which the premium or consideration was incurred:

Provided that where that person is entitled to such use or occupation for an indefinite period, he shall be deemed to be entitled to such use or occupation for such period as, in the opinion of the Commissioner, represents the probable duration of such use or occupation, or twenty-five years, whichever is the lesser;

- (g) (i) an allowance in respect of any expenditure incurred by that person pursuant to an obligation to effect improvements on land or to buildings under an agreement whereby the right of use or occupation of such land or buildings is granted by any other person, where such land or buildings are used or occupied in the production of his assessable income;
- (ii) the allowance referred to in subparagraph (i) shall consist of a number of successive annual deductions equal to the amount of expenditure incurred divided by the number of years, calculated from the date on which the improvements are completed, for which that person is entitled to such use or occupation, or one twenty-fifth of that amount, whichever is the greater, the first such deduction being allowed in the tax year in which the improvements are completed:

Provided that where that person is entitled to such use or occupation for an indefinite period, he shall be deemed to be entitled to such use or occupation for such period as, in the opinion of the Commissioner, represents the probable duration of such use or occupation, or twenty-five years, whichever is the lesser;

- (h) the amount of any debts due to that person to the extent to which they are bad and provided they have been brought to account by that person in the ascertainment of his assessable income of any tax year;
- (i) such amount as the Commissioner deems reasonable in respect of debts due to that person which he considers to be

doubtful of recovery and provided they have been brought to account in the ascertainment of his assessable income of any tax year;

- (j) any expenditure incurred during the tax year by way of interest on any loan made to that person, including interest payable on debentures or debenture stock, where the Commissioner is satisfied that the amount of such loan was used by that person in the production of his assessable income:

Provided that, where, in the opinion of the Commissioner, the rate of interest payable on such loan is excessive by reference to the commercial rate generally prevailing at the time the loan was made, the deduction shall be limited to such amount as the Commissioner deems reasonable;

- (k) expenditure incurred by that person during the tax year –
 - (i) on scientific research undertaken by him for the development of his business, not being expenditure of a capital nature; or
 - (ii) by way of contribution to any association, institution, college or university, where the Commissioner is satisfied that such contribution will be used in scientific research relating to that person's business;
- (l) expenditure incurred by him during the tax year on the replacement of any implement, utensil or similar article used by him in a business;
- (m) any periodic subscription paid during the tax year by that person in respect of his membership of a trade union or an association of employees or employers to which item (viii) of Part I of the Second Schedule applies; and

(19 of 1971) (n) any licence fees or licence levy paid under the Casino Act, 1971.

(2) Notwithstanding section 38 (2), in ascertaining the chargeable income of any person for any tax year, any expenditure incurred by him on hospitality or entertainment during the tax year shall be allowed as a deduction only to the extent to which, in the opinion of the Commissioner, such expenditure was wholly, exclusively and necessarily incurred in the production of the assessable income of that person.

Deductions allowable, mines and minerals

40. (1) Subject to Part VIII and notwithstanding the generality of section 38 (2), in ascertaining the chargeable income of any person for any tax year from mining operations, the deductions allowed shall include –

- (a) expenditure wholly, exclusively and necessarily incurred –
 - (i) in Botswana, during the tax year by that person or any associated person in the production of his assessable income from mining operations;

- (ii) out of Botswana, during the tax year by that person or any associated person in the production of his assessable income from mining operations to the extent that the Commissioner may allow; and
 - (iii) during the tax year by that person on prospecting operations carried on by him in Botswana; and
- (b) for the tax year in which that person commences mining operations, an amount equal to any assessed loss incurred by him in respect of prospecting operations carried on prior to the commencement of his mining operations to the extent that any such assessed loss has not been deducted under section 43.

(2) In ascertaining the chargeable income of any person, not being a person carrying on mining operations, for any tax year from prospecting operations the deductions allowed shall include expenditure wholly, exclusively and necessarily incurred during the tax year by that person on the acquisition of mineral rights, mining or prospecting information or mining or prospecting rights over land situate in Botswana:

Provided that where such rights or information were acquired by that person –

- (i) for a consideration which cannot be valued; or
- (ii) otherwise than by way of a transaction at arm's length,

there shall be deducted the amount which the Commissioner considers to be equal to the market value of the rights or information at the time they were acquired.

41. (1) In ascertaining the chargeable income for any tax year of any company carrying on business in Botswana there shall be deducted an amount equal to one hundred and twenty-five per centum of any expenditure actually incurred in that tax year by that company on –

Special deduction for approved training expenditure

- (a) approved education (not being primary or secondary education) or training of any person, being a citizen of Botswana, who is employed by or bonded to the company at an approved educational, professional or vocational training establishment; or
- (b) the employment in Botswana of an approved training officer wholly engaged in approved vocational training of citizens of Botswana.

(2) In subsection (1) “approved” in relation to –

- (a) any approved education or training;
- (b) an approved training establishment;
- (c) an approved training officer; and
- (d) any approved vocational training,

means approved by the Minister upon application by the company.

Deductions
not allowable
under more
than one
provision

42. No amount shall be deducted under any provision of this Act in respect of expenditure which has been or will be taken into account as a deduction or in calculating a deduction under any other provision of this Act or the previous Act.

Deductions
for assessed
losses

43. (1) Any assessed loss determined by the Commissioner as incurred by any person in relation to any tax year shall be deducted in ascertaining the chargeable income of such person from a business for a subsequent tax year to the extent provided in this section.

(2) The deduction provided in subsection (1) shall not exceed the amount of the chargeable income of the next subsequent tax year, ascertained in accordance with section 38 (3) but before the operation of this section, (hereinafter in this section referred to as "the relevant chargeable income") and where the assessed loss exceeds the relevant chargeable income of such subsequent tax year or there is no relevant chargeable income of such subsequent tax year, the excess or amount of the assessed loss, as the case may be, shall be carried forward and deducted in like manner in ascertaining the chargeable income of the following tax year, and so on until the assessed loss has been fully allowed:

Provided that, except in the case of an assessed loss incurred in carrying on a business of farming or mining, no assessed loss shall be carried forward as a deduction for more than the five years next succeeding the tax year in which that loss arose.

(3) Where an assessed loss has been determined in respect of two or more tax years then, for the purpose of this section, the whole of such a loss determined in respect of the earliest of such tax years shall, subject to the proviso to subsection (2), be deducted before any part of such a loss determined in respect of a later year.

(4) The deduction provided in subsection (2) shall not apply in relation to any person whose estate has been voluntarily or compulsorily sequestrated (unless such sequestration is set aside), or to the trustee of any such person in respect of any tax year subsequent to the date of sequestration:

Provided that for the purposes of this subsection that part of the tax year in which sequestration occurs which is subsequent to the date of sequestration shall be deemed to be a tax year.

(5) The assessed loss of any person determined by the Commissioner for any tax year shall be reduced by the amount or value of any benefit accruing to that person in that tax year as a result of a concession granted by or a compromise made with his creditors whereby his liabilities to them have been reduced or extinguished, to the extent to which such liabilities arose in the ordinary course of business and have been taken into account in ascertaining his chargeable income of any tax year.

(6) Where an assessed loss is determined in relation to any person in the carrying on of a business, the deduction provided in subsection (2) shall not be affected by reason only of the temporary discontinuance of the carrying on of that business by that person.

(7) Where, in respect of the disposal –

- (a) by any person other than a person carrying on a mining or prospecting business, of any interest in mineral rights or mining or prospecting rights or mining or prospecting information over land situate in Botswana; or
- (b) by any person, of any share or interest in the capital or income of a company holding mineral rights over land situate in Botswana,

the deductions allowed under this Part in relation to such source of gross income exceed the assessable income from that source, the loss arising therefrom shall be deemed to be an assessed loss to be allowed only as a deduction against future gross income from that source.

44. Notwithstanding anything in the Third Schedule to the contrary, where, in any tax year, an employee incurs capital expenditure on plant or machinery which, in the opinion of the Commissioner, was necessarily incurred for the purposes of his employment, the provisions of Parts II, VI and VII of the Third Schedule shall apply to such expenditure and any allowance to which he may be entitled under the Third Schedule shall be deducted in ascertaining his chargeable income.

Capital expenditure by an employee

45. Subject to any express provision in this Part authorizing a specified deduction in ascertaining chargeable income, no deduction shall be allowed in respect of –

Deductions not allowable

- (a) domestic or private expenses;
- (b) any amount not wholly, exclusively and necessarily laid out or expended for the purpose of producing assessable income;
- (c) any capital withdrawn or any expenditure or loss of a capital nature;
- (d) any tax imposed under this Act, any previous law relating to tax imposed on income, or the Local Government Tax Law, (29 of 1965) 1965;
- (e) any income tax or tax of a similar nature charged in a country outside Botswana; or
- (f) any contribution to a benefit, superannuation, pension, provident or similar fund which is not an approved benefit fund or approved superannuation fund.

PART VII

ASCERTAINMENT OF TAXABLE INCOME

Taxable
income,
general

46. (1) Subject to this Part, in ascertaining the taxable income for any tax year of a person who is a resident individual there shall, upon due claim and subject to such evidence as the Commissioner may require, be deducted from the aggregate of his chargeable income from all sources any amounts to which he is entitled under this Part.

(2) The taxable income for any tax year of every person, other than a resident individual, shall be the aggregate of his chargeable income from all sources for that tax year.

(3) In this section "individual" includes, for the purposes of section 47, the estate of a deceased person.

Personal
allowance

47. (1) Subject to this section –

(a) a married person shall be entitled to a personal allowance of two thousand four hundred rand; and

(b) an unmarried person shall be entitled to a personal allowance of one thousand two hundred rand.

(2) A woman who becomes chargeable to tax in her own name by reason of the death of her husband or her divorce or separation from him shall in respect of the tax year during which the death, divorce or separation occurred, be entitled to the proportionate allowance provided in subsection (4).

(3) The estate of a deceased person shall be deemed to be entitled to a personal allowance or the proportionate allowance determined by reference to the marital status of the deceased person at the time of his death –

(a) in respect of the tax year in which he died, the proportionate allowance provided in subsection (4);

(b) in respect of succeeding tax years during which the estate is being administered, the personal allowance provided in subsection (1); and

(c) in respect of the tax year in which completion of the administration of the estate occurred, the proportionate allowance provided in subsection (4).

(4) Where a person is chargeable to tax in relation to gross income which accrues for part only of a tax year (hereinafter in this section referred to as "the relevant period") by reason of –

(a) his arrival in or departure from Botswana;

(b) in the case of a woman –

(i) her marriage; or

- (ii) the death of her husband or her divorce or separation from him;
- (c) his death; or
- (d) in the case of the estate of a deceased person –
 - (i) the coming into existence of that estate; or
 - (ii) the cessation of that estate on completion of its administration,

there shall be allowed in respect of such person a proportion only of the appropriate personal allowance provided in subsection (1) (in this section referred to as “the proportionate allowance”) calculated in accordance with subsection (5).

(5) In any case to which subsection (4) applies, the proportionate allowance shall be such amount as bears to the full amount of the appropriate personal allowance the same ratio as the relevant period bears to twelve months.

(6) Where the marital status of a male person alters during the course of a tax year by reason of –

- (a) his marriage; or
- (b) his ceasing to be a married person consequent upon his divorce or separation,

he shall be entitled to a proportion only of each of the personal allowances provided in subsection (1) calculated in accordance with subsection (7).

(7) In any case to which subsection (6) applies the proportion of each of the personal allowances provided in subsection (1) to which he shall be entitled shall be –

- (a) such amount as bears to the full amount of the allowance provided in subsection (1) (a) the same ratio as the period during which he was a married man bears to twelve months; and
- (b) such amount as bears to the full amount of the allowance provided in subsection (1) (b) the same ratio as the period during which he was not a married man bears to twelve months.

(8) Where a male person is chargeable to tax in relation to gross income which accrues for part only of a tax year and the relevant period is less than twelve months by reason of –

- (a) his arrival in or departure from Botswana; or
- (b) his death,

and during the course of the relevant period his marital status has altered by reason of his marriage or his divorce or separation, he shall be entitled to a proportion only of each of the personal allow-

ances provided in subsection (1) in the amounts calculated under subsection (9).

(9) The amounts referred to in subsection (8) shall be –

- (a) such amount as bears to the full amount of the proportionate allowance applicable to a married person the same ratio as the period during which he was a married man bears to the relevant period; and
- (b) such amount as bears to the full amount of the proportionate allowance applicable to an unmarried person the same ratio as the period during which he was not a married man bears to the relevant period,

and in making such calculation the proportionate allowance applicable to a married person and to an unmarried person respectively for the relevant period shall be ascertained in accordance with subsection (5).

(10) In calculating any allowance under subsection (5), (7) or (9) the allowance shall be calculated to the nearest rand.

Education
allowance

48. (1) Where in any tax year a person pays education expenses which are ultimately borne by him out of his chargeable income, he shall be entitled, subject to subsection (2), to a deduction in respect of such expenditure.

(2) The deduction allowable under this section shall not exceed, in the aggregate, six hundred rand.

(3) In this section “education expenses” means fees paid to a school, college, university or other educational establishment or to a tutor for the full time education of any student and includes any reimbursement to the Government in respect of education expenses paid by the Government on behalf of such person.

Medical
allowance

49. (1) Where in any tax year a person pays medical expenses or makes contributions to a medical benefit fund which are ultimately borne by him out of his chargeable income, he shall be entitled, subject to subsection (2), to a deduction in respect of such expenditure.

(2) Where the expenditure referred to in subsection (1) includes medical expenses, only the excess over fifty rand of such expenses shall be included in the deduction allowable.

(3) In this section –

“medical expenses” means payments made –

- (a) to a medical practitioner or dentist in respect of medical or dental services rendered;
- (b) to a hospital or nursing home in connexion with treatment of any illness or confinement; or

- (c) for drugs prescribed by a medical practitioner for the treatment of an illness or in connexion with an operation; and

“medical benefit fund” means a benefit fund established for the purpose of defraying the costs of medical expenses incurred by its members.

50. (1) Where in any tax year a person or his wife makes payments for the future benefit of such person or his wife, children or dependants – Insurance allowance

- (a) as current contributions to an approved benefit fund or an approved superannuation fund;
- (b) as premiums for insurance on his life or the life of his wife;
- (c) as premiums for retirement annuity insurance;
- (d) as premiums for insurance against sickness, accident or unemployment; or
- (e) as current contributions to any national insurance fund established by law in any country, insofar as those contributions relate to future superannuation benefits,

and the payments are ultimately borne out of his chargeable income he shall be entitled, subject to subsections (2), (3) and (4), to a deduction in respect of such expenditure.

(2) The deduction allowed under this section shall not exceed, in the aggregate, eight hundred rand.

(3) A deduction in respect of contributions made for the purposes of paragraphs (b) and (c) of subsection (1) shall only be allowed where the benefits are payable in currency of the currency area of which Botswana forms part.

(4) Nothing in subsection (1) shall be construed so as to authorize a deduction in respect of any contribution or premium paid under a policy of motor insurance.

51. Where in any tax year a person, not being a public servant, pays interest at a rate which the Commissioner is satisfied does not differ substantially from normal commercial rates operating in that tax year on a loan made to him by – Home purchase loan interest allowance

- (a) a building society; or
- (b) any other financial institution recognised by the Commissioner as an institution whose business includes the lending of moneys for the purchase of homes,

and applied by him in purchasing or building his principal private residence in Botswana, and such payments are ultimately borne by him out of his chargeable income, he shall be entitled to a deduction in respect of such interest.

PART VIII
SPECIAL PROVISIONS RELATING TO CERTAIN
TAXPAYERS

DIVISION I – ORDERS AND AGREEMENTS

Development
approval
orders

52. (1) The Minister may by order to be known as a development approval order, prescribe –

- (a) any business which may be granted additional tax relief in respect of a project for the development of the economy of Botswana;*
- (b) the types of development project in respect of which additional tax relief may be granted;*
- (c) the area in which any such development project is to be carried out; or*
- (d) the types and rates of additional tax relief which may be granted in respect of any such development project,*

and where any such development approval order is made and included in the Fourth Schedule the provisions of that order shall apply in relation to such business.

(2) Notwithstanding any other provision of this Act, the Minister may in any development approval order prescribe that such additional amount as he may determine shall be deducted in ascertaining the chargeable income of the business insofar as it is derived from the development project; and such deduction may relate to any expenditure incurred by the business in relation to the development project including any expenditure to which Part VI applies.

(3) An application for approval of a business under this section shall be made in the prescribed form and submitted to the Permanent Secretary of the Ministry responsible for finance.

(4) In considering any application for approval of a development project of a business the Minister shall have regard to –

- (a) the number of Botswana citizens who will be employed in relation to the project and the capacities in which they will be employed;*
- (b) any facilities proposed for the training and imparting of skills to Botswana citizens;*
- (c) any provisions made for the eventual replacement of non-resident employees by Botswana citizens;*
- (d) any provision made for participation by Botswana citizens in the management of the business;*
- (e) the degree of investment in the business of capital owned by Botswana citizens;*

- (f) the area in which the proposed development will be carried on; and
- (g) any effect which the proposed project might be expected to have –
 - (i) on stimulating the development of other economic, industrial or commercial activities in Botswana, whether of the business or otherwise; or
 - (ii) in reducing the price in Botswana of consumer goods or services.

(5) Where the Minister is satisfied that the proposed project would be beneficial to the development of the economy of Botswana or to the economic advancement of its citizens he may issue a development approval order in respect of the business.

(6) A development approval order may be issued subject to such conditions and for such period of time as the Minister deems fit.

(7) The Minister may at any time, by a further order, amend or revoke a development approval order if he is satisfied that –

- (a) the business has failed substantially to carry out the development specified in the order; or
- (b) there has been a substantial breach of any conditions specified in the order,

but no such order of amendment or revocation shall be made until the business has, by notice in writing, been given the opportunity either to rectify that failure or breach or to show cause within such time as may be specified, not being less than thirty days from the date of such notice, why the development approval order should not be amended or revoked.

(8) Any business which is aggrieved by the proposed amendment or revocation of a development approval order may appeal to a subordinate court of the first class on the grounds that it has carried out the development specified in the order or that it is not in breach of any condition of the order; and if such appeal is upheld, the proposed amendment or revocation of the development approval order shall not proceed.

(9) A business to which a development approval order relates shall be entitled to the relief specified in the order where the Commissioner is satisfied that the development to which the order relates has been carried out.

(10) Where, under subsection (7), the Minister has, by further order, amended or revoked a development approval order relating to a development project carried on by any person such adjustment shall be made as respects liability to tax of such person for any tax year as is necessary to give effect to that further order.

(11) A development approval order or further order made under this section shall be laid before the National Assembly as soon as may be after it is made and shall not take effect until it is approved by resolution of the National Assembly but, upon approval, it shall come into operation or be deemed to have come into operation from the date specified in the order or further order.

(12) A development approval order or further order made under this section shall provide for an amendment of the Fourth Schedule –

(a) by the inclusion therein of such order;

(b) by the amendment of any order included therein; or

(c) by the deletion therefrom of any order included therein, as the case may be.

International
agreements
for the
avoidance of
double
taxation

53. (1) The Minister may on behalf of the Government enter into an agreement with the government of any other country with a view to the prevention, mitigation or discontinuance of the levying of tax under this Act and the income tax laws of that other country or to the rendering of reciprocal assistance in the administration of and in the collection of tax under this Act and such income tax laws.

(2) Any agreement entered into under subsection (1) shall, by order, be laid before the National Assembly as soon as may be after the agreement is entered into and shall not take effect until the order is approved by resolution of the National Assembly but, upon approval it shall come into operation or be deemed to have come into operation from the date specified in the agreement.

(3) The Minister may at any time, by order, laid before the National Assembly as soon as may be after it is issued, amend or cancel any agreement entered into under subsection (1) and if such order of amendment or cancellation is approved by resolution of the National Assembly such agreement shall –

(a) operate in its amended form; or

(b) cease to operate,

as the case may be, from the date specified in such order.

(4) An order made under subsection (2) or (3) shall provide for an amendment of the Fifth Schedule –

(a) by the inclusion therein of such order;

(b) by the amendment of any order included therein; or

(c) by the deletion therefrom of any order included therein, as the case may be.

Tax
agreements

54. (1) The Minister may on behalf of the Government enter into a tax agreement with any person who is or may become liable to tax under this Act.

(2) No agreement entered into under this section shall have effect unless and until it is ratified by an Act of Parliament but upon

ratification an agreement shall be deemed to have come into operation on the date specified in that agreement.

(3) Any agreement entered into under this section may, in respect of the person with whom it is made, vary the provisions of this Act insofar as such provisions –

(a) impose liability to tax; or

(b) regulate the imposition of such liability,

and may provide for the exemption of dividends or interest paid by that person or for the relief of that person from any responsibilities, duties or liabilities under this Act to the extent indicated in the Second Schedule.

(4) If any agreement entered into under this section imposes any liability to tax such liability shall be deemed to be a liability imposed under this Act and all the provisions of this Act including any variations thereto which may have been made under subsection (3) shall apply thereto.

DIVISION II – BOTSWANA MEAT COMMISSION

55. Notwithstanding anything contained in this Act, the taxable income of the Botswana Meat Commission shall be ascertained in accordance with the provisions of the Sixth Schedule.

Basis of
taxation of
Botswana
Meat
Commission

DIVISION III – WITHHOLDING TAXES

56. (1) Every employer shall deduct tax from the remuneration paid to his employees in accordance with and in the manner specified in the Seventh Schedule and shall carry out such other obligations as are imposed by that Schedule.

Deduction of
tax by
employers

(2) In this section the word “employer” shall have the meaning given to it in the Seventh Schedule.

57. (1) Every person who makes any payment under a contract –

(a) relating to construction operations; or

(b) for professional services not being services under a contract of employment,

Deduction of
tax from
payments due
under certain
contracts
with non-
residents

to a non-resident, shall deduct tax from such payment, if so directed by the Commissioner, in accordance with and, in the manner specified in the Eighth Schedule and shall carry out such other obligations as are imposed by that Schedule.

(2) For the purposes of this section a person, including a partnership, to whom any payment is made to which this section applies shall be presumed, unless the contrary is proved, to be a non-resident if such payment is made to an address outside Botswana.

Deduction of tax from payments of dividends or interest to non-residents

58. (1) Every person who –

(a) pays interest; or

(b) being a resident company, pays a dividend,

to a non-resident, shall deduct tax from such payments in accordance with and in the manner specified in the Ninth Schedule and shall carry out such other obligations as are imposed by that Schedule.

(2) For the purposes of this section a person, including a partnership, to whom any payment is made to which this section applies shall be presumed, unless the contrary is proved, to be a non-resident if such payment is made to an address outside Botswana.

(3) The Commissioner may direct that this section shall not apply to any interest payment if he is satisfied that by reason of the small amount of interest or any other special circumstances it is reasonable to so direct.

PART IX

ASCERTAINMENT OF TAX PAYABLE

DIVISION I – RATES OF TAX

Rates of tax: general

59. (1) Subject to this Act, tax shall be charged for each tax year on the taxable income –

(a) of a resident other than a company, at the rates specified in paragraph 1 of the Tenth Schedule;

(b) of a non-resident other than a company, at the rate specified in paragraph 2 of the Tenth Schedule;

(c) of a resident company, at the rate specified in paragraph 3 of the Tenth Schedule;

(d) of a non-resident company, at the rate specified in paragraph 4 of the Tenth Schedule;

(e) of the Botswana Meat Commission, at the rate specified in paragraph 5 of the Tenth Schedule.

(2) Where dividends or interest accrue to a non-resident from Botswana, tax shall be charged for each tax year at the rate specified in paragraph 2 of the Ninth Schedule.

Rates of tax: resident individual assessable on employment income of wife

60. (1) Subject to subsection (2), where for any tax year the taxable income of a resident individual includes employment income of his wife, the tax charged on such individual under section 59 shall be reduced by any amount by which the part of that tax which relates to such employment income exceeds the tax which would be charged under section 59 for such tax year on an unmarried person who was entitled only to –

(a) the personal allowance provided in section 47 (1) (b); and

(b) a deduction under section 50 (1) (a) in respect of any con-

tribution made by that person as a member of an approved superannuation fund,

and whose chargeable income consisted only of such employment income.

(2) Where the employment income referred to in subsection (1) accrued during part only of a tax year by reason of –

(a) the marriage of the parties; or

(b) the death of one of the parties, or their divorce or separation, in such tax year, the calculation of tax in subsection (1) in respect of an unmarried person shall be made by reference to a part only of the personal allowance referred to therein, the amount thereof being calculated in accordance with subsection (3).

(3) The amount of the personal allowance referred to in subsection (2) shall be that proportion of the full amount of that personal allowance which the period during which the parties were married to one another in such tax year bears to twelve months.

(4) In this section –

(a) “employment income”, in relation to a wife, shall not include any amount received from her husband; and

(b) the amount of tax referred to in subsection (1) as relating to the employment income of the wife is the amount by which the tax charged on the husband under section 59 has been increased by the inclusion in his taxable income of the amount relating to the employment income of his wife.

DIVISION II – CREDIT FOR TAX PAID

61. Where, under Division III of Part VIII, any tax has been deducted from amounts accrued to any person, the tax so deducted shall be set off against the tax charged under section 59 for the tax year in which such amounts accrued or are deemed to have accrued.

Credit for tax deducted at source

62. (1) Where an agreement which has effect under section 53 provides that tax payable under the laws of the country with which such agreement has been made shall be allowed as a credit against tax charged in Botswana, credit for such tax shall be calculated in the manner provided in section 63 and shall be set off against the tax charged under this Act.

Credit for tax paid outside Botswana

(2) Subject to subsection (1) where interest or dividends accrued to a resident from a source outside Botswana are charged to tax under this Act, credit for any tax payable under the laws of the country from which such interest or dividends accrued shall be calculated in the manner provided in section 63 and shall be set off against the tax charged under this Act.

Calculation
of tax
credit

(3) Subject to subsection (1) where an amount accrued to any person from a source outside Botswana is charged to tax under section 30, credit for any tax payable under the laws of the country from which such amount accrued shall be given to such extent as in the opinion of the Commissioner is reasonable.

63. (1) The credit to be set off in respect of tax payable in another country on the amount referred to in section 62 shall be the lesser of the following –

- (a) the tax payable in the other country; or
- (b) the tax charged under this Act,
on such amount.

(2) In this section –

“the tax payable in the other country” means the amount of tax payable, either directly or by deduction, for which the taxpayer was personally liable and ultimately bears in that other country; and

“the tax charged under this Act” in relation to any tax year means that proportion of such tax which the amount accrued from a source outside Botswana referred to in section 62 bears to the chargeable income of that tax year.

PART X

RETURNS AND NOTICES

Tax returns:
general

64. (1) Subject to section 76 every person liable to furnish a return of his gross income (hereinafter referred to as a “tax return”) in respect of any tax year, either personally or in a representative capacity, shall furnish a tax return in the prescribed form within two months after the end of that tax year, and such form shall be signed by him or by an agent authorized to sign on his behalf.

(2) The Commissioner shall give general notice in the Gazette and in such other manner and at such other places as he deems fit of the obligations imposed by this section but failure to give any such notice shall in no way relieve any person liable to furnish a tax return from his obligation to comply with subsection (1).

(3) Tax return forms may be obtained from the Commissioner or from any income tax office or from any other place specified in the notice under subsection (2) and it shall be the duty of all persons liable to furnish a tax return to obtain such forms.

(4) Notwithstanding subsection (3) the Commissioner may, if he deems it so advisable, cause forms to be delivered by hand or post to any person.

(5) For the purposes of this Part “every person liable to furnish a tax return” includes every person liable to pay tax under this Act, every partnership and also –

- (a) every employee or other individual whose chargeable income

exceeds the annual rate of one thousand two hundred rand during the tax year;

- (b) every trustee of a person under a legal disability or executor of the estate of a deceased person where the chargeable income of that trust or estate exceeds the annual rate of one thousand two hundred rand during the tax year;
- (c) every company, every trustee of a trust or of an insolvent estate and every non-resident to whom any chargeable income has accrued during the tax year;
- (d) every person who in any previous tax year has made a loss in respect of which he may be entitled to claim a deduction in the tax year or any subsequent tax year; and
- (e) every person who was liable to pay tax in respect of the previous tax year,

except such persons who have been advised in writing by the Commissioner that a return is not required for the tax year:

Provided that in the case of a non-resident whose gross income derived from Botswana consists only of dividends or interest to which section 58 applies such person shall be relieved of the obligation of furnishing a tax return.

65. Where under section 76 the Commissioner has extended the period in which a tax return for any tax year is to be furnished by any person he may by notice in writing require such person, within such time as may be specified in the notice, not being less than seven days from the date of service of that notice, to furnish a provisional return containing an estimate by such person of his taxable income for such tax year.

Provisional
tax return

66. Where it appears to the Commissioner that –

- (a) a person may leave Botswana during the current tax year or shortly after its expiry and that the absence from Botswana of such person is unlikely to be temporary only;
- (b) a person has ceased to carry on business in any tax year; or
- (c) in the case of any other person it is expedient to do so,

Tax returns:
cessation of
income
during a tax
year

the Commissioner may at any time serve upon such person a notice in writing requiring him to furnish within such time as may be specified in the notice, not being less than seven days from the date of service of such notice, a tax return for any tax year.

67. (1) Where it appears to the Commissioner that any person is or may be liable to furnish a tax return for any tax year and has not done so, he may, by notice in writing, require such person to furnish a tax return within such time as may be specified in the notice, not being less than seven days from the date of service of such notice.

Tax returns:
where no
return is
furnished

(2) Nothing in this section shall be construed as extending the time limits provided by section 64 for the furnishing of any tax return.

Further returns or information, production of books and giving of evidence to Commissioner

68. (1) For the purpose of obtaining full information in respect of the gross income of any person, the Commissioner may, by notice in writing, require any person –

- (a) to furnish to the Commissioner such further tax return, statement of assets and liabilities or other information as may be required by the Commissioner;
- (b) to produce at such time and place as may be specified in such notice, for examination by the Commissioner or for retention by him for such period as may be reasonable for their examination, any accounts, books of account, statement of assets and liabilities or other documents which the Commissioner may consider necessary for such purpose and, if any such information is not available in the English or Setswana language, to produce at the taxpayer's expense a translation in English prepared and certified by an approved translator; or
- (c) to attend at such time and place as may be specified in such notice, for the purpose of being examined by the Commissioner respecting his gross income or the gross income of any other person or any transactions or matters appearing to be relevant thereto.

(2) Where any person is required to attend and give information under subsection (1), in relation to any other person, he may be allowed such expenses of attending as may be prescribed.

Powers of entry, inspection and removal of documents

69. (1) The Commissioner, or any officer authorized by him, may, for the purposes of obtaining information which he considers necessary in relation to the liability of any person to tax, enter any premises at any time during the day, without previous notice, and search for any moneys or documents; and in carrying out any such search he may –

- (a) open, or cause to be removed and opened, any article in which he considers any moneys or documents may be contained;
- (b) seize any documents which he considers may afford material evidence of the liability of any person to tax;
- (c) retain any such documents for such period as may be reasonable for their examination or for the purposes of a prosecution; or
- (d) make copies of any such documents.

(2) Any officer exercising any power under subsection (1) shall, upon demand, produce the authority furnished to him by the Commissioner.

(3) Where any documents are seized and retained under subsection (1), the person to whom such documents belong shall be

entitled to examine and make copies of or extracts from them at such time and place and under such supervision as the Commissioner may determine.

(4) In this section "documents" includes any books, records or accounts.

70. (1) Where any person carries on business in any tax year his tax return for such year shall be accompanied by a copy of the accounts of the business together with a reconciliation of the accounts with the chargeable income disclosed in that return in relation to the business.

Submission of accounts with tax return and certificate relating to preparation of accounts

(2) Where the accounts referred to in subsection (1) have been prepared by the person carrying on the business he shall furnish together with the accounts a certificate signed by him stating –

- (a) the nature of the books of account and documents from which such accounts were prepared; and
- (b) whether such accounts present a true and fair view of the profits from his business for the accounting period.

(3) Where the accounts referred to in subsection (1) have been prepared by a person other than the person carrying on the business, such other person shall provide on the face of such accounts a certificate giving his name, address and occupation and stating –

- (a) the extent of the examination made of the books of account and of the documents from which such books of account were prepared; and
- (b) whether or not, as far as he was able to ascertain from such examination, the entries in those documents and books of account disclosed the true nature of every transaction, receipt, accrual, payment and debit.

71. Every resident company shall on or before the 31st August next following each tax year furnish to the Commissioner a return showing the name and address of each person –

Annual returns by companies of interest and dividends paid

- (a) to whom interest was paid in such tax year in respect of any debentures, debenture stock, loans or advances and the amount of interest paid; or
- (b) to whom dividends were paid or any bonus shares, debentures or securities were awarded in such tax year and the amount or value of such payment or award,

and, for the purposes of this section, where any interest or dividend is not paid but is reinvested, accumulated, capitalised, carried to any revenue or otherwise dealt with on his behalf or as he directs, it shall be deemed to have been paid.

Annual return by private companies of shareholders

72. Every resident private company shall on or before the 31st August next following each tax year furnish to the Commissioner a return showing the name and address of and number of shares held by each shareholder on the last day of that tax year.

Companies: documents of incorporation, amendments thereof and prospectus

73. (1) Every company shall furnish to the Commissioner within the time specified in this section –

(a) a copy of the memorandum and articles of association constituting the company or any other documents setting out the powers, aims and objects of and the rules or regulations governing the company;

(b) a copy of any amendment made to such documents; and

(c) a copy of any prospectus proposed to be issued by the company.

(2) In the case of a company incorporated or formed in Botswana the documents referred to in subsection (1) shall be furnished within sixty days of the date of incorporation or formation, amendment thereof or, in the case of a prospectus, registration thereof.

(3) In the case of a company incorporated or formed outside Botswana but carrying on business in Botswana the documents referred to in subsection (1) shall be furnished within sixty days of the date of commencing to carry on business in Botswana, amendment of the documents constituting or governing the company or, in the case of a prospectus, registration thereof.

Returns deemed to be furnished by due authority and in full knowledge of contents

74. Every return, statement or form purporting to be furnished under this Act by or on behalf of any person shall for all purposes of this Act be deemed to have been furnished by that person or with his authority, as the case may be, unless the contrary is proved; and any person signing such return, statement or form shall be deemed to be cognizant of all matters contained therein.

Returns: method of furnishing

75. Any return required to be furnished shall be delivered by hand or post to the address specified in the prescribed form.

Extension of time

76. Where under this Act any return is required to be furnished by any person within a specified number of days, the Commissioner may, by notice in writing served on such person, extend the period in which such return is to be furnished.

PART XI **ASSESSMENT OF TAX**

Commissioner to make assessment

77. (1) The Commissioner shall proceed to assess every person chargeable with tax as expeditiously as possible after the expiry of the time allowed to such person under section 64 or as extended under section 76 for the delivery of a tax return.

(2) Where a person has delivered a tax return the Commissioner may accept such return and make an assessment in accordance therewith.

(3) Where –

(a) a person fails to furnish a tax return; or

(b) the Commissioner is not satisfied that the tax return furnished by any person is true and correct,

the Commissioner may make an assessment to the best of his judgment.

78. Where, in relation to an assessment made on any person for any tax year, the Commissioner is of the opinion that – Additional assessments

(a) the tax charged is less than the amount which should have been charged;

(b) any assessed loss is greater than the amount at which it should have been assessed; or

(c) a refund has been made in excess of the amount which should have been refunded,

the Commissioner shall make an additional assessment accordingly.

79. (1) Where, in relation to an assessment made on any person for any tax year, the Commissioner is satisfied that – Reduced assessments

(a) the tax charged is greater than the amount which should have been charged;

(b) any assessed loss is less than the amount at which it should have been assessed; or

(c) a refund has been made which is less than the amount which should have been refunded,

the Commissioner shall make a reduced assessment accordingly.

(2) Where, on the determination of an appeal made under Part XII, the Court or Appeals Committee orders the reduction of an assessment, the Commissioner shall reduce the assessment accordingly.

(3) Where, for any tax year, a person who has furnished a tax return for that tax year and has been assessed under section 77 or 78 notifies the Commissioner in writing within six years after the end of that tax year that by reason of some error or mistake of fact in such return the assessment was excessive, the Commissioner, after taking into account all relevant circumstances, may reduce the assessment to provide such relief as is fair and reasonable:

Provided that no relief shall be given under this subsection if the assessment was properly made in accordance with the practice generally prevailing at the time such return was made.

Deter-
mination of
assessed loss

80. (1) Where, in relation to any tax year, the amount, as determined by the Commissioner, by which the deductions allowable to any person under Part VI in relation to the carrying on of a business by that person exceed that part of the assessable income of that person which accrues from that business, the Commissioner shall make a determination of such excess (referred to in this Act as "the assessed loss").

(2) The determination of the assessed loss of any person for any tax year under subsection (1) shall constitute the making of an assessment by the Commissioner, shall be notified in writing to the person assessed and the provisions of this Act other than sections 83 and 84 shall apply as if such determination were the determination of the amount of the taxable income of such person for such tax year.

Provisional
assessments

81. (1) Without prejudice to the powers of the Commissioner under section 76, where a provisional tax return has been furnished by any person under section 65, the Commissioner may proceed to make a provisional assessment in the amount of the taxable income disclosed in such return and shall determine the tax payable accordingly.

(2) Notwithstanding any extension of time which has been granted under section 76 for the furnishing of a tax return for any tax year any tax payable under a provisional assessment shall be due and payable within the time specified in section 93 and may be recovered in the manner provided in Part XIII but upon the furnishing of such tax return the Commissioner shall make an additional assessment or a reduced assessment or confirm the provisional assessment.

(3) Any provisional assessment made under this section shall be subject to the right of objection and the time within which any such objection may be made in accordance with section 86 shall not commence to run until the date of service of the notice of additional assessment, reduced assessment or confirmation of the provisional assessment, as the case may be.

Time limits
for assess-
ments

82. (1) An assessment may be made in relation to any person under this Act at any time prior to the expiry of six years after the end of the tax year to which it relates:

Provided that –

- (i) where such person is deceased, such assessment may only be made within three years after the end of such tax year;
- (ii) where any fraud or wilful default has been committed in connexion with tax for any tax year by or on behalf of any person, and –
 - (a) such person is an individual who is alive at the time the assessment is made, or a person other than an in-

dividual, an assessment in relation to such tax year may be made at any time; or

- (b) such person is deceased, subject to subsection (2), an assessment may only be made in respect of the tax year in which he died and the five immediately preceding tax years.

(2) In the case of an assessment made upon the executor of an estate of a deceased person in accordance with section 17, the assessment shall be made within three years of the end of the tax year in which such person died.

83. (1) Subject to subsection (2) a notice of assessment in respect of every person chargeable with tax shall be made and issued to such person in the prescribed form. Notice of assessment

(2) The Commissioner shall not be required to issue a notice of assessment other than a notice of reduced assessment to any person where –

- (a) no liability to tax arises;
(b) the balance of tax due to be paid by him does not exceed five rand; or
(c) the balance of refund of tax due to him does not exceed one rand,

unless that person makes a request to the Commissioner for the issue of a notice of assessment.

(3) In this section “notice of assessment” shall include a notice of a reduced assessment, an additional assessment and a provisional assessment.

84. The Commissioner shall maintain in such manner as he thinks fit a record of all assessments made in respect of each tax year. Record of assessments

85. (1) Subject to section 79 (3), where in relation to an assessment – Finality of assessment

- (a) no valid notice of objection has been given under section 86;
(b) subsequent to the determination of an objection, no valid notice of appeal has been given under section 89; or
(c) an appeal has been determined and there is no right of further appeal,

such assessment shall be final and not subject to appeal.

(2) Nothing in this section shall prevent the Commissioner from making any additional assessment for any tax year which does not involve reopening any matter which has been determined on appeal for such tax year.

(3) Notwithstanding subsections (1) and (2) where any fraud or wilful default has been committed by or on behalf of any person in relation to his liability to tax for any tax year, the Commissioner may

make an additional assessment for such tax year even though it may involve reopening a matter which has been determined on appeal.

PART XII

OBJECTIONS AND APPEALS

Objection to
assessment

86. (1) Any person who is aggrieved by an assessment made on him may, by notice in writing to the Commissioner within thirty days after the date of service of the notice of assessment, or within such further time as the Commissioner may for good cause allow, object to the assessment.

(2) Where the assessment is –

(a) an additional assessment; or

(b) a reduced assessment which, in part, imposes a fresh liability, the person assessed shall have no further right of objection than he would have had if that assessment had not been made except to the extent to which that assessment has imposed a fresh liability on him.

(3) An objection shall specify particulars of the grounds on which it is made.

(4) In this section “aggrieved by an assessment” means aggrieved by –

(a) the inclusion in an assessment of an amount as part of the taxable income;

(b) the disallowance in an assessment of an amount claimed as a deduction in ascertaining the taxable income;

(c) the determination by the Commissioner of the amount of an assessed loss;

(d) the amount of tax set off under section 61 or 62;

(e) the imposition of any amount of penalty for failure to lodge a tax return within the prescribed time or any extended time allowed under section 76;

(f) the imposition of any amount of penalty for failure to lodge a correct tax return; or

(g) the determination by the Commissioner of the status of a company as public or private in the exercise of his discretion under paragraph (a), (b), (c) or (d) of section 125 (2).

Decision by
Commissioner
on objection

87. (1) The Commissioner shall consider any valid objection made under section 86 and may either disallow it or allow it either wholly or in part and shall by notice in writing inform that person of his decision.

(2) If a decision of the Commissioner requires the reduction of an assessment made on any person, the Commissioner shall issue a notice of reduced assessment to that person, together with the notice of his decision or as soon as is practicable thereafter.

88. For the purposes of this Part, there shall be one or more Income Tax Appeals Committees constituted and regulated in accordance with the Eleventh Schedule.

Income Tax
Appeals
Committees

89. (1) Any person who is aggrieved by a decision of the Commissioner on an objection (hereinafter referred to as "the appellant") may, by notice of appeal, appeal therefrom –

Appeal from
decision by
Commissioner

- (a) to the High Court; or
- (b) subject to subsection (4) and, at his option, to an Appeals Committee.

(2) A notice of appeal shall –

- (a) be made in writing;
- (b) state whether the appeal is to the High Court or an Appeals Committee;
- (c) be lodged with the Commissioner within sixty days after the date of service of the notice of his decision on the objection, or within such further time as the Commissioner may for good cause allow;
- (d) be restricted to the grounds stated in the objection given to the Commissioner except for such modifications as may be necessary arising from the partial allowance by the Commissioner of the objection; and
- (e) contain an address for service of notice of the date and place of hearing.

(3) In this section "aggrieved by a decision of the Commissioner" means aggrieved by –

- (a) the inclusion in an assessment of an amount as part of the taxable income;
- (b) the disallowance in an assessment of an amount claimed as a deduction in ascertaining the taxable income;
- (c) the determination by the Commissioner of the amount of an assessed loss;
- (d) the amount of tax set off under section 61 or 62;
- (e) the imposition of any amount of penalty for failure to lodge a tax return within the prescribed time or any extended time allowed under section 76;
- (f) the imposition of any amount of penalty for failure to lodge a correct tax return; or
- (g) the determination by the Commissioner of the status of a company as public or private in the exercise of his discretion under paragraph (a), (b), (c) or (d) of section 125 (2).

(4) An appeal shall lie to the High Court in respect of any of the matters mentioned in subsection (3) but an appeal shall lie to an Appeals Committee –

- (a) in respect of the matters mentioned in paragraphs (a), (b), (d), (e) or (f) of subsection (3), only where the amount of tax or penalty in dispute does not exceed one thousand rand; or
 - (b) in respect of the matter mentioned in subsection (3) (c), only where the assessed loss does not exceed five thousand rand.
- (5) An appeal in respect of the matter mentioned in subsection (3) (g) shall lie to an Appeals Committee or the High Court by –
- (a) the company in respect of which a determination has been made; or
 - (b) a shareholder in a company, being a company determined by the Commissioner to be a private company, in respect of the distribution of a dividend deemed under section 126 to have been made to that shareholder.
- (6) Upon receipt of a valid notice of appeal the Commissioner shall forward to the High Court or the Chairman of an Appeals Committee as early as is practicable such number of copies as may be necessary of –
- (a) the tax return;
 - (b) the notice of assessment under appeal;
 - (c) the notice of objection;
 - (d) the decision of the Commissioner on the objection;
 - (e) the notice of appeal; and
 - (f) a statement setting out the matter in dispute between the appellant and the Commissioner.
- (7) Upon transmission of the documents referred to in subsection (6) the Commissioner shall notify the appellant that such action has been taken and at the same time shall forward to the appellant a copy of such documents.

Hearing by
Appeals
Committee
or High
Court

90. (1) Upon every hearing of an appeal by an Appeals Committee or the High Court the Committee or the Court may confirm, increase or order the reduction of any assessment or may make such other order as it deems fit.

(2) On any appeal to which this section relates both the appellant and the Commissioner shall bear their own costs except where the Appeals Committee or the High Court is of the opinion that –

- (a) the decision of the Commissioner on the objection was arbitrary and unreasonable; or

- (b) the grounds of appeal by the appellant were frivolous, when the Appeals Committee or the Court may make such order as to costs as it deems fit.

(3) On any appeal the burden of proof shall lie upon the appellant.

(4) At least thirty days before the date fixed for the hearing of an appeal by an Appeals Committee, the Chairman shall, by notice in writing, advise the appellant and the Commissioner of the date and place on and at which the appeal has been set down for hearing.

(5) At every hearing by an Appeals Committee the appellant and the Commissioner shall be entitled to appear in person or by representation.

(6) The sittings of the High Court or an Appeals Committee for the hearing of any appeal shall not be public unless the Court or the Chairman of the Committee so directs on application by the appellant.

(7) The Court or the Chairman of an Appeals Committee may authorize the publication of the decision on any appeal but the publication shall be in such manner as not to disclose the name of the appellant.

91. (1) The Commissioner or the appellant may appeal to the High Court from any decision of an Appeals Committee which involves a question of law, including a question of mixed fact and law, but in any other case the decision of the Appeals Committee on an appeal shall be final and not subject to further appeal. Right of further appeal

(2) The Commissioner or the appellant may appeal to the Court of Appeal as of right from any decision of the High Court (including a decision of the High Court on an appeal from an Appeals Committee) which involves a question of law, including a question of mixed fact and law, but in any other case the decision of the High Court on an appeal shall be final and not subject to further appeal.

(3) On any further appeal to which this section relates the High Court or Court of Appeal, as the case may be -

(a) may confirm, increase or order the reduction of any assessment;

(b) may make such other order as it deems fit; and

(c) may make such order as to costs as it deems fit.

92. The obligation to pay any tax chargeable under an assessment shall not be suspended by reason of any notice of objection or appeal having been given against such assessment, and the tax charged may be recovered as if no such notice of objection or appeal had been given. Payment of tax not suspended by notice of objection or appeal

PART XIII

PAYMENT, RECOVERY AND REFUND OF TAX

93. Subject to this Part, any tax charged shall be due and payable by the person chargeable within thirty days of the date of service on him of the notice of assessment. When tax is payable

Extensions of time or payment by instalments

94. (1) On application by the person chargeable, the Commissioner may in any case grant such extension of time for payment, or permit payment to be made by such instalments and within such time as he considers the circumstances warrant, and in such case the tax shall be due and payable accordingly.

(2) Where, under subsection (1), the tax is permitted to be paid by instalments and there is default in payment of any instalment, the whole of the balance of tax outstanding shall become due and payable forthwith.

Interest on unpaid tax

95. (1) Any tax not paid within the time specified in section 93 shall bear interest at the rate of two per centum for each month or part of a month during which it remains unpaid.

(2) The Commissioner may, where he considers the circumstances warrant it, remit the whole or part of any interest payable under subsection (1).

When tax deducted by employer is payable

96. (1) Any tax deducted or deductible by an employer under section 56 from the remuneration paid to an employee shall be due and payable by the employer –

(a) within fifteen days after the end of the month during which that tax was deducted or deductible; or

(b) in the case of a person who ceases to be an employer, within fifteen days after the date on which he so ceases.

(2) On application by an employer, the Commissioner may grant such extension of time for payment as he considers the circumstances warrant and in such case the tax deducted or deductible shall be due and payable accordingly.

(3) In this section the words “employer”, “remuneration” and “employee” shall have the meaning given to them in the Seventh Schedule.

When tax deducted from payments due under certain contracts with non-residents is payable

97. Any tax deducted or deductible by any person under section 57 in respect of a contract relating to construction operations or for professional services shall be due and payable by that person within fifteen days after the end of the month during which that tax was deducted or deductible.

When tax deducted from payments of dividends or interest to non-residents is payable

98. Any tax deducted or deductible under section 58 by any person from a payment of dividends or interest to a non-resident shall be due and payable by that person within fifteen days after the end of the month during which that tax was deducted or deductible.

Interest on unpaid tax deductions

99. (1) Any tax deducted or deductible by any person and not paid within the time specified in section 96, 97 or 98 shall bear

interest at the rate of two per centum for each month or part of a month during which it remains unpaid.

(2) Any interest imposed on any person by subsection (1) shall be a debt due by that person and shall not be recoverable by him from the person in respect of whom the tax was deducted or should have been deducted.

100. (1) Tax shall, when it becomes due and payable, be a debt due to the Government and payable to the Commissioner in the manner and at the place prescribed.

Recovery of
tax, general

(2) Proceedings in any court for the recovery of tax shall be deemed to be proceedings for the recovery of a liquid debt.

(3) In any proceedings for the recovery of tax it shall not be competent for the defendant to enter a defence that –

- (a) the taxable income is incorrect;
- (b) the tax charged is excessive; or
- (c) the assessment is the subject of objection or appeal.

101. (1) If any person fails to pay any tax when it becomes due and payable the Commissioner may file with the clerk or registrar of any court of competent jurisdiction a statement, certified by him as correct, of the amount of tax due and payable and unpaid.

Procedure
for recovery
of tax by
court action

(2) A statement filed under subsection (1) shall have the effect of a civil judgment given in that court in favour of the Commissioner for a liquid debt of the amount specified in the statement and the court shall, subject to subsection (3), issue a writ of execution in respect thereof against the person who has so failed to pay.

(3) No writ of execution shall be issued against any person pursuant to subsection (2) until fourteen days after service on him by the court of a notice informing him that a writ of execution will be issued by the court in respect of tax due by him and unpaid unless before the expiration of that period of fourteen days he produces proof of payment thereof satisfactory to the court.

(4) After giving the Commissioner the opportunity of being heard, in the event of –

- (a) proof of payment being produced with which the court is satisfied, the writ of execution shall not be issued;
- (b) no proof of payment being produced with which the court is satisfied, the writ of execution shall be issued and execution thereon shall proceed forthwith; or
- (c) proof of payment being produced which appears to the court to be inconclusive, the court shall proceed to set down a case for hearing and both parties shall be entitled to be heard personally or by representation: and upon completion of the hearing the court shall direct whether or not the writ of execution shall be issued.

(5) The issue of a writ of execution under subsection (2) shall be without prejudice to the right of the Commissioner to apply for any other form of execution of the judgment debt.

Recovery of
moneys from
person
leaving
Botswana

102. (1) Where the Commissioner has reason to believe that any person may leave Botswana owing moneys or might, upon assessment, owe moneys to the Commissioner under this Act, the Commissioner may, by notice in writing served on that person, require that he pay the amount owing or give security to the satisfaction of the Commissioner for the payment thereof, or to cover the amount which might be owing, within the time specified in the notice.

(2) The Commissioner may issue to the Immigration Control Officer –

- (a) a copy of the notice served under subsection (1); and
- (b) a request for the person charged to be prevented from leaving Botswana until he pays the amount owing or gives security as provided in subsection (1).

(3) Where a notice has been served under subsection (1) and a request has been made under subsection (2), upon payment of the amount owing or the giving of satisfactory security as required under subsection (1) the Commissioner shall, as soon as possible, issue to the Immigration Control Officer a withdrawal of his request made under subsection (2) and shall furnish the person charged with a copy thereof, which shall be sufficient evidence for any immigration officer to permit the departure of that person.

(4) If any person fails to pay any moneys owing or give satisfactory security as required under subsection (1) the Immigration Control Officer shall take such steps as may be necessary to prevent such person from leaving Botswana pending compliance with the notice served on him.

Recovery of
tax from
married
persons and
settlements

103. (1) Any tax due and payable by a married man may be recovered from his assets or any assets of his wife.

(2) So much of any tax due and payable by a settlor as is attributable to amounts accrued in a settlement but charged to tax in the name of the settlor under section 14, 15 (1) or 16 may be recovered from assets of the settlement.

(3) For the purposes of this section tax attributable to amounts deemed to have accrued to any person under section 14, 15 (1) or 16 means the amount by which the tax charged under section 59 has been increased by the inclusion of such amounts in the gross income of the person charged to tax.

(4) In subsection (2) the words “settlor” and “settlement” shall have the meaning given to them respectively in sections 14, 15 (1) and 16.

Recovery of
tax from
representative
taxpayers

104. (1) Where any person dies, then in respect of any tax payable under an assessment –

- (a) made upon him prior to and remaining unpaid at his death;

- (b) made upon his executor under section 17 in respect of amounts accrued prior to his death; or
- (c) made upon his executor under section 18 in respect of amounts accrued after death to the estate of the deceased person,

the amount of tax unpaid by that person in his lifetime or payable under an assessment made on his executor shall be a debt due and payable out of the estate of the deceased person.

(2) Where a company is being wound up or has been placed under judicial management, then in respect of any tax payable under an assessment –

- (a) made upon the company, prior to and remaining unpaid at the commencement of the liquidation or judicial management;
- (b) made upon the liquidator or judicial manager in respect of amounts accrued prior to commencement of the liquidation or judicial management; or
- (c) made upon the liquidator or judicial manager in respect of amounts accrued during the winding up or judicial management of the company,

the amount of tax unpaid by the company or payable by the liquidator or judicial manager shall be a debt due and payable out of the assets of the company.

(3) Where any person is chargeable to tax under section 15 (2) as trustee of a trust the income of which is accumulated, then any tax payable by the trustee shall be due and payable out of the assets of the trust.

(4) Where any person is chargeable to tax under section 19 as trustee for a legally disabled person, any tax payable by the trustee shall be due and payable out of the assets of the legally disabled person.

(5) Where any person is chargeable to tax under section 20 as trustee for the beneficiaries of a trust, any tax payable by the trustee shall be due and payable out of the assets of the trust.

(6) Where any person is chargeable to tax under section 23 as agent for a non-resident, any tax payable shall be due and payable out of the assets in Botswana of the non-resident.

(7) Where any person is chargeable to tax as public officer of a company, any tax payable shall be due and payable by the company.

105. Every person who as a representative taxpayer pays any tax shall be entitled to recover the amount paid from the person on whose behalf it was paid or to retain out of any moneys that may be in his possession, or may come to him, in his representative capacity an amount equal to the amount paid.

Right of
representative
taxpayer to
indemnity

Personal liability of representative taxpayer

106. Every representative taxpayer shall be personally liable for any tax payable by him in his representative capacity if, while it remains unpaid –

- (a) he alienates, charges or disposes of any amounts in respect of which the tax is charged; or
- (b) he disposes of or parts with any assets or money which is in his possession or comes to him after the date on which the tax is payable,

if the tax could legally have been paid out of such amounts, assets or money.

Recovery of tax from person holding money for another person

107. (1) For the purpose of recovery of any tax due from any person the Commissioner may, by notice in writing declare any other person –

- (a) from whom any money is due or may become due to the first mentioned person;
- (b) who holds or may subsequently hold money for or on account of the first mentioned person;
- (c) who holds money on account of some other person for payment to the first mentioned person; or
- (d) who has authority from some other person to pay money to the first mentioned person,

to be the agent of that person and to pay to the Commissioner within fifteen days of the date of service of that notice or if on such date no money is due from him to that person within fifteen days of the date on which money becomes due to that person the amount specified in the notice or if the money due is less than the amount specified the whole amount of the money due.

(2) Where any person declared to be an agent under subsection (1) fails to make any payment within the time specified in a notice under that subsection, the provisions of this Act shall apply as if such amount were tax due and payable by that person on the date by which he was required to make such payment to the Commissioner.

Priority of tax debt upon insolvency or liquidation

108. From the date on which any tax becomes due and payable the Commissioner shall have such preferential claim for such debt upon the assets of –

- (a) an insolvent person as is specified in section 85A of the
- (b) a company in liquidation or under judicial management as is specified in section 256 or 270 (4) of the Companies Proclamation, 1959.

(Cap. 82)

(71 of 1959)

Refund of tax overpaid

109. (1) Where the Commissioner is satisfied that any person has paid tax for any tax year, by deduction or otherwise, in excess of the amount finally determined to be payable under this Act for such tax

117. (1) Any person who -

- (a) fails or neglects to furnish to the Commissioner any return or document as and when required under this Act;
- (b) fails to comply with the requirements of any notice in writing served on him under this Act;
- (c) refuses or neglects to answer truly and fully any questions put to him or to supply any information required from him respecting his gross income or the gross income of any other person;

Offences:
Failure to
comply with
requirements
of the Act

year, that person shall, subject to section 79, be entitled to have the amount of the excess refunded.

(2) Where the Commissioner is satisfied that any excess tax to which subsection (1) applies has been paid, by deduction or otherwise, by a married woman in respect of gross income which has been deemed to have accrued to her husband, the Commissioner may, upon request by such married woman, refund such excess to her if this appears to him to be reasonable.

(3) The burden of proof that any amount of tax has been paid, by deduction or otherwise, shall rest with the person referred to in subsection (1) but any tax certificate issued to such person under the Seventh, Eighth or Ninth Schedule shall be *prima facie* evidence that the amount of tax shown therein has been paid by such person.

110. (1) The Minister may remit wholly or in part any tax payable by any person where he is satisfied that it is just and equitable to do so.

Remission of
tax

(2) Any decision made by the Minister under this section shall be final and not subject to appeal.

(3) The Commissioner may remit any amount of tax, not exceeding two hundred and fifty rand, unpaid by any person in respect of any tax year where the Commissioner is satisfied that such tax is irrecoverable.

PART XIV

OFFENCES

DIVISION I - CIVIL PENALTIES

111. The penalties imposed by this Division of this Part may be imposed by the Commissioner at his discretion and shall be in addition to any right to institute criminal proceedings against any person for an offence under this Act, and any fine payable on conviction for an offence shall be in addition to the penalties provided herein.

Penalties:
general

112. Where any person who is required to furnish a tax return for any tax year fails to do so within the prescribed time or any extended time allowed under section 76 he shall be liable to -

Penalties:
failure to
furnish tax
return

- (a) interest at the rate of two per centum per month on the amount of tax charged for such tax year, calculated for the period -
 - (i) commencing thirty days after the date on which the return should have been lodged, or the 1st January following the end of that tax year, whichever is the later; and
 - (ii) ending on the date on which the tax becomes due and payable under the assessment made for that tax year under section 77; and

shall be guilty of an offence and liable on conviction to a fine of two thousand rand or to imprisonment for two years.

(2) In any proceedings under this section, if it is proved that any incorrect statement or entry is wilfully made in any return, answer, books of account or other records, or certificate or statement by any person, he shall be presumed, until the contrary is proved, to have made or caused or allowed to be made that incorrect statement or entry with intent to evade assessment or liability to tax.

(b) a penalty not exceeding the amount of tax chargeable for that tax year.

Penalties:
failure to
furnish
correct tax
return or
estimate of
taxable
income

113. (1) Where any person has failed to lodge a correct tax return for any tax year by reason of –

- (a) his failure to disclose any gross income accrued to him from any source;
- (b) the deduction or set off by him of any amount which is not allowable as a deduction;
- (c) the claim by him of an expenditure or loss of an amount which was not expended or lost; or
- (d) his failure to disclose any fact, the disclosure of which would result in an increase in his taxable income,

he shall be liable to a penalty in accordance with subsection (2).

(2) Where the incorrectness of the tax return, statement or information was attributable to –

- (a) neglect or carelessness, he shall be liable to a penalty not exceeding the amount of tax which would have been lost if he had been assessed on the basis of the incorrect return, statement or information furnished by him; or
- (b) fraud or wilful default, he shall be liable to a penalty not exceeding twice the amount of tax which would have been lost if he had been assessed on the basis of the incorrect return, statement or information furnished by him.

(3) If, in any tax year in which the determination of the taxable income of any person does not result in an assessed loss, that person is entitled to the deduction of a balance of assessed loss from the previous tax year and the balance to which he is entitled is less than it would have been if it had been calculated on the basis of the tax return, statement or information furnished by him for the tax year in which it was incurred he shall be deemed for the purposes of this section to have omitted from his tax return of the first mentioned tax year an amount equal to the difference between the amount at which such balance of loss is finally determined and the amount at which it would have been determined if the incorrect return, statement or information had been accepted by the Commissioner as correct under section 77 (2).

(4) Where for any tax year a person furnishes a provisional tax return under section 65 and, by reason of the incorrectness of that tax return, the amount of tax charged under a provisional assessment made under section 81 is less than three-quarters of the correct tax liability as determined for that tax year on the furnishing of the tax return under section 76, that person shall be liable to pay a penalty, by way of interest, at the rate of two per centum per month on the amount of the difference between the tax charged in the

119. (1) Any person who –

Offences by
employers

- (a) within the prescribed time fails to register as an employer, or to notify any change of address or to notify that he has ceased to be an employer;
- (b) within the prescribed time fails to deduct any amount of tax from remuneration paid to an employee;
- (c) within the prescribed time fails to pay to the Commissioner any amount of tax so deducted;
- (d) fails to comply with any direction issued or condition specified by the Commissioner under the Seventh Schedule;
- (e) fails to maintain a record of remuneration paid to his employees and tax deducted therefrom; or
- (f) fails to deliver to any employee a certificate of tax deducted from remuneration, as and when required,

shall be guilty of an offence and liable on conviction to a fine of four hundred rand or to imprisonment for one year.

(2) In this section the words “employer”, “remuneration” and “employee” shall have the meaning given to them in the Seventh Schedule.

120. (1) Any person who wilfully with intent to evade assessment or liability to tax –

Offences:
evasion of
tax in
relation to
deduction of
tax by
employers

- (a) furnishes to his employer or the Commissioner an incorrect return of personal particulars or gives any incorrect information to his employer in relation to any matter affecting the amount of tax to be deducted from his remuneration;
- (b) issues, possesses, uses or causes to be issued or used any certificate of remuneration and tax deducted which is incorrect;
- (c) alters any certificate of remuneration and tax deducted, issued by any other person, pretends to be the employee named in any certificate of remuneration and tax deducted, or in any other way to his own advantage or benefit obtains credit with respect to or payment of the whole or any part of any amount of tax deducted from remuneration received by another person; or
- (d) not being an employer and without being authorized by any person who is an employer issues or causes to be issued any document purporting to be a certificate of remuneration and tax deducted from remuneration,

shall be guilty of an offence and liable on conviction to a fine of two thousand rand or to imprisonment for two years.

(2) In this section the words “employer”, “remuneration” and

“employee” shall have the meaning given to them in the Seventh Schedule.

Offences:
deduction
from
payments due
under
certain
contracts
with non-
residents

121. Any person who –

- (a) fails to deduct any tax from a payment made to a non-resident to which section 57 applies;
- (b) within the prescribed time fails to pay to the Commissioner any amount deducted under section 57; or
- (c) within the prescribed time fails to notify the Commissioner that he has entered into a contract to which the Eighth Schedule applies,

shall be guilty of an offence and liable on conviction to a fine of four hundred rand or to imprisonment for one year.

Offences:
deduction
from
payments of
dividends and
interest to
non-
residents

122. Any person who –

- (a) fails to deduct any tax from a payment of dividend or interest made to a non-resident as required by section 58; or
- (b) within the prescribed time fails to pay to the Commissioner any amount deducted under section 58,

shall be guilty of an offence and liable on conviction to a fine of four hundred rand or to imprisonment for one year.

Aiding and
abetting an
offence

123. (1) Where any person –

- (a) wilfully makes or delivers on behalf of another person; or
- (b) aids or abets another person to make or deliver,

an incorrect return, account, statement or any incorrect information relating to any matter affecting the tax liability of that other person, the first mentioned person shall be guilty of an offence and liable on conviction to a fine of four hundred rand or to imprisonment for one year.

(2) Where any person wilfully and with intent to assist any other person to evade assessment or liability to tax does any of the matters referred to in section 118 he shall be guilty of an offence and liable on conviction to a fine of two thousand rand or to imprisonment for two years.

(3) In any proceedings under subsection (2) if it is proved that any incorrect statement or entry is wilfully made in any return, answer, books of account or other records or certificate or statement by such person, he shall be presumed, until the contrary is proved, to have made such incorrect statement or entry with intent to assist such other person to evade assessment or liability to tax.

Mitigation of
penalties and
compounding
of offences

124. (1) Where any person has committed a breach of the provisions of this Act for which a penalty is provided under Division I of this Part, then in relation to such breach the Commissioner may mitigate any penalty imposed by him, either wholly or in part and whether before or after judgment for its recovery has been obtained.

(2) Nothing in subsection (1) shall be construed so as to authorize the Commissioner to mitigate any penalty where the penalty imposed by the Commissioner has been the subject of appeal under section 89.

(3) Where any penalty has been mitigated under subsection (1) by agreement with the person concerned then, notwithstanding the provisions of sections 86 and 89, that person shall not be entitled to object to or appeal against the imposition of, or the amount of, the penalty as so mitigated.

(4) Subject to the direction of the Attorney-General, where any person has committed an offence against this Act for which criminal proceedings may be taken under Division II of this Part, then in relation to such offence the Commissioner may, at any time prior to the commencement of the hearing by any court of such proceedings, compound the offence and order the person to pay such sum of money, not exceeding the amount provided in Division II of this Part for such offence as the Commissioner may think fit.

(5) The Commissioner shall not exercise his power to compound under this section unless the person who has committed the offence requests the Commissioner in writing to so deal with the offence.

(6) Where the Commissioner compounds any offence under this section and makes an order accordingly –

- (a) the order shall be made in writing and there shall be attached to it the request referred to in subsection (5);
- (b) the order shall specify –
 - (i) the offence committed;
 - (ii) the sum of money ordered to be paid; and
 - (iii) the date on which payment is to be made or the dates on which instalments of that sum are to be paid;
- (c) a copy of the order shall be given, if he so requests, to the person who committed the offence;
- (d) that person shall not be liable to any criminal proceedings or further criminal proceedings, as the case may be, in respect of such offence, and if any such proceedings are taken it shall be a good defence for that person to prove that the offence has been compounded under this section;
- (e) the order shall be final and shall not be subject to any appeal; and
- (f) a statement of the amount due by reason of the order may be filed with any court of competent jurisdiction in the manner provided in section 101 and such amount shall be deemed to be an amount of tax due and payable and unpaid, and recovery thereof shall be made in accordance with the provisions of that section.

(7) Where under subsection (6) (b) (iii) any sum is to be paid by instalments and there is default in payment of any instalment the whole of the balance then outstanding shall become due and payable forthwith.

PART XV
PROVISIONS RELATING TO COMPANIES AND
PARTNERSHIPS

Status of
companies:
public or
private

125. (1) For the purposes of this Act a company shall be recognised as either a public company or a private company in respect of each tax year and the Commissioner shall upon the request of any company inform that company whether it is recognised as a public company or a private company.

(2) A company shall be recognized as a public company in relation to a tax year if –

(a) all classes of its shares are listed for quotation in the official list of a stock exchange on the last day of the tax year or substituted accounting period and the Commissioner is satisfied that –

(i) the stock exchange is a recognized and *bona fide* stock exchange under adequate control and that its rules for granting and continuing a quotation for the purchase and sale of shares provide full protection of the interests of the public in regard to dealings in the shares of the company;

(ii) the memorandum and articles of association of the company contain no restrictions on the right to acquire or transfer any of its shares as are likely to preclude members of the general public from becoming shareholders in the company; and

(iii) the general public throughout the tax year either directly as shareholders or indirectly as shareholders in any other public company held more than fifty per centum of every class of equity share issued by the company;

(b) the company is a subsidiary of a public company;

(c) the company is not a company which by its memorandum or articles of association –

(i) restricts the right to transfer its shares;

(ii) limits the number of its members to fifty, not including persons who are in the employment of the company and persons who have been formerly in the employment of the company were while in that employment and have continued, after the determination of that employment, to be members of the company; or

(iii) prohibits any invitation to the general public to subscribe for any shares or debentures of the company, and is a company in respect of which the Commissioner is satisfied that –

(A) the general public throughout the tax year either directly as shareholders or indirectly as shareholders in any other public company held more than fifty per centum of every class of equity share issued by the company; and

(B) 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 recognized as a public company under paragraph (a);

(d) the Commissioner is satisfied that –

(i) the company was incorporated to serve a specified purpose beneficial to the public; and

(ii) under the constitution of the company, no person 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;

(e) it is an insurance society or company;

(f) it is a society or company registered under the Co-operative Societies Law, 1962; or

(g) it is a specified corporation.

(3) A company which is not recognized as a public company in relation to a tax year shall be recognized as a private company.

(4) For the purposes of subsection 2 (b) a company is a subsidiary of a public company if one or more companies, which are public companies for the purposes of any other paragraph of subsection (2), throughout the tax year held more than fifty per centum of every class of equity share issued by the company.

(5) Where, by reason of changes in the constitution or shareholding of any company which has been recognised as a public company under paragraph (a), (b) or (c) of subsection (2) or for any other reason the company in any tax year ceases to satisfy the requirements of the relevant paragraph, the company shall be recognised as a private company in relation to that tax year.

Deemed
distributions
of dividends:
private
companies

126. (1) Subject to this section where, in respect of any tax year, the total amount distributed by a resident private company as dividends within twelve months after the end of the tax year is less than the standard amount for the tax year the Commissioner shall, by notice in writing to the public officer of the company, order that the undistributed portion of the standard amount for that tax year shall be deemed to have been distributed as dividends to the shareholders listed on the share register of the company at the end of twelve months after the end of the tax year and thereupon the proportionate share thereof of each shareholder shall be deemed to be a dividend accrued to him on that date.

(2) Where the Commissioner is satisfied that by reason of drought, flood or similar unforeseen circumstances abnormal book debts have been reasonably accumulated he may extend the period of twelve months, during which distribution should be made, for such further period as he considers necessary.

(3) Where, within such further period as may be given under subsection (2), the total amount distributed as dividends is less than the standard amount the Commissioner shall, by notice in writing to the public officer, order that the undistributed portion of the standard amount for the tax year shall be deemed to have been distributed as dividends to the shareholders listed on the share register of the company on the last day of the extended period and thereupon the proportionate share thereof of each shareholder shall be deemed to be a dividend accrued to him on that date.

(4) Where –

(a) a company has agreed in writing with the Commissioner to the expenditure, by a date fixed in the agreement, of a specified amount in the development of industry, commerce or agriculture; and

(b) such expenditure has been approved by the Minister upon application to the Commissioner in the prescribed form,

such expenditure shall be deducted from the undistributed portion of the standard amount for any tax year in relation to which the approval is given in determining under subsection (1) whether or not a sufficient distribution has been made:

Provided that where such company fails to expend such amount or any part of such amount by the date fixed in the agreement or the Commissioner is satisfied that, by reason of the circumstances, such expenditure is unlikely to be incurred by such date, then, save for any expenditure which has been incurred, the Commissioner shall add such amount to the undistributed portion of the standard amount for such tax year as appears to him to be appropriate.

(5) Where an order has been made or a resolution passed for the winding up of a private company the taxable income of the company

from the end of the previous tax year to the date of the order or resolution for winding up shall be deemed to be taxable income of a tax year available for distribution to the shareholders.

(6) In respect of the period to which subsection (5) applies and the preceding tax year, where the total amount distributed by a resident private company as dividends prior to the date of the order or resolution for winding up is less than the standard amount for the preceding tax year the Commissioner shall, by notice in writing to the liquidator, order that the undistributed portion of the standard amount for that preceding tax year shall be deemed to have been distributed as dividends to the shareholders listed on the share register of the company at the date of the order or resolution for winding up and thereupon the proportionate share thereof of each shareholder shall be deemed to be a dividend accrued to him on that date.

(7) Where the undistributed portion of the standard amount for any tax year has been deemed to have been distributed under subsection (1) or (3), any subsequent distribution of the whole or part of such amount shall be exempt from tax under item (xxv) of Part II of the Second Schedule.

(8) Any amount deemed to be a dividend accrued to a shareholder under subsection (1) or (3) shall, where the shareholder is a resident private company, be deemed to be part of its gross income for the purpose of the application of subsection (1) or (3) to the taxable income of that company.

(9) For the purposes of this section "the standard amount", in relation to any tax year, means the excess of fifty per centum of any taxable income of the company for that tax year over the aggregate of –

- (a) any assessed loss of the company for that tax year; and
- (b) fifty per centum of any tax charged on the company for that tax year.

127. (1) Every company carrying on business in Botswana shall at all times be represented for the purposes of this Act by a public officer residing in Botswana and duly appointed by the company or its authorized agent or attorney.

(2) Every company, if it has not appointed a public officer and an address for service of notices before the commencement of this Act, shall appoint a public officer and an address for service of notices –

- (a) within two months after the commencement of this Act; or
- (b) in the case of a company which begins to carry on business in

Botswana after the commencement of this Act, within one month after the commencement of business.

(3) Every change of public officer or of the address for service of notices on the company shall be notified to the Commissioner by the public officer within fifteen days of such change occurring.

(4) No appointment of a public officer shall be deemed to be duly made until notice thereof in writing, specifying the name of the public officer and an address for service of notices, has been given to the Commissioner.

(5) The appointment of a public officer shall be subject to the approval of the Commissioner, who may decline to approve the appointment of a public officer or may subsequently withdraw his approval of a person who had previously been appointed.

(6) The public officer shall be answerable for the doing of all such things as are required under this Act to be done by the company of which he is the representative and in case of default he shall be liable to the same penalties.

(7) Everything done by the public officer, which he is required to do in his representative capacity, shall be deemed to have been done by the company and any notice given to or request made upon the public officer shall be deemed to be given to or made upon the company.

(8) The absence of or failure to appoint a public officer shall not excuse a company from the necessity of complying with any of the provisions of this Act and the company shall be subject to and liable to comply with its provisions as if there were no requirement to appoint a public officer.

(9) Every notice, process or proceeding which under this Act may be given to, served on or taken against any company may be given to, served on or taken against the public officer, and if at any time there is no public officer then any such notice, process or proceeding may be given to, served on or taken against any officer or person acting in the management of the business of the company or as agent for the company and such person shall have the same liability in respect of that notice, process or proceeding as the company or public officer would have had if it had been given to, served on or taken against the company or public officer.

(10) In the event of any company being placed in liquidation or under judicial management the liquidator or judicial manager, as the case may be, shall be required to exercise all the functions and assume all the responsibilities of a public officer under this Act during the continuance of the liquidation or judicial management, and any person previously appointed as public officer of the company shall cease to be public officer at such time.

128. (1) Every partnership carrying on business in Botswana shall at all times be represented by a resident individual who shall be –

- (a) the precedent partner; or
- (b) if no acting partner is resident in Botswana, the agent of the partnership in Botswana.

(2) The precedent partner shall be the person who, being an acting partner resident in Botswana –

- (a) is first named in the partnership agreement;
- (b) if there is no partnership agreement, is specified by name or initial singly or with precedence to the other partners in the usual name of the partnership,

or, in any case where neither paragraph (a) or (b) is applicable, such other person as is specified by the partnership.

(3) Every partnership shall notify the Commissioner of the name of the precedent partner or, if there is no acting partner resident in Botswana shall appoint and notify the Commissioner of the name of its agent in Botswana –

- (a) if it is carrying on business at the commencement of this Act, within two months after such commencement; or
- (b) if it begins to carry on business after the commencement of this Act, within one month after the commencement of business.

(4) Every partnership shall within the period specified in subsection (3) appoint an address for service of notices.

(5) Every change of precedent partner or agent of the partnership or of address for service of notices shall be notified to the Commissioner within fifteen days of such change.

(6) The precedent partner or the agent, as the case may be, shall be answerable for the doing of all such things as are required under this Act to be done by the partnership of which he is the representative and in case of default he shall be liable to the same penalties.

(7) Everything done by the precedent partner or the agent, as the case may be, which he is required to do in his representative capacity, shall be deemed to have been done by the partnership, and any notice given to or request made upon the precedent partner or the agent shall be deemed to have been given to or made upon the partnership.

PART XVI **MISCELLANEOUS**

129. All correspondence relating to the assessment and collection of tax including tax returns, addressed to the Commissioner and posted within Botswana by any person, may be sent free of postage

in envelopes which are marked "Income Tax" and "On Botswana Government Service".

Preservation
of
documents

130. (1) Subject to this section, every person carrying on business in Botswana shall preserve all books of account and other documents which are essential to the explanation of any entry in such books of account relating to that business for a period of seven years after the end of the tax year or accounting period to which such books of account or documents relate.

(2) Where –

- (a) a company has gone into liquidation; or
- (b) a person has died,

the Commissioner, on application by the liquidator or the executor prior to completion of the winding up of the company or administration of the estate, may approve of the disposal of any books of account or other documents within such lesser period than seven years that he thinks fit.

(3) The Commissioner may, subject to such conditions and in respect of such books of account or other documents as he may specify, authorize the retention of a microfilm copy of any books of account or other documents in lieu of the original books or documents.

(4) For the purposes of this section the books of account and other documents required to be preserved shall be deemed to include the record required to be kept under –

- (a) paragraph 11 of the Seventh Schedule;
- (b) paragraph 6 of the Eighth Schedule; and
- (c) paragraph 4 of the Ninth Schedule.

Regulations

131. The Minister may make regulations for the better carrying out of the purposes of this Act and without prejudice to the generality of the foregoing such regulations –

- (a) may prescribe all matters which are required or permitted to be prescribed;
- (b) may provide for the imposition by the Commissioner of penalties not exceeding forty rand for any breach of the regulations; and
- (c) may provide for the imposition by a court of fines not exceeding one hundred rand for any breach of the regulations.

Repeal and
saving
(81 of 1959)

132. (1) The Income Tax (Consolidation) Proclamation, 1959, is hereby repealed.

(22 of 1965)

(2) Section 22 of the Botswana Meat Commission Law, 1965, is hereby repealed.

(3) Nothing in the repeal effected by this section shall affect any liability to tax or any obligation arising in respect of any tax year

prior to the commencement of this Act, for which purposes the repealed legislation shall, subject to subsection (4), continue in force:

Provided that –

- (i) in relation to the tax year 1972/73, after the date of commencement of this Act the provisions of Parts X, XI, XII, XIII and XIV of this Act shall apply; and
- (ii) in relation to the payment, recovery and refund of any tax and the imposition and recovery of any interest in respect of any other tax year prior to the commencement of this Act the provisions of Part XIII of this Act shall apply.

(4) Where objection or appeal is made in relation to any matter arising under the previous Act neither the Collector nor any other person shall have the right to state a case to the High Court on any question of law in relation to any such matter.

(5) After the commencement of this Act in relation to any action taken under the previous Act, the Commissioner shall be deemed to have been appointed as Collector of Income Tax under the previous Act and is hereby authorized to commence or continue all such actions necessary on his part under the title of Commissioner or Commissioner of Taxes.

133. (1) The persons appointed as Collector of Income Tax and Assistant Collector of Income Tax under the previous Act, and serving on the date of the repeal thereof shall be deemed to have been appointed under this Act on such date as Commissioner and Deputy Commissioner respectively and references in any written law to the Collector of Income Tax or the Assistant Collector of Income Tax shall be construed as references to the Commissioner or Deputy Commissioner respectively. Transitional

(2) A public officer of a company appointed under the previous Act and holding that office on the date of the repeal thereof shall be deemed to be the public officer of the company appointed in relation to this Act.

(3) Any oath of fidelity or secrecy taken under the previous Act by any person appointed in relation to or employed in carrying out the provisions of that Act shall be deemed to have been taken under this Act.

(4) Any reference in this Act to a prior tax year shall, if the context so requires, include a reference to a year of assessment under the previous Act.

(5) Every development approval order, made under section 69A of the previous Act and in force at the commencement of this Act, shall be included in the Fourth Schedule, shall be deemed to have been made under this Act for the purposes of any reliefs available in respect of the tax year 1973/1974 and subsequent tax years and

any reference appearing therein to section 69A and to the Collector shall be deemed to be references to section 52 of this Act and to the Commissioner respectively.

(6) Where, but for the repeal of the previous Act, any person would have been entitled, in respect of the tax year 1973/1974, to set off as a deduction any balance of assessed loss carried forward from the preceding tax year, the Commissioner shall determine any apportionment of such amount as may be necessary to give effect to section 43.

(7) For the purposes of section 43, in relation to the tax year 1973/1974, an assessed loss shall be deemed to include, in the case of a business of farming, such amount of capital expenditure as, under the proviso to paragraph 17 (3) of the First Schedule to the previous Act, would have been deemed to have been incurred during the tax year 1973/1974 if that Act had not been repealed.

(8) Every international agreement for the avoidance of double taxation entered into under previous legislation and in force at the commencement of this Act shall be included in the Fifth Schedule, shall be deemed to have been made under this Act for the purposes of any liability to or relief from tax in respect of the tax year 1973/1974 and subsequent tax years and shall be read with such modifications and adaptations as may be necessary to bring it into conformity with the provisions of this Act.

(9) Every tax agreement entered into under section 6A of the previous Act and in force at the date of commencement of this Act shall be deemed to have been made under this Act for the purpose of any liability to or relief from tax in respect of the tax year 1973/1974 and subsequent tax years, but nothing herein shall be construed so as to vary the liability to tax of the person with whom such agreement was entered into if such variation would be contrary to the terms of the agreement entered into between the Government and that person.

(10) Any printed forms of notice, return or other document bearing the title "Collector" or "Collector of Income Tax" or the heading or a reference therein to the "Income Tax (Consolidation) Proclamation, 1959", may continue to be used after the date of commencement of this Act and in relation to a tax year to which this Act applies until stocks thereof are exhausted and the references thereon shall be deemed to be references to the "Commissioner", "Commissioner of Taxes" or the "Income Tax Act, 1973", as the case may be.

(11) A determination of the life of a mine, made by the Mining Commissioner under the previous Act, shall be deemed to have been made by the Commissioner under this Act, and any such determination made by the Mining Commissioner shall be subject to review under the Third Schedule at the end of the third tax year following such determination.

**FIRST SCHEDULE
ARRANGEMENT OF PARAGRAPHS**

**PART I
STOCK**

PARAGRAPH

1. Value of stock held to be included in tax return
2. Value of stock held at beginning of tax year
3. Value of stock held at end of tax year
4. Cost price of stock
5. Deemed cost of certain stock

PART II

FARMING LIVESTOCK AND PRODUCE

1. Value of livestock and produce to be included in tax return
2. Value of stock held at beginning of tax year
3. Value of livestock held at end of tax year
4. Value of breeding livestock held at end of tax year
5. Value of livestock held at end of tax year where no standard value specified
6. Value of produce held at end of tax year
7. Standard values
8. Deduction for livestock mortality risk
9. Livestock deemed to be held at end of tax year
10. Discontinuance of farming operations
11. Donations of livestock
Table of standard values

**PART I
STOCK**

(Sections 28 and 39)

1. Every person carrying on business, excluding a business of farming, shall include in his tax return for each tax year the value of all stock held and not disposed of by him (hereinafter referred to as "the value of stock held") at the beginning and end of each tax year.

Value of stock held to be included in tax return

2. The value of stock held by any person at the beginning of any tax year shall be deemed to be –

Value of stock held at beginning of tax year

(a) where he carried on his business on the last day of the previous tax year, the value of stock held on that date; and

(b) where he commenced business during the tax year, the cost to him of any stock acquired prior to the commencement of the business.

3. The value of stock held at the end of a tax year shall be deemed to be the cost to the person carrying on business less such amount, if any, as in the opinion of the Commissioner, is reasonable as

Value of stock held at end of tax year

representing the amount by which the value of such stock has been diminished because of damage, deterioration, obsolescence or other cause.

Cost price of stock

4. For the purposes of this Part the cost of any stock in relation to any date shall be –

- (a) the cost incurred in acquiring such stock; and
- (b) any further costs incurred up to such date in getting such stock into its then existing condition or location.

Deemed cost of certain stock

5. Where any stock has been acquired by any person

- (a) for a consideration which cannot be valued; or
- (b) otherwise than by way of a transaction at arm's length, such stock shall be deemed to have been acquired at a cost equal to the price which, in the opinion of the Commissioner, was the current market price of such stock on the date of acquisition.

PART II

FARMING LIVESTOCK AND PRODUCE

(Sections 29 and 39)

Value of livestock and produce to be included in tax return

1. Every farmer shall include in his tax return for each tax year the value of all livestock or produce held and not disposed of by him (hereinafter referred to as "the value of stock held") at the beginning and end of each tax year.

Value of stock held at beginning of tax year

2. The value of stock held at the beginning of a tax year shall be deemed to be –

- (a) where the farmer carried on farming operations on the last day of the previous tax year, the value of stock held on that date; and
- (b) where the farmer commenced farming during the tax year, the cost to him of any stock acquired prior to commencement of farming.

Value of livestock held at end of tax year

3. The value of livestock, not being livestock acquired by purchase for breeding purposes, held at the end of a tax year shall be deemed to be –

- (a) in the case of a farmer, other than a company –
 - (i) where the livestock was purchased, either the purchase price or the standard value applicable to such livestock; or
 - (ii) where the livestock was acquired otherwise than by purchase, the standard value applicable to such livestock; or
- (b) in the case of a company –
 - (i) where the livestock was purchased, either the purchase price or the price which, in the opinion of the Com-

missioner, was the current market price of such livestock; or

- (ii) where the livestock was acquired otherwise than by purchase, the price which, in the opinion of the Commissioner, was the current market price of such livestock.

- 4.** The value of livestock acquired by purchase for breeding purposes shall be the purchase price paid for that livestock. Value of breeding livestock held at end of tax year
- 5.** The value of any livestock for which no standard value has been specified in the Table to this Schedule shall be the purchase price or the current market price, whichever is the lower. Value of livestock held at end of tax year where no standard value specified
- 6.** The value of produce included in any return shall be such amount as, in the opinion of the Commissioner, is reasonable. Value of produce held at end of tax year
- 7.** The standard value applicable to any class of livestock for any tax year shall be – Standard values
- (a) the relevant standard value set out in the Table to this Schedule;
- (b) if, for the previous tax year, a higher standard value has been adopted by the farmer than that provided in the Table, then such higher standard value; or
- (c) if, for the tax year a higher standard value has been adopted by the farmer than that provided in the Table, in respect of a class of livestock not included in a previous return, then such higher standard value.
- 8.** Except at the commencement of farming, the value of livestock held by any farmer, other than a company, shall be reduced by such amount as, in the opinion of the Commissioner, is reasonable having regard to the risk of mortality of such livestock. Deduction for livestock mortality risk
- 9.** For the purposes of this Part any livestock which is the subject of an agreement between the owner and any other person whereby the owner retains the right of ownership of such livestock or of any progeny thereof, shall be deemed to be livestock held and not disposed of by such owner. Livestock deemed to be held at end of tax year
- 10.** Where any person discontinues farming operations during a tax year but does not dispose of his livestock or produce, the value of stock held at the end of the tax year shall be included in his gross income for that tax year. Discontinuation of farming operations

Donations of
livestock

11. Where any farmer makes a donation of any livestock or produce during a tax year to any other person there shall be included in the gross income of that farmer for that tax year an amount equal to the price which, in the opinion of the Commissioner, is the current market price of such livestock or produce.

TABLE
(paragraph 7)

Class of Livestock	Standard Value	
	1973/74	1974/75 and subsequent tax years
	R	R
CATTLE		
Calves under one year	6	7
Tollies and Heifers over one and under two years	13	16
Tollies and Heifers over two and under three years	22	25
Cows over three years	31	34
Oxen over three and under four years	38	45
Oxen over four years	46	55
Bulls	46	50
SHEEP		
Wethers	5	5
Rams	5	5
Ewes	5	5
Lambs under one year	1	1
GOATS		
Full grown	3	3
Kids	1	1
HORSES		
Stallions over four years	40	45
Mares over four years	31	35
Geldings over three years	33	35
Colts and Fillies: Three years	13	15
Two years	9	10
One year	7	8
Foals under one year	2	3
DONKEYS		
Jacks and Jennies over three years	4	4
Jacks and Jennies under three years	2	2
Foals under one year	-	-

Class of Livestock	Standard Value	
	1973/74	1974/75 and subsequent tax years
	R	R
MULES		
Over four years	30	30
Three years	20	20
Two years	14	14
One year	6	6
Under one year	—	—
PIGS		
Over one year	6	6
Under one year	3	3
POULTRY		
Over nine months	1	1

SECOND SCHEDULE
(Sections 37 and 54)

PART I

PERSONS EXEMPTED

The following persons shall be exempt from tax:

- (i) Botswana Housing Corporation;
- (ii) Botswana Power Corporation;
- (iii) National Development Bank;
- (iv) Water Utilities Corporation;
- (v) any approved benefit fund or approved superannuation fund;
- (vi) any building society;
- (vii) any institution which is, in the opinion of the Commissioner, a mutual savings bank, or a mutual loan association;
- (viii) any trade union or employees' association registered under the Trade Unions Act, 1969, or any association of employers established for a purpose approved by the Minister. (24 of 1969)
- (ix) any association of individuals formed for the purpose of promoting social or sporting amenities, not involving the acquisition of gain, or the possibility of future gain, by its individual members;
- (x) any religious, charitable or educational institution of a public character;
- (xi) any prescribed organization of which Botswana and one or more other countries are members.

PART II
CLASSES OF GROSS INCOME EXEMPT

The following classes of amounts included in gross income shall be exempt from tax to the extent indicated:

- (i) the official emoluments and allowances of the President;
- (ii) the official salaries and emoluments payable in respect of their offices to –
 - (a) heads of diplomatic missions and consulates accredited to Botswana; and
 - (b) members of the staffs of such missions and consulates, except such persons who are citizens of Botswana;
- (iii) the official salary and emoluments of an official of a prescribed organization of which Botswana and one or more other countries are members, to the prescribed extent and subject to the prescribed conditions;
- (24 of 1965) (iv) allowances exempted under the National Assembly (Salaries and Allowances) Law, 1965;
- (17 of 1967) (v) allowances exempted under the House of Chiefs (Salaries and Allowances) Act, 1967;
- (52 of 1968) (vi) allowances and gratuities exempted under the Judges (Salaries and Allowances) Act, 1968;
- (vii) any amount accrued to a public servant or consultant to the Government as director of any company other than his principal employer, where such amount is paid to his principal employer or to the Government;
- (viii) any amount accrued to a public servant as a housing allowance;
- (xi) any amount accrued to a public servant as a foreign service allowance whilst serving outside Botswana in a diplomatic mission of Botswana;
- (x) war pensions or gratuities;
- (xi) interest payable by the Post Office Savings Bank, including interest on Post Office Savings Bank Certificates;
- (13 of 1963) (xii) interest on national development bonds exempted under the National Development Bank Law, 1963;
- (5 of 1970) (xiii) interest on bonds exempted under the Development Loan (Botswana Registered Bonds) Act, 1970;
- (xiv) interest accrued to any non-resident company or institution in respect of any loan approved by the Minister where he is satisfied that the exemption of such interest will be in the public interest.
- (xv) any amount payable as –
 - (a) interest on any subscription share; or

- (b) a dividend from any ordinary indefinite period share, issued by any building society resident in Botswana;
- (xvi) payments to members by any co-operative thrift and loan society;
- (xvii) payments by way of sickness or accident benefits to any person, or to his dependants or heirs, by an approved benefit fund, a trade union, or under a policy of insurance covering sickness or accident;
- (xviii) amounts received by way of periodical payments in the nature of maintenance or alimony by a woman from her husband or former husband:

Provided that no exemption shall apply under this item where, for the purpose of making such payments, the husband or former husband has divested himself of any assets which produce gross income, or divested from himself amounts which would otherwise have been taken into account in ascertaining his taxable income:

- (xix) any amount payable to an employee, not being a citizen of Botswana, upon the *bona fide* termination of his employment where such payment is made by the employer –
 - (a) pursuant to the terms of a written contract of employment; or
 - (b) by reason of any law in force in Botswana, by way of bonus or gratuity, to the extent to which in the opinion of the Commissioner, the payment is reasonable in amount having regard to –
 - (1) the period of the employment;
 - (2) the nature of the employment;
 - (3) the salary payable to the employee; and
 - (4) the measure of retirement benefits generally prevailing at that time;
- (xx) any amounts accrued from a business or employment carried on in Botswana by a citizen of any other country or by a company registered under any law in force in any other country, where such business or employment is carried on in Botswana under an agreement with the Government for the provision of technical assistance to the Government, to the extent to which the Minister may, by notice in writing to the Commissioner, declare such amounts to be exempt from tax;
- (xxi) any amounts accrued to an insurance company from the carrying on of a business of life assurance in Botswana;
- (xxii) any amount payable by way of dividends to a resident public company by an associated company;
- (xxiii) any amount payable by way of dividends by Bamangwato

Concessions Limited, BCL (Sales) Limited or Botswana RST Limited to -

(a) a resident company; or

(b) any non-resident who does not carry on business in Botswana through a permanent establishment situate therein,

(6 of 1970) where such dividends are dividends to which Clause 11 (B) of the Schedule to the Selebi-Pikwe Tax Agreement Ratification Act, 1970, applies;

(xxiv) any amount payable by way of interest -

(a) by Bamangwato Concessions Limited or BCL (Sales) Limited; or

(b) by Botswana RST Limited, to the extent that such interest is in respect of moneys borrowed by that company and made available to Bamangwato Concessions Limited for the purposes of its mining operations or exploration in Botswana,

(6 of 1970) to any non-resident who does not carry on business in Botswana through a permanent establishment situate therein where such interest is interest to which Clause 11 (C) or 11 (F) of the Schedule to the Selebi-Pikwe Tax Agreement Ratification Act, 1970, applies;

(xxv) any amount payable by way of dividends by a private company which, in the same or any previous tax year, constituted the undistributed portion of a standard amount and has been deemed to be a dividend in the hands of the shareholders.

PART III

PERSONS EXEMPTED FROM CERTAIN OBLIGATIONS

The persons specified in the first column hereunder shall be exempted from the provisions of the Act to the extent indicated in the second column hereunder -

<i>Person</i>	<i>Section or other provision</i>
(i) Bamangwato Concessions Limited	Sections 58 and 107 and the Ninth Schedule in relation to dividends or interest paid to non-residents to which items (xxiii) or (xxiv) of Part II applies.
(ii) BCL Sales Limited	
(iii) Botswana RST Limited	

**THIRD SCHEDULE
CAPITAL ALLOWANCES
ARRANGEMENT OF PARAGRAPHS**

**PART I
INVESTMENT ALLOWANCES**

PARAGRAPH

1. Industrial buildings
2. Investment allowance for industrial buildings
3. Plant or machinery
4. Investment allowance for plant or machinery

**PART II
ANNUAL ALLOWANCES**

PARAGRAPH

1. Property held prior to the effective date
2. Annual allowances to correspond to allowances under previous Act
3. Limitation on annual allowance
4. Industrial building acquired on or after the effective date
5. Annual allowance, industrial buildings
6. Plant or machinery acquired after the effective date
7. Annual allowance, plant or machinery

**PART III
RESIDENTIAL ACCOMMODATION FOR EMPLOYEES**

1. Deduction allowable
2. Accommodation used for other purposes

**PART IV
FARMERS**

1. Deduction allowable

**PART V
MINING CAPITAL ALLOWANCE**

1. Mining capital allowance
2. Calculation of allowance
3. Life of a mine
4. Review of determination
5. Where life of mine exceeds thirty years
6. Separate calculations for different mines
7. Definition, residual capital expenditure
8. Balancing allowance and balancing charge

**PART VI
DISPOSAL OF PROPERTY**

1. Charge or allowance on disposal
2. Balancing allowance

Definition,
residual
capital
expenditure

7. The residual capital expenditure, in relation to any mine for any tax year, means the sum of –

(a) the residue of any mining capital expenditure incurred in previous tax years remaining after –

(i) the application of this Part to that mining capital expenditure; and

(ii) the deduction of the disposal value of any property included in that mining capital expenditure which was disposed of in that first-mentioned tax year; and

(b) any mining capital expenditure incurred during that tax year, and in relation to the tax year commencing on the 1st July 1973, the residue referred to in subparagraph (a) shall be the balance of capital expenditure unredeemed at the end of the previous tax year as calculated under the previous Act.

Balancing
allowance
and
balancing
charge

8. Where a mine to which this Part applies is disposed of in any tax year, the provisions of paragraphs 2 and 3 of Part VI shall apply; and the references therein to allowances shall be deemed to relate to the mining capital allowances granted for previous tax years in respect of the mining capital expenditure in relation to that mine.

PART VI DISPOSAL OF PROPERTY

Charge or
allowance on
disposal

1. Where, in relation to any business other than a business of mining carried on by any person, allowances have been granted in previous tax years in respect of any property represented by any expenditure to which such provisions relate and that property is disposed of in any tax year, a balancing allowance or a balancing charge shall be made as provided in this Part.

Balancing
allowance

2. Where the expenditure incurred by any person on the property referred to in paragraph 1 disposed of in any tax year exceeds the aggregate of –

(a) the allowances granted in previous tax years in respect thereof; and

(b) the disposal value,

the amount of such excess (referred to in this Act as “a balancing allowance”) shall be deducted from the business assessable income of such person for that tax year.

Balancing
charge

3. Where the disposal value of the property referred to in paragraph 1 disposed of in any tax year exceeds the difference between –

(a) the expenditure incurred by that person on that property; and

(b) the annual allowances which have been granted in previous tax years in respect thereof,

the amount of such excess (referred to in this Act as “a balancing charge”) shall be included in the gross income of such person for that tax year.

4. Where, but for this paragraph, the amount of any balancing charge would be taken into account in ascertaining the gross income of any person for any tax year, that person may elect, by notice in writing given to the Commissioner, when lodging his tax return for that year that, in lieu of the balancing charge being so taken into account, it may be deducted, in accordance with paragraph 5 or 6, from the expenditure incurred on any property (hereinafter referred to as “the replacement property”) acquired by him for the purposes of his business during the tax year to replace the property disposed of.

Replacement property

5. For the purposes of determining annual allowances under Part II, the expenditure incurred on the replacement property in respect of which an election is made under paragraph 4 shall be reduced by the amount of the balancing charge therein referred to:

Annual allowance on replacement property

Provided that such reduction shall in no way affect –

- (i) the entitlement to any investment allowance; or
- (ii) the calculation of any balancing allowance or balancing charge in the event of the subsequent disposal of the replacement property,

by reference to the full amount of the expenditure incurred.

6. Where an election is made by any person under paragraph 4 in respect of the amount of any balancing charge and that balancing charge exceeds the expenditure incurred on the replacement property –

Effect of election

- (a) no annual allowance shall be granted under Part II in respect of the replacement property; and
- (b) the amount of the excess shall be included in the gross income of that person for that tax year.

7. Where, in relation to any business carried on by any person, an investment allowance has been granted to that person under this Act or the previous Act in respect of any property being an industrial building, plant or machinery, and that property is disposed of by way of sale, exchange, gift or withdrawal from use in that business within –

Recovery charge

- (a) in the case of an industrial building, five years; or
- (b) in the case of plant or machinery, three years,

after the end of the tax year in which such investment allowance was granted then a recovery charge equal to the amount of the investment allowance previously granted shall be included in the gross income of that person for the tax year in which such property was so disposed of.

PART VII
DEFINITIONS

Definitions

I. In this Schedule –

“allowance granted” means the sum of –

- (a) annual allowances under Part II; and
- (b) allowances in respect of capital expenditure granted under the previous Act;

“annual allowance”, in relation to any case to which paragraph 3(2) of Part II applies, means the annual allowance which would have been granted in respect of any item of property if no restriction had been imposed under that subparagraph;

“approved industrial business” means –

- (a) an hotel business;
- (b) any business the predominant activity of which is a process of manufacture or a process which the Commissioner is satisfied is similar to a process of manufacture; or
- (c) the letting of an industrial building or plant or machinery for use by the lessee thereof in any business of the kind referred to in item (a) or (b);

“business assessable income” means that part of the assessable income of any person derived from a business carried on by him;

“business chargeable income” means that part of the chargeable income of any person derived from a business carried on by him;

“disposal value” means, in relation to –

- (a) the scrapping of property, the scrap value thereof;
- (b) the disposal of property by way of –
 - (i) sale, the net proceeds of sale;
 - (ii) exchange, the market value of any asset acquired through such exchange adjusted to take into account any monetary consideration made;
 - (iii) compulsory acquisition, the amount for which it was compulsorily acquired; or
 - (iv) gift, the market value thereof;
- (c) withdrawal of property from use in the business, the market value thereof; or
- (d) the loss or destruction of property, any amount received for the remains of such property together with any amounts accrued by way of compensation or indemnity for such loss or destruction;

“disposed of”, in relation to a unit of property, means scrapped,

sold, exchanged, given away, withdrawn from use, lost or destroyed;

“dwelling house” includes a unit of residential accommodation in a building constructed for the accommodation of more than one person;

“effective date”, in relation to expenditure incurred by any person prior to or subsequent to the commencement of this Act, means the 30th June 1973 or the last day of the accounting period which determines the business chargeable income of that person for the tax year ending on the 30th June 1973;

“expenditure” means expenditure of a capital nature;

“expenditure incurred”, in relation to property acquired by any person, means the cost to that person of such property or, where such property was acquired by him —

(a) for a consideration which cannot be valued;

(b) otherwise than by way of a transaction at arm’s length; or

(c) prior to being brought into use in his business,

the amount which the Commissioner considers to be equal to the market value of the property at the time it was acquired.

FOURTH SCHEDULE

DEVELOPMENT APPROVAL ORDERS

PART I

DEVELOPMENT APPROVAL (HOLIDAY INNS INTERNATIONAL (PROPRIETARY) LIMITED) ORDER, 1972

Statutory Instrument No. 36 of 1972 as amended by Statutory Instrument No. 54 of 1972.

ARRANGEMENT OF SECTIONS

SECTION

1. Citation
2. Prescription of enterprise
3. Tax relief
4. Period of Order
Schedule

1. This Order may be cited as the Development Approval Citation
(Holiday Inns International (Proprietary) Limited) Order, 1972.

2. Holiday Inns International (Proprietary) Limited is prescribed as an enterprise which may be granted tax relief for the Prescription
of enterprise
purposes of its business of operating an hotel, casino and amenities associated therewith (hereinafter referred to as “the development”) in Gaborone on Lots 4727 and 4910 in Gaborone as described in the Memorandum of Agreement between the Government of the

Republic of Botswana and Holiday Inns International (Pty.) Limited, dated the 29th September, 1971.

Tax relief	3. The enterprise may be granted relief at the rates and in respect of the qualifying expenditure set out in the Schedule.
Period of Order	4. Subject to the provisions of section 69A of the Proclamation this Order shall be in respect of the period of five years commencing on the 1st November, 1971, and shall apply only to qualifying expenditure incurred necessarily and exclusively for the purposes of the development during such period.

SCHEDULE

INVESTMENT ALLOWANCE	Rate per centum
<i>Qualifying expenditure in respect of:</i>	
New buildings, structures or works	10
Used buildings, structures or works	Nil
New plant, machinery, implements, articles or utensils	25
Used plant, machinery, implements, articles or utensils	Nil
INITIAL ALLOWANCE	Rate per centum
<i>Qualifying expenditure in respect of:</i>	
New buildings, structures or works	25
Used buildings, structures or works	Nil
New plant, machinery, implements, articles or utensils	Such rate, not exceeding 100 per centum, as the enterprise may claim
Used plant, machinery, implements, articles or utensils	Nil
ANNUAL ALLOWANCE	Rate per centum
<i>Qualifying expenditure in respect of:</i>	
New buildings, structures or works	9
Used buildings structures or works	2
New plant, machinery, implements, articles or utensils	Such rate, not exceeding 100 per centum, as the enterprise may claim
Used plant, machinery, implements, articles or utensils	Such rates as may be determined by the Collector to be just and reasonable as representing the diminished values of the assets.

FIFTH SCHEDULE
INTERNATIONAL AGREEMENTS FOR AVOIDANCE OF
DOUBLE TAXATION

PART I

THE UNITED KINGDOM AGREEMENT

(High Commissioner's Notice No. 259 of 1949 as amended by
Treaty Series No. 2 of 1970)

It is hereby notified for general information that, under and by virtue of section 64A of the Bechuanaland Protectorate Income Tax (Consolidation) Proclamation, 1940 (as amended by the Bechuanaland Protectorate Proclamation, 1948), His Excellency the High Commissioner has concluded an Agreement with the Government of Great Britain and Northern Ireland for the purposes of providing for the prevention of or relief from double taxation.

The terms of the Agreement are set out in the Schedule to this Notice.

By Command of His Excellency the High Commissioner.

W.A.W. CLARK
Chief Secretary

High Commissioner's Office,
Pretoria.
9th December, 1949.

SCHEDULE

**ARRANGEMENT BETWEEN THE GOVERNMENT OF THE
UNITED KINGDOM OF GREAT BRITAIN AND NORTH-
ERN IRELAND AND THE GOVERNMENT OF THE
REPUBLIC OF BOTSWANA FOR THE AVOIDANCE OF
DOUBLE TAXATION AND THE PREVENTION OF FISCAL
EVASION WITH RESPECT TO TAXES ON INCOME**

1. (1) The taxes which are the subject of this Arrangement are –
 - (a) in the United Kingdom: the income tax (including surtax) and the profits tax (hereinafter referred to as "United Kingdom tax");
 - (b) in Botswana: the normal tax and the super tax (hereinafter referred to as "Botswana tax").
- (2) This Arrangement shall also apply to any other taxes of a substantially similar character imposed in the United Kingdom or Botswana after this Arrangement has come into force.
2. (1) In this Arrangement, unless the context otherwise requires –
 - (a) the term "United Kingdom" means Great Britain and Northern Ireland, excluding the Channel Islands and the Isle of Man;

- (b)* the term “Botswana” means the Republic of Botswana;
- (c)* the terms “one of the territories” and “the other territory” mean the United Kingdom or Botswana, as the context requires;
- (d)* the term “tax” means United Kingdom tax or Botswana tax, as the context requires;
- (e)* the term “person” includes any body of persons, corporate or not corporate;
- (f)* the term “company” includes any body corporate;
- (g)* the terms “resident of the United Kingdom” and “resident of Botswana” mean respectively any person who is resident in the United Kingdom for the purpose of United Kingdom tax and not resident in Botswana for the purposes of Botswana tax and any person who is resident in Botswana for the purposes of Botswana tax and not resident in the United Kingdom for the purposes of United Kingdom tax: and a company shall be regarded as resident in the United Kingdom if its business is managed and controlled in the United Kingdom and as resident in Botswana if its business is managed and controlled in Botswana;
- (h)* the terms “resident of one of the territories” and “resident of the other territory” mean a person who is a resident of the United Kingdom or a person who is a resident of Botswana, as the context requires;
- (i)* the terms “United Kingdom enterprise” and “Botswana enterprise” mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of the United Kingdom and an industrial or commercial enterprise or undertaking carried on by a resident of Botswana; and the terms “enterprise of one of the territories” and “enterprise of the other territory” mean a United Kingdom enterprise or a Botswana enterprise, as the context requires;
- (j)* the term “industrial or commercial profits” does not include income in the form of rents, royalties (other than rents or royalties in respect of motion picture films), interest, dividends, management charges and remuneration for labour or personal services, and in relation to Botswana tax the term “profits” means income;
- (k)* the term “permanent establishment”, when used with respect to an enterprise of one of the territories, means a branch, management or other fixed place of business, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprise or has a stock of merchandise from which he regularly fills orders on its behalf.

An enterprise of one of the territories shall not be deemed to have a permanent establishment in the other territory merely because it carries on business dealings in that other territory through a *bona fide* broker or general commission agent acting in the ordinary course of his business as such.

The fact that an enterprise of one of the territories maintains in the other territory a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute that fixed place of business a permanent establishment of the enterprise.

The fact that a company which is a resident of one of the territories has a subsidiary company which is a resident of the other territory or which is engaged in trade or business in that other territory (whether through a permanent establishment or otherwise), shall not of itself constitute that subsidiary company a permanent establishment of its parent company.

(2) Where under this Arrangement any income is exempt from tax in one of the territories if (with or without other conditions), it is subject to tax in the other territory, and that income is subject to tax in that other territory by reference to the amount thereof which is remitted to or received in that other territory, the exemption to be allowed under this Arrangement in the first-mentioned territory shall apply only to the amount so remitted or received.

(3) In the application of the provisions of this Arrangement by the United Kingdom or Botswana, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of the United Kingdom, or, as the case may be, Botswana, relating to the taxes which are the subject of this Arrangement.

3. (1) The industrial or commercial profits of a United Kingdom enterprise shall not be subject to Botswana tax unless the enterprise is engaged in trade or business in Botswana through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by Botswana, but only on so much of them as is attributable to that permanent establishment.

(2) The industrial or commercial profits of a Botswana enterprise shall not be subject to United Kingdom tax unless the enterprise is engaged in trade or business in the United Kingdom through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by the United Kingdom, but only on so much of them as is attributable to that permanent establishment.

(3) Where an enterprise of one of the territories is engaged in trade or business in the other territory through a permanent establishment situated therein, there shall be attributed to that

permanent establishment the industrial or commercial profits which it might be expected to derive from its activities in that other territory if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.

(4) No portion of any profits arising from the sale of goods or merchandise by an enterprise of one of the territories shall be attributed to a permanent establishment situated in the other territory by reason of the mere purchase of the goods or merchandise within that other territory.

4. Where –

- (a) an enterprise of one of the territories participates directly or indirectly in the management, control or capital of an enterprise of the other territory; or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the territories and an enterprise of the other territory; and
- (c) in either case, conditions are made or imposed between the two enterprises, in their commercial or financial relations, which differ from those which would be made between independent enterprises,

then any profits which would but for those conditions have accrued to one of the enterprises but by reason of those conditions have not so accrued may be included in the profits of that enterprise and taxed accordingly.

5. Notwithstanding the provisions of paragraphs 3 and 4, profits which a resident of one of the territories derives from operating ships or aircraft shall be exempt from tax in the other territory.

6. (1) Dividends paid by a company resident in one of the territories to a resident of the other territory who is subject to tax in that other territory in respect thereof and not engaged in trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from any tax in that first-mentioned territory which is chargeable on dividends in addition to the tax chargeable in respect of the profits or income of the company.

(2) Where a company which is a resident of one of the territories derives profits or income from sources within the other territory, the Government of that other territory shall not impose any form of taxation on dividends paid by the company to persons not resident in that other territory, or any tax in the nature of an undistributed profits tax on undistributed profits of the company, by reason of the fact that those dividends or undistributed profits represent, in whole or in part, profits or income so derived.

(3) If the recipient of a dividend is a company which owns 10 per cent or more of the class of shares in respect of which the dividend is paid then subparagraph (1) shall not apply to the dividend to the extent that it can have been paid only out of profits which the company paying the dividend earned or other income which it received in a period ending twelve months or more before the relevant date. For the purposes of this subparagraph the term "relevant date" means the date on which the beneficial owner of the dividend became the owner of 10 per cent or more of the class of shares in question: Provided that this subparagraph shall not apply if the beneficial owner of the dividend shows that the shares were acquired for *bona fide* commercial reasons and not primarily for the purpose of securing the benefit of this paragraph.

7. (1) Any royalty derived from sources within one of the territories by a resident of the other territory who is subject to tax in that other territory in respect thereof and is not engaged in trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from tax in that first-mentioned territory; but no exemption shall be allowed under this paragraph in respect of so much of any royalty as exceeds an amount which represents a fair and reasonable consideration for the rights for which the royalty is paid.

(2) In this paragraph the term "royalty" means any royalty or other amount paid as consideration for the use of, or for the privilege of using, any copyright, patent, design, secret process or formula, trade-mark, or other like property, but does not include a royalty or other amount paid in respect of the operation of a mine or quarry or of other extraction of natural resources.

8. (1) Remuneration, including pensions, paid by the Government of one of the territories to any individual for services rendered to that Government in the discharge of governmental functions shall be exempt from tax in the other territory if the individual is not ordinarily resident in that territory or (where the remuneration is not a pension) is ordinarily resident in that other territory solely for the purpose of rendering those services.

(2) The provisions of this paragraph shall not apply to payments in respect of services rendered in connexion with any trade or business carried on by either of the Governments for purposes of profit.

9. (1) An individual who is a resident of the United Kingdom shall be exempt from Botswana tax on profits or remuneration in respect of personal (including professional) services performed within Botswana in any year of assessment if –

(a) he is present within Botswana for a period or periods not exceeding in the aggregate 183 days during that year; and

(b) the services are performed for or on behalf of a person resident in the United Kingdom; and

(c) the profits or remuneration are subject to United Kingdom tax.

(2) An individual who is a resident of Botswana shall be exempt from United Kingdom tax on profits or remuneration in respect of personal (including professional) services performed within the United Kingdom in any year of assessment if –

(a) he is present within the United Kingdom for a period or periods not exceeding in the aggregate 183 days during that year; and

(b) the services are performed for or on behalf of a person resident in Botswana; and

(c) the profits or remuneration are subject to Botswana tax.

(3) The provisions of this paragraph shall not apply to the profits or remuneration of public entertainers such as stage, motion picture or radio artistes, musicians and athletes.

10. (1) Any pension (other than a pension paid by the Government of Botswana for services rendered to it in the discharge of governmental functions), and any annuity derived from sources within Botswana by an individual who is a resident of the United Kingdom and subject to United Kingdom tax in respect thereof, shall be exempt from Botswana tax.

(2) Any pension (other than a pension paid by the Government of the United Kingdom for services rendered to it in the discharge of governmental functions) and any annuity, derived from sources within the United Kingdom by an individual who is a resident of Botswana and subject to Botswana tax in respect thereof, shall be exempt from United Kingdom tax.

(3) The term “annuity” means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in consideration of money paid.

11. The remuneration derived by a professor or teacher who is ordinarily resident in one of the territories, for teaching, during a period of temporary residence not exceeding two years, at a university, college, school or other educational institution in the other territory, shall be exempt from tax in that other territory.

12. A student or business apprentice from one of the territories who is receiving full-time education or training in the other territory shall be exempt from tax in that other territory on payments made to him by persons in the first-mentioned territory for the purposes of his maintenance, education or training.

13. Subject to the provisions of paragraph 3 (3) of this Arrangement, a resident of the United Kingdom whether carrying on business in Botswana or not, shall be exempt from Botswana tax in respect of any income received or accruing from any country outside Botswana in respect of which he is subject to United Kingdom tax.

14. (1) Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom (which shall not affect the general principle hereof) –

(a) Botswana tax payable under the laws of Botswana and in accordance with this Arrangement, whether directly or by deduction, on profits or income from sources within Botswana shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits or income by reference to which the Botswana tax is computed. Provided that in the case of a dividend the credit shall only take into account such tax in respect thereof as is additional to any tax payable by the company on the profits out of which the dividend is paid and is ultimately borne by the recipient without reference to any tax so payable.

(b) Where a company which is a resident of Botswana pays a dividend to a company resident in the United Kingdom which controls directly or indirectly at least 10 per cent of the voting power in the first-mentioned company, the credit shall take into account (in addition to any Botswana tax for which credit may be allowed under (a) of this subparagraph) the Botswana tax payable by that first-mentioned company in respect of the profits out of which such dividend is paid.

(2) If Botswana tax is payable, whether directly or by deduction, in respect of income derived from sources within the United Kingdom, then, subject to the provisions of the law of Botswana regarding the allowance as a credit against Botswana tax of tax payable in a territory outside Botswana (which shall not affect the general principle hereof) –

(a) United Kingdom tax payable under the laws of the United Kingdom and in accordance with this Arrangement, whether directly or by deduction, on profits or income from sources within the United Kingdom shall be allowed as a credit against any Botswana tax computed by reference to the same profits or income by reference to which the United Kingdom tax is computed. Provided that in the case of a dividend the credit shall only take into account such tax in respect thereof as is additional to any tax payable by the company on the profits out of which the dividend is paid and is ultimately borne by the recipient without reference to any tax so payable.

(b) Where a company which is a resident of the United Kingdom pays a dividend to a company resident in Botswana which controls directly or indirectly at least 10 per cent of the voting power in the first-mentioned company, the credit shall take into account (in addition to any United Kingdom tax for which credit may be allowed under (a) of this subparagraph) the United Kingdom tax payable by that first-mentioned company in respect of the profits out of which such dividend is paid.

(3) For the purposes of this paragraph profits or remuneration for personal (including professional) services performed in one of the territories shall be deemed to be income from sources within that territory, and the services of an individual whose services are wholly or mainly performed in ships or aircraft operated by a resident of one of the territories shall be deemed to be performed in that territory.

(4) Where Botswana income tax is payable for a year for which this Arrangement has effect in respect of any income in respect of which United Kingdom income tax is payable for a year prior to the year beginning on the 6th April, 1949, then –

- (a) in the case of a person resident in Botswana, the Botswana income tax shall, for the purposes of subparagraph (2) of this paragraph, be deemed to be reduced by the amount of any relief allowable in respect thereof under the provisions of section 27 of the United Kingdom Finance Act, 1920; and
- (b) in the case of a person resident in the United Kingdom, the provisions of section sixty-four A of the Botswana Income Tax (Consolidation) Proclamation, 1940, shall apply for the purposes of the allowance of relief from Botswana tax.

15. (1) The taxation authorities of the United Kingdom and Botswana shall exchange such information (being information available under their respective taxation laws) as is necessary for carrying out the provisions of this Arrangement or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of this Arrangement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of this Arrangement. No information shall be exchanged which would disclose any trade secret or trade process.

(2) As used in this paragraph, the term “taxation authorities” means the Commissioners of Inland Revenue or their authorised representative in the case of the United Kingdom and the Collector of Income Tax or his authorised representative in the case of Botswana.

(3) If the recipient of a dividend is a company which owns 10 per cent or more of the class of shares in respect of which the dividend is paid then subparagraph (1) shall not apply to the dividend to the extent that it can have been paid only out of profits which the company paying the dividend earned or other income which it received in a period ending twelve months or more before the relevant date. For the purposes of this subparagraph the term "relevant date" means the date on which the beneficial owner of the dividend became the owner of 10 per cent or more of the class of shares in question: Provided that this subparagraph shall not apply if the beneficial owner of the dividend shows that the shares were acquired for *bona fide* commercial reasons and not primarily for the purpose of securing the benefit of this paragraph.

7. (1) Any royalty derived from sources within one of the territories by a resident of the other territory who is subject to tax in that other territory in respect thereof and is not engaged in trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from tax in that first-mentioned territory; but no exemption shall be allowed under this paragraph in respect of so much of any royalty as exceeds an amount which represents a fair and reasonable consideration for the rights for which the royalty is paid.

(2) In this paragraph the term "royalty" means any royalty or other amount paid as consideration for the use of, or for the privilege of using, any copyright, patent, design, secret process or formula, trade-mark, or other like property, but does not include a royalty or other amount paid in respect of the operation of a mine or quarry or of other extraction of natural resources.

8. (1) Remuneration, including pensions, paid by the Government of one of the territories to any individual for services rendered to that Government in the discharge of governmental functions shall be exempt from tax in the other territory if the individual is not ordinarily resident in that territory or (where the remuneration is not a pension) is ordinarily resident in that other territory solely for the purpose of rendering those services.

(2) The provisions of this paragraph shall not apply to payments in respect of services rendered in connexion with any trade or business carried on by either of the Governments for purposes of profit.

9. (1) An individual who is a resident of the United Kingdom shall be exempt from Botswana tax on profits or remuneration in respect of personal (including professional) services performed within Botswana in any year of assessment if –

(a) he is present within Botswana for a period or periods not exceeding in the aggregate 183 days during that year; and

(b) the services are performed for or on behalf of a person resident in the United Kingdom; and

(c) the profits or remuneration are subject to United Kingdom tax.

(2) An individual who is a resident of Botswana shall be exempt from United Kingdom tax on profits or remuneration in respect of personal (including professional) services performed within the United Kingdom in any year of assessment if –

(a) he is present within the United Kingdom for a period or periods not exceeding in the aggregate 183 days during that year; and

(b) the services are performed for or on behalf of a person resident in Botswana; and

(c) the profits or remuneration are subject to Botswana tax.

(3) The provisions of this paragraph shall not apply to the profits or remuneration of public entertainers such as stage, motion picture or radio artistes, musicians and athletes.

10. (1) Any pension (other than a pension paid by the Government of Botswana for services rendered to it in the discharge of governmental functions), and any annuity derived from sources within Botswana by an individual who is a resident of the United Kingdom and subject to United Kingdom tax in respect thereof, shall be exempt from Botswana tax.

(2) Any pension (other than a pension paid by the Government of the United Kingdom for services rendered to it in the discharge of governmental functions) and any annuity, derived from sources within the United Kingdom by an individual who is a resident of Botswana and subject to Botswana tax in respect thereof, shall be exempt from United Kingdom tax.

(3) The term “annuity” means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in consideration of money paid.

11. The remuneration derived by a professor or teacher who is ordinarily resident in one of the territories, for teaching, during a period of temporary residence not exceeding two years, at a university, college, school or other educational institution in the other territory, shall be exempt from tax in that other territory.

12. A student or business apprentice from one of the territories who is receiving full-time education or training in the other territory shall be exempt from tax in that other territory on payments made to him by persons in the first-mentioned territory for the purposes of his maintenance, education or training.

16. This Arrangement shall come into force on the date on which the last of all such things shall have been done in the United Kingdom and Botswana as are necessary to give the Arrangement the force of law in the United Kingdom and Botswana respectively, and shall thereupon have effect –

- (a) in the United Kingdom: As respects income tax, for any year of assessment beginning on or after the 6th April, 1949; as respects surtax, for any year of assessment beginning on or after the 6th April, 1948; and as respects profits tax, in respect of the following profits –
- (i) profits arising in any chargeable accounting period beginning on or after the 1st April, 1949;
 - (ii) profits attributable to so much of any chargeable accounting period falling partly before and partly after that date as falls after that date;
 - (iii) profits not so arising or attributable by reference to which income tax is, or but for the present Arrangement would be, chargeable for any year of assessment beginning on or after the 6th April, 1949;
- (b) in Botswana: As respects the normal tax and the super tax in respect of the year of assessment ending on the 30th June, 1949, and subsequent years.

17. This Arrangement shall continue in effect indefinitely but either of the Governments may, on or before the 30th day of September in any calendar year after the year 1950, give notice of termination to the other Government and, in that event, this Arrangement shall cease to be effective –

- (a) in the United Kingdom: As respects income tax, for any year of assessment beginning on or after the 6th April in the calendar year next following that in which the notice is given; and as respects surtax, for any year of assessment beginning on or after 6th April, in the calendar year in which the notice is given; and as respects profits tax, in respect of the following profits –
- (i) profits arising in any chargeable accounting period beginning on or after the 1st April in the calendar year next following that in which the notice is given;
 - (ii) profits attributable to so much of any chargeable accounting period falling partly before and partly after that date as falls after that date;
 - (iii) profits not so arising or attributable by reference to which income tax is chargeable for any year of assessment beginning on or after the 6th April, in that next following calendar year;

(b) in Botswana: As respects the normal tax and the super tax in respect of any year of assessment ending on or after the 30th day of June in the calendar year next following that in which such notice is given.

PART II

THE SOUTH AFRICAN AGREEMENT

(High Commissioner's Notice No. 70 of 1959)

It is hereby notified for general information, in accordance with the provisions of section sixty-four of the Income Tax Proclamation (Chapter 73 of the Laws of the Bechuanaland Protectorate), that an Agreement as set out in the Schedule hereto has been concluded between the Government of Great Britain and Northern Ireland and the Government of the Union of South Africa.

By Command of His Excellency the High Commissioner.

C.R. LATIMER,
for Deputy High Commissioner.

High Commissioner's Office,
Pretoria.
14th July, 1959.

AGREEMENT

BETWEEN THE GOVERNMENT OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE UNION OF SOUTH AFRICA FOR THE AVOID- ANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of Great Britain and Northern Ireland and the Government of the Union of South Africa, desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income imposed in the Union of South Africa and in the Bechuanaland Protectorate, have agreed as follows:

ARTICLE I

- (1) The Taxes which are the subject of the present Agreement are:
- (a) In the Union of South Africa: The normal tax and super tax (hereinafter referred to as Union Tax).
 - (b) In the Bechuanaland Protectorate: The normal tax and super tax (hereinafter referred to as Bechuanaland tax).

(2) The present Agreement shall also apply to any other taxes of a substantially similar character imposed in the Union of South Africa or the Bechuanaland Protectorate subsequent to the date of signature of the present Agreement.

ARTICLE II

(1) In the present Agreement unless the context otherwise requires:

- (a) the term "Union" means the Union of South Africa;
- (b) the term "Bechuanaland" means the Bechuanaland Protectorate and references in Articles II to XII inclusive, to a Government shall, in regard to the Bechuanaland Protectorate, be construed as references to the Government of Bechuanaland;
- (c) the terms "territory of one of the Governments" and "territory of the other Government" mean the Union or Bechuanaland, as the context requires;
- (d) the term "tax" means Union tax or Bechuanaland tax, as the context requires;
- (e) the term "person" includes any body of persons, corporate or not corporate;
- (f) the term "company" means any body corporate;
- (g) the terms "resident of the Union" and "resident of Bechuanaland" mean respectively any person who is ordinarily resident in the Union for the purposes of Union tax and not ordinarily resident in Bechuanaland for the purposes of Bechuanaland tax and any person who is ordinarily resident in Bechuanaland for the purposes of Bechuanaland tax and not ordinarily resident in the Union for the purposes of Union tax: a company shall be regarded as resident in the Union if its business is managed and controlled in the Union and as resident in Bechuanaland if its business is managed and controlled in Bechuanaland;
- (h) the term "resident of one of the territories" means a person who is a resident of the Union or a person who is a resident of Bechuanaland, as the case may be;
- (i) the terms "company of one of the Governments" and "company of the other Government" mean a company which is a resident of the Union or a company which is a resident of Bechuanaland, as the context requires;
- (j) the terms "Union enterprise" and "Bechuanaland enterprise" mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of the Union and an industrial or commercial enterprise or undertaking carried on by a resident of Bechuanaland, and the

terms "enterprise of one of the Governments" and "enterprise of the other Government" mean a Union enterprise or a Bechuanaland enterprise, as the context requires;

- (k) the term "permanent establishment" when used with respect to an enterprise of one of the Governments means a branch, management, factory, or other fixed place of business, a mine, quarry or any other place of natural resources subject to exploitation. It also includes a place where construction work or the installation of plant or machinery is carried on, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of the enterprise or has a stock of merchandise from which he regularly fills orders on its behalf.

In this connexion –

- (i) an enterprise of one of the Governments shall not be deemed to have a permanent establishment in the territory of the other Government merely because it carries on business dealings in the territory of that other Government through a *bona fide* broker or general commission agent acting in the ordinary course of his business as such;
 - (ii) the fact that an enterprise of one of the Governments maintains in the territory of the other Government a fixed place of business exclusively for the purchase of goods or merchandise, shall not of itself constitute that fixed place of business a permanent establishment of the enterprise;
 - (iii) the fact that a company of one of the Governments has a subsidiary company which is a company of the other Government or which is engaged in trade or business in the territory of that other Government (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary company a permanent establishment of its parent company;
- (l) the term "industrial or commercial profits" includes mining, farming and agency profits but does not include income in the form of royalties, rents (including royalties or rents on cinematograph films), interest, dividends, management charges, remuneration for personal services or profits from the operation of transport services;
- (m) the term "profits" means "taxable income" as defined under the laws of the Union and Bechuanaland relating to the taxes which are the subject of this Agreement;

(n) the term "taxation authorities means the Commissioner for Inland Revenue or his authorised representative in the case of the Union and the Collector of Income Tax or his authorised representative in the case of Bechuanaland.

(2) In the application of the provisions of the present Agreement by one of the Governments, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Government relating to the taxes which are the subject of the present Agreement.

(3) The terms "Union tax" and "Bechuanaland tax" do not include any sum payable in respect of any default or omission in relation to the taxes which are the subject of this Agreement or which represent a penalty imposed under the law of either territory relating to those taxes.

ARTICLE III

(1) The industrial or commercial profits of an enterprise of one of the Governments shall not be subject to tax in the territory of the other Government unless the enterprise is engaged in trade or business in the other territory through a permanent establishment in that other territory. If it is so engaged tax may be imposed on those profits by the other territory but only on so much of them as is attributable to that permanent establishment.

(2) Where an enterprise of one of the Governments is engaged in trade or business in the territory of the other Government through a permanent establishment situated therein, there shall be attributed to such permanent establishment the industrial or commercial profits which it might be expected to derive if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.

(3) No portion of any profits arising from the sale of goods or merchandise by an enterprise of one of the Governments shall be attributed to a permanent establishment situated in the territory of the other Government by reason of the mere purchase of goods or merchandise within the territory of that other Government.

(4) Profits derived by an enterprise of one of the Governments from sales, under contracts concluded in the territory of that Government, of goods or merchandise stocked in a warehouse or depot in the other territory for convenience of delivery and not for purposes of display shall not be attributed to a permanent establishment of the enterprise in that other territory notwithstanding that the offers of purchase have been obtained by an agent of the enterprise in that territory and transmitted by him to the enterprise for acceptance.

(5) If the information available to the taxation authorities concerned is inadequate to determine the profits to be attributed to the permanent establishment, nothing in the preceding paragraphs shall affect the application of the law of either territory in relation to the liability of the permanent establishment to pay tax on an amount determined by the exercise of a discretion or the making of an estimate by the taxation authorities of that territory: Provided that such discretion shall be exercised or such estimate shall be made, so far as the information available to the taxation authorities permits, in accordance with the principles stated in the preceding paragraphs of this Article.

ARTICLE IV

(1) Where –

- (a) an enterprise of one of the Governments participates directly or indirectly in the management, control or capital of an enterprise of the other Government; or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the Governments and an enterprise of the other Government; and
- (c) in either case, conditions are made or imposed between the two enterprises, in their commercial or financial relations, which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises but by reason of those conditions have not so accrued may be included in the profits of that enterprise and taxed accordingly.

(2) Profits included in the profits of an enterprise of one of the Governments under paragraph (1) of this Article shall be deemed, if, apart from this Agreement, the law of that Government in respect of the taxes which are the subject of this Agreement so provides, to be income derived from sources in the territory of that Government and shall be taxed accordingly.

(3) If the information available to the taxation authorities concerned is inadequate to determine, for the purpose of paragraph (1) of this Article, the profits which might be expected to accrue to an enterprise, nothing in that paragraph shall affect the application of the law of either territory in relation to the liability of that enterprise to pay tax on an amount determined by the exercise of a discretion or the making of an estimate by the taxation authorities of that territory: Provided that such discretion shall be exercised or such estimate shall be made, so far as the information available to the taxation authorities permits, in accordance with the principles stated in paragraphs (1) and (2) of this Article.

ARTICLE V

Profits derived by the Government or a resident of one of the territories from operating transport services shall be exempt from tax in the other territory.

ARTICLE VI

Any royalty, rent (including royalties or rent of cinematograph films) or other consideration received by or accrued to a resident of one of the territories by virtue of the use in the other territory of, or the grant of permission to use in that other territory, any patent, design, trade mark, copyright, secret process, formula or any other property of a similar nature shall be exempt from tax in the first-mentioned territory if such royalty, rent or other consideration is subject to tax in the other territory.

ARTICLE VII

(1) Income of whatever nature derived from real property, within the territory of one of the Governments by a resident of the territory of the other Government shall be exempt from tax in the last-mentioned territory.

(2) Any royalty or other amount paid in respect of the operation of a mine or quarry or of any other extraction of natural resources within the territory of one of the Governments to a resident of the other territory shall be exempt from tax in the last-mentioned territory.

ARTICLE VIII

(1) Remuneration (other than pensions) paid by the Government of one of the territories to any individual for services rendered to that Government in the discharge of governmental functions shall be exempt from tax in the territory of the other Government if the individual is not ordinarily resident in that territory or is ordinarily resident in that territory solely for the purpose of rendering those services.

(2) Any pension paid by the Government of one of the territories to any individual for services rendered to that Government in the discharge of governmental functions shall be exempt from tax in the territory of the other Government, if immediately prior to the cessation of those services the remuneration therefor was exempt from tax in that territory, whether under paragraph (1) of this Article or otherwise, or would have been exempt under that paragraph if the present Agreement had been in force at the time the remuneration was paid.

(3) For the purposes of this Article any individual who is in the employ of the Bechuanaland Government and who is stationed in Mafeking during the period he is so employed and stationed shall be deemed to be ordinarily resident in Bechuanaland.

ARTICLE IX

(1) A student or business apprentice from the territory of one of the Governments who is receiving full-time education or training in the territory of the other Government shall be exempt from tax in that other territory on payments made to him by persons in the first-mentioned territory for the purposes of his maintenance, education or training.

(2) A student at a university, college or other establishment for higher education in the territory of one of the Governments who for a period or periods not exceeding in the aggregate 183 days during the year of assessment is employed in the territory of the other Government in order to obtain a practical training required for his studies shall be exempt from tax in that other territory on so much of his remuneration as does not exceed R500.

ARTICLE X

(1) Where Union tax is payable in respect of profits derived from sources within the Union by a person ordinarily resident in Bechuanaland, Bechuanaland shall either impose no tax on such profits, or, subject to such provisions (which shall not affect the general principle hereof) as may be enacted in Bechuanaland, shall allow the Union tax as a credit against any Bechuanaland tax payable in respect of such profits.

(2) Where Bechuanaland tax is payable in respect of profits derived from sources within Bechuanaland by a person ordinarily resident in the Union, the Union shall either impose no tax on such profits, or, subject to such provisions (which shall not affect the general principle hereof) as may be enacted in the Union, shall allow the Bechuanaland tax as a credit against any Union tax payable in respect of such profits.

ARTICLE XI

(1) The taxation authorities of the Governments shall on request exchange such information (being information available under the respective taxation laws of the Governments) as is necessary for carrying out the provisions of the present Agreement or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of the present Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of the present Agreement. No information shall be exchanged which would disclose any trade secret or trade process.

(2) The taxation authorities of the Governments may consult together as may be necessary for the purpose of carrying out the provisions of this Agreement.

ARTICLE XII

Any taxpayer who shows that the action of the taxation authorities of the two Governments has resulted in double taxation with respect to the taxes referred to in this Agreement, may lodge a claim with the taxation authority of the territory in which he resides. Should the claim be upheld, the taxation authority of that territory may come to an agreement with the taxation authority of the other territory with a view to avoidance of the double taxation.

ARTICLE XIII

This Agreement shall come into force on the date on which the last of all such things shall have been done in the Union and in Bechuanaland as are necessary to give the Agreement the force of law in the Union and in Bechuanaland respectively, and shall thereupon have effect in respect of assessments for the year beginning on the first day of July, 1956, and subsequent years.

ARTICLE XIV

The present Agreement shall continue in effect indefinitely but either of the Contracting Governments may, on or before the 30th day of June in any calendar year after the year 1958, give notice of termination to the other Contracting Government and, in such event, the present Agreement shall cease to be effective in respect of any year of assessment beginning on the first day of July in the calendar year next following that in which such notice is given.

IN WITNESS whereof the undersigned being duly authorised by their respective Governments have signed the present Agreement.

Done at Cape Town in duplicate, in the English and Afrikaans languages, the texts being equally authentic, on the 18th day of June, 1959.

For the Government of Great Britain and Northern Ireland:
JOHN MAUD

For the Government of the Union of South Africa:
ERIC H. LOUW

PART III

THE SWEDISH AGREEMENT

(High Commissioner's Notice No. 57 of 1962 as amended by Treaty Series No. 13 of 1969)

CONVENTION

BETWEEN THE GOVERNMENT OF THE UNITED
KINGDOM OF GREAT BRITAIN AND NORTHERN
IRELAND AND THE GOVERNMENT OF THE
KINGDOM OF SWEDEN

FOR THE AVOIDANCE OF DOUBLE TAXATION AND
THE PREVENTION OF FISCAL EVASION WITH RESPECT
TO TAXES ON INCOME

London, July 28, 1960

- together with -

EXCHANGE OF NOTES BETWEEN THE GOVERNMENT
OF THE UNITED KINGDOM OF GREAT BRITAIN AND
NORTHERN IRELAND AND THE GOVERNMENT OF
THE KINGDOM OF SWEDEN EXTENDING TO BECHUA-
NALAND PROTECTORATE AND SWAZILAND THE CON-
VENTION OF JULY 28, 1960, FOR THE AVOIDANCE OF
DOUBLE TAXATION AND THE PREVENTION OF FISCAL
EVASION WITH RESPECT TO TAXES ON INCOME

November 27, 1961

- and -

AN EXCHANGE OF LETTERS BETWEEN THE GOVERN-
MENT OF THE REPUBLIC OF BOTSWANA AND THE
GOVERNMENT OF THE KINGDOM OF SWEDEN

18th March and 30th May, 1969.

CONVENTION BETWEEN THE GOVERNMENT OF THE
UNITED KINGDOM OF GREAT BRITAIN AND NOR-
THERN IRELAND AND THE GOVERNMENT OF THE
KINGDOM OF SWEDEN FOR THE AVOIDANCE OF
DOUBLE TAXATION AND THE PREVENTION OF FISCAL
EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the United Kingdom of Great Britain and
Northern Ireland and the Government of the Kingdom of Sweden;

Desiring to conclude a Convention for the avoidance of double
taxation and the prevention of fiscal evasion with respect to taxes
on income;

Have agreed as follows:

ARTICLE I

1. The taxes which are the subject of the present Convention are:

(a) in Sweden -

- (i) the State income tax, including sailors tax and coupon
tax;
- (ii) the tax on the undistributed profits of companies
(ersättningsskatt);
- (iii) the tax on public entertainers (bevillningsavgifterna
för särskilda formaner och rattigheter);
- (iv) the communal income tax (kommunal inkomstskatt);
and

- (v) the State capital tax,
(hereinafter referred to as "Swedish tax").
- (b) in the United Kingdom of Great Britain and Northern Ireland –
 - (i) the income tax (including surtax); and
 - (ii) the profits tax,
(hereinafter referred to as "United Kingdom tax").

2. This Convention shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes.

ARTICLE II

1. In the present Convention, unless the context otherwise requires:

- (a) the term "United Kingdom" means Great Britain and Northern Ireland, excluding the Channel Islands and the Isle of Man;
- (b) the terms "one of the territories" and "the other territory" mean the United Kingdom or Sweden, as the context requires;
- (c) the term "taxation authorities" means, in the case of Sweden, the Minister of Finance or his authorised representative; in the case of the United Kingdom the Commissioners of Inland Revenue or their authorised representative; and, in the case of any territory to which this Convention is extended under Article XXVIII, the competent authority for the administration in such territory of the taxes to which this Convention applies;
- (d) the term "tax" means United Kingdom or Swedish tax, as the context requires;
- (e) the term "person" includes any body of persons, corporate or not corporate;
- (f) the term "company" means any body corporate;
- (g) (i) the terms "resident of the United Kingdom" and "resident of Sweden" mean respectively any person who is resident in the United Kingdom for the purposes of United Kingdom tax and any person who is resident in Sweden for the purposes of Swedish tax; but
 - (ii) where by reason of the provisions of sub-paragraph (g) (i) above an individual is a resident of both territories, then this case shall be solved in accordance with the following rules –
 - (aa) he shall be deemed to be a resident of the territory in which he has a permanent home available to

him. If he has a permanent home available to him in both territories, he shall be deemed to be a resident of the territory with which his personal and economic relations are closest (hereinafter referred to as his centre of vital interest);

- (bb)* if the territory in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either territory, he shall be deemed to be a resident of the territory in which he has an habitual abode;
 - (cc)* if he has an habitual abode in both territories or in neither of them, he shall be deemed to be a resident of the territory of which he is a national;
 - (dd)* if he is a national of both territories or of neither of them, the taxation authorities of the territories shall determine the question by mutual agreement;
- (iii)* where by reason of the provisions of sub-paragraph *(g)* *(i)* above a legal person is a resident of both territories, then it shall be deemed to be a resident of the territory in which its place of effective management is situated. The same provision shall apply to partnerships and associations which under the national laws by which they are governed are not legal persons;
- (h)* the terms "resident of one of the territories" and "resident of the other territory" mean a person who is a resident of the United Kingdom or a person who is a resident of Sweden, as the context requires;
 - (i)* the terms "United Kingdom enterprise" and "Swedish enterprise" mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of the United Kingdom and an industrial or commercial enterprise or undertaking carried on by a resident of Sweden, and the terms "enterprise of one of the territories" and "enterprise of the other territory" mean a United Kingdom enterprise or a Swedish enterprise, as the context requires;
 - (j)* the term "industrial or commercial profits" includes rents or royalties in respect of cinematograph including television films;
 - (k)*
 - (i)* the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on;
 - (ii)* a permanent establishment shall include especially –
 - (aa)* a place of management;
 - (bb)* a branch;

- (cc) an office;
 - (dd) a factory;
 - (ee) a workshop;
 - (ff) a mine, quarry or other place of extraction of natural resources;
 - (gg) a building site or construction or assembly project which exists for more than twelve months;
- (iii) the term “permanent establishment” shall not be deemed to include –
- (aa) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
 - (bb) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - (cc) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - (dd) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
 - (ee) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise;
- (iv) a person acting in one of the territories on behalf of an enterprise of the other territory – other than an agent of an independent status to whom sub-paragraph (k) (v) applies – shall be deemed to be a permanent establishment in the first-mentioned territory if he has, and habitually exercises in that territory, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise;
- (v) an enterprise of one of the territories shall not be deemed to have a permanent establishment in the other territory merely because it carries on business in that other territory through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business;
- (vi) the fact that a company which is a resident of one of the territories controls or is controlled by a company which

is a resident of the other territory, or which carries on business in that other territory (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

(1) the term "international traffic" includes traffic between places in one country in the course of a voyage which extends over more than one country.

2. Where under this Convention any income is exempt from tax in one of the territories if (with or without other conditions) it is subject to tax in the other territory and that income is subject to tax in that other territory by reference to the amount thereof which is remitted to or received in that other territory, the exemption to be allowed under this Convention in the first-mentioned territory shall apply only to the amount so remitted or received.

3. In the application of the provisions of the present Convention by one of the Contracting Parties any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws in force in the territory of that Party relating to the taxes which are the subject of the present Convention.

ARTICLE III

1. The industrial or commercial profits of a United Kingdom enterprise shall not be subject to Swedish tax unless the enterprise carries on a trade or business in Sweden through a permanent establishment situated therein. If it carries on a trade or business as aforesaid, tax may be imposed on those profits by Sweden, but only on so much of them as is attributable to that permanent establishment.

2. The industrial or commercial profits of a Swedish enterprise shall not be subject to United Kingdom tax unless the enterprise carries on a trade or business in the United Kingdom through a permanent establishment situated therein. If it carries on a trade or business as aforesaid, tax may be imposed on those profits by the United Kingdom, but only on so much of them as is attributable to that permanent establishment.

3. Where an enterprise of one of the territories carries on a trade or business in the other territory through a permanent establishment situated therein, there shall be attributed to that permanent establishment the industrial or commercial profits which it might be expected to derive in that other territory if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.

4. Where an enterprise of one of the territories derives profits, under contracts concluded in that territory, from sales of goods or

merchandise stocked in a warehouse in the other territory for convenience of delivery and not for purposes of display, those profits shall not be attributed to a permanent establishment of the enterprise in that other territory.

5. No portion of any profits arising to an enterprise of one of the territories shall be attributed to a permanent establishment situated in the other territory by reason of the mere purchase of goods or merchandise within that other territory by the enterprise.

ARTICLE IV

Where –

- (a) an enterprise of one of the territories participates directly or indirectly in the management, control or capital of an enterprise of the other territory; or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the territories and an enterprise of the other territory,

and in either case, conditions are made or imposed between the two enterprises, in their commercial or financial relations, which differ from those which would be made between independent enterprises, then any profits which would but for those conditions have accrued to one of the enterprises but by reason of those conditions have not so accrued may be included in the profits of that enterprise and taxed accordingly.

ARTICLE V

If undistributed profits of United Kingdom enterprises are effectively charged to United Kingdom profits tax at a lower rate than distributed profits of such enterprises –

- (a) the industrial and commercial profits of a Swedish enterprise shall be charged to United Kingdom profits tax only at that lower rate; and
- (b) where a company which is a resident of Sweden controls, directly or indirectly, not less than 50 per cent of the entire voting power of a company which is a resident of the United Kingdom, distributions by the latter company to the former company shall be left out of account in computing United Kingdom profits tax effectively chargeable on the latter company at the rate appropriate to distributed profits.

ARTICLE VI

Income from the operation of ships or aircraft in international traffic shall be taxable only in the territory in which the place of effective management of the enterprise is situated.

ARTICLE VII

1. (a) Dividends paid by a company which is a resident of the United Kingdom to a resident of Sweden, who is subject to tax in

Sweden in respect thereof and does not carry on a trade or business in the United Kingdom through a permanent establishment situated therein, shall be exempt from United Kingdom surtax.

(b) Dividends paid by a company which is a resident of Sweden to a resident of the United Kingdom, who is subject to tax in the United Kingdom in respect thereof and does not carry on a trade or business in Sweden through a permanent establishment situated therein, shall be exempt from Swedish coupon tax.

2. Dividends paid by a company which is a resident of the United Kingdom to a company which is a resident of Sweden shall be exempt from Swedish tax. This exemption shall not apply unless in accordance with the laws of Sweden the dividends would have been exempt from Swedish tax if the first-mentioned company had been a resident of Sweden and not a resident of the United Kingdom.

3. Where a company which is a resident of one of the territories derives profits or income from sources within the other territory, there shall not be imposed in that other territory any form of taxation on dividends paid by the company to persons not resident in that other territory, or any tax in the nature of undistributed profits tax on undistributed profits of the company, whether or not those dividends or undistributed profits represent, in whole or in part, profits or income so derived.

ARTICLE VIII

1. Any interest derived from sources within one of the territories by a resident of the other territory, who is subject to tax in that other territory in respect thereof and does not carry on a trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from tax in that first-mentioned territory.

2. In this Article, the term "interest" includes interest on bonds, securities, notes, debentures or any other form of indebtedness.

3. Where any interest exceeds a fair and reasonable consideration in respect of the indebtedness for which it is paid, the exemption provided by the present Article shall apply only to so much of the interest as represents such fair and reasonable consideration.

ARTICLE IX

1. Any royalty derived from sources within one of the territories by a resident of the other territory, who is subject to tax in that other territory in respect thereof and does not carry on a trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from tax in that first-mentioned territory.

2. In this Article, the term "royalty" means any royalty or other amount paid as consideration for the use of, or for the privilege of

using, any copyright, patent, design, secret process or formula, trade-mark, or other like property, but does not include any royalty or other amount paid in respect of the operation of a mine or quarry or of any other extraction of natural resources or in respect of cinematograph including television films.

3. Where any royalty exceeds a fair and reasonable consideration in respect of the rights for which it is paid, the exemption provided by the present Article shall apply only to so much of the royalty as represents such fair and reasonable consideration.

4. Any capital sum derived from sources within one of the territories from the sale of patent rights by a resident of the other territory through a permanent establishment situated therein, shall be exempt from tax in that first-mentioned territory.

ARTICLE X

1. Income from immovable property may be taxed in the territory in which such property is situated.

2. The term "immovable property" shall be defined in accordance with the laws of the territory in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment of agricultural and forestry enterprises, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraphs 1 and 2 of this Article shall apply to income derived from the direct use or from the letting of immovable property or the use in any other form of such property, including income from agricultural or forestry enterprises. They shall likewise apply to profits from the alienation of immovable property.

4. The provisions of paragraphs 1 to 3 of this Article shall also apply to the income from immovable property of any enterprises other than agricultural or forestry enterprises and to income from immovable property used for the performance of professional services.

ARTICLE XI

1. Where under the provisions of this Convention a resident of the United Kingdom is exempt or entitled to relief from Swedish tax, similar exemption or relief shall be applied to the undivided estate of a deceased person insofar as one or more of the beneficiaries is a resident of the United Kingdom.

2. Swedish tax on the undivided estate of a deceased person shall, insofar as the income accrues to a beneficiary who is resident in the United Kingdom, be allowed as a credit under Article XXIII.

ARTICLE XII

Notwithstanding anything contained in Article X, a resident of one of the territories who does not carry on a trade or business in the other territory through a permanent establishment situated therein shall be exempt in that other territory from any tax on gains from the sale, transfer or exchange of capital assets.

ARTICLE XIII

1. Subject to the provisions of paragraph 2 of this Article remuneration or pensions paid by, or out of funds created by, one of the Contracting Parties to any individual in respect of services rendered to that Party in the discharge of governmental functions shall be exempt from tax in the territory of the other Contracting Party.

2. Where the individual is a national of the latter Contracting Party without being also a national of the first-mentioned Party paragraph 1 of this Article shall not apply, but the remuneration or pension shall for the purposes of Article XXIII be deemed to be income from a source within the territory of the first-mentioned Party.

3. The provisions of this Article shall not apply to payments in respect of services rendered in connexion with any trade or business carried on by either of the Contracting Parties for purposes of profit.

ARTICLE XIV

1. Any pension (other than a pension of the kind referred to in paragraph 1 or 2 of Article XIII) and any annuity derived from sources within Sweden by an individual who is a resident of the United Kingdom and subject to United Kingdom tax in respect thereof, shall be exempt from Swedish tax.

2. Any pension (other than a pension of the kind referred to in paragraph 1 or 2 of Article XIII) and any annuity derived from sources within the United Kingdom by an individual who is a resident of Sweden and subject to Swedish tax in respect thereof, shall be exempt from United Kingdom tax.

3. The term "annuity" means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

ARTICLE XV

Income derived by a resident of one of the territories in respect of professional services or other independent activities of a similar character shall be subjected to tax only in that territory unless he has a fixed base regularly available to him in the other territory for the purpose of performing his activities. If he has such a fixed base, such part of that income as is attributable to that base may be taxed in that other territory.

ARTICLE XVI

1. Subject to the provisions of Articles XIII, XIV and XVIII, salaries, wages and other similar remuneration derived by a resident of one of the territories in respect of an employment shall be subjected to tax only in that territory unless the employment is exercised in the other territory. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other territory.

2. Notwithstanding the provisions of paragraph 1 of this Article, remuneration derived by a resident of one of the territories in respect of an employment exercised in the other territory shall be subjected to tax only in the first-mentioned territory if:

- (a) the recipient is present in the other territory for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned; and
- (b) the remuneration is paid by or on behalf of an employer who is not a resident of the other territory; and
- (c) the remuneration is not deducted from the profits of a permanent establishment or a fixed base which the employer has in the other territory.

3. In relation to remuneration of a director of a company derived from the company the preceding provisions of this Article shall apply as if the remuneration were remuneration of an employee in respect of an employment, and as if references to employers were references to the company.

4. Notwithstanding the preceding provisions of this Article remuneration for personal services performed aboard a ship or aircraft in international traffic may be taxed in the territory in which the place of effective management of the enterprise is situated.

ARTICLE XVII

Notwithstanding anything contained in this Convention, income derived by public entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the territory in which these activities are exercised.

ARTICLE XVIII

A professor or teacher from one of the territories, who receives remuneration for teaching, during a period of temporary residence not exceeding two years, at a university, college, school, or other educational institution in the other territory, shall be exempt from tax in that other territory in respect of that remuneration.

ARTICLE XIX

1. Payments which a student or business apprentice from one of the territories who is present in the other territory solely for the purpose of his education or training receives for the purpose of his

maintenance, education or training, shall not be taxed in that other territory, provided that such payments are made to him from sources outside that other territory.

2. A student at a university or other establishment for higher education in one of the territories who for a period or periods not exceeding in the aggregate 100 days during the year of assessment is employed in the other territory in order to gain practical experience required for his education shall be exempt from tax in that other territory on his remuneration from such employment.

ARTICLE XX

Any income not dealt with in the foregoing provisions derived by a resident of one of the territories who is subject to tax there in respect thereof shall be subjected to tax only in that territory.

ARTICLE XXI

Where any capital tax is imposed by one or other or both of the Contracting Parties, the following provisions shall apply:

- (a) capital represented by immovable property, as defined in paragraph 2 of Article X, may be taxed in the territory in which such property is situated;
- (b) subject to the provisions of sub-paragraph (a) of this Article, capital represented by assets forming part of the business property employed in a permanent establishment of an enterprise, or by assets pertaining to a fixed base used for the performance of professional services, may be taxed in the territory in which the permanent establishment or fixed base is situated;
- (c) ships and aircraft operated in international traffic and assets, other than immovable property, pertaining to the operation of such ships and aircraft, may be subjected to capital tax only in the territory in which the place of effective management of the enterprise is situated;
- (d) all other elements of capital of a resident of one of the territories may be subjected to capital tax only in that territory.

ARTICLE XXII

1. Individuals who are residents of Sweden shall be entitled to the same personal allowances, reliefs and reductions for the purposes of United Kingdom tax as British subjects not resident in the United Kingdom.

2. Individuals who are residents of the United Kingdom shall be entitled to the same personal allowances, reliefs and reductions for

the purposes of Swedish tax as those to which Swedish nationals not resident in Sweden may be entitled.

ARTICLE XXIII

1. Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom, Swedish tax payable under the laws of Sweden and in accordance with this Convention, whether directly or by deduction, in respect of income from sources within Sweden shall be allowed as a credit against any United Kingdom tax payable in respect of that income. Where such income is an ordinary dividend paid by a company which is a resident of Sweden the credit shall take into account (in addition to any Swedish tax appropriate to the dividend) the Swedish tax payable by the company in respect of its profits; and, where it is a dividend paid on participating preference shares and representing both a dividend at the fixed rate to which the shares are entitled and an additional participation in profits, the Swedish tax so payable by the company shall likewise be taken into account insofar as the dividend exceeds that fixed rate. For the purpose of this paragraph the term Swedish tax shall not include any capital tax.

2. Income from sources within the United Kingdom which under the laws of the United Kingdom and in accordance with this Convention is subject to tax in the United Kingdom either directly or by deduction shall be exempt from Swedish tax; provided that where such income is a dividend paid by a company being a resident of the United Kingdom to a resident of Sweden, not being a company which is exempt from Swedish tax according to the provisions of paragraph (2) of Article VII, Swedish tax shall be charged on the amount of the dividend after deduction of United Kingdom income tax, but the amount of Swedish tax chargeable shall be reduced by a sum equal to 20 per cent of the amount of the dividend so charged.

3. If, in accordance with Article XXI, capital belonging to a resident of Sweden may be taxed in the United Kingdom, such capital shall be exempt from Swedish tax.

4. For the purposes of this Article, profits or remuneration for personal (including professional) services performed in one of the territories shall, unless paragraph 2 of Article XIII applies, be deemed to be income from sources within that territory, and the services of an individual whose services are wholly or mainly performed in ships or aircraft operated by a resident of one of the territories shall be deemed to be performed in that territory.

5. The graduated rate of Swedish tax to be imposed on residents of Sweden may be calculated as though income or capital exempted under this Convention were included in the amount of the total income or capital.

ARTICLE XXIV

The taxation authorities of the Contracting Parties shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or for the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of the present Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of the present Convention. No information as aforesaid shall be exchanged which would disclose any trade, business, industrial or professional secret or trade process.

ARTICLE XXV

The taxation authorities of the Contracting Parties may communicate with each other directly for the purpose of giving effect to the provisions of this Convention and for resolving any difficulty or doubt as to the application or interpretation of the Convention.

ARTICLE XXVI

1. The nationals of one of the Contracting Parties shall not be subjected in the territory of the other Contracting Party to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which the nationals of the latter Party in the same circumstances are or may be subjected.

2. The term "nationals" means:

- (a) in relation to Sweden, all Swedish subjects and all legal persons, partnerships and associations deriving their status as such from the law in force in Sweden;
- (b) in relation to the United Kingdom, all British subjects and British-protected persons –
 - (i) residing in the United Kingdom or any territory to which the present Convention is extended under Article XXVIII, or
 - (ii) deriving their status as such from connexion with the United Kingdom or any territory to which the present Convention is extended under Article XXVIII,and all legal persons, partnerships and associations deriving their status as such from the law in force in the United Kingdom or in any territory to which the Convention is extended under Article XXVIII.

3. The taxation on a permanent establishment which an enterprise of one of the territories has in the other territory shall not be

less favourably levied in that other territory than the taxation levied on enterprises of that other territory carrying on the same activities. This provision shall not be construed as obliging one of the Contracting Parties to grant to residents of the other Contracting Party any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

4. Enterprises of one of the territories, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other territory, shall not be subjected in the first-mentioned territory to any taxation or any requirements connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned territory are or may be subjected.

5. In this Article the term "taxation" means taxes of every kind and description.

ARTICLE XXVII

The following agreements between the United Kingdom and Sweden shall not have effect for any period for which the present Convention has effect, that is to say,

- (a) the agreement dated 19th December, 1924, for the reciprocal exemption from income tax in certain cases of profits accruing from the business of shipping¹;
- (b) the agreement dated 6th July, 1931, for the reciprocal exemption from taxes in certain cases of profits arising through agencies².

ARTICLE XXVIII

1. This Convention may be extended, either in its entirety or with modifications, to any territory for whose foreign relations the United Kingdom is responsible, and which imposes taxes substantially similar in character to those which are the subject of this Convention, and any such modifications and conditions (including conditions as to termination) as may be specified and agreed between the Contracting Parties in notes to be exchanged for this purpose.

2. The termination in respect of Sweden or the United Kingdom of this Convention under Article XXX shall, unless otherwise expressly agreed by both Contracting Parties, terminate the application of this Convention to any territory to which the Convention has been extended under this Article.

ARTICLE XXIX

1. The present Convention shall be ratified by the Contracting Parties in accordance with their respective constitutional and legal requirements.

¹"Treaty Series No. 11 (1925)" Cmd. 2322.

²"Treaty Series No. 31 (1931)" Cmd. 3923.

2. The instruments of ratification shall be exchanged at Stockholm as soon as possible.

3. Upon the exchange of ratifications the present Convention shall enter into force², and its provisions shall have effect:

(a) in Sweden -

(i) in respect of the State income tax and the communal income tax on income which is assessed in or after the calendar year beginning on 1st January, 1961, being income for which preliminary tax is payable during the period 1st March, 1960, to 28th February, 1961, or any succeeding period;

(ii) in respect of coupon tax on dividends payable on or after 1st January, 1960;

(iii) in respect of the tax on public entertainers which is levied on or after 1st January, 1960;

(iv) in respect of sailors tax on income payable on or after 1st January, 1960; and

(v) in respect of the State capital tax which is assessed in or after the calendar year beginning on 1st January, 1961.

(b) In the United Kingdom:

as respects income tax for any year of assessment beginning on or after 6th April, 1960;

as respects surtax for any year of assessment beginning on or after 6th April, 1959; and

as respects profits tax in respect of the following profits:

(i) profits arising in any chargeable accounting beginning on or after 1st April, 1960;

(ii) profits attributable to so much of any chargeable accounting period falling partly before and partly after that date as falls after that date;

(iii) profits not so arising or attributable by reference to which income tax is, or but for the present Convention would be, chargeable for any year of assessment beginning on or after 6th April, 1960.

4. The Convention between Sweden and the United Kingdom of Great Britain and Northern Ireland, signed at London on the 30th March, 1949³, shall terminate and cease to be effective as respects taxes to which the present Convention in accordance with paragraph 3 above applies: Provided that the said Convention shall still apply as between Sweden and those territories to which that Convention has been extended under Article XXIII thereof.

²The Convention entered into force on February 14, 1961.

³United Kingdom "Treaty Series No. 63 (1949)" Cmd. 7800.

5. The understanding between the Government of the United Kingdom and the Government of Sweden embodied in the Exchange of Notes of 18th February, 1955³, shall not apply as respects income earned after 31st December, 1959.

ARTICLE XXX

The present Convention shall continue in effect indefinitely but either of the Contracting Parties may, on or before 30th June in any calendar year not earlier than the year 1964, give to the other Contracting Party, through diplomatic channels, written notice of termination and, in such event, the present Convention shall cease to be effective:

(a) In Sweden –

- (i) in respect of the State income tax and the communal income tax on income for which preliminary tax is payable after the last day of February in the calendar year next following that in which such notice is given;
- (ii) in respect of coupon tax on dividends payable on or after 1st January in the calendar year next following that in which such notice is given;
- (iii) in respect of the tax on public entertainers which is levied on or after 1st January in the calendar year next following that in which such notice is given;
- (iv) in respect of sailors tax on income payable on or after 1st January in the calendar year next following that in which such notice is given; and
- (v) in respect of the State capital tax assessed in or after the second calendar year following that in which such notice is given.

(b) In the United Kingdom –

as respects income tax for any year of assessment beginning on or after 6th April in the calendar year next following that in which the notice is given;

as respects surtax for any year of assessment beginning on or after 6th April in the calendar year in which the notice is given; and

as respects profits tax in respect of the following profits:

- (i) profits arising in any chargeable accounting period beginning on or after 1st April in the calendar year next following that in which the notice is given;
- (ii) profits attributable to so much of any chargeable accounting period falling partly before and partly after that date as falls after that date;

³United Kingdom "Treaty Series No. 26 (1955)" Cmd. 9459.

- (iii) profits not so arising or attributable by reference to which income tax is chargeable for any year of assessment beginning on or after 6th April in the next following calendar year.

IN WITNESS whereof the undersigned, being duly authorised thereto by their respective Governments, have signed the present Convention.

Done in duplicate at London this 28th day of July, 1960, in the English and Swedish languages, both texts being equally authoritative.

For the Government of the United Kingdom DAVID ORMSBY
of Great Britain and Northern Ireland: GORE

For the Government of the Kingdom of Sweden: GUNNAR
HAGGLOF

BECHUANALAND PROTECTORATE

(High Commissioner's Notice No. 57 of 1962)

INCOME TAX - DOUBLE TAXATION AGREEMENT BETWEEN THE KINGDOM OF SWEDEN AND BECHUANALAND PROTECTORATE

It is hereby notified for general information in accordance with the provisions of section sixty-eight of the Income Tax Proclamation (No. 81 of 1959) that an Agreement as set out in the Schedule hereto has been concluded between the Government of Great Britain and Northern Ireland and the Government of the Kingdom of Sweden.

By command of His Excellency the High Commissioner.

J.R. MASSON
for Chief Secretary

High Commissioner's Office,
Cape Town.
28th May, 1962.

SCHEDULE

EXCHANGE OF NOTES BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE KINGDOM OF SWEDEN EXTENDING TO BECHUANALAND PROTECTORATE AND SWAZILAND THE CONVENTION OF JULY 28, 1960, FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

No. 1

Her Majesty's Ambassador at Stockholm
to the Swedish Minister for Foreign Affairs

British Embassy,
Stockholm.

November 27, 1961.

Your Excellency,

I am instructed by Her Majesty's Principal Secretary of State for Foreign Affairs to refer to the Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of Sweden for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed at London on the 28th July, 1960.

I have the Honour to propose on behalf of the Government of the United Kingdom that, in accordance with the provisions of Article XXVIII, the above-mentioned Convention shall be extended to Bechuanaland Protectorate and to Swaziland in the manner, subject to the modifications, and with effect from the dates, specified in the annex to the present Note.

If the following proposal is acceptable to the Government of Sweden, I have the honour to suggest that the present Note, together with its Annex, and Your Excellency's reply to that effect, should be regarded as constituting an Agreement between the two Governments in this matter.

I avail, etc.

J.E. COULSON

ANNEX

PART I

APPLICATION

1. The said Convention as modified by the present Annex shall apply –

- (a) as if the Contracting Parties were the Government of Sweden and the Government of Bechuanaland and Swaziland respectively;
- (b) as if the taxes concerned in Bechuanaland and Swaziland were the normal tax and the supertax;
- (c) as if the date of signature of the said Convention were the date of the Exchange of Notes to which the present Annex is appended.

2. When the last of these measures shall have been taken in Sweden and in Bechuanaland and Swaziland necessary to give the

present extension the force of law in Sweden and in Bechuanaland and Swaziland respectively, the present extension shall have effect –

(a) In Sweden –

- (i) as respects State income tax and the communal income tax on income which is assessed in or after the calendar year beginning on 1st January, 1961, being income for which preliminary tax is payable during the period 1st March, 1960, to 28th February, 1961, or any succeeding period;
- (ii) as respects coupon tax on dividends payable on or after 1st January, 1960;
- (iii) as respects the tax on public entertainers which is levied on or after 1st January, 1960;
- (iv) as respects sailors tax on income payable on or after the calendar year beginning on 1st January, 1961.

(b) In Bechuanaland and Swaziland –

as respects tax for any year of assessment beginning on or after 1st July, 1960, and for subsequent years of assessment.

3. The Government of Sweden shall inform the Government of the United Kingdom in writing through the diplomatic channel when the last of the measures necessary, as indicated in paragraph 2, have been taken in Sweden. The Government of the United Kingdom shall inform the Government of Sweden in writing through the diplomatic channel when the last of the measures necessary, as indicated in paragraph 2, have been taken in Bechuanaland and Swaziland respectively.

4. The present extension shall continue in effect indefinitely but either the Government of the United Kingdom or the Government of Sweden may, on or before the 30th day of June in any calendar year not earlier than the year 1964, give to the other through the diplomatic channel written notice of termination and in such an event the present extension shall cease to have effect:

(a) In Sweden –

- (i) as respects State income tax and the communal income tax on income for which preliminary tax is payable after the last day of February in the calendar year next following that in which such notice is given;
- (ii) as respects coupon tax on dividends payable on or after 1st January in the calendar year next following that in which such notice is given
- (iii) as respects the tax on public entertainers which is levied on or after 1st January in the calendar year next following that in which such notice is given;

- (iv) as respects sailors tax on income payable on or after 1st January in the calendar year next following that in which such notice is given;
 - (v) as respects the State capital tax assessed in or after the second calendar year following that in which such notice is given;
- (b) In Bechuanaland and Swaziland –
- as respects tax for any year of assessment beginning on or after 1st July in the calendar year next following that in which the notice is given.

PART II

MODIFICATIONS

The said Convention shall, for the purpose of the extension to Bechuanaland and Swaziland, apply with the following modifications:

- (a) the words “shall be exempt from United Kingdom surtax” in Article VII 1. (a) of the said Convention shall be understood, for the purposes of this extension, as though they read “shall not be liable to (United Kingdom) tax at a rate in excess of the rate of tax chargeable on the profits of a company”;
- (b) Article VIII of the said Convention shall be deemed to be deleted.

No. 2

The Swedish Minister for Foreign Affairs
to Her Majesty's Ambassador at Stockholm.

Royal Ministry for Foreign Affairs,
Stockholm.

November 27, 1961.

Your Excellency,

I have the honour to acknowledge receipt of your Excellency's Note of November 27, 1961, which reads as follows:

(as in No. 1)

In reply, I have the honour to state that the Government of Sweden considers that your Excellency's Note with its Annex and the present reply to which a copy of the Annex is attached constitute an Agreement between the two Governments.

I avail, etc.,

OSTEN UNDEN.

EXCHANGE OF LETTERS BETWEEN THE GOVERNMENT OF THE REPUBLIC OF BOTSWANA AND THE GOVERNMENT OF THE KINGDOM OF SWEDEN

No. 1

Botswana High Commission,
London.

NOTE 034/200

18th March, 1969

Your Excellency,

I am instructed by His Excellency the President of Botswana to refer to the Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of Sweden for the Avoidance of Fiscal Evasion with respect to taxes on income, signed at London on the 28th July, 1960, as extended to the former Protectorate of Bechuanaland in accordance with the exchange of notes between the United Kingdom and Swedish Governments dated the 27th November, 1961.

I have the honour to propose on behalf of the Government of Botswana that the above-mentioned Convention, as extended as aforesaid, should, subject to the provisions of Article XXX of the said Convention, continue in force indefinitely between the two Governments, so however that any reference in the Convention as extended to Bechuanaland should in relation to any period of time after the 30th September, 1966, be construed as a reference to Botswana.

If the proposal is acceptable to the Government of Sweden, I have the honour to suggest that the present Note, and your Excellency's reply to that effect, should be regarded as constituting an Agreement between the two Governments in this matter.

Please accept, your Excellency, the renewed assurance of my highest consideration.

Yours sincerely,

M.D. MOKAMA

Botswana Ambassador to Sweden

His Excellency the Swedish Ambassador,
Monsieur Leif Balfrage, C.B.E.,
Swedish Embassy,
29 Portland Place,
LONDON, W.1.

EXCHANGE OF LETTERS BETWEEN THE GOVERNMENT OF THE REPUBLIC OF BOTSWANA AND THE GOVERNMENT OF THE KINGDOM OF SWEDEN

No. 2

London
May 30, 1969

Royal Swedish Embassy,
29 Portland Place,
London, W.1.

Sir,

I have the honour to acknowledge receipt of the Note of His Excellency the Botswana Ambassador to Sweden of 18th March, 1969, which reads as follows:

(as in No. 1)

In reply I have been instructed to state that the Government of Sweden accepts the proposal of the Government of Botswana and considers that the Note quoted above and the present reply constitute an Agreement between Sweden and Botswana.

I avail myself of this opportunity, Sir, to renew to you the assurance of my high consideration.

LIEF BALFRACE.

SIXTH SCHEDULE

BOTSWANA MEAT COMMISSION
(Section 55)

1. The gross income of the Botswana Meat Commission (hereinafter referred to as "the Commission") for any tax year shall comprise the aggregate of -

- (a) the gross proceeds of sale by the Commission of -
 - (i) its products from the slaughtering of livestock; and
 - (ii) cattle sold on the hoof; and
- (b) any amounts recovered by way of insurance against loss or damage to such livestock or products,

during the tax year.

2. Subject to paragraph 3, the taxable income of the Commission for any tax year shall be ascertained by deducting from the gross income

income of that tax year all direct marketing expenses incurred during that tax year by the Commission in the marketing of its products by way of –

- (a) bank exchange;
- (b) charges incurred for the handling and storage of its products outside Botswana;
- (c) cartage and railway and shipping freight charges;
- (d) insurance premiums in respect of such cartage and freightage;
- (e) sales commissions;
- (f) survey and inspection fees charged and Government taxes imposed outside Botswana;
- (g) advertising and sales promotion expenses; and
- (h) royalties paid in respect of trade marks and labels,

and shall be a proportion of the amount remaining after deducting such expenses (hereinafter referred to as "the remainder") calculated as follows –

- (i) where the remainder does not exceed three million rand (R3 000 000), one tenth of the remainder;
- (ii) where the remainder exceeds three million rand (R3 000 000) but does not exceed six million rand (R6 000 000), the sum of one fifth of such part of the remainder as exceeds three million rand (R3 000 000) and three hundred thousand rand (R300 000);
- (iii) where the remainder exceeds six million rand (R6 000 000) but does not exceed nine million rand (R9 000 000), the sum of three tenths of such part of the remainder as exceeds six million rand (R6 000 000) and nine hundred thousand rand (R900 000); or
- (iv) where the remainder exceeds nine million rand (R9 000 000), the sum of one third of such part of the remainder as exceeds nine million rand (R9 000 000) and one million eight hundred thousand rand (R1 800 000).

Special
deductions

3. From the amount calculated in paragraph 2, there shall be deducted in ascertaining the taxable income of the tax year therein referred to an allowance to the extent approved by the Minister in respect of expenditure incurred after 31st December, 1970, on or in connexion with development projects approved by the Minister for the time being responsible for agriculture with the concurrence of the Minister.

SEVENTH SCHEDULE
(Section 56)
DEDUCTION OF TAX BY EMPLOYERS
ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

1. Definitions
2. Registration of employers
3. Deduction of tax
4. Tax deduction tables
5. Variations from tax deduction tables
6. Liability to deduct tax not abated by other rights or obligations
7. Payment to or recovery by Commissioner
8. Payment of remuneration free of tax
9. Certificate of remuneration and tax deducted
10. Personal liability of employer and employee
11. Employer to keep records
12. Tax remittance returns
13. Employer's annual return of deductions and remittances
14. Representative employers
15. Obligations upon every company

1. In this Schedule -

Definitions

“employee” means any person (other than a company) who, in respect of an employment, receives remuneration from an employer, and includes any person to whom remuneration accrues -

- (a) as a director of a company;
- (b) from a former employer or from an approved superannuation fund; or
- (c) as a dependant of a deceased person where such remuneration accrues to that dependant as a consequence of the former employment of that deceased person;

“employer” means any person who pays remuneration to any employee and includes -

- (a) a representative employer; and
- (b) the trustee of an approved superannuation fund;

“remuneration” means any amount accrued to an employee by way of -

- (a) wages, salary, leave pay, fee, commission, bonus, gratuity or compensation;
- (b) commutation of moneys due under any contract of employment or service; or
- (c) pension, lump sum payment or other benefit,

but does not include any amount accrued to any resident individual in respect of services rendered where such amount does not exceed the annual rate of six hundred rand;

“representative employer” means –

- (a) in the case of a company, the public officer or, in the case of a company in liquidation or under judicial management, the liquidator or judicial manager, as the case may be;
- (b) in the case of a partnership, the precedent partner or the agent of the partnership;
- (c) where the employer is the Government, a government authority, a town council or district council or other similar authority, or a body corporate or unincorporate (not being a company or a partnership), the person responsible for paying remuneration on behalf of such employer;
- (d) in the case of an employer in respect of whose taxable income a representative taxpayer is chargeable to tax, the representative taxpayer; or
- (e) in the case of a non-resident employer, the agent having authority to pay remuneration on behalf of such employer,

but nothing in this definition shall be construed as relieving any employer from any duty or liability imposed upon him by this Schedule.

Registration
of employers

2. (1) Every person who pays or becomes liable to pay remuneration to any employee shall register as an employer with the Commissioner.

(2) Every employer who has not registered as an employer before the commencement of this Act shall register with the Commissioner in the prescribed form –

- (a) within thirty days after the commencement of this Act; or
- (b) in the case of a person who becomes an employer after the commencement of this Act, within thirty days after the end of the month in which he became an employer.

(3) Every employer who changes his business address or ceases to be an employer shall notify the Commissioner accordingly within thirty days of such change of address or of his ceasing to be an employer, as the case may be.

Deduction
of tax

3. (1) Every employer shall, unless the Commissioner otherwise authorizes, deduct tax in accordance with this Schedule.

(2) Subject to paragraph 5, the amount of tax to be deducted shall be determined in accordance with tax deduction tables prescribed by the Commissioner under paragraph 4.

(3) Where an employer deducts from an employee's remuneration the employee's current contribution to an approved superannuation fund, the amount of tax to be deducted shall be calculated on the balance of remuneration remaining after deducting that contribution, provided that the deduction for any such contribution shall be made at an annual rate not exceeding eight hundred rand.

4. (1) The Commissioner shall prescribe tax deduction tables (in this Schedule referred to as "the tables") which shall come into force on the date of commencement of this Act. Tax deduction tables

(2) The tax to be deducted in accordance with the tables prescribed under this paragraph shall take into account -

- (a) the rates of tax payable under section 59; and
- (b) the personal allowances deductible under section 47.

(3) In the case of a resident individual, tax shall be deducted by reference to the personal allowance applicable to an unmarried person unless the employee furnishes to the employer a declaration in the prescribed form that he or she is -

- (a) in the case of a man, a married person; or
- (b) in the case of a woman, a married person chargeable to tax in her own name under section 13 (2).

(4) The tables shall specify the manner of calculation of the tax to be deducted from any payments of remuneration by way of -

- (a) annual and other bonuses;
- (b) overtime;
- (c) leave pay; and
- (d) other payments of an abnormal nature.

(5) In the event of any variation of the rates of tax payable or personal allowances deductible in relation to any tax year to which this Act applies, the Commissioner shall prescribe new tables to take into account such variations and shall, by notice published in the Gazette, specify the date upon which such tables shall come into force.

(6) Notwithstanding subparagraph (4) (d), where a payment of remuneration is to be made to an employee by way of -

- (a) bonus, gratuity, compensation or other lump sum on termination of his employment; or
- (b) lump sum payment by a superannuation fund on his retirement,

the employer shall, not less than fifteen days prior to the date such payment is to be made, apply to the Commissioner for a direction as to the amount of tax, if any, which shall be deducted therefrom, and the employer shall comply with that direction.

Variations
from tax
deduction
tables

5. (1) The employer shall, at the written request of an employee, deduct from his remuneration an amount of tax greater than that required to be deducted under the tables.

(2) Where, in respect of any tax year, the Commissioner is of the opinion that the amount of tax required to be deducted by an employer in accordance with the tables from the remuneration payable to any employee will be substantially less than the amount of tax which is likely to be charged for that tax year he may direct the employer by notice in writing to deduct such greater amount than is prescribed in the tables as appears to the Commissioner to be appropriate to the circumstances of that employee, and the employer shall comply with that direction.

(3) Where, in respect of any tax year, an employee is of the opinion that the amount of tax required to be deducted by his employer in accordance with the tax tables will be substantially greater than the amount of tax which is likely to be charged for that tax year, he may apply in the prescribed form to the Commissioner for the issue of a direction under subparagraph (2) and if the Commissioner is satisfied that it would be reasonable to do so he may direct the employer by notice in writing to deduct either no tax or such lesser amount than is prescribed in the tables as appears to the Commissioner to be appropriate to the circumstances of that employee, and the employer shall comply with that direction.

(4) A request by an employee to an employer under subparagraph (1) or a direction made by the Commissioner to an employer under subparagraph (2) or (3) may be withdrawn at any time by notice in writing given to the employer and upon receipt of any such notice the employer shall deduct tax in accordance with the tables.

(5) Nothing in subparagraph (3) shall be construed so as to authorize the repayment to an employee by the employer of any amount of tax which has been deducted.

(6) Any request under subparagraph (1), direction under subparagraph (2) or (3), or notice of withdrawal under subparagraph (4) shall be complied with by the employer on and after the pay day next succeeding a period of seven days following the receipt by him of the request, direction or notice.

Liability to
deduct tax
not abated by
other rights
or
obligations

6. The liability of an employer to deduct tax under this Schedule shall not be abated or extinguished by reason of –

(a) the fact that the employer has a right or is, otherwise than in terms of any law, under an obligation to deduct any other amount from the employee's remuneration and such right or obligation shall, notwithstanding anything to the contrary contained in any other law, be deemed to refer only to the balance of remuneration remaining after tax has been deducted; or

(b) the provisions of any law which may provide that the amount of remuneration shall not be reduced or be subject to attachment.

7. Any tax deducted under this Schedule shall ---

Payment to
or recovery
by
Commissioner

(a) be due and payable within the time specified in section 96; and

(b) when it becomes due and payable, be a debt due to the Government and if unpaid shall bear interest at the rate specified in section 99 and may be recovered in the manner provided in section 101.

8. (1) Any agreement between an employer and an employee whereby the employer agrees to pay, as remuneration to an employee, an amount expressed to be free of tax, shall be deemed to be an agreement providing for payment to the employee of such an amount of remuneration as, after deduction of tax in accordance with the table appropriate to that employee, would leave an amount equal to the remuneration paid.

Payment of
remuneration
free of tax

(2) In any case to which subparagraph (1) applies -

(a) the employer shall be liable to pay to the Commissioner an amount equal to the difference between the remuneration deemed to be paid and the amount of the remuneration paid;

(b) such amount shall be deemed to be tax to be deducted under this Schedule; and

(c) the employee shall be deemed to have received as employment income the amount deemed to have been paid by the employer.

9. (1) Every employer who has deducted any tax under this Schedule in any tax year shall within the time and in relation to the period of employment specified in subparagraph (2), furnish to every employee or former employee to whom remuneration has been paid, a certificate in the prescribed form the contents of which shall include -

Certificate of
remuneration
and tax
deducted

(a) the total remuneration accrued to that employee or former employee; and

(b) the total of the amounts of tax deducted from such remuneration.

(2) The certificate referred to in subparagraph (1) shall specify the period of employment to which it relates and shall be furnished to the employee or former employee -

(a) where the employer has not ceased to be an employer in relation to that employee at the end of the tax year, within fifteen days after the end of the tax year;

(b) where the employer has ceased to be an employer in relation to that former employee but has continued to be an employer

in relation to other employees, on the date of cessation of the employment of that person;

- (c) where the employer has ceased to be an employer in relation to all employees, within fifteen days after the date on which he ceased to be an employer; or
- (d) notwithstanding (a), (b) or (c) as and when directed by the Commissioner,

and where an employee, other than a casual employee to whom subparagraph (3) applies, is employed by the same employer for more than one period in any tax year the employer shall furnish a certificate in respect of each such period.

(3) Where the Commissioner so directs for the purposes of subparagraph (2), an employer shall be deemed not to have ceased to be an employer in relation to any of his casual employees who are likely to be re-employed from time to time by such employer in a tax year.

(4) Any employee or former employee who has not received a certificate within the time specified in subparagraph (2) shall apply to the employer forthwith for such certificate to be furnished and in the event of such certificate not being furnished within a further period of fifteen days he shall notify the Commissioner of such failure by the employer to furnish the certificate.

(5) Every employee, when furnishing his tax return for any tax year, shall attach to such return the certificate furnished under this paragraph and, in the case of a married man chargeable to tax in respect of the remuneration of his wife, any certificate furnished to her under this paragraph.

(6) The certificate to be furnished under this paragraph by an employer to an employee or former employee may be delivered -

- (a) by hand to such employee or his authorized agent;
- (b) by registered letter addressed to that employee at his usual or last known postal address; or
- (c) where the taxable income of that employee is not chargeable to tax in his name, by hand or registered letter addressed to the person so chargeable.

(7) In the event of inability to deliver a certificate under subparagraph (6) the employer shall retain such certificate and forward it to the Commissioner with the return required under paragraph 13.

(8) At the request of an employee or former employee, an employer may issue a duplicate certificate in the prescribed form.

(9) The Commissioner may control the issue to employers of stocks of unused certificates and may prescribe conditions in regard to the manner in which they shall be used or as to the surrender of unused stocks.

(10) Every employer shall furnish to the Commissioner, within fifteen days after the end of the tax year, a return in the prescribed form giving details of all certificates used during the tax year.

(11) Where an employer uses a mechanical accounting system the Commissioner may, subject to such conditions as he may impose, authorize the use by that employer of certificates in a form other than that prescribed.

(12) If any employer to whom subparagraph (11) applies fails to comply with any condition imposed by the Commissioner, the Commissioner may withdraw his authorization of the use of the certificates referred to therein and the employer shall forthwith or from any date specified by the Commissioner cease to use such certificates.

(13) Any certificate bearing the name or the trade name of any employer shall, unless the contrary is proved, be deemed to have been issued by such employer where such certificate -

- (a) is in the form prescribed by the Commissioner and was supplied by the Commissioner to and for the use of such employer; or
- (b) is in a form authorized by the Commissioner under subparagraph (11) for use by such employer.

10. (1) Where in any tax year an employer fails to deduct any tax under paragraph 3, he shall, in addition to any penalty for which he may be liable, be personally liable to pay to the Commissioner, within the time specified in section 96, the amount which he has failed to deduct. Personal liability of employer and employee

(2) Where an employer pays to the Commissioner the amount of tax which he failed to deduct, such amount shall be deemed to have been deducted under this Schedule.

(3) The employer shall be entitled to recover from the employee any amount paid to the Commissioner under subparagraph (2).

(4) Where, in relation to any payment of remuneration, an employer has failed to deduct tax under paragraph 3 but the Commissioner is satisfied -

- (a) that such failure to deduct tax was not due to any intent to postpone payment or to avoid the employer's obligations under this Schedule and that there is reasonable probability of recovering the tax from the employee by means other than under this Schedule; or
- (b) that tax deducted under this Schedule from earlier or later payments of remuneration is sufficient to meet the amount of tax which he has failed to deduct,

the Commissioner may absolve the employer from his liability under subparagraph (1).

(5) Where an employer pays any amount to the Commissioner under this paragraph, he shall not be required to include any such amount in a certificate under paragraph 9 unless and until he recovers that amount from that employee.

(6) Where the Commissioner is satisfied that any amount of tax which has been set off under section 61 pursuant to a certificate under paragraph 9 has not been deducted by the employer, the employer and the employee shall be jointly and severally liable to pay to the Commissioner the amount which has been so set off and such amount shall be recoverable under section 101:

Provided that where the Commissioner is satisfied that the employee alone was responsible for the incorrect amount being shown on the employee's tax certificate, the employer shall be absolved from liability under this subparagraph.

(7) Where it is proved to the satisfaction of the Commissioner that any amount of tax has been deducted from the remuneration of an employee, notwithstanding that the employer has failed to pay such amount to the Commissioner, no action shall be taken by the Commissioner for the recovery thereof from the employee.

Employer to
keep records

11. Every employer shall, in respect of each of his employees, maintain a record showing, in relation to each tax year

(a) the amounts of remuneration accrued to that employee; and
(b) the amounts of tax deducted from such remuneration, and such record shall be kept available for examination by the Commissioner as and when required.

Tax
remittance
returns

12. Every employer shall, when making any payment under section 96, furnish a tax remittance return in the prescribed form:

Provided that in respect of the final month of a tax year or the month in which he ceases to be an employer such return shall be lodged with the return required under paragraph 13.

Employer's
annual
return of
deductions
and
remittances

13. (1) Every employer shall in respect of any tax year

(a) within fifteen days after the end of that tax year; or
(b) where he ceases to be an employer during that tax year, within fifteen days after such cessation,

or within such further time as the Commissioner may allow, furnish to the Commissioner a return, in the prescribed form, showing the total amount of tax deducted by him in respect of all his employees during that tax year and the total payments of such tax which have been made to the Commissioner.

(2) The return referred to in subparagraph (1) shall be accompanied by the first carbon copy or such other copy as may be approved by the Commissioner of all certificates issued under paragraph 9.

(3) In the event of there being any difference between the total amount of tax deducted and the total payments of such tax made to the Commissioner, the employer shall be required to account to the Commissioner for such difference.

14. (1) Every representative employer, in relation to any remuneration paid by him in his representative capacity to any employee, shall be subject to the same duties and liabilities under this Schedule as if such remuneration had been paid by him in his personal capacity. Representative employers

(2) Any tax which should be deducted by a representative employer under this Schedule, any interest due by him under section 99 or fine imposed under section 119 or 120 on him shall be recoverable from him but to the extent only of any assets of the person whom he represents which may be in his possession or may come to him while acting in his representative capacity.

(3) The executor of the estate of any deceased employer or the trustee of the estate of any insolvent employer shall fulfil such obligations of that employer under this Schedule as were not fulfilled at the time of his death or insolvency.

15. Notwithstanding that a company carrying on business in Botswana does not pay remuneration to any employee, it shall be liable Obligations upon every company

- (a) to register as an employer under paragraph 2; and
- (b) to furnish to the Commissioner a return under paragraph 12 within fifteen days after the end of each calendar month in every tax year.

EIGHTH SCHEDULE

(Section 57)

DEDUCTION OF TAX FROM PAYMENTS DUE UNDER CERTAIN CONTRACTS WITH NON-RESIDENTS

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

1. Notice to be given to Commissioner
2. Direction for deduction
3. Amount to be deducted
4. Non-resident remains liable to the provisions of the Act
5. Certificate of amount of tax deducted
6. Record to be kept of payments made and tax deducted
7. Tax remittance returns
8. Annual return of deductions and remittances
9. Personal liability where failure to deduct tax

Notice to be given to Commissioner	<p>1. Where any person enters into a contract under which payments will be made to which this Schedule applies, and where the total of such payments will exceed five thousand rand, that person shall notify the Commissioner in writing within thirty days from the date of entering into the contract —</p> <p style="margin-left: 40px;">(a) the nature of the contract;</p> <p style="margin-left: 40px;">(b) its likely duration;</p> <p style="margin-left: 40px;">(c) the name and address of the non-resident; and</p> <p style="margin-left: 40px;">(d) the amount estimated to be payable under the contract, and in this paragraph "a contract" means a single contract or a series of contracts.</p>
Direction for deduction	<p>2. The Commissioner may by notice served on any person direct that, upon making any payment to which this Schedule applies, that person shall deduct tax in accordance with paragraph 3.</p>
Amount to be deducted	<p>3. (1) Where the payment, in respect of which a direction is given under paragraph 2, is made under a contract —</p> <p style="margin-left: 40px;">(a) relating to construction operations, the amount of tax to be deducted shall be twenty per centum of so much of the payment as is not shown to represent the direct cost to any other person of materials for use in carrying out those construction operations; or</p> <p style="margin-left: 40px;">(b) for professional services, the amount of tax to be deducted shall be twenty per centum of the payment.</p> <p>(2) Where, upon application by a non-resident affected by a direction given under paragraph 2, the Commissioner is satisfied that the tax directed to be deducted is excessive in relation to the tax likely to be charged upon assessment, the Commissioner may —</p> <p style="margin-left: 40px;">(a) vary the amount to be deducted; or</p> <p style="margin-left: 40px;">(b) cancel the direction and accept such security for payment as appears to him to be reasonable.</p>
Non-resident remains liable to the provisions of the Act.	<p>4. No deduction of tax under this Schedule from any payment made to a non-resident shall relieve that person from the obligation to furnish any tax return under, or from any other obligations imposed by, this Act.</p>
Certificate of amount of tax deducted	<p>5. Every person who has deducted any tax under paragraph 2 shall furnish to the person to whom payment was made a certificate in the prescribed form showing the amount of the payment made and the tax which has been deducted therefrom.</p>
Record to be kept of payments made and tax deducted	<p>6. Every person making any payment to which this Schedule applies shall maintain a record showing, in relation to each tax year—</p> <p style="margin-left: 40px;">(a) the amounts of payments made, in respect of which a direction has been given; and</p>

(b) the amounts of tax deducted from such payments, and such record shall be kept available for examination by the Commissioner as and when required.

7. Every person when making any payment under section 97 shall furnish a tax remittance return in the prescribed form. Tax remittance returns

8. (1) Every person to whom this Schedule applies shall, in respect of each tax year, within fifteen days after the end of that tax year or within such further time as the Commissioner may allow, furnish to the Commissioner a return in the prescribed form showing the total amount of tax deducted by him during the tax year and the total payments of such tax which have been made to the Commissioner. Annual return of deductions and remittances

(2) The return referred to in subparagraph (1) shall be accompanied by the first carbon copy of all certificates issued under paragraph 5.

(3) In the event of there being any difference between –

(a) the total amount of tax deducted; and

(b) the total payments of such tax made to the Commissioner, that person shall be required to account to the Commissioner for any such difference.

9. (1) Where any person fails to deduct any tax under paragraph 2, he shall, in addition to any penalty for which he may be liable, be personally liable to pay to the Commissioner within the time specified in section 97 the amount which he has failed to deduct. Personal liability where failure to deduct tax

(2) Where any person pays to the Commissioner the amount of tax which he failed to deduct, such amount shall be deemed to have been deducted under this Schedule.

(3) The person making such payment to the Commissioner under subparagraph (1) shall be entitled to recover such amount from the person to whom a payment was made under the contract.

(4) Where, in relation to any payment to which this Schedule applies, any person has failed to deduct tax under paragraph 2 but the Commissioner is satisfied that –

(a) the failure to deduct tax was not due to any intent to postpone or to avoid that person's obligations under this Schedule and that there is reasonable probability of recovering the tax from the payee by means other than under this Schedule; or

(b) that tax deducted under this Schedule from earlier or later payments is sufficient to meet the amount of tax which he has failed to deduct,

the Commissioner may absolve the person who should have deducted tax from his liability under subparagraph (1).

NINTH SCHEDULE
(Section 58)

**DEDUCTION OF TAX FROM
DIVIDENDS AND INTEREST PAID TO NON-RESIDENTS**

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

1. Person paying dividend or interest to deduct tax
 2. Amount to be deducted
 3. Certificate of tax deducted from dividend or interest payment
 4. Record to be kept of payments made and tax deducted
 5. Tax remittance returns
 6. Annual return of deductions and remittances
 7. Personal liability where failure to deduct tax
- 1.** Every person who makes any payment to which this Schedule applies shall deduct tax in accordance with paragraph 2.
- 2.** The amount of tax to be deducted where a payment is made to a non-resident shall be fifteen per centum of the payment.
- 3.** Every person who has deducted any tax under paragraph 1 shall furnish to the person to whom payment is made a certificate, in the prescribed form, showing the amount of the payment made and the tax which has been deducted therefrom.
- 4.** Every person making any payment to which this Schedule applies shall maintain a record showing, in relation to each tax year –
- (a) the amounts of dividends or interest paid to each non-resident; and
 - (b) the amounts of tax deducted from such payments,
- and such record shall be kept available for examination by the Commissioner as and when required.
- 5.** Every person when making any payment under section 98 shall furnish a tax remittance return in the prescribed form.
- 6.** (1) Every person to whom this Schedule applies shall, in respect of each tax year, within fifteen days after the end of that tax year or within such further time as the Commissioner may allow, furnish to the Commissioner a return in the prescribed form showing the total amount of tax deducted by him during the tax year and the total payments of such tax which have been made to the Commissioner.

(2) The return referred to in subparagraph (1) shall be accompanied by the first carbon copy of all certificates issued pursuant to paragraph 3.

(3) In the event of there being any difference between –

(a) the total amount of tax deducted; and

(b) the total payments of such tax made to the Commissioner, that person shall be required to account to the Commissioner for any such difference.

7. (1) Where any person fails to deduct any tax under paragraph 1, he shall, in addition to any penalty for which he may be liable, be personally liable to pay to the Commissioner within the time specified in section 98 the amount which he has failed to deduct. Personal liability where failure to deduct tax

(2) Where any person pays to the Commissioner the amount of tax which he failed to deduct, such amount shall be deemed to have been deducted under this Schedule.

(3) The person making such payment to the Commissioner under subparagraph (1) shall be entitled to recover such amount from the person to whom a dividend or interest was paid.

(4) Where any person has failed to deduct tax as required under paragraph 1 but the Commissioner is satisfied that –

(a) the failure to deduct such tax was not due to any intent to postpone payment or to avoid that person's obligations under this Schedule and that there is reasonable probability of recovering the tax from the payee by means other than under this Schedule; or

(b) that tax deducted under this Schedule from earlier or later payments is sufficient to meet the amount of tax which he has failed to deduct,

the Commissioner may absolve the person who should have deducted tax from his liability under subparagraph (1).

A.194

Passed by the National Assembly this 24th day of May, 1973.

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