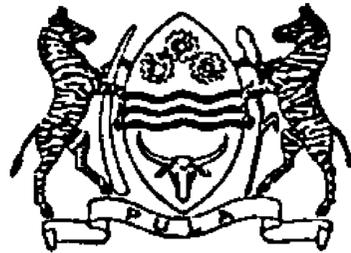


SALES TAX ACT, 1993

No. 1



of 1993

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Appointments
4. Charge to tax
5. Exemptions
6. Taxable value
7. When tax falls due
8. Persons liable to pay tax
9. Minister's powers
10. Registration of persons liable to pay tax
11. Sales tax warehouse
12. Goods in bonded sales tax warehouse
13. Removal of goods in bond
14. Invoices, records and returns
15. Payment and recovery of tax
16. Rebates, refunds and drawbacks
17. Examination of premises, records and documents
18. Appeals
19. Offences and penalties
20. Admission of guilt and power to compound an offence
21. Seizure and forfeiture of goods
22. Repeal, Cap 50:02

An Act to consolidate the law relating to the levying of sales tax on goods and services, and other matters connected therewith.

Date of Assent: 18th February, 1993.

Date of Commencement: 26th February, 1993.

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Sales Tax Act, 1993.

2. In this Act, unless the context otherwise requires —

“Commissioner” means the Commissioner of Sales Tax appointed under this Act and includes the Deputy Commissioner and any other officer delegated by the Commissioner to act on his behalf;

“goods” includes all wares, articles, merchandise, animals, currency, matters or things;

Short title

Interpretation

“hotel” means a house or other building or tent providing board and lodging therein for payment, whether or not it is also used for the purchase and consumption on its premises of food and beverages, and includes a motel, a safari or hunting or game lodge or camp, or such other place as may be prescribed, but shall not include a hotel which does not provide beds for more than 10 persons at a time, or the annual takings of which do not exceed P 75 000, or such other amount as the Minister may prescribe;

“home consumption” means consumption or use in Botswana;

“importer” in respect of any imported goods includes any person who, at the time of importation —

- (a) owns such goods;
- (b) carries the risk of such goods;
- (c) represents that, or acts as if, he is the importer or owner of such goods;
- (d) actually brings such goods into Botswana;
- (e) is beneficially interested in any way whatever in such goods; or
- (f) acts on behalf of any person referred to in paragraph (a), (b), (c), (d) or (e);

“manufacture” means the subjection of any physical matter to any process which materially changes it or its packaging in substance, character or appearance, and includes the assembly of parts;

“manufacturer” means any person who engages in the manufacture of goods;

“restaurant” means a place of business where meals and beverages are served to customers for consumption on the premises, or are otherwise sold, but shall not include —

- (a) a hotel; or
- (b) a restaurant or fast food service at which there is no seating accommodation, or seating accommodation for less than fifty people at a time, and the annual takings of which do not exceed P 75 000, or such other amount as the Minister may prescribe;

“seller” means, in relation to any goods manufactured in Botswana, the manufacturer or any person to whom the goods are sold in bond;

“tax” means sales tax imposed under this Act, as provided in section 4, and includes a penalty imposed under this Act;

“tour operator” means a person who, whether on his own account or as an agent of another person, carries on the business of conducting safari or hunting tours, wildlife viewing or nature viewing or cultural or photographic tours in Botswana;

“transaction” includes the sale of any goods, the rendering of any prescribed service, the provision of board and lodging, the supplying of meals or the importation of goods into Botswana;

“value” has the meaning assigned to it under section 6.

Appointments

3. There shall be a Commissioner of Sales Tax, a Deputy Commissioner of Sales Tax, and such other officers in the Public Service as are required for the administration of sales tax under this Act.

4. Except as is provided in section 5, there shall be charged and paid sales tax, at the rate or rates specified in regulations made under section 9, on the value, or on a unit of quantity, as the case may be, of —

Charge to tax

- (a) goods specified in Parts I, II and III of the First Schedule to the Sales Tax Regulations, which are imported into Botswana, or which are manufactured in Botswana and are sold for the first time in Botswana;
- (b) any service rendered by any person in the course of any business, profession or vocation carried on by him, and which is prescribed by the Minister in regulations made under this Act; or
- (c) board and lodging and any other facility supplied by any person in carrying on the business of a hotel or a tour operator, or of meals or beverages or other goods served or otherwise sold on the premises in carrying on the business of a restaurant:

Provided that where meals, beverages or other goods are supplied to occupants of a hotel from a restaurant, and their value is included in the charges billed to such occupants by the hotel, the amounts so included shall not be chargeable to tax in respect of the restaurant which supplied the meals, beverages or other goods.

5. Notwithstanding the provisions of section 4, sales tax shall not be chargeable —

Exemption

- (a) in respect of goods manufactured in Botswana, where such goods are exported from Botswana under the supervision of the Commissioner;
- (b) in respect of such goods as may be specified in regulations made under section 9, not exceeding UA 500 in value, or such other value as the Minister may prescribe, or in respect of such quantities of goods as may be specified in such regulations, which a person entering Botswana by air, road or rail may import at the time of his entry and have in his physical possession, and where the goods are for his own personal use or consumption;
- (c) in respect of goods imported by any person designated in Part I of the Diplomatic Immunities and Privileges (Conferment of Personal Immunities and Privileges) Order made under section 4 of the Diplomatic Immunities and Privileges Act, or by any organization specified in the Schedule to the Diplomatic Immunities and Privileges (Designation of Organizations and Conferment of Immunities and Privileges) Order made under the said Act;
- (d) in respect of goods manufactured by a business carried on in Botswana, of which the annual turnover of taxable goods does not exceed P75 000 or such other amount as the Minister may prescribe;
- (e) in respect of goods imported or manufactured by a welfare organization approved by the Minister;

Cap. 39:01

- (f) bona fide unsolicited parcels sent by post, the number and the value of which the Minister may prescribe;
- (g) goods imported into Botswana where the Commissioner is satisfied that the goods had been previously exported in substantially the same condition, except where the goods had been first imported under rebate of tax, or the tax had been refunded on export;
- (h) any goods directly imported or purchased directly from a registered manufacturer for the exclusive use of any department or agency of the Government; and
- (i) any goods for the personal or official use of the President or any dependent member of his family.

Taxable value

6. (1) For the purpose of this Act the taxable value of goods shall be —

- (a) in the case of goods sold by a manufacturer to a person independent of him, the price for which the goods are sold;
- (b) in the case of goods sold in any other manner by a manufacturer, the price at which the goods would have been sold in the ordinary course of business to a person independent of the manufacturer, and, in cases where no price can be so determined, such price as shall, subject to the Sales Tax Regulations, be decided by the Commissioner; and
- (c) in the case of taxable goods imported into Botswana, the sum of the following amounts —
 - (i) the value of such taxable goods ascertained for the purpose of customs duty, in accordance with the Customs and Excise Duty Act, whether or not any customs duty is payable on those goods;
 - (ii) such percentage of the amount ascertained under subparagraph (i) as the Minister may prescribe in respect of insurance and freight; and
 - (iii) the amount of the customs duty, if any, payable on those goods;
- (d) in the case of hotels, the total amount of all charges included in the bills payable by the occupants;
- (e) in the case of restaurants, the total amount accruing from the service and sale of meals, beverages and other goods;
- (f) in the case of tour operators, the total amount charged in respect of the services rendered in Botswana.

(2) In the case of the tourism industry, the Commissioner may substitute a single charge to tax, at the prescribed rate, upon the gross amount payable for a single tour package, in place of separate charges in respect of the value or unit of quantity of each of the services or goods included in such tour package:

Provided that where the Commissioner is not satisfied that the amounts represented to be charges for the services rendered within Botswana are not the correct amounts, he may substitute such amounts

as he considers reasonable, and tax shall be due and payable under this Act in respect thereof.

7. (1) Tax falls due under this Act —

When tax falls due

- (a) in the case of a sale of goods, on the date on which the sale is concluded;
- (b) in a case falling under paragraphs (b) or (c) of section 4, on the date of accrual to the person rendering the service or providing the board and lodging or supplying the meals, of the consideration included in the value of the service rendered, or the provision of board and lodging or the supply of meals, as the case may be; or
- (c) in the case of goods imported into Botswana, on the date on which goods are imported:

Provided that goods which are cleared under the Customs and Excise Duty Act or under this Act for home consumption shall, for the purposes of this Act, be deemed to have been imported on the date on which they are so cleared.

(2) For the purposes of this Act, the date of conclusion of the sale of goods shall be the date on which delivery of the goods is effected under the sale, or the date on which the consideration payable by the purchaser under the sale is paid in full, whichever is the earlier.

8. (1) Subject to the provisions of sections 4 and 5, tax shall be paid —

Persons liable to pay tax

- (a) in the case of goods manufactured in Botswana and sold for the first time, by the seller;
- (b) in the case of any service rendered, or any provision of board and lodging, or the supply of any meals, beverages or other goods, by the person rendering the service, providing board and lodging or supplying meals, beverages or other goods ; or
- (c) in the case of goods imported into Botswana, by the importer.

(2) For the purpose of paragraph (b) of subsection (1), in respect of the tourist industry, a tour operator shall be deemed to be the person referred to as rendering the service, or supplying the meals, beverages or other goods, except where they are rendered or supplied by a hotel or a restaurant.

(3) Where the person who is liable to pay tax is not resident in Botswana, the Commissioner may substitute the agent, manager or factor of such person to be the person liable to pay tax, by serving written notice of such substitution on such agent, manager or factor, as the case may be.

(4) Where any business is sold, any tax payable under this Act in relation to any transaction carried out in that business prior to such sale and remaining unpaid at the date of such sale, shall be payable by the purchaser of the business.

9. (1) The Minister may make regulations for the better carrying out of the provisions of this Act, or to give force and effect to its provisions, or for its better administration, and without prejudice to the generality of the foregoing such regulations may provide for the following —

Minister's powers

(a) the classification of goods liable to the tax and the rate or rates of tax;

(b) the prescription of anything which in terms of this Act is to be or which may be prescribed.

(2) The Minister may, at his discretion, and after consultation with the Commissioner, grant a rebate or refund of any tax payable in any case of grave hardship.

(3) The Minister may appoint a board, to be known as the Board of Adjudicators, to hear and decide on any matter in dispute between the Commissioner and any person in respect of his liability for or assessment for sales tax, and regulations made by the Minister may provide for the composition of such Board, its procedure, and any other matters relating to its operations and activities under this Act.

10. (1) Every importer of goods liable to tax shall be registered under this Act in such manner as may be prescribed before importing such goods:

Provided that the provisions of this subsection shall not apply to an occasional importer of goods for his own personal use or consumption, unless the Commissioner, in accordance with the provisions of subsection (3), decides otherwise.

(2) Every manufacturer of goods having a total value of not less than P 75 000 in any one year, or such other amount as the Minister may from time to time prescribe, shall be registered as a manufacturer for the purposes of this Act, in such manner as may be prescribed, before commencing such manufacture.

(3) Every tour operator, and every owner or operator of a hotel or restaurant liable to tax, shall be registered for the purposes of this Act, in such manner as may be prescribed.

(4) If, in the opinion of the Commissioner, any person who should be registered under subsection (1), (2) or (3), but is not so registered, the Commissioner shall so notify him in writing and require him to register forthwith.

(5) Any person required to be registered in accordance with the provisions of subsection (1), (2), (3) or (4) shall apply therefor to the Commissioner in such manner as may be prescribed, and where the Commissioner is satisfied that a certificate of registration is required it shall be issued to the applicant in the prescribed form, on payment of such fee as may be prescribed.

(6) Every person who is required to be registered under the provisions of this section shall keep such records and accounts, in such form, and shall retain them for such period, as may be prescribed or as the Commissioner may require, and shall produce them for inspection by the Commissioner, or by an officer authorized by the Commissioner in that behalf, at such place and at such time as the Commissioner or such officer requires.

(7) Where a change in any material fact recorded in the application for a certificate of registration occurs, the importer or manufacturer concerned shall notify the Commissioner in writing of that change within thirty days of its occurrence.

(8) Any person who contravenes or fails to comply with any of the provisions of this section shall be guilty of an offence and shall be liable to a fine of P1 500 and to imprisonment for 6 months.

11. (1) The Commissioner may licence a warehouse, to be known as a bonded sales tax warehouse, at any place appointed for that purpose under this Act and approved by him.

Sales tax
warehouse

(2) A bonded sales tax warehouse may be licensed either for the storage of taxable goods or for the manufacture of taxable goods, but the Commissioner may licence warehouses for both purposes on the same premises provided they are separated in a manner approved by him.

(3) In addition to any lock used by the licensee, the Commissioner may cause any bonded sales tax warehouse to be locked with a Department of Sales Tax lock for such period as he deems fit, and no person shall remove or break such lock, or enter such warehouse or remove any goods therefrom without the authority of the Commissioner, whilst it is so locked.

(4) The Commissioner may, at any time, take stock of the goods in any bonded sales tax warehouse, and may require any tax due upon any deficiency to be paid forthwith.

(5) If the Commissioner is satisfied that the stock of goods in such warehouse is greater than the quantity accounted for as being in stock, the excess shall be debited to stock and the tax thereon shall be payable on entry for home consumption.

(6) In no case shall the Government or any public officer be liable for any loss or damage of whatever nature sustained by any goods in a bonded sales tax warehouse, or for any loss or damage sustained by reason of wrong delivery of such goods.

(7) In addition to any liability to tax incurred by any person under any other provision of this Act, the licensee of a bonded sales tax warehouse shall be liable to the tax due on all goods stored or manufactured in such warehouse, from the time of receipt of the goods or the time of manufacture, as the case may be.

12. (1) Subject to approval by the Commissioner, any taxable goods may be entered for storage in a bonded sales tax warehouse with deferment, under bond, of payment of tax, and no such goods shall be removed to or placed in such warehouse until they have been so entered.

Goods in
bonded sales
tax warehouse

(2) Such entry shall, for the purposes of this Act, be deemed to be due entry in respect of such goods at the place of importation or manufacture.

(3) Upon the entry and landing of imported taxable goods for storage in a bonded sales tax warehouse, or the transfer of locally produced goods to such warehouse, or upon the transfer of taxable manufactured goods from such warehouse for manufacture to such a warehouse for storage, the licensee of the warehouse concerned shall take and record an

accurate account of the goods and shall debit to stock any excess of such goods found on receipt at such warehouse and report the same to the Commissioner.

(4) No allowance for loss or diminution of any nature which may occur while goods are being transported to or kept in any bonded sales tax warehouse or while being transferred from one such warehouse to another, or removed in bond, shall be allowed unless the Commissioner is satisfied that it is reasonable.

(5) Subject to such conditions as the Commissioner may determine, any goods on which tax is not payable may be taken into a bonded sales tax warehouse, without entry, for the purpose of being used in the production of or in conjunction with taxable goods.

(6) Goods which have been manufactured or stored in a bonded sales tax warehouse may be taken or delivered therefrom upon due entry and in accordance with regulations made under this Act, for one or other of the following purposes —

- (a) home consumption upon payment of any tax payable thereon;
- (b) transfer to another bonded sales tax warehouse or removal in bond as provided in section 13; and
- (c) export from a bonded sales tax warehouse, including supply as stores for aircraft leaving Botswana.

(7) No person shall, without the permission of the Commissioner, divert any goods entered for removal in bond from a despatch point to a bonded sales tax warehouse, except goods entered for payment of tax due thereon, to a destination other than that declared on entry, or deliver such goods or cause them to be delivered in Botswana, except in accordance with the provisions of this Act.

(8) The tax due on any deficiency in a bonded sales tax warehouse shall be paid forthwith on demand after detection of such deficiency:

Provided that in the case of goods manufactured in any bonded sales tax warehouse or in the case of goods in the process of manufacture and removal from one such warehouse to another, the Commissioner may allow working, pumping, handling, processing and similar losses and losses due to natural causes, between the time when liability to tax first arises and the time of removal of such goods from the warehouse in which the goods are manufactured or in which the process of manufacture is completed, as the case may be, if he is satisfied that no part of such loss was wilfully or negligently caused.

13. (1) Notwithstanding anything to the contrary in this Act —

- (a) the importer of any taxable goods or the manufacturer or purchaser of any taxable goods manufactured in a bonded sales tax warehouse or the licensee of such a warehouse in which goods are manufactured or stored may remove such goods in bond to any place of entry or warehousing place under this Act or to any place outside Botswana:

Provided that taxable goods manufactured or stored in a customs and excise warehouse may only be so removed for warehousing to another such warehousing place within Botswana;

Removal of
goods in
bond

- (b) the pilot of an aircraft or person in charge of any vehicle from which any goods were landed in a place in Botswana to which such goods were not consigned, may remove such goods in bond to the place to which they were consigned, if evidence is produced to the Commissioner, before entry for removal, of the identity of such goods and that the goods in question were consigned to the place to which they are proposed to be removed;
 - (c) the owner of or any person beneficially interested in any goods which are in transit through Botswana may remove such goods in bond from the place they entered Botswana to the place where they are destined to leave Botswana;
 - (d) a container operator may remove any container in bond to the container depot or container terminal to which it was consigned, without furnishing the security provided for in subsection (6), and the manifest in terms of section 7(2)(b) of the Customs and Excise Duty Act of the goods packed in such container shall be deemed to be due entry for removal in bond of such container.
- (2) In addition to any liability to tax incurred by any person under any other provision of this Act, the person who removes any goods in bond in terms of subsection (1) shall, subject to the provisions of subsection (3), be liable to tax on all goods which he so removes.
- (3) Subject to the provisions of subsection (4), any liability to tax under subsection (2) shall cease when it is proved to the satisfaction of the Commissioner by the person concerned that in the case of goods which are destined for a place beyond the borders of Botswana, that the goods have been taken out of the country.
- (4) If the person concerned fails to submit the proof referred to in subsection (3) within a period of thirty days from the date on which the goods in question were entered for removal in bond, he shall pay forthwith on demand by the Commissioner the tax due on such goods.
- (5) No goods shall be removed in bond in terms of this section from the place where they were landed in Botswana or where they entered Botswana, until they have been entered for removal in bond and such entry shall be deemed to be due entry in respect of such goods at that place for the purposes of this Act.
- (6) No entry for removal in bond shall be tendered by or may be accepted from a person who has not furnished such security as the Commissioner may require, and the Commissioner may at any time require that the form, nature or amount of such security shall be altered in such manner as he may determine.
- (7) The removal in bond of goods shall be subject to such regulations and such conditions as may be prescribed in respect of such goods, and the Commissioner may refuse to accept bills of entry for the removal in bond of goods from a remover who has persistently failed to comply with such regulations or conditions, or who has committed such offence or offences under this Act as may be prescribed.

(8) Goods removed in bond shall not be delivered or removed from the control of the Commissioner at the place of destination in Botswana, except upon due entry according to the first account taken of such goods on landing or on entry for removal in bond thereof, or according to the contents of the packages containing such goods as reflected in the invoice issued by the supplier in respect of such goods, and payment of any tax due, including any tax due on any deficiency.

(9) The Commissioner may refuse removal in bond of goods in respect of which a provision of this Act has not been complied with, or which are liable to forfeiture.

(10) In no case shall the Government or any public officer be liable for any loss of, or damage of whatever nature to, any goods removed in bond, or for any loss or damage sustained by reason of wrong removal or delivery.

(11) Notwithstanding the provisions of this section the Commissioner may, subject to such conditions as he may impose, allow goods which are in transit through Botswana and which are removed in bond in circumstances specified by him, to be entered or removed in bond at a place other than the place at which they entered Botswana.

(12) The Commissioner may determine the roads and routes and means of carriage of any goods removed in bond or any such goods carried in circumstances specified by him.

(13) No person shall, without the permission of the Commissioner, divert any goods removed in bond to a destination other than the destination declared on entry for removal in bond, or deliver such goods or cause such goods to be delivered in Botswana except into the control of an officer at the place of destination.

(14) The Commissioner may specify the particulars to be reflected on entry for removal in bond, and the documents to be produced by the remover upon entry for removal in bond, in respect of any goods removed in bond, or any such goods removed in circumstances or to a destination specified by him.

14. (1) In respect of all goods or matters taxable under this Act there shall be issued at the time such goods change hands, or services are rendered, or board and lodging are provided, or meals are supplied, an invoice indicating the amount paid as sales tax on such goods by the importer or by the manufacturer, or by the recipient of such services, board and lodging or meals, as the case may be, and for this purpose any receipt in which the sales tax paid is indicated separately from the price of the goods, or the cost of the services, board and lodging or meals shall constitute an invoice:

Provided that the provisions of this subsection shall not apply in respect of such stores or such activities as the Commissioner may exempt therefrom, or in respect of which the Commissioner may agree to accept other arrangements.

(2) Any person who issues an invoice where either no tax has been paid or where the amount of tax on the invoice is greater than the amount of tax paid, shall be guilty of an offence.

(3) Every person liable to tax under this Act shall maintain such full and true records, written up to date, in respect of transactions which determine his liability to tax, as may be prescribed.

(4) Every person liable to pay tax under this Act shall, not later than one month after the end of every month, furnish a return to the Commissioner in the prescribed form, of —

(a) in the case of imports of taxable goods, the value of goods imported during that month and the tax payable thereon;

(b) in the case of a manufacturer of taxable goods, the total value of goods sold during that month either directly or through a bonded sales tax warehouse, and the tax payable thereon; and

(c) in the case of a person providing taxable services or providing board and lodging or serving or selling taxable meals, the total value of the services or board and lodging provided or meals served or sold during that month and the tax payable thereon.

(5) The provisions relating to registration and the furnishing of tax returns shall not apply to a person who occasionally imports taxable goods for his own personal use or consumption.

(6) Where the Commissioner is of the opinion that a person liable to furnish a return has either not done so or has furnished a return which is not true and correct, he may estimate the amount of tax due and payable by that person, demand payment thereof and if payment is not made, proceed to recover the same.

(7) Where the Commissioner has estimated the amount of tax due and payable by any person, he may allow that person the opportunity, either before or during the course of recovery proceedings, of furnishing a return and establishing that the tax payable by him is less than the amount estimated by the Commissioner.

15. (1) Every importer, every manufacturer and every person rendering services or providing board and lodging at a hotel or meals at a restaurant shall, unless otherwise directed by the Commissioner, pay to the Commissioner any tax due under this Act in any month, on or before the end of the next succeeding month together with the return for the month in respect of which tax is paid, subject to provision of such bond as the Commissioner may require.

(2) In respect of imported goods, where the Commissioner has so directed under subsection (1), or where a casual importer exceeds the limits specified for exemption of tax under section 5, any tax due shall be paid in full to the Commissioner forthwith at the time and place where the goods are imported into Botswana, and the goods shall not be released from the control of the Customs and Excise Department until the tax has been paid in full, unless the Commissioner directs otherwise.

(3) Notwithstanding subsection (1), if the Commissioner has reason to believe that any person liable to tax is about to leave Botswana or that a company is about to be liquidated or otherwise wound up or to cease to carry on business, or has reason to believe that in any other circumstances tax due may not be paid or be recoverable in the ordinary

Payment
and recovery
of tax

course, he may direct that the tax due be payable to him forthwith or on such other date as he may specify.

(4) Where any amount of tax due remains unpaid after the date on which it becomes payable in terms of this section, a penalty equal to two percent per month or part thereof of such unpaid amount shall be imposed and be forthwith due and payable.

(5) Any penalty imposed under subsection (4) shall, for the purposes of this Act relating to the collection and recovery of tax, be deemed to be tax.

(6) Where any amount of tax due is in default, the Commissioner may, instead of suing for the tax, recover it by distress and for that purpose authorize an officer in writing to levy distress upon the goods and chattels of the defaulter and may, at the cost of the defaulter, employ any servant or agent to assist him in the levying of the distress.

(7) If the full amount of the tax and expenses incurred in recovery proceedings cannot be recovered by the levying of distress, the amount outstanding may be recovered in any other manner provided in the Act, the expenses being treated as a debt due and payable to the Government.

(8) For the purpose of levying distress the authorized officer may seek the presence and assistance of a police officer during such levying.

(9) Any distress levied shall be kept for ten days at the premises of the defaulter or at any other premises considered appropriate by the authorized officer, at the cost of the defaulter.

(10) If the tax in default, together with any expenses incurred, is not paid in full within the period of ten days from the date of the levying of distress, the goods and chattels distrained shall be sold by public auction, the proceeds of the sale being first applied towards recovery of all expenses incurred, and secondly towards recovery of the tax in default, any remaining amount being paid to the defaulter.

(11) Where any tax under this Act is due from any person, the Commissioner may, by notice in writing, require any other person who owes or holds money due to that person or who owes or holds money due to a third person who owes money or hold money due to the first mentioned person, to pay that money or so much of it as is sufficient to recover the tax due and any expenses incurred in recovery proceedings, and any payment made in accordance with such written notice shall constitute a good and sufficient discharge of the liability of the person on whom the notice is served to the person to whom the money is owed or on whose behalf the money is held.

(12) (a) Where tax due from any person is in default, the Commissioner may by notice in writing inform that person of his intention to apply to the Registrar of Deeds for any land or buildings situated in Botswana which are owned by such person to be the subject of security for the tax in default, together with any expenses incurred in recovery proceedings.

(b) If the person on whom a notice has been served under paragraph (a) fails to pay the whole of the amount specified in the notice within thirty days of the date of service of the notice, the Commissioner may, by notice in writing direct the Registrar of Deeds that the land or buildings, to the extent of the defaulter's interest therein, shall be the subject of security for the total amount due, and unpaid, and the Registrar shall, without fee, register the direction as if it were an instrument of mortgage over or charge on, as the case may be, such land or buildings, and thereafter that registration shall, subject to any prior mortgage or charge, operate while it subsists in all respects as a legal mortgage over or charge on the land or buildings to secure the amount due.

(13) Without prejudice to any other means of recovery of tax in default, the Commissioner may recover the amount in default as a debt due to the State by filing with the clerk or registrar of any court, a certified statement of the amount due by the defaulter, and that statement shall have the effect of a civil judgement of that court in favour of the Commissioner for a liquid debt of the stated amount; and the court shall issue a writ of execution in respect thereof against the defaulter:

Provided that no such writ of execution shall be issued until 14 days after service by the court on the defaulter of a notice informing him that a writ of execution will be issued by the court in respect of tax owed by him, and unpaid, unless before the expiration of that period of 14 days he produces proof of payment thereof satisfactory to the court.

(14) In any action under subsection (13), the Commissioner shall be deemed to be a creditor and may institute proceedings for the sequestration of the property of the defaulter.

(15) In the event of insolvency of any person liable to pay tax, the amount of tax chargeable and unpaid shall rank in priority over other debt claims, except prior claims for any other tax or duty.

16. (1) In so far as it is applicable, Part X of the Customs and Excise Duty Act shall apply in respect of rebates, refunds and drawbacks, subject to the provisions of subsections (2), (3), (4) and (5).

(2) Tax shall be refunded on tax paid goods if such goods are identifiable at the port of exit and are exported from Botswana within a period of three months from the date of sale, and the necessary documents are presented to the customs officer, together with the goods being exported, at the port of exit.

(3) Where the Commissioner is satisfied that any person has paid tax in excess of the amount with which he is properly chargeable, or where any amount of tax paid or part thereof has been remitted by the Minister, any amount paid in excess, or amount remitted, shall be refunded to that person.

(4) Where the Commissioner is satisfied that any amount of tax has been rebated or refunded in error, he may demand payment of that amount within such time as he may by written notice specify, and if payment is not made accordingly the amount shall be deemed to be tax imposed under this Act for all purposes of recovery of tax in default.

Rebates,
refunds and
drawbacks

(5) On application by a registered trader and subject to such conditions as the Commissioner may impose, the Commissioner may grant rebate of tax on imported or locally produced goods intended for incorporation into taxable items:

Provided that any breach of the said conditions by the applicant may result in cancellation of the rebate granted to him.

17. (1) Notwithstanding any other provision of this Act, it shall be lawful for the Commissioner to authorize any officer of the Department of Taxes to carry out any of the provisions of this section for the purposes of this Act and an officer so authorized shall, for that purpose only, be deemed to be an officer appointed under this Act.

(2) For the purpose of obtaining full information in respect of the tax liability of any person or any class of persons, the Commissioner or any authorized officer may require —

- (a) the production for examination, at a time and place specified by him, any records, books of account, statements of assets and liabilities, or other documents which he may consider necessary for that purpose;
- (b) the production for retention and examination of any records, books of account and other documents as he may specify;
- (c) any person to attend, at a time and place to be specified, for the purpose of being examined on any matter or transaction relevant to his tax liability or to the tax liability of any other person.

(3) Subject to subsection (1) an authorized officer may, at any reasonable hour, with or without prior notice and without a warrant, enter any premises at which any person carries on business or in which he has reasonable grounds to believe that a person is carrying on business or keeping the records, books of account or other documents of a business, in order to ascertain whether this Act is being complied with, and on entry he may —

- (a) require the production of any record, book of account, bank statement, cheque book or other document or correspondence which relate to the business for the purpose of examination and the making of copies thereof;
- (b) take possession and remove any record, book of account, bank statement, cheque book or other document or correspondence which he has reasonable grounds for suspecting to be or to contain evidence of the commission of an offence under the Act;
- (c) require any cabinet, box, drawer, container, envelope or other receptacle or package to be opened or if unopened, to remove the same for retention and examination; or
- (d) remove and retain for examination samples of any goods.

(4) An authorized officer or any other person accompanying him who enters any premises and conducts an examination or search for the purposes of the Act shall not be held responsible for any involuntary damage to any article or thing suffered in the course of the examination or search.

(5) Any person whose premises are entered into by an authorized officer for the purposes of the Act, or any other person who is present by the wish or consent of that person, shall comply with any reasonable request made by the authorized officer and shall not obstruct the officer in carrying out his duties under the Act.

(6) The Commissioner or an authorized officer may request the presence of a police officer during the course of an entry and examination of any premises conducted under this section.

(7) The Commissioner may, in order to secure payment by any person of any tax, penalty or other sum payable under this Act, or the compliance by any person with any provision of this Act, require the person concerned to furnish security therefor in such manner and in such amount as may be prescribed and any person who, without reasonable excuse, fails to comply with a notice or requirement under this subsection shall be guilty of an offence.

18. (1) Any person who is aggrieved by a decision of an officer in any matter under this Act may appeal against such decision, in writing, within 30 days from the delivery of such decision, to the Commissioner.

Appeals

(2) (a) The Commissioner shall refer any appeal on a matter affecting policy or an appeal in a case involving grave hardship to the Minister for his decision.

(b) The Minister's decision in a case involving grave hardship shall be final and shall not be questioned in any court.

(3) In any other matter the Commissioner, or the Deputy Commissioner acting on his behalf, or any other officer of the department so authorized by the Commissioner, shall hear and determine the appeal.

(4) An appeal under the provisions of subsection (3) may be heard and determined either in the presence or absence of the appellant, as may be considered appropriate by the person hearing the appeal, and any ruling on the matter in dispute may be given verbally if the appellant is present, or if he is absent, in writing addressed to the appellant.

(5) Any appellant who is aggrieved by a ruling given under subsection (3) or (4), may appeal against that ruling to the Board of Adjudicators appointed by the Minister under section 9(3).

(6) An appeal to the Board under subsection (5) shall be made in writing, addressed to the Commissioner, within 30 days of the date on which the ruling appealed against was given and setting out the grounds on which the ruling is disputed.

(7) The hearing of an appeal by the Board shall be in camera and shall be conducted in accordance with such procedure as may be provided in regulations made under this Act relating to appeals, or in the absence of such regulations, as the Board may determine.

(8) In any appeal before the Board the burden of proving that the ruling appealed against was wrong shall lie on the appellant, and in its decision the Board may confirm, vary or annul the ruling appealed against, or make such other order as it deems appropriate.

(9) Every decision of the Board shall be conveyed to the appellant and to the Commissioner in writing and where any evidence has been led, a record of that evidence shall be appended to the decision.

(10) The appellant or the Commissioner may appeal against a decision of the Board to the High Court on a point of law.

(11) The Commissioner and the appellant shall each bear the costs of the appeal unless the Board decides that the Commissioner's ruling on the appeal made to him is unreasonable or arbitrary, or that the appeal to the Board by the appellant is frivolous, in which event the Board may order the offending party to bear the full costs of the appeal.

19. (1) Any person who —

- (a) makes a false return or statement, produces a false document or false information, relating to matters under the Act or fails to declare goods liable to tax under this Act; or
- (b) fails to comply with any notice which he is required to comply with under this Act, or fails to comply with any condition imposed or specified by the Commissioner under the Act; or
- (c) fails to comply with any other provision of this Act, shall be guilty of an offence and shall be liable —

- (i) in a case falling under paragraph (a) to a fine of P5 000, or treble the value of the tax evaded, whichever is the greater, and to imprisonment for two years, and the goods in respect of which such false statement was made or such false declaration or document was produced shall be liable to forfeiture;

- (ii) in a case falling under paragraphs (b) or (c) to a fine of P1 500 and to imprisonment for six months.

(2) Any person who obstructs an authorized officer or any person accompanying him in an examination or search of any premises under the provisions of this Act, or who fails to comply with a lawful request made to him during the course of such examination shall be guilty of an offence and shall be liable to a fine of P2 500 and to imprisonment for twelve months.

(3) Any person guilty of an offence under this Act for which no penalty is specified shall be liable to a fine of P2 500 and to imprisonment for twelve months.

(4) Any person who is required to be registered under this Act and who fails so to register or to inform the Commissioner that he is required to register, shall be guilty of an offence and shall be liable to a fine of P1 500 and to imprisonment for six months.

(5) Where an offence under this Act is committed by an employee or agent of any person, that person shall also be guilty of the same offence and liable to the same penalties unless he proves that he was not a party to the commission of the offence and could not reasonably be expected to know that the offence was being committed and that he exercised all due diligence to prevent the commission of the offence.

(6) Where an offence under this Act is committed by a body corporate or a partnership firm, every director, partner or officer, as the case may, who is concerned in the management of such body corporate or partnership firm shall be deemed to be guilty of the offence and liable to the same penalties, unless he proves that he was not a party to the offence and that he could not reasonably be expected to know that the offence was being committed and that he exercised all due diligence to prevent the commission of the offence.

(7) Every person aiding and abetting the commission of an offence under this Act shall himself be guilty of that offence and liable to the same penalties as the person committing the offence.

20. (1) If any person, having admitted to the commission of an offence under this Act, agrees to abide by a decision of the Commissioner thereon and deposits with the Commissioner a sum which he may order to be deposited, not being in excess of the maximum fine which a court may impose on conviction for the offence, the Commissioner, may, after such enquiry as he deems necessary, determine the matter summarily, and may, without legal proceedings, order forfeiture by way of penalty of the whole or part of the amount deposited.

Admission of
guilt and
power to
compound
an offence

(2) Any person who is aggrieved by a determination of the Commissioner under subsection (1), and where the penalty imposed by the Commissioner is not less than P 5 000, may appeal against that determination to the Minister, and the decision of the Minister thereon shall be final and shall not be questioned in any court.

(3) Nothing in subsections (1) and (2) shall affect liability for forfeiture of goods or for payment of tax or other charges in respect thereof.

(4) Any person whose offence has been compounded under this section shall not be liable to further prosecution in respect of that offence unless the Attorney-General decides otherwise.

21. (1) In addition to any other circumstances in which goods are liable to forfeiture under this Act, any taxable goods found to have been sold without payment of tax, and any form of conveyance or transportation of those goods, including motor vehicles and aircraft (other than aircraft operating as part of a commercial passenger airline, or any other conveyance operating as part of a regular commercial passenger service) shall be liable to forfeiture.

Seizure and
forfeiture
of goods

(2) It shall be a defence to an order of forfeiture —

(a) if the person in possession of the goods liable to forfeiture proves to the satisfaction of the Commissioner that the goods were purchased by him in good faith and without knowing or having reason to know that tax had not been paid on the goods; and

(b) if the owner of the form of conveyance or transportation proves to the satisfaction of the Commissioner that the goods were being conveyed or transported without his knowledge or consent, or that he acted in good faith and without knowing or having reason to know that the goods were liable to tax, or that any tax due had not been paid.

(2) The captain, owner or other person in charge of any aircraft or other form of conveyance or transportation which is liable to seizure and forfeiture in terms of paragraph (1) shall, unless he proves that the goods were being conveyed or transported without his knowledge, or that he acted in good faith and without knowing or having reason to know that the goods were liable to tax, or that any tax due had not been paid, be guilty of an offence and shall be liable to a fine of P2 000 and to imprisonment for two years.

(3) For the purpose of this Act, goods liable to seizure and forfeiture shall include any packaging in which the goods are wrapped or packed, and any other thing contained in that packaging.

22. The Sales Tax Act is hereby repealed.

Repeal
Cap. 50:02

PASSED by the National Assembly this 21st December, 1992.

C.T. MOMPEI,
Deputy Clerk.