

**MAP NORA DEVELOPMENT TAX AGREEMENT  
(RATIFICATION) ACT, 1989**

No. 4



of 1989

**ARRANGEMENT OF SECTIONS**

**SECTION**

1. Short title
2. Ratification of Agreement

**SCHEDULE**

**An Act to ratify a tax agreement entered into between the Government of the Republic of Botswana and Shashe Mines (Proprietary) Limited, Phelps Dodge of Africa Limited and Phelps Dodge of Botswana (Proprietary) Limited.**

*Date of Assent:* 18.4.89.

*Date of Commencement:* 28.4.89.

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Map Nora Development Tax Agreement (Ratification) Act, 1989. Short title

2. The Agreement set out in the Schedule hereto, entered into between the Government of Botswana and Shashe Mines (Proprietary) Limited, Phelps Dodge of Africa Limited and Phelps Dodge of Botswana (Proprietary) Limited on 9th September, 1987 is hereby ratified. Ratification of Agreement

**SCHEDULE**

**MAP NORA DEVELOPMENT — TAX AGREEMENT**

THIS AGREEMENT made this 9th day of September 1987 between the Minister of Finance and Development Planning on behalf of the Government of the Republic of Botswana (the Government); Shashe Mines (Proprietary) Ltd whose registered office is situated at Plot 5646 Nakedi Road Gaborone; Phelps Dodge of Africa Ltd whose registered office is situated at Plot 5646 Nakedi Road Gaborone; and Phelps Dodge of Botswana (Proprietary) Ltd whose registered office is situated at Plot 5646 Nakedi Road Gaborone.

WHEREAS on the 9th day of September, 1987 the parties hereto entered into an agreement known as the Map Nora Development Agreement (MDA);

AND WHEREAS the aforesaid Agreement stipulated that the Government will

enter into a Tax Agreement, in accordance with the provisions of Section 54 of the Income Tax Act (Cap. 52:01), with the parties hereto with regard to sale and acquisition of certain prospecting information, deductions for "mining capital expenditure", as defined in Section 2 of the said Act, and treatment for income tax purposes of certain loans:

NOW THEREFORE the parties hereto have agreed as follows:

- (1) That in determining the gross income accruing to any party to this Agreement from the disposal of any interest in mineral rights or any mining or prospecting information or prospecting rights for implementation of Clause 2 of the MDA, the market value of those rights or information for the purposes of Section 30 of the Act shall be deemed to be the cost thereof in accordance with the MDA.
- (2) That any capital expenditure incurred in any tax year by Shashe for purposes of the "Project" and for which allowance would be deductible under the provisions of Section 39 (1)(a) of the Act shall be included in "mining capital expenditure" and that the amount to be deducted by Shashe from "assessable income" from the business of mining under the MDA for any tax year as "mining capital allowance" in terms of Part V of the Third Schedule to the Act shall be the lesser of:
  - (a) the "residual capital expenditure"; or
  - (b) so much of the "residual capital expenditure" as will reduce the "chargeable income" of that tax year to an amount equal to the maximum amount deductible for that tax year, under Section 51 A of the Act, in respect of dividends paid to resident shareholders.
- (3) That in relation to any loans made free of interest by any party to this Agreement to Shashe for purposes of implementation of the MDA:
  - (a) the provisions of Section 35 of the Act shall not be invoked; and
  - (b) for the purposes of Section 126 C of the Act no interest shall be deemed to accrue to any party to the Agreement whilst the loans continue to be used for purposes of the MDA and remain outstanding.
- (4) That dividends accrued to any party to this Agreement from Shashe shall be deemed to have accrued from a separate business.
- (5) That dividends accrued to any party to this Agreement from any other party to this Agreement other than Shashe, shall, insofar as they do not exceed the dividend accrued to that other party from Shashe, be deemed to have accrued to the first mentioned party from a separate business.
- (6) That no liability to income tax will arise to any party to the Agreement from and by reason alone of the issue of equity shares in Shashe to the Government.

IN WITNESS whereof the parties hereto have hereunder set their hands.

THUS DONE AND SIGNED at GABORONE this 9th day of SEPTEMBER, 1987.

A.M. MOGWE,  
*for and on behalf of the Government  
of the Republic of Botswana.*

J. TURNER,  
*Shashe Mines (Pty) Ltd.*

**J. TURNER,**  
*Phelps Dodge Africa Ltd.*

**J. TURNER,**  
*Phelps Dodge of Botswana Ltd.*

**PASSED** by the National Assembly this 6th day of April, 1989.

**C.G. MOKOBI,**  
*Clerk of the National Assembly.*