

**SHELL COAL BOTSWANA (PROPRIETARY) LIMITED
TAX AGREEMENT RATIFICATION ACT, 1982**

No. 23



of 1982

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Ratification

An Act to ratify a Tax Agreement entered into on the 14th July, 1982, between the Government of Botswana and Shell Coal Botswana (Proprietary) Limited.

Date of Assent: 28.9.82

Date of Commencement: 15.10.82

ENACTED by the Parliament of Botswana.

1. This Act may be cited as Shell Coal Botswana (Proprietary) Limited Tax Agreement Ratification Act, 1982. Short title
2. The Tax Agreement entered into on the 14th July, 1982, between the Government of Botswana and Shell Coal Botswana (Proprietary) Limited and set out in the Schedule is hereby ratified. Ratification

SCHEDULE

TAX AGREEMENT

An Agreement between the Government of the Republic of Botswana ("Botswana") and Shell Coal Botswana (Proprietary) Limited ("Shell"), a company incorporated in the Republic of Botswana whose registered office is situated at Shell House, The Mall, Gaborone Botswana.

WHEREAS

- (A) An Agreement entitled the Joint Venture Agreement ("JVA") between the Parties has been executed today for the purpose of developing an export coal mine and associated infrastructure ("the Project") in areas specified in the JVA;
- (B) A Joint Venture Company ("the Company") will be formed with the Parties as shareholders for the purpose of carrying out the Project;
- (C) **The Minister for Finance and Development Planning ("the Minister") has powers under section 54 of the Income Tax Act (Cap. 52:01), subject to ratification by Parliament, to enter an agreement with any person to vary the provisions of the said Act and this Agreement is entered into in exercise of such powers;**

Now therefore the Parties agree as follows:

1. Notwithstanding anything to the contrary contained in the Income Tax Act;
 - (a) in ascertaining the chargeable income or assessed loss in any tax year from all mining operations carried out as part of the Project under any mining lease, concession or licence granted by Botswana to Shell Company under the Mines and Minerals Act (Cap. 66:01), the mining capital allowance specified in Part V of the Third Schedule to the Income Tax Act shall be the whole of the mining capital expenditure incurred in respect of all such mining operations in that year and for the purpose of this Tax Agreement "mining capital expenditure" shall have the meaning ascribed to it in section 2 of the Income Tax Act;
 - (b) (1) any amount of interest paid by Shell or by the Company to any non-resident person in connection with the mining operations referred to in paragraph (a) of this clause; and
(2) any amount of fees paid by Shell or the Company to any non-resident Affiliate of Shell, until the production test for the Project defined in the JVA is satisfied in relation to Phase I, in consideration of services provided by such Affiliate for the purpose of carrying out the Project if the Minister is satisfied that such fees are no more than reimbursement of costs incurred by such Affiliate in the provision of such services, shall be exempt from income tax in Botswana to the extent that
 - (i) such interest or fees are incurred for the purposes of the Project and are allowable deductions in ascertaining the chargeable income or assessed loss of Shell or the Company; and
 - (ii) the recipient of such interest or fees establishes to the satisfaction of the the Minister that the payment of such income tax in Botswana would increase the total amount of tax payable by such recipient in all jurisdictions;
 - (c) Shell and the Company are relieved from all obligations imposed on the payer under section 58 (1) and the Ninth Schedule of the Income Tax Act in respect of such payments of interest or fees.
2. (a) For the purposes of paragraph (b) (ii) of clause 1 hereof it shall be sufficient to establish that the payment of income tax in Botswana as therein mentioned would increase the total amount of tax payable by the recipient of any interest or fees such as are mentioned in the said clause, if the recipient's auditors give a certificate to that effect.
(b) Shell will procure that the recipient of any such interest or fees shall use all reasonable efforts to ensure that it claims any credits or reliefs available to it in its own jurisdiction against or in respect of income tax in Botswana.
3. Botswana undertakes that in respect of tax levied under the Income Tax Act on mining operations carried on as part of the Project, neither Shell nor the Company shall be subject to any treatment which is, or is in its effect, discriminatory. For the purpose of this clause, treatment is discriminatory if it is less favourable than treatment accorded to any other company in like circumstances or under like conditions or if its application to Shell or to the Company results from a classification of entities which is unreasonable or arbitrary.
4. Expressions defined in the JVA have the same meanings hereinafter.
5. This Agreement shall be presented to Parliament for ratification and shall come into force when ratified.

Signed this 14th day of July, 1982.

G.F. PECCHIOLI,
Shell Coal Botswana (Proprietary) Limited

P.S. MMUSI,
*for and on Behalf of
The Government of Botswana*

PASSED by the National Assembly this 17th day of August, 1982.

B. K. TEMANE,
Clerk of the National Assembly.