

VALUE ADDED TAX ACT, 2000

No. 1



of 2001

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An Act to provide for the imposition of a value added tax, its administration and matters incidental thereto.

Date of Assent: 26.01.2001.

Date of commencement: On Notice.

ENACTED by the Parliament of Botswana

PART I — Preliminary

Short title and commencement

1. (1) This Act may be cited as the Value Added Tax Act, 2000.
(2) This Act shall come into force on a date to be fixed by the Minister by Order published in the Gazette.

Interpretation

2. In this Act, unless the context otherwise requires —
“appealable decision” means an assessment or a decision described in sections 13(6), 17(6), 18(10), 20(6), 26(8), 27(3), 30(7), 31(5), 33(4), 35(5), 40(6), 42(9), 45(2), 62(4), and 75(8);
“association not for gain” means —

Cap 18:02

- (a)** an institution of religious worship registered under the Societies Act; or
- (b)** any other society, association, or organization, whether incorporated or not, which —
 - (i)** is carried on otherwise than for the purposes of profit or gain to a proprietor, member, or shareholder; and
 - (ii)** is, in terms of its memorandum, articles of association, written rules, or other document constituting or governing the activities of that society, association, or organization —
 - (A)** required to utilise any asset or income solely in the furtherance of its aims and objects;
 - (B)** prohibited from transferring a portion of its assets or income directly or indirectly in a manner so as to profit any person other than by way of the payment in good faith of reasonable remuneration to an officer or employee of the society, association, or organization for service actually rendered to such society, association, or organization; and
 - (C)** upon the winding up or liquidation of such society, association, or organization, obliged to give or transfer its assets remaining after the satisfaction of its liabilities to another society, association or organization with objects similar to those of the first-mentioned society, association, or organization;

“auctioneer” means a person engaged in a taxable activity that includes the supply of goods by auction as an auctioneer or agent for or on behalf of another person;

“capital goods” means any asset, or component of an asset, which is of a character subject to a deduction of capital expenditures incurred as provided in section 40 of the Income Tax Act, and which is used in the course or furtherance of a taxable activity;

Act No. 12
of 1995

“cash value”, in relation to a supply of goods under a credit agreement, means —

- (a) where the seller or lessor is a bank or other financial institution, an amount equal to the sum of —
 - (i) the consideration paid by the bank or other financial institution for the goods, or the fair market value of the supply of the goods to the bank or other financial institution, whichever is the greater; and
 - (ii) any consideration for erection, construction, assembly, or installation of the goods borne by the bank or other financial institution; or
- (b) where the seller or lessor is a dealer, an amount equal to the sum of —
 - (i) the consideration at which the goods are normally sold by the dealer for cash; and
 - (ii) any consideration for erection, construction, assembly, or installation of the goods borne by the dealer;

“casino” has the meaning assigned to it under the Casino Act;

Cap. 19:01

“company” means any association or body corporate or unincorporate, whether created or recognised under a law in force in Botswana or elsewhere, and whether created for profit or non-profit purposes, but not including a partnership or trust;

“consideration”, in relation to a supply or import of goods or services, means the total amount in money or kind, paid or payable (including any deposit on any returnable container) for the supply or import by any person, directly or indirectly, including any duty, levy, fee, and charge, other than tax, paid or payable on, or by reason of, the supply or import, reduced by any price discounts or rebates allowed and accounted for at the time of the supply or import, but does not include —

- (a) any cash payment made by a person as an unconditional gift to an association not for gain; or
- (b) a deposit, other than a deposit on a returnable container, whether refundable or not, given in connection with a supply of goods or services, unless and until the supplier applies the deposit as consideration for the supply or such deposit is forfeited;

“credit agreement” means a hire-purchase agreement or a finance lease;

“customs and excise warehouse” means a warehouse licensed by the Director of Customs and Excise as such under section 18 of the Customs and Excise Duty Act ;

Cap. 50:01

“Director” means the Director of Value Added Tax;

“exempt import” has the meaning assigned to it under section 14;

“exempt supply” has the meaning assigned to it under section 11;

“fair market value” has the meaning assigned to it under section 3;

“finance lease”, in relation to goods, means the lease of the goods where —

(a) the lease term exceeds 75% of the effective life of the goods for income tax purposes;

(b) the lessee has an option to purchase the goods for a fixed or determinable price at the expiration of the lease; or

(c) the estimated residual value of the goods to the lessor at the expiration of the lease term, including the period of any option to renew, is less than 20% of its fair market value at the commencement of the lease;

“goods” means all kinds of corporeal movable or immovable property, thermal or electrical energy, heat, gas, refrigeration, air conditioning, and water, but does not include money;

“hire-purchase agreement” has the meaning assigned to it under the Hire-Purchase Act;

Cap. 46:03

“immovable property” includes —

(a) any estate, right, interest, or servitude on or over any land, and things attached to land or permanently fastened to anything attached to land;

(b) any unit as defined in section 2(1) of the Sectional Titles Act ; or

(c) any real right in any such property;

Act No. 7
of 1999

“import” means —

(a) in the case of goods, to bring or cause to be brought into Botswana from a foreign country or place; or

(b) in the case of services, a supply of services to a resident person —

(i) by a non-resident person; or

(ii) by a resident person from a business carried on by the resident person outside Botswana,

to the extent that such services are utilised or consumed in Botswana, other than to make taxable supplies;

“importer” has the meaning assigned to it under the Customs and Excise Duty Act;

Cap. 50:01
Act No. 12 of
1995

“income tax” has the meaning assigned to it under the Income Tax Act;

“input tax”, in relation to a registered person means —

- (a) any tax charged under section 7(1)(a) on a taxable supply to the registered person; and
- (b) any tax charged under section 7(1)(b) on an import of goods by the registered person, but does not include penalties imposed under sections 15(10), 15(12), 16(9), 26(6), 33(5), 51(4) and Division II of Part XV;

“international financial services centre company” has the meaning assigned to it under section 75;

“invoice” means a document notifying an obligation to make a payment;

“life insurance contract” means an insurance contract or life insurance fund as defined under the First Schedule to the Insurance Industry Act;

Cap. 46:01

“local authority” means a district council, a city council, a town council, or a township authority;

“money” means —

- (a) a coin or note that is legal tender in Botswana under the Bank of Botswana Act;
- (b) a bill of exchange, bank draft, promissory note, postal order, or money order; or
- (c) a stamp, form, or card that has a monetary value and is sold or issued by the State for the payment of any fiscal charge levied under any law for the benefit of the Consolidated Fund, except where the coin, note, stamp, form, or card is disposed of as a collector’s piece, an investment article, or an item of numismatic interest;

Cap. 74:01

“non-resident person” means any person who is not a resident person; and any person referred to in paragraph (d) of the definition of “resident person” to the extent that the person is not a resident person;

“output tax”, in relation to a registered person, means the tax charged under section 7 on a taxable supply made by the person;

“person” includes the State, a local authority, board, natural person, trust, company, and partnership;

“recipient”, in relation to a supply or import, means the person to whom the supply or import is made;

“registered person” means a person registered or treated as such under this Act;

“registering authority” means a person appointed under any law to issue a licence, permit, certificate, concession, or other authorization;

“related persons” means —

- (a) an individual and —
 - (i) any relative of that individual; or
 - (ii) a trust in respect of which such relative is or may be a beneficiary; or
- (b) a trust and a person who is or may be a beneficiary in respect of that trust; or
- (c) a partnership, or unincorporated association or body or close corporation and —
 - (i) any member thereof; or
 - (ii) any other person where that person and a member of such partnership, or unincorporated association or body, or close corporation as the case may be, are related persons in terms of this definition; or
- (d) an incorporated company, other than a close corporation and —
 - (i) a person, other than an incorporated company, where that person or that person and a person related to the first mentioned person in terms of this definition controls 10 percent or more of —
 - (A) the voting power in the company;
 - (B) the rights to distributions of capital or profits of the company, either directly or through one or more interposed companies, partnerships, or trusts; or
 - (ii) any other incorporated company in which the first mentioned person referred to in sub-paragraph (i) or that person and a person related to that first mentioned person in terms of this definition controls 10 percent or more of —
 - (A) the voting power in the first-mentioned company; or
 - (B) the rights to distributions of capital or profits of the first-mentioned company, either directly or through one or more interposed companies, partnerships, or trusts; or
 - (iii) any person where that person and the person referred to in subparagraph (i) or the other incorporated company referred to in subparagraph (ii) are related persons in terms of this definition; or
 - (iv) any person related to the person referred to in subparagraph (iii) in terms of this definition;
- (e) a registered person and a branch or division of that registered person which is separately registered under section 46(3) as a registered person; or

- (f) any branches or divisions of a registered person which are separately registered under section 46(3) as registered persons;
- “relative”, in relation to an individual, means —
- (a) the spouse of the individual;
 - (b) an ancestor, lineal descendant, brother, sister, uncle, aunt, nephew, niece, stepfather, stepmother, stepchild, or adopted child of that person or her spouse and in the case of an adopted child her adoptive parent; or
 - (c) the spouse of any person referred to in paragraph (b), and for the purposes of this definition, any adopted child is treated as related to her adoptive parent within the first degree of consanguinity;
- “rental agreement” means an agreement for the letting of goods other than a hire-purchase agreement or a finance lease;
- “resident person” means -
- (a) the State or a local authority in Botswana; or
 - (b) a natural person resident in Botswana; or
 - (c) a company, partnership, or trust which is formed or created under the laws of Botswana or which is managed and controlled in Botswana; or
 - (d) any other person to the extent that such person carries on in Botswana, a taxable or other activity and has a fixed place in Botswana relating to such activity;
- “sale” means an agreement of purchase and sale, and any other transaction or act whereby or, in consequence of which, ownership of goods passes or is to pass from one person to another;
- “services” means anything that is not goods or money;
- “short term insurance contract” means a contract of insurance, including reinsurance, or guarantee against loss, damage, injury, or risk of any kind, whether pursuant to any contract or law, and includes a renewal of such contract, but does not include a life insurance contract;
- “supplier”, in relation to a supply, means the person making the supply;
- “supply” has the meaning assigned to it under section 4;
- “tax” or “VAT” means the tax imposed under this Act, and includes any amount to the extent that it is treated as tax for the purposes of this Act;
- “taxable activity” has the meaning assigned to it under section 5;
- “taxable supply” means a supply of goods or services in the course or furtherance of a taxable activity, other than an exempt supply;

“taxation officer” means —

- (a) the Director; or
- (b) a person in the service of the directorates of —
 - (i) Income Tax;
 - (ii) Value Added Tax; or
 - (iii) Customs & Excise; or
- (c) a police officer or official of the Botswana Police Force, acting on behalf of the directorate of Value Added Tax in terms of sections 38(2)(b), 52(6), or 63(2) of this Act; or
- (d) an employee or official of the Botswana Postal Services, acting on behalf of the directorate of Customs & Excise in terms of section 15(5)(b) of this Act, who administers this Act;

“tax fraction” means the fraction calculated in accordance with the formula—

$$r/(100 + r)$$

where “r” is the rate of tax applicable under section 7(1);

“tax invoice” means a document provided as required under section 23;

“tax period”, has the meaning assigned to it under section 25;

“trust” means any relationship where property is under the control or management of a trustee; and

“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; or
- (b) a receiver as defined in section 41(1);
- (c) a person having or taking on the administration or control of property subject to another person having a beneficial interest in the property;
- (d) a person acting in a fiduciary capacity;
- (e) a person having possession, control, or management of the property of a person under a legal disability; or
- (f) a person who manages assets under a private foundation or other similar arrangement.

“value added tax (or VAT) manufacturing warehouse” has the meaning assigned to it under section 75.

Fair market
value

3. (1) In this section -

“similar import”, in relation to an import of goods or services, means any other import of goods or services that, in respect of the characteristics, quality, quantity, functional components, materials, and reputation of the first-mentioned goods or services, is the same as, or closely or substantially resembles, that import of goods or services;

“similar supply”, in relation to a supply of goods or services, means any other supply of goods or services that, in respect of the characteristics, quality, quantity, functional components, materials, and reputation of the first-mentioned goods or services, is the same as, or closely or substantially resembles, that supply of goods or services.

(2) For the purposes of this Act, the fair market value of a supply or import of goods or services at any date shall be the consideration in money which the supply or import, as the case may be, would generally fetch if supplied or imported in similar circumstances at that date in Botswana, being a supply or import freely offered and made between persons who are not related persons.

(3) Where the fair market value of a supply or import of goods or services at any date cannot be determined under subsection (2), the fair market value shall be the consideration in money which a similar supply or similar import, as the case may be, would generally fetch if supplied or imported in similar circumstances at that date in Botswana, being a supply or import freely offered and made between persons who are not related persons.

(4) Where the fair market value of a supply or import of goods or services cannot be determined under subsection (2) or (3), the fair market value shall be determined in accordance with any method approved by the Director which provides a sufficiently objective approximation of the consideration in money which could be obtained for that supply or import had the supply or import been freely offered and made between persons who are not related persons.

(5) For the purposes of this Act, the fair market value of any consideration, not being consideration in money, for a supply or import of goods or services shall be ascertained in the same manner, with any necessary modifications, as the fair market value of a supply or import, as the case may be, of goods or services ascertained pursuant to the foregoing provisions of this section.

(6) The fair market value of a supply or import is determined at the time of the supply or import as determined under this Act.

4. (1) Subject to this Act —

Supply

(a) a supply of goods means —

- (i) a sale of goods; or
- (ii) a grant of the use or right to use goods, whether with or without a driver, pilot, crew, or operator, under a rental agreement, credit agreement, freight contract, agreement for charter, or any other agreement under which such use or right to use is granted; or
- (iii) a transfer or provision of thermal or electrical energy, heat, gas, refrigeration, air conditioning, or water; and

- (b) a supply of services means anything done which is not a supply of goods or money, including -
- (i) the granting, assignment, cessation, or surrender of any right;
 - (ii) making available a facility or advantage; or
 - (iii) refraining from or tolerating any activity.
- (2) The disposition of a taxable activity as a going concern, or a part of a taxable activity that is capable of separate operation, is a supply of goods made in the course or furtherance of such taxable activity.
- (3) For the purposes of subsection (2), a taxable activity or a part of a taxable activity capable of separate operation is disposed of as a going concern where —
- (a) all the goods and services necessary for the continued operation of that taxable activity or that part of the taxable activity are supplied to the transferee; and
 - (b) the transferor carries on, or is carrying on, that taxable activity or that part of the taxable activity up to the time of its transfer to the transferee.
- (4) A supply of goods for goods or services is a supply of goods.
- (5) A supply of services for goods or services is a supply of services.
- (6) Subject to section 18(11), the application by a registered person of goods or services acquired for use in a taxable activity to a different use, including the provision of goods or services to an employee for personal use, is a supply of those goods or services by the registered person in the course or furtherance of that taxable activity, but only if the registered person has been allowed a deduction for input tax in respect of those goods or services.
- (7) Where goods are repossessed under a credit agreement, the repossession is a supply of the goods by the debtor under the credit agreement to the person exercising the right of repossession, and where such debtor is a registered person, the supply is made in the course or furtherance of the debtor's taxable activity unless such goods did not form part of the assets held or used by the debtor in connection with that activity.
- (8) Where a lay-by agreement is cancelled or terminates and the seller retains any amount paid by the purchaser or recovers any amount the purchaser owes under the agreement, the cancellation or termination is a supply of services by the seller in respect of the agreement.
- (9) Where a registered person receives a payment of a claim or is otherwise indemnified under a short term insurance contract for a loss incurred in connection with the conduct of a taxable activity, the receipt of such payment or indemnity is a supply of services by the registered person in the course or furtherance of a taxable activity, but only if the supply of that short term insurance contract was taxable under section 7(1), other than a supply charged to tax at a zero rate under section 10.

(10) A bet placed by a person with another person operating a casino is a supply of services by the person operating the casino to the first-mentioned person.

(11) Where a registered person in carrying on a taxable activity in Botswana, transfers goods or provides services to, or for the purposes of, a branch or main business outside Botswana that falls within section 5(2)(c), the transfer or provision is a supply of goods or services, as the case may be, by the registered person in the course or furtherance of that taxable activity.

(12) A supply of services incidental to a supply of goods is part of the supply of goods.

(13) A supply of goods incidental to a supply of services is part of the supply of services.

(14) A supply or import of services incidental to an import of goods is part of the import of goods.

(15) Regulations made under section 77 may provide that a supply of goods and services is a supply of goods or a supply of services.

(16) Where a supply consists both of a supply that is charged with tax at a positive rate and a supply that is charged with tax at a zero rate, each part of the supply is treated as a separate supply.

(17) A supply of services by an employee to an employer by reason of employment is not a supply.

(18) The provision of goods on consignment and the transfer of goods to a person in a representative capacity is not a supply.

(19) Where a registered person supplies goods or services and a deduction for input tax paid on the acquisition of such goods or services was denied, the supply by the registered person is a supply of goods or services otherwise than in the course or furtherance of a taxable activity.

(20) Subject to subsection (21), where —

- (a) the disposition of a taxable activity, including a disposition of a part of a taxable activity capable of separate operation by a registered person is a supply of goods under subsection (2); and
- (b) the supply was charged with tax at the rate of zero percent in terms of paragraph 2(p) of the First Schedule; and
- (c) the goods and services comprising the taxable activity were acquired by the recipient wholly or partly for a purpose other than for consumption, use, or supply in the course of making taxable supplies, the acquisition of the taxable activity is a supply by the recipient in the course or furtherance of a taxable activity carried on by the recipient to the extent that the goods and services comprising the taxable activity were acquired for a purpose other than consumption, use, or supply in the course of making taxable supplies.

(21) Subsection (20) does not apply where that part of the taxable activity referred to in subsection (20)(c) is less than 10 percent of the total taxable activity.

(22) Where a right to receive goods or services for a monetary value stated on any token, voucher, or stamp, other than a postage stamp as defined in section 2 of the Post Office Act, is granted for a consideration in money, the issue of such token, voucher, or stamp is not a supply, except to the extent (if any) that such consideration exceeds that monetary value.

(23) Subsection (22) does not apply to a phone card, prepayment on a cellular phone, or a similar scheme of advance payment for the rendering of services.

(24) The removal of goods from a value added tax manufacturing warehouse by any person or the rendering of services by an international financial services centre company is treated as a supply of those goods or services by the person or company in the course or furtherance of a taxable activity carried on by the person in Botswana.

(25) The payment by the State of a subsidy under a subsidy scheme to defray expenses, or the payment of a bursary is not a supply.

(26) Subject to subsections (27) and (28), a supply of goods or services —

- (a) made by a person as agent for another person (“the principal”) is a supply by the principal; or
- (b) made to a person as agent for a principal is a supply to the principal.

(27) Subsection (26) does not apply to services supplied by an agent to the agent’s principal.

(28) A supply of goods by auction is treated as a supply of goods for consideration by the auctioneer as supplier made in the course or furtherance of a taxable activity carried on by the auctioneer.

Taxable activity

5. (1) For the purposes of this Act, “taxable activity” means —

- (a) an activity which is carried on continuously or regularly by any person —
 - (i) in Botswana,
 - (ii) or partly in Botswana,whether or not for a pecuniary profit, that involves or is intended to involve, in whole or in part, the supply of goods or services to another person for consideration; or
- (b) without limiting the generality of paragraph (a), an activity of a local authority or unincorporated association or body that involves, in whole or in part, the supply of goods or services for consideration.

(2) Taxable activity does not include —

- (a) an activity carried on by a natural person essentially as a private recreational pursuit or hobby or an activity carried on by a person other than a natural person which would, if carried on by a natural person, be carried on essentially as a private recreational pursuit or hobby; or
- (b) an activity to the extent that the activity involves the making of exempt supplies; or

- (c) an activity carried on from a branch or main business permanently located on premises outside Botswana where -
 - (i) the branch or main business can be separately identified; and
 - (ii) an independent system of accounting is maintained in respect of the branch or main business.

(3) Anything done in connection with the commencement or termination of a taxable activity is treated as carried out in the course or furtherance of that taxable activity.

(4) Subject to subsection (5), a supply is made for consideration if the supplier directly or indirectly receives any payment for the supply from the recipient or any other person, including any payment wholly or partly in money or kind.

(5) A supply made for consideration includes —

- (a) a supply made between related persons for no consideration; or
- (b) a supply of goods for use only as trade samples; or
- (c) a supply referred to in section 4(6), (11), (20), or (24).

6. This Act binds the State.

Act binding
on State

PART II — *Imposition of Tax*

7. (1) Subject to the provisions of this Act, there shall be levied and paid a tax, to be known as the value added tax, at the rate of 10 percent of the value of —

Imposition
of tax

- (a) every taxable supply by a registered person; and
- (b) every import of goods or import of services, other than an exempt import.

(2) Except as otherwise provided in this Act, the tax payable under subsection (1) shall —

- (a) in the case of a supply to which subsection (1)(a) applies, be accounted for by the registered person making the supply; or
- (b) in the case of an import of goods, be paid by the importer; or
- (c) in the case of an import of services, be paid by the recipient of the services.

- (3) A supply chargeable with tax under both subsections (1)(a) and (b) shall be treated as a supply chargeable under subsection (1)(a).

PART III — *Rules Relating to Supplies*

8. (1) Subject to this Act, a supply of goods or services occurs when —

- (a) an invoice for the supply is issued by the supplier, or
- (b) any payment for the supply is received,

whichever is the earlier.

Time of
supply

(2) Subject to subsection (3), where the supplier and the recipient are related persons, the supply occurs —

- (a) in the case of a supply of goods which are to be removed, when the goods are removed;
 - (b) in the case of a supply of goods which are not to be removed, when the goods are made available to the recipient; or
 - (c) in the case of a supply of services, when the services are performed.
- (3) Subsection (2) does not apply to a supply between related persons to the extent that an invoice is issued, or payment is received for the supply on or before the earlier of —
- (a) the day on which the return is furnished for the tax period during which that supply would, but for subsection (2), have been made; or
 - (b) the last day prescribed by this Act for furnishing the return for the tax period during which that supply would, but for subsection (2), have been made.
- (4) A supply of goods under a credit agreement occurs when the goods are delivered or the time any payment for the supply is received, whichever is earlier.
- (5) A supply of goods pursuant to a lay-by agreement occurs when the goods are delivered to the purchaser.
- (6) A supply of goods or services under section 4(6) occurs when the goods or services are applied to a different use.
- (7) A supply of goods under section 4(7) occurs when the goods are repossessed, or where the debtor may under any law be reinstated in his rights and obligations under the credit agreement, the day after the last day of any period during which the debtor may under such law be so reinstated.
- (8) A supply of services under section 4(8) occurs when the seller obtains the right to retain any amount paid by the purchaser or when the seller recovers any amount owing by the purchaser under the agreement.
- (9) A supply for a consideration in money received by the supplier by means of a machine, meter, or other device operated by coin, note, or token occurs when the coin, note, or token is taken from that machine, meter, or other device by or on behalf of the supplier.
- (10) A supply of goods or services referred to in section 4(11) by a registered person occurs when the goods are delivered to, or the services performed for, the branch or main business.
- (11) Goods supplied under a rental agreement or services supplied under an agreement which provides for periodic payments, are treated as successively supplied for successive parts of the period of the agreement, and each of the successive supplies occurs when a payment becomes due or is received, whichever is the earlier.

(12) Where —

- (a) goods described under section 4(1) (a) (iii) are supplied; or
- (b) goods or services are supplied directly in the construction, major reconstruction, manufacture, or extension of a building or civil engineering work and the consideration becomes due in instalments or periodically, the goods or services are treated as successively supplied for each period to which a payment for the goods or services relates and each successive supply occurs when payment in respect of the supply becomes due, is received, or an invoice relating only to that payment is issued, whichever is the earlier.

(13) A supply under section 4(20) occurs when the supply under section 4(2), to which it relates, occurs.

(14) To the extent that the issuance of a token, voucher, or stamp is a supply under section 4(22), the supply occurs when the token, voucher, or stamp is issued.

(15) A supply under section 4(24) of goods removed from a value added tax manufacturing warehouse or of services rendered by an international financial services centre company occurs when the goods are removed from the warehouse or when the services are rendered.

(16) The forfeit of a deposit (other than a deposit on a returnable container) is a supply of services when the deposit is forfeited.

9. (1) Subject to this Act, the value of a supply of goods or services is the amount of the consideration for the supply.

Value of
supply

(2) Where a portion of the price of a supply represents tax imposed by this Act that is not accounted for separately, the value of the supply is the price reduced by an amount equal to the tax fraction multiplied by that price.

(3) Where —

- (a) a supply is made by a registered person for no consideration or for a consideration that is less than the fair market value of that supply; and
- (b) (i) the supplier and the recipient are related persons ; or
(ii) the recipient is a charitable organization, institution of religious worship, educational institution, old-age home, orphanage, children's home, or institution of a similar nature;

the value of the supply is the fair market value of the supply.

(4) Where a registered person makes a supply of goods or services referred to in section 4(6), the value of the supply is the lesser of —

- (a) the consideration paid or payable by the registered person for those goods or services; or
- (b) the fair market value of the supply.

(5) The Minister may prescribe rules to determine the value of a supply governed by subsection (4) where the registered person applies less than the entire goods or services to a different use.

(6) The value of a supply of goods under a credit agreement is the cash value of the supply.

(7) Where a debtor makes a supply of goods as a result of the repossession of those goods from the debtor under a credit agreement, the value of the supply is an amount equal to the balance of the cash value of the supply of those goods to the debtor that has not been recovered at the time of the supply.

(8) For purposes of subsection (7), the balance of the cash value of the supply is the amount remaining after deducting from the cash value so much of the sum of the payments made by the debtor under the credit agreement as, on the basis of an apportionment in accordance with the rights and obligations of the parties to such agreement, may properly be regarded as having been made in respect of the cash value of the supply.

(9) The value of a supply of services under section 4(8) is an amount equal to the amount referred to in that section that is retained or recoverable.

(10) Where the grant of a right to receive goods or services for a monetary value stated on a token, voucher, or stamp is a supply under section 4(22), the value of the supply is an amount equal to the amount by which the consideration exceeds the monetary value of the token, voucher, or stamp.

(11) Where a token, voucher, or stamp is issued by a registered person for no consideration and the holder thereof is entitled on surrender thereof to another person, being a supplier of goods or services, to a discount on the price of goods or services supplied to the holder, the value of the supply of such goods or services by the supplier includes the monetary value stated on the token, voucher, or stamp, less the tax fraction of the monetary value if the token, voucher, or stamp is surrendered for a taxable supply.

(12) For purposes of subsection (11), the monetary value is inclusive of tax.

(13) Where a taxable supply is not the only matter to which the consideration for the supply relates, the value of the supply is such part of the consideration as is properly attributable to it.

(14) The value of a supply of goods or services referred to in section 4(11) by a registered person is the lesser of -

- (a) the cost, excluding tax, to the registered person of the acquisition, manufacture, assembly, construction, or production of such goods or services, including the costs of transportation or delivery of the goods or services to the branch or main business; or
- (b) the fair market value of the supply.

(15) Except as otherwise provided in this section, if a supply is made for no consideration the value of the supply is nil.

(16) The value of a supply of services under section 4(10) is the amount received in respect of the bet, reduced by an amount equal to the tax fraction multiplied by the amount received in respect of the bet.

(17) The value of a supply referred to in section 4(20) shall be the consideration for the acquisition of the taxable activity reduced by an amount which bears to the amount of such consideration the same ratio as the intended use or application of the taxable activity for making taxable supplies bears to the total intended use or application of the taxable activity.

(18) The value of goods removed from a value added tax manufacturing warehouse referred to in section 4(24) is the fair market value of the supply.

(19) For the purposes of this Act, consideration paid or payable in kind is the fair market value of the consideration as determined under section 3(5).

10. (1) Where, but for this section, a supply of goods or services would be charged with tax under section 7(1)(a), the supply shall be charged with tax at the rate of zero percent if it is specified in paragraph 2 of the First Schedule.

Zero rating

(2) Where a registered person has applied the rate of zero percent to a supply under this section, the registered person shall obtain and retain such documentary proof acceptable to the Director substantiating the person's entitlement to apply the zero rate to the supply.

(3) Notwithstanding any provision of this Act, the Minister may by Order deny zero rating of supplies exported from Botswana as specified in the First Schedule if such action is necessary to protect the revenue or to offset restrictions placed on zero rating of comparable supplies by the export country as defined in the First Schedule.

11. (1) Subject to subsection (2), a supply of goods or services is an exempt supply if it is specified in paragraph 2 of the Second Schedule.

Exempt supply

(2) A supply of goods or services is not an exempt supply if, in the absence of subsection (1), the supply would be charged with tax at the rate of zero percent under section 10.

PART IV — *Imports*

12. (1) An import of goods occurs —

(a) in the case of goods required to be entered for home consumption under the Customs and Excise Duty Act, when the goods are so entered; or

(b) in any other case, when the goods are brought into Botswana.

(2) Where goods are imported and entered in a customs and excise warehouse but are not entered for home consumption, a supply of such goods before they are entered for home consumption shall be disregarded for the purposes of this Act.

(3) An import of services occurs at the time determined by applying section 8 to the import on the basis that the import is a supply of services.

Time of import

Cap. 50:01

Value of import

Cap. 50:01

- 13. (1) The value of an import of goods is —**
- (a) in the case of goods required to be cleared under the Customs and Excise Duty Act, an amount equal to —**
 - (i) the transaction value of the goods for customs duty purposes in terms of section 71 of the Customs and Excise Duty Act;**
 - (ii) the cost of insurance and freight; and**
 - (iii) the amount of any duty levied under the said Act in respect of the importation of such goods; and**
 - (b) in the case of goods not required to be cleared, the greater of —**
 - (i) an amount equal to the sum of —**
 - (A) the free-on-board value of the goods; and**
 - (B) an amount equal to the cost of insurance and freight;**
 - or**
 - (ii) the fair market value of the import.**
- (2) Notwithstanding the provisions of subsection (1), if a motor vehicle is imported by an individual for the individual's own use and not for sale, the Director may determine the value of the import of such vehicle.**
- (3) Subject to subsection (4), the value of an import of services is the amount of the consideration for the import.**
- (4) Where —**
- (a) an import of services is made for no consideration or for a consideration that is less than the fair market value of that import; and**
 - (b) the supplier and the recipient are related persons, the value of the import is the fair market value of the import.**
- (5) Where a portion of the price of an import of services represents tax imposed by this Act that is not accounted for separately, the value of the import is the price reduced by an amount equal to the tax fraction multiplied by that price.**
- (6) An individual dissatisfied with a decision under subsection (2) may appeal against the decision only in accordance with the provisions of Part VIII.**

Exempt import

- 14. An import of goods or services is an exempt import where —**
- (a) the import is specified in the Third Schedule; or**
 - (b) the import would be a zero rated supply under section 10 or an exempt supply under section 11 if it were a supply of goods or services in Botswana.**

Import declaration and payment of tax
Cap. 50:01

- 15. (1) Where tax is payable on an import of goods —**
- (a) in the case of goods required to be entered for home consumption under the Customs and Excise Duty Act, the importer shall, upon such entry, furnish the Director with an import declaration and pay the tax due on the import in accordance with the arrangements referred to in subsection (5);**

- (b) in the case of goods imported from Lesotho, Namibia, Republic of South Africa, or Swaziland, the importer shall, upon import, furnish the Director with an import declaration and pay the tax due in respect of the import in accordance with the arrangements referred to in subsection (5); or
 - (c) in any other case, the importer shall, at the time of the import, furnish the Director with an import declaration and pay the tax due in respect of the import.
- (2) Where tax is payable on an import of services, other than where section 4(14) applies, the recipient of the services under section 7(2)(c) shall, within 30 days after the time of the import, furnish the Director with an import declaration and pay the tax due in respect of the import.
- (3) An import declaration under subsection (1) or (2) shall —
- (a) be in the form prescribed by the Minister,
 - (b) state the information necessary to calculate the tax payable in respect of the import, and
 - (c) be furnished in the manner specified by the Director.
- (4) Where —
- (a) a person carries on activities outside Botswana which do not form part of any taxable activity of the person; and
 - (b) in the course of carrying on those activities outside Botswana, services are rendered for the purposes of any taxable activity of the person; and
 - (c) if those services were rendered by any other person, the rendering of the services would be an import of services for the purposes of this Act, the services shall be treated as an import of services received by the person referred to under paragraph (a) when the services are rendered in respect of a taxable activity carried on by the person for an amount equal to the fair market value of the import.
- (5) The Director of Customs and Excise —
- (a) shall collect, at the time of import and on behalf of the Director, any tax due under this Act on an import of goods and, at that time, obtain the name and the VAT registration number, if any, of the importer, the import declaration, and the invoice values in respect of the import; and
 - (b) may make arrangements with Botswana Postal Services to perform such functions on his behalf in respect of imports through the postal services.
- (6) Notwithstanding subsection (5), the Director may authorize an importer who is a registered person to pay tax within 25 days after the end of the month in which the goods are imported, where the importer posts security deemed adequate by the Director, or the Director is satisfied that the importer has regularly paid all tax due on imports within the

prescribed period; and the Director shall notify the Director of Customs and Excise of the name and VAT registration number of the person entitled to deferral under this subsection.

(7) Except where the contrary intention appears, the provisions of the Customs and Excise Duty Act, relating to the import, transit, coastwise carriage, clearance of goods, and payment and recovery of duty shall, with such exceptions, modifications, and adaptations as the Minister may by regulation prescribe, apply, so far as relevant, to the tax charged under this Act on the import of goods.

(8) A person who fails to furnish an import declaration as required by this Act commits an offence and is liable on conviction to a fine not exceeding P5 000 or to imprisonment for a term not exceeding 1 year, or to both.

(9) Where a person convicted of an offence under subsection (8) fails to furnish the import declaration within a further period specified by the Director by notice in writing, that person commits an offence and is liable on conviction to a fine of P50 for each day during which the failure continues and to imprisonment for 3 months without the option of a fine in lieu of imprisonment.

(10) A person who fails to furnish an import declaration within the time required under this Act is liable for a penalty which is the greater of —

(a) P50 per day for each day or part thereof that the return or import declaration remains outstanding; or

(b) an amount equal to 10 percent of the tax payable for the period of such import declaration, for each month or part thereof that the return or import declaration remains outstanding.

(11) The penalty imposed under subsection (10) shall not exceed the amount of tax payable in respect of the return or import declaration.

(12) A person who fails to pay tax payable on import in accordance with this section on or before the due date, is liable for a penalty which is the greater of —

(a) P50 per day for each day or part thereof that the tax remains outstanding; or

(b) an amount equal to 10 percent of the tax outstanding, for each month or part thereof that the tax remains outstanding.

(13) The penalty imposed under subsection (12) shall not exceed the amount of unpaid tax.

(14) A penalty paid by a person under subsection (12) shall be refunded to the person to the extent that the tax to which it relates is subsequently determined not to have been due and payable.

(15) A penalty imposed under subsection (12) is in addition to any interest payable under section 22.

PART V — *Registration*

Registration

16. (1) Subject to the provisions of this Act, every person who carries on a taxable activity and is not registered, becomes liable to be registered if —

- (a) at the end of any period of 12 months the person made, during that period, taxable supplies the total value of which exceeded the amount specified in paragraph 1 of the Fifth Schedule; or
- (b) at the beginning of any period of 12 months there are reasonable grounds to expect that the total value of taxable supplies to be made by the person during that period will exceed the amount specified in paragraph 1 of the Fifth Schedule.

(2) In determining whether a person is liable to be registered under subsection (1) —

- (a) the Director may have regard to the value of taxable supplies made by another person where both persons are related persons; and

(b) the value of the person's supplies is determined under section 9.

(3) A person is not liable to be registered under subsection (1) where the Director is satisfied that the value of taxable supplies exceeded the amount specified under subsection (1) solely as a consequence of —

- (a) a cessation, or substantial and permanent reduction in the size or scale, of a taxable activity carried on by the person; or
- (b) the replacement of capital goods used in the taxable activity carried on by that person.

(4) A person who makes, or intends to make taxable supplies, but is not liable to be registered under subsection (1), may apply to the Director for registration under this Act.

(5) Notwithstanding subsection (1), the State or a local authority that carries on a taxable activity is liable to be registered from the date of commencement of that activity.

(6) Notwithstanding subsection (1), a person who is an auctioneer becomes liable to be registered on the date on which the person becomes an auctioneer.

(7) Every person liable to be registered under this section shall apply to the Director for registration within 21 days of becoming so liable.

(8) A person who fails to apply for registration as required by subsection (7) commits an offence and is liable on conviction —

- (a) where the failure was made knowingly or recklessly, to a fine not exceeding P10 000 or to imprisonment for a term not exceeding 2 years, or to both; or
- (b) in any other case, to a fine not exceeding P5 000 or to imprisonment for a term not exceeding 1 year, or to both.

(9) A person who fails to apply for registration as required by subsection (7) is liable for a penalty equal to double the amount of output tax payable from the time the person becomes liable to be registered until the person files an application for registration with the Director.

(10) No penalty is payable under subsection (9) where the person has been convicted of an offence under subsection (8) in respect of the same act.

(11) If a penalty under subsection (9) has been paid and the Director institutes criminal proceedings under subsection (8) in respect of the same act, the Director shall refund the amount of penalty paid, and that penalty is not payable unless the prosecution is withdrawn.

17. (1) An application for registration under section 16 shall be in the prescribed form and the applicant shall provide such further particulars as may be required.

(2) The Director shall register a person who has applied for registration within 21 days of receipt of the application, unless the Director is satisfied that the person is not liable to be registered under section 16 or, in the case of an application under section 16(4) —

(a) the person has no fixed place of abode or business; or

(b) the Director has reasonable grounds to believe that the person —

(i) will not keep proper records; or

(ii) will not submit regular and reliable tax returns, as required under this Act.

(3) Where a person liable to be registered under this Act fails to make an application for registration as required under section 16(7), the person shall be deemed to be registered for the purposes of this Act, other than under section 16(1), from the date specified under subsection (4)(a) or (b), or such later date as the Director may determine.

(4) Registration takes effect, in the case of —

(a) a person referred to in section 16(1)(a), from the beginning of the second tax period immediately following the time when the person became liable to be registered;

(b) a person referred to in section 16(1)(b), 16(5), or 16(6), from the beginning of the 12 month period, the commencement of the activities, or the date the person becomes an auctioneer, respectively; or

(c) an application under section 16(4), from the beginning of the second tax period immediately following the period in which the person applied for registration.

(5) The Director shall, within 21 days of receipt of an application under subsection (2), serve a notice in writing on an applicant for registration of the decision in respect of the application.

(6) An applicant dissatisfied with a decision referred to under subsection (5) may appeal against the decision only in accordance with the provisions of Part VIII.

- (7) Every registered person shall notify the Director, in writing, of —
- (a) any change in the name, address, place of business, constitution, or nature of the principal taxable activity or activities of the person; and
 - (b) any change of address from which, or name in which, a taxable activity is carried on by the registered person, within 21 days of the change occurring.
- (8) A person who fails to notify the Director of a change in circumstances as required by subsection (7) commits an offence and is liable on conviction —
- (a) where the failure was made knowingly or recklessly, to a fine not exceeding P10 000 or to imprisonment for a term not exceeding 2 years, or to both; or
 - (b) in any other case, to a fine not exceeding P5 000 or to imprisonment for a term not exceeding 1 year, or to both.

18. (1) Subject to subsections (2) or (3), a registered person may apply in writing to the Director to have the person's registration cancelled where, at any time, the value of that person's taxable supplies in the period of 12 months then beginning will not be more than the amount specified under section 16(1)(b).

Cancellation
of registration

(2) A person liable to be registered under section 16(1) who ceases to satisfy the criteria thereunder, or a person registered as a result of an application under section 16(4) may apply for cancellation of the registration only after the expiration of 2 years from the date the registration took effect.

(3) Subsection (1) does not apply to the State or a local authority under section 16(5), or to an auctioneer referred to under section 16(6).

(4) Where the Director is satisfied that a registered person who has made an application under subsection (1) ceases to be liable to be registered, the Director shall cancel the person's registration with effect from the last day of the tax period during which the Director was so satisfied, or such other date as the Director may determine.

(5) Subject to subsection (6), a registered person who ceases to carry on all taxable activities shall notify the Director of that fact within 21 days of the date of such cessation, and the Director shall cancel the registration of that person with effect from the last day of the tax period during which all such taxable activities ceased, or from such other date as the Director may determine.

(6) The Director shall not cancel the registration of a registered person under subsection (5) where the Director has reasonable grounds to believe that the person will carry on any taxable activity at any time within 12 months from that date of cessation.

(7) A notification pursuant to subsection (5) shall be made in writing and shall state the date upon which that person ceased to carry on all taxable activities, and whether or not that person intends to carry on a taxable activity within 12 months from that date.

(8) Where the Director is satisfied that a registered person is not carrying on a taxable activity, the Director may cancel that person's registration with effect from the last day of the tax period during which the Director became so satisfied, or from such other date as the Director may determine, and shall notify that person in writing of the date on which the cancellation takes effect.

(9) A date determined by the Director for the cancellation of registration under subsection (8) may be retrospective to a date not earlier than —

- (a) the last day of the tax period during which taxable activity carried on by the person ceased; or
- (b) the date on which the person was registered under this Act, if the Director is satisfied that the person did not, from that date, carry on any taxable activity.

(10) A person dissatisfied with a decision of the Director under this section, to cancel or not to cancel the person's registration, may appeal against the decision only in accordance with the provisions of Part VIII.

(11) A person whose registration is cancelled under this section shall be deemed to have made —

- (a) a taxable supply of any goods on hand, including capital goods, at the time the registration is cancelled in respect of which the person has been allowed a deduction for input tax; and
- (b) the taxable supply at the time the registration was cancelled; and
- (c) the taxable supply for a value equal to the fair market value of the supply.

(12) Any obligation or liability under this Act, including the furnishing of returns, of any person in respect of anything done or omitted to be done by that person while the person is a registered person, is not affected by cancellation of the person's registration.

(13) A person who fails to notify the Director as required by subsection (5) commits an offence and is liable on conviction —

- (a) where the failure was made knowingly or recklessly, to a fine not exceeding P10 000 or to imprisonment for a term not exceeding 2 years, or to both; or
- (b) in any other case, to a fine not exceeding P5 000 or to imprisonment for a term not exceeding 1 year, or to both.

PART VI — *Calculation of Tax Payable*

Tax payable
for tax
period

19. (1) The tax payable by a registered person for a tax period is the total amount of output tax payable by the person in respect of taxable supplies made by the person during the period less —

- (a) subject to this section and section 20, the total amount of input tax —
 - (i) payable in respect of taxable supplies made to the person during the tax period;

- (ii) paid in respect of any import of goods by the person during the tax period in the course or furtherance of a taxable activity carried on by the person; and
 - (iii) allowed under section 21 for the tax period; and
 - (b) input tax to which subsection (3) applies for the tax period;
 - (c) an amount equal to the tax fraction of any amount paid during the tax period by the registered person as a prize or winnings to the recipient of services under section 4(10);
 - (d) an amount equal to the tax fraction of any amount paid during the tax period by the registered person to indemnify another person under a short term insurance contract provided —
 - (i) the supply of the short term insurance contract is a taxable supply;
 - (ii) the payment is not in respect of the supply of goods or services to the registered person or the importation of goods or services by the registered person;
 - (iii) the supply of the short term insurance contract is not a supply charged with tax at a rate of zero percent under section 10 and, at the time the amount was paid, the other person was not a resident person and not a registered person; and
 - (iv) the payment does not result from a supply of goods or services to that other person where those goods are situated outside Botswana or those services are physically performed elsewhere than in Botswana at the time of the supply; and
 - (e) an amount equal to the tax fraction of any amount paid during the tax period by the registered person to a supplier in respect of the redemption of a token, voucher, or stamp referred to in section 9(11) by the supplier.
- (2) Notwithstanding any other provision of this Act, no deduction of input tax shall be made in respect of a supply or import unless —
- (a) a tax invoice, or debit or tax credit note, in relation to the supply, has been provided in accordance with sections 23 or 24 and is held by the registered person taking the deduction at the time any return in respect of the supply is furnished, other than when a tax invoice is not required to be provided; and
 - (b) a bill of entry or validating bill of entry as prescribed under section 39 of the Customs and Excise Duty Act, or a document issued by the Department of Customs and Excise or the Director evidencing payment of tax in relation to an import that has been delivered in accordance with the Customs and Excise Duty Act or this Act and is held by the registered person taking the deduction at the time any return in respect of the import is furnished.
- (3) Subject to subsection (4), a deduction is allowed to a registered person in the first tax period in which the person is registered for input tax paid or payable by the person in respect of —

- (a) taxable supplies of goods, other than capital goods, made to the person; and
 - (b) any imports of goods, other than capital goods, made by the person, prior to becoming registered to the extent that the goods are for use or resupply in a taxable activity carried on by the person after registration.
- (4) Subsection (3) applies where —
- (a) the supply or import occurred not more than 4 months prior to the date of registration; and
 - (b) the goods are on hand at the date of registration.
- (5) Where the total amount deductible to a registered person for a tax period under subsection (1) exceeds the total amount of output tax payable by the person for that period, the amount of the excess is dealt with in accordance with section 42.

Input tax

20. (1) In this section —

“entertainment” means the provision of food, beverages, tobacco, accommodation, amusement, recreation, or hospitality of any kind by a registered person whether directly or indirectly to any person in connection with a taxable activity carried on by the registered person; and

“passenger vehicle” means a road vehicle designed or adapted for the transport of nine or fewer seated persons, including double cab vehicles,

(2) No amount may be deducted under section 19(1) by a registered person for input tax paid in respect of —

- (a) a taxable supply to, or import by, the person of a passenger vehicle, unless the person is in the business of dealing in, or hiring of, such vehicles, and the vehicle was acquired for the purposes of such business;
- (b) a taxable supply to, or import by, the person of goods or services acquired for the purposes of entertainment or providing entertainment, unless —

- (i) the person is in the business of providing entertainment and the taxable supply or import relates to the provision of taxable supplies of entertainment in the ordinary course of that business; or

- (ii) the person is in the business of providing taxable supplies of transportation services and the entertainment is provided to passengers as part of the transportation service; or

- (c) fees or subscriptions paid by the person in respect of membership of any person in a club, association, or society of a sporting, social, or recreational nature.

(3) Subject to subsection (4), where only a part of the supplies made by a registered person during a tax period are taxable supplies, the amount of the input tax allowed as a deduction under section 19(1)(a)(i) and (ii) for that period is determined as follows —

- (a) in respect of a supply or import received which is directly allocable to the making of taxable supplies, the full amount of input tax payable in respect of the supply or import shall be allowed as a deduction;
- (b) in respect of a supply or import received which is directly allocable to the making of exempt supplies, no amount of input tax payable in respect of the supply or import shall be allowed as a deduction; or
- (c) in respect of a supply or import received which is used both for the making of taxable and exempt supplies, the amount calculated according to the following formula —

$$A \times B / C$$

where —

A is the total amount of input tax payable in respect of supplies and imports received during the period for which a deduction is allowed under section 19(1), less the input tax accounted for under (a) and (b); B is the total amount of taxable supplies made by the registered person during the period; and

C is the total amount of all supplies made by the registered person during the period other than a supply described in paragraph (2)(p) of the First Schedule.

(4) Where the fraction B/C in paragraph (3)(c) is more than 0.90, the registered person may deduct the total amount of input tax on supplies and imports described in that paragraph.

(5) Notwithstanding subsection (3), the Director may determine the amount of input tax allowed for a tax period where a registered person makes both taxable and exempt supplies during the period on such other basis as the Director considers reasonable.

(6) A registered person dissatisfied with a decision of the Director under subsection (5) may appeal against the decision only in accordance with the provisions of Part VIII.

21. (1) Subsections (2) to (8) of this section apply where, in relation to a supply by a registered person —

- (a) the supply is cancelled;
- (b) the taxation of the supply changes because the nature of the supply is fundamentally varied or altered;
- (c) the previously agreed consideration for the supply is altered, whether due to an offer of a discount or for any other reason; or
- (d) the goods or services or part thereof are returned to the supplier.

(2) Subsection (1) applies only where the registered person making the supply has —

- (a) provided a tax invoice in relation to the supply and the amount shown therein as the tax charged on the supply is incorrect as a result of the occurrence of one or more of the events described under subsection (1)(a) — (d); or

Post-sale
adjustments

(b) furnished a return for the tax period in which the supply occurred and has accounted for an incorrect amount of output tax on that supply as a result of the occurrence of one or more of the events described under subsection (1)(a) — (d).

(3) Where subsection (1) applies, the registered person making the supply is required to make an adjustment as specified under subsection (4) or (6).

(4) Where the output tax properly chargeable in respect of the supply exceeds the output tax actually accounted for by the supplier, the amount of the excess shall be deemed to be the output tax charged by the supplier in relation to a taxable supply made in the tax period in which the event referred to in subsection (1) occurred.

(5) Where a supplier issues a tax debit note to rectify the output tax charged to the recipient in the circumstances specified under subsection (4), the additional tax specified in the tax debit note shall, for purposes of section 19(1), be deemed to be tax payable by the recipient in the tax period in which the tax debit note is received.

(6) Subject to subsection (8), where the output tax actually accounted for by the supplier exceeds the output tax properly chargeable in relation to the supply, the supplier shall be allowed an input tax deduction for the amount of the excess in the tax period in which the event referred to in subsection (1) occurred.

(7) Where a supplier issues a tax credit note to rectify the output tax charged to the recipient in the circumstances specified under subsection (6), the recipient, if a registered person, shall treat the additional tax specified in the tax credit note as output tax payable by the person in respect of a taxable supply made by the person in the tax period in which the tax credit note is received.

(8) Where the supply has been made to a person who is not a registered person, a deduction under subsection (6) is not allowed, unless the amount of the excess tax has been repaid to the recipient of the supply, whether in cash or as a credit against an amount owing to the registered person by the recipient.

(9) Subject to subsections (14), (15) and (16), a registered person is allowed an input tax deduction for tax paid in respect of a taxable supply made by the registered person where the whole or part of the consideration for the supply is subsequently treated as a bad debt.

(10) The amount of the deduction allowed under subsection (9) is the amount of tax paid in respect of the supply which corresponds to the amount of the debt treated as bad.

(11) The deduction under subsection (9) arises on the later of —

(a) the date on which the bad debt was written off in the account of the registered person; or

(b) twelve months after the end of the tax period in which the tax was paid in respect of the supply.

(12) Where an amount in respect of which a deduction has been allowed in accordance with subsection (9) is at any time wholly or partly recovered by the registered person, the registered person is treated as having been charged tax in respect of a taxable supply made during the tax period in which the bad debt is wholly or partly recovered, being an amount of tax calculated according to the following formula —

$$AxB/C$$

where —

A is the amount allowed as a deduction under subsection (9);

B is the amount of the bad debt recovered; and

C is the amount of the bad debt written off.

(13) The deduction allowed under subsection (9) is treated as input tax under section 19(1) for the purposes of calculating the tax payable by the registered person for the tax period in which the deduction arises and for the purposes of section 42.

(14) A deduction is allowed under section 9 only if —

(a) the taxable supply was made to a person other than a registered person; or

(b) the taxable supply was made to a purchaser who is a registered person and the person claiming the deduction under subsection (9) issued a tax credit note to the purchaser listing the amount of the bad debt claimed under the formula under subsection (10).

(15) Where all or a portion of a bet referred to in section 4(10) is a bad debt under this section, the registered person shall treat the amount written off or unpaid for the period prescribed in subsection (11) as a prize or winnings for purposes of section 19 (1)(c).

(16) Where an amount treated as a prize or winnings under subsection (15) is recovered in whole or part, the registered person is treated as having made a supply under section 4(10) during the tax period in which the bad debt is wholly or partly recovered.

22. (1) A person who fails to pay any tax or penalty by the due date for payment under section 33, is liable to pay interest on the unpaid amount at the rate specified in paragraph 2 of the Fifth Schedule, calculated from the date on which the payment was due until the date on which payment was made.

Interest on
unpaid tax

(2) Interest paid by a person under subsection (1) shall be refunded to the person to the extent that the tax or penalty to which it relates is subsequently determined not to have been due.

(3) The provisions of this Act relating to the collection and recovery of tax apply to any interest charged under this section as if the interest is tax due under this Act.

23. (1) Subject to subsection (2), a registered person, referred to as the “registered supplier”, making a taxable supply to another registered person, referred to as the “registered recipient”, shall provide the registered recipient with a tax invoice for the taxable supply containing such particulars as specified in paragraph 1 of the Fourth Schedule.

Tax invoices

(2) A registered supplier shall not be required to provide a tax invoice if the total consideration for the taxable supply is in cash and does not exceed the amount specified in paragraph 3 of the Fifth Schedule.

(3) A person shall not provide a tax invoice in circumstances other than those specified under this section.

(4) Subject to subsection (8), a registered supplier shall issue only one tax invoice for each taxable supply.

(5) A registered recipient who has not received a tax invoice as required by subsection (1) may request, in writing, the registered supplier to provide a tax invoice in respect of the taxable supply.

(6) A request for a tax invoice under subsection (5) shall be made within 60 days after the date of the supply.

(7) A registered supplier who receives a request under subsection (5) shall comply with the request within 14 days after receiving that request.

(8) Where a registered recipient claims to have lost the original tax invoice for a taxable supply, the registered supplier may provide a copy clearly marked "copy."

(9) A registered person making a taxable supply to a person who is not a registered person shall issue an invoice for the taxable supply containing the particulars specified in paragraph 2 of the Fourth Schedule, and such invoice shall not be treated as a tax invoice.

(10) A registered person who fails to provide a tax invoice as required by this section commits an offence and is liable on conviction to a fine not exceeding P10 000 or to imprisonment for a term not exceeding 2 years, or to both.

(11) A person who provides a tax invoice otherwise than as provided for in this section commits an offence and is liable on conviction —

(a) where the failure was made knowingly or recklessly, to a fine not exceeding P10 000 or to imprisonment for a term not exceeding 2 years, or to both; or

(b) in any other case, to a fine not exceeding P5000 or to imprisonment for a term not exceeding 1 year, or to both.

Tax credit and
debit notes

24. (1) Where a tax invoice has been issued in the circumstances specified under section 21(2)(a) and the amount shown as tax charged in that tax invoice exceeds the tax properly chargeable in respect of the supply, the registered person making the supply shall provide the recipient of the supply with a tax credit note containing the particulars specified in paragraph 3 of the Fourth Schedule.

(2) A person shall not provide a tax credit note in any circumstances other than those specified under subsection (1).

(3) Where a tax invoice has been issued in the circumstances specified under section 21(2)(a) and the tax properly chargeable in respect of the supply exceeds the amount shown as tax charged in that tax invoice, the registered person making the supply shall provide the recipient of the supply with a tax debit note containing the particulars specified in paragraph 4 of the Fourth Schedule.

(4) A person shall not provide a tax debit note in any circumstances other than those specified under subsection (3).

(5) A registered person shall only issue one tax credit note or tax debit note for the amount of the excess stated in subsection (1) or (3) respectively.

(6) Notwithstanding the provisions of this section, where a registered person claims to have lost the original tax credit note or tax debit note, the registered person who made the supply may provide a copy clearly marked "copy".

(7) A registered person who fails to provide a tax credit note or tax debit note as required by this section, commits an offence and is liable on conviction, to a fine not exceeding P10 000 or to imprisonment for a term not exceeding 2 years, or to both.

(8) A person who provides a tax credit note or tax debit note otherwise than as provided for in this section commits an offence and is liable on conviction —

- (a) where the failure was made knowingly or recklessly, to a fine not exceeding P10 000 or to imprisonment for a term not exceeding 2 years, or to both; or
- (b) in any other case, to a fine not exceeding P5 000 or to imprisonment for a term not exceeding 1 year, or to both.

PART VII — *Tax Period, Returns, and Assessments*

25. The tax period applicable to a registered person under this Act is the period of 1 month ending on the last day of each month. Tax period

26. (1) Every registered person shall furnish the Director with a return for each tax period, within 25 days after the end of the period whether or not tax is payable in respect of that period. Returns

(2) A return shall be in the prescribed form, and shall —

- (a) state the information necessary to calculate the tax payable in accordance with section 19 for the period, and
- (b) be furnished in the manner prescribed.

(3) In addition to any return required under this Act, the Director may by notice in writing require any person, whether or not a registered person, to furnish the Director, whether on that person's own behalf or as agent or trustee of another person, with such further or other return in the prescribed form and when required by the Director for the purposes of this Act.

(4) A person who fails to furnish a return as required by this Act, commits an offence and is liable on conviction, to a fine not exceeding P5 000 or to imprisonment for a term not exceeding 1 year, or to both.

(5) Where a person convicted of an offence under subsection (4) fails to furnish the return within a further period specified by the Director by notice in writing, that person commits an offence and is liable on conviction to a further fine of P50 for each day during which the failure

continues and to imprisonment for 3 months without the option of a fine in lieu of imprisonment.

(6) A person who fails to furnish a return within the time required under this Act is liable to a penalty which is the greater of:

(a) P50 per day for each day or part thereof that the return remains outstanding; or

(b) an amount equal to 10 percent of the tax payable for the period of such return for each month or part thereof that the return remains outstanding.

(7) The penalty imposed under subsection (6) shall not exceed the amount of tax payable in respect of the return or import declaration.

(8) A person dissatisfied with a decision of the Director under subsection (3) may appeal against the decision only in accordance with the provisions of Part VIII.

Extension of
time

27. (1) Upon application in writing by a person, the Director may, where good cause is shown by the person, extend the period within which a return required under section 26 is to be furnished.

(2) The granting of an extension of time under subsection (1) does not alter the due date for payment of tax under section 33.

(3) A person dissatisfied with a decision of the Director under subsection (1) may appeal against the decision only in accordance with the provisions of Part VIII.

Assessments

28. (1) Where —

(a) a person fails to furnish a return as required by section 26 or fails to furnish an import declaration as required by section 15(1) or (2);

(b) the Director is not satisfied with a return or import declaration furnished by a person;

(c) the Director has reason to believe that a person has become liable for the payment of an amount of tax but has not paid such amount;

(d) a person, other than a registered person, supplies goods or services and represents that tax is charged on the supply;

(e) a registered person supplies goods or services and the supply is not a taxable supply or is a taxable supply charged with tax at the rate of zero percent and, in either case, the registered person represents that a positive rate of tax is charged on the supply; or

(f) the Director has determined the liability of any person in terms of section 71(2),

the Director may make an assessment of the amount of tax payable by the person or of the amount of tax represented by the person as payable in respect of a supply.

(2) The person assessed under subsection (1) —

(a) in the case of an assessment under subsection (1)(d) or (e), is the person making the supply; or

(b) in the case of an assessment under subsection (1)(f), is the person whose liability has been determined under section 71(2); or

- (c) in any other case, is the person required to account for the tax under this Act.
- (3) An assessment under subsection (1)(a), (c), (d), (e), or (f) may be made at any time.
- (4) An assessment under subsection (1)(b) may be made —
- (a) at any time, where the default was due to —
- (i) fraud, or
 - (ii) gross or wilful neglect committed by, or on behalf of, the person who furnished the return or import declaration; or
- (b) in any other case, 5 years after the date the return or import declaration was furnished.
- (5) The Director may, based on the information available, estimate the tax payable by a person for the purposes of making an assessment under subsection (1).
- (6) Where an assessment has been made under this section, the Director shall serve a notice of the assessment on the person assessed, which notice shall state —
- (a) the tax payable;
 - (b) the date the tax is due and payable; and
 - (c) the time, place, and manner of objecting to the assessment.
- (7) The Director may, within 3 years after service of the notice of assessment, amend an assessment by making such alterations or additions to the assessment as the Director considers necessary, and the Director shall serve notice of the amended assessment on the person assessed.
- (8) An amended assessment is treated in all respects as an assessment under this Act.
- (9) An amount assessed under subsection (1)(d), (e) or (f) shall be treated, for all purposes of this Act, as tax charged under this Act.

29. (1) The production of a notice of assessment or a certified copy of a notice of assessment is receivable in any proceedings as conclusive evidence that the assessment has been duly made and, except in proceedings under Part VIII relating to the assessment, that the amount and all particulars of the assessment are correct.

(2) No assessment or other document purporting to be made, issued, or executed under this Act shall be —

- (a) quashed or deemed to be void or voidable for want of form; or
- (b) affected by reason of mistake, defect, or omission therein, if it is, in substance and effect, in conformity with this Act and the person assessed, or intended to be assessed or affected by the document is designated in it according to common understanding.

General provisions relating to assessments

PART VIII — *Objections and Appeals*

Objections

30. (1) A person dissatisfied with an appealable decision may lodge an objection to the decision with the Director within 30 days after service of the notice of the decision.

(2) Upon application in writing by a person dissatisfied with an appealable decision, the Director may, where satisfied that owing to absence from Botswana, sickness, or other reasonable cause, the person was prevented from lodging an objection to the decision within the time specified under subsection (1) and there has been no unreasonable delay by the person in lodging the objection, accept an objection lodged after the time specified under subsection (1).

(3) An objection to an appealable decision shall be in writing and specify in detail, the grounds upon which it is made.

(4) In the case of an objection to an assessment, the Director may consider the objection only if —

(a) the person assessed has paid the tax due under the assessment; or

(b) the Director is satisfied that the person objecting is unable to pay the full amount of tax due and has given sufficient security for the amount of tax unpaid and any penalty that may become payable.

(5) After considering the objection, the Director may allow the objection in whole or in part and amend the assessment or the decision objected to accordingly, or disallow the objection.

(6) The Director shall serve the person objecting with notice in writing of the decision on the objection.

(7) A person dissatisfied with a decision of the Director under subsection (2) may appeal against the decision only in accordance with the provisions of this Part.

Appeals

31. (1) In this section —

“Board of Adjudicators” means a board appointed by the Minister to hear any matter in dispute between the Director and any person in respect of the person’s liability or assessment for tax.

(2) A person dissatisfied with a decision under section 30(5) may, within 30 days after the person was served with notice of the decision, lodge with the Director, a notice of appeal to the High Court or, at the person’s option, the Board of Adjudicators.

(3) Upon application in writing by a person dissatisfied with a decision under section 30(5), the Director may, where satisfied that owing to absence from Botswana, sickness, or other reasonable cause, the person was prevented from lodging a notice of appeal within the time specified under subsection (2) and there has been no unreasonable delay by the person in lodging the notice, accept a notice of appeal lodged after the time specified under subsection (2).

(4) The provisions of sections 89-93, except for section 90(3), and except for the time period to lodge an appeal under section 90(2)(c) of the Income Tax Act and any regulation made under that Act relating to

the High Court or the Board of Adjudicators and to any appeal in terms of section 92 of that Act, shall apply with necessary changes made to adapt those rules to a value added tax appeal.

(5) A person dissatisfied with a decision of the Director under subsection (3) may appeal against the decision only in accordance with the provisions of this Part.

32. The burden of proving that an assessment is excessive or that a decision of the Director is wrong is on the person objecting to the assessment or decision.

Burden of
proof

PART IX — *Collection and Recovery*

33. (1) Tax payable under this Act is due —

Due date for
payment

- (a) from a registered person for a tax period, by the due date for the return for the tax period;
- (b) from a person assessed under an assessment issued under this Act, on the date specified in the notice of assessment; or
- (c) from an importer of goods or a recipient of an import of services, by the due date specified under section 15 in respect of the import.

(2) Where an objection to, or a notice of appeal against, an assessment has been lodged, the tax payable under the assessment is due and payable under subsection (1), and may be recovered, notwithstanding that objection or appeal.

(3) Upon application in writing by a person liable for tax, the Director may, where good cause is shown, extend the time for payment of tax by the person beyond the date on which it is due and payable under this section, or make such other arrangement as appropriate to ensure the payment of the tax due, and any such extension does not alter the due date for purposes of section 22.

(4) A person dissatisfied with a decision of the Director under subsection (3) may appeal against the decision only in accordance with the provisions of Part VIII.

(5) A person who fails to pay tax payable under this Act on or before the due date, is liable for a penalty which is the greater of —

- (a) P50 per day for each day or part thereof that the tax remains outstanding; or
- (b) an amount equal to 10 percent of the tax outstanding, for each month or part thereof that the tax remains outstanding.

(6) The penalty imposed under subsection (5) shall not exceed the amount of unpaid tax.

(7) A penalty paid by a person under subsection (5) shall be refunded to the person to the extent that the tax to which it relates is subsequently determined not to have been due and payable.

(8) A penalty imposed under subsection (5) is in addition to any interest payable under section 22.

34. (1) Any amount of tax due and payable under this Act shall be recoverable by the Director as a debt due to the State from the person liable therefor, in the manner provided in this section.

(2) Where a person, referred to as "the defaulter", fails to pay tax when it is due and payable, the Director may file, with the clerk or registrar of a court, a statement certified by the Director setting forth the amount of the tax due and payable by that person, and that statement shall have the effect of a civil judgment lawfully given in that court in favour of the Director for a liquid debt in the amount specified in the statement, and the court shall issue a writ of execution in respect thereof against the defaulter.

(3) A writ of execution under subsection (2) shall not be issued until 14 days after service by the court on the defaulter of a notice informing the defaulter that a writ of execution will be issued by the court in respect of tax owed and unpaid by the defaulter unless, before the expiration of that period of 14 days, the defaulter produces proof of payment thereof satisfactory to the court.

(4) The Director may, without prejudice to re-instituting proceedings under subsection (2), by notice in writing addressed to the clerk or registrar of the court, withdraw the statement referred to in subsection (2) and such statement shall thereupon cease to have effect.

(5) Where, in addition to an amount of tax which is due and payable by any person under this Act, an amount of interest or penalty is payable, any payment made by the person in respect of such tax, interest, or penalty which is less than the total amount due, shall be deemed to be made —

- (a) first in respect of such penalty;
- (b) to the extent that such payment exceeds the amount of such penalty, then in respect of such interest; and
- (c) to the extent that such payment exceeds the sum of such penalty and interest, then in respect of such tax.

(6) Where the Director has reasonable grounds to believe that a person may leave Botswana permanently without paying all tax due or which may become due under this Act, the Director may issue a certificate to the Chief Immigration Officer containing particulars of the tax due and request that the Chief Immigration Officer take the necessary steps to prevent the person from leaving Botswana until the person makes —

- (a) payment in full; or
- (b) an arrangement satisfactory to the Director for the payment of the tax.

(7) The Director shall, if it is practicable to do so, serve a copy of the certificate issued under subsection (6), on the person named in the certificate.

(8) Payment of the tax specified in a certificate issued under subsection (6), to a Customs and Excise officer or Chief Immigration Officer, or the production of a certificate signed by the Director stating that the tax has been paid or a satisfactory arrangement for payment has been made, shall be sufficient evidence for any immigration officer to allow the person to leave Botswana.

35. (1) The Director, in any case where it is reasonable to do so for the protection of the revenue, may, by notice in writing, require any person to furnish security for the payment of tax that is or may become payable by the person under this Act.

Security

(2) Security required under subsection (1) shall be for such amount, in such form, and furnished within such period as the Director may specify in the notice.

(3) Where a registered person fails to comply with a notice under subsection (1), the Director may recover the amount of the security as if the amount is tax due under this Act.

(4) Where security under subsection (1) is in cash and the Director is satisfied that the security is no longer required, the amount of the security shall be applied by the Director as specified under section 42(2).

(5) A person dissatisfied with a decision of the Director under subsection (1) may appeal against the decision only in accordance with the provisions of Part VIII.

36. (1) For the purposes of this Act the words “tax on income or profit”, contained in paragraph (a) of section 86 of the Insolvency Act, shall include value added tax.

Preferential
claim to assets
Cap. 42:02

(2) Where a person is in default of paying tax, the Director may, by notice in writing, inform that person of the Director’s intention to apply to the Registrar of Deeds for any land or building situated in Botswana which is owned by that person, to be the subject of security for the unpaid tax in default, together with any expense incurred in recovery proceedings.

(3) If the person on whom a notice has been served under subsection (2) fails to pay the amount specified in the notice within 30 days after the date of service of the notice, the Director 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 of unpaid tax.

(4) Where the Director has served a notice on the Registrar of Deeds under subsection (3), the Registrar shall, without fee, register the notice of security as if the notice were an instrument of mortgage over or charge on, as the case may be, such land or buildings, and such 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.

37. (1) Where the Director has reasonable grounds to believe that tax on a supply or import of goods has not been or will not be paid, the Director may seize the goods.

(2) The Director may seize any vehicle used in the removal or carriage of goods liable to be seized under subsection (1) unless it is shown that such vehicle was so used without the consent or knowledge of the owner of that vehicle or other person lawfully in possession or charge thereof; and at the discretion of the Director, the vehicle may be sold by public auction or may be dealt with in such other manner as the Director may direct.

(3) Goods seized under subsection (1) shall be stored in a place approved by the Director for the storage of such goods.

(4) Where goods are seized under subsection (1), the Director shall, as soon as practicable after the seizure, serve on the owner of the goods or the person who had custody or control of the goods immediately before seizure, a notice in writing —

- (a) identifying the goods;
- (b) stating that the goods have been seized under this section and the reason for seizure; and
- (c) setting out the terms of subsections (7), (8), and (9).

(5) The Director is not required to serve notice under subsection (4) if, after making reasonable enquiries, the Director does not have sufficient information to identify the person on whom the notice should be served.

(6) Where subsection (5) applies, the Director may serve a notice under subsection (4) on any person claiming the goods, provided the person has given the Director sufficient information to enable such a notice to be served.

(7) Subject to subsection (8), the Director may authorise the delivery of goods seized under subsection (1) to the person on whom a notice was served under subsection (4), where that person pays or gives security, in accordance with section 35, for the payment of tax due and payable or that will become due and payable in respect of the supply or import of the goods.

(8) The Director shall detain the goods seized under subsection (1) —

- (a) in the case of perishable goods, for such period as the Director considers reasonable having regard to the condition of the goods; or
- (b) in any other case, until the later of —
 - (i) 10 days after the seizure of the goods; or
 - (ii) 10 days after the due date for payment of the tax on the supply or import of the goods.

(9) Where the detention period in subsection (8) has expired, the Director may sell the goods in the manner specified under section 38(4) and apply the proceeds of sale as set out in section 38(5).

(10) Notwithstanding the provisions of this section, the Director may proceed under section 34 with respect to any balance owed if the proceeds of sale are not sufficient to meet the costs thereof and the tax due.

38. (1) The Director may recover unpaid tax by distress proceedings against the movable property of the person liable to pay the tax, referred to as the “person liable”, by issuing an order in writing, specifying the —

Distress
proceedings

- (a) person liable,
- (b) location of the property, and
- (c) tax liability to which the proceedings relate.

(2) For the purposes of executing distress under subsection (1), the Director may —

- (a) at any time, enter any house or premises described in the order authorising the distress proceedings; and
- (b) request a police officer to be present while the distress is being executed.

(3) Property upon which a distress is levied under this section, other than perishable goods, shall be kept for 10 days either at the premises where the distress was levied or at such other place as the Director may consider appropriate, at the cost of the person liable.

(4) Where the person liable does not pay the tax due, together with the costs of the distress —

- (a) in the case of perishable goods, within such period as the Director considers reasonable having regard to the condition of the goods; or
- (b) in any other case, within 10 days after the distress is levied, the property distrained upon may be sold by public auction, or in such other manner as the Director may direct.

(5) The proceeds of a disposal under subsection (4) shall be applied by the auctioneer or seller first towards the cost of taking, keeping, and selling the property distrained upon, then by the Director towards the tax due, and the remainder of the proceeds, if any, shall be restored to the person liable.

(6) Nothing in this section precludes the Director from proceeding under section 34 with respect to any balance owed if the proceeds of the distress are not sufficient to meet the costs thereof and the tax due.

(7) All costs incurred by the Director in respect of any distress proceedings, may be recovered by the Director from the person liable as if the costs are tax due under this Act.

39. (1) Where, in consequence of a fraudulent action or misrepresentation by the recipient of a taxable supply from a registered person, the registered person incorrectly treated the supply as an exempt or zero-rated supply, the Director may raise an assessment upon the recipient for the amount of unpaid tax in respect of the supply, together with any interest or penalty that has become payable under sections 22, and either 15 or 33.

Recovery of
tax from
recipient of
supply

(2) The Director shall serve notice of an assessment under subsection (1) on the recipient specifying —

- (a) the tax payable;
- (b) the date the tax is due and payable; and
- (c) the time, place, and manner of objecting to the assessment.

(3) An assessment raised under subsection (1) is treated as an assessment for all purposes of the Act.

(4) Subsection (1) does not preclude the Director from recovering the tax, interest, or penalty from the registered person making the supply.

(5) For purposes of subsection (4), any amount recovered from the recipient is to be credited against the liability of the registered person; and any amount recovered from the registered person is to be credited against the liability of the recipient.

(6) Where an amount of tax, interest, or penalty referred to in subsection (1) is paid by the registered person, the registered person may recover the amount paid from the recipient.

(7) An amount assessed under this section shall be treated, for all purposes of this Act, as tax charged under this Act.

40. (1) Where a person liable to pay tax under this Act, referred to as the “person liable”, fails to do so by the due date, the Director may, by notice in writing, require any other person —

- (a) owing or who may owe money to the person liable;
- (b) holding or who may subsequently hold money for, or on account of, the person liable; or
- (c) having authority from some other person to pay money to the person liable, to pay the money to the Director on the date set out in the notice, up to the amount of the tax due.

(2) The date specified in the notice under subsection (1) shall not be a date before the money becomes due to the person liable to pay tax, or held on the person’s behalf.

(3) A copy of a notice issued under subsection (1) shall be served on the person liable.

(4) Where a person served with a notice under subsection (1) is unable to comply with the notice, the person shall, before the payment date specified in the notice, notify the Director, in writing, setting out the reasons for the inability to comply.

(5) Where a notice is served on the Director under subsection (4), the Director may, by notice in writing —

- (a) accept the notification and cancel or amend the notice issued under subsection (1); or
- (b) reject the notification.

(6) Where a person who has served a notice on the Director under subsection (4) is dissatisfied with the decision of the Director under subsection (5), the person may appeal against the decision only in accordance with the provisions of Part VIII.

(7) A person making a payment pursuant to a notice under subsection (1) shall be deemed to have acted under the authority of the person liable and of any other person concerned and is indemnified in respect of the payment.

(8) The provisions of this Act relating to the collection and recovery of tax shall apply to any amount due under this section as if it were tax due under this Act.

(9) A person who fails to comply with a notice under this section commits an offence and is liable on conviction to a fine not exceeding P5,000 or to imprisonment for a term not exceeding 1 year, or to both.

(10) Where a person is convicted of an offence under subsection (9), the Court may, in addition to imposing a fine or prison sentence, order the convicted person to pay to the Director an amount not exceeding the amount which the person failed to pay as required under this section.

41. (1) In this section, "receiver" means a person who, with respect to an asset in Botswana of a registered person, is —

- (a) a liquidator of a company;
- (b) a receiver appointed out of court or by a court;
- (c) a trustee for an unrehabilitated insolvent;
- (d) a mortgagee in possession;
- (e) an executor of a deceased estate; or
- (f) any other person conducting a business on behalf of a person legally incapacitated.

(2) A receiver shall, in writing, notify the Director within 14 days after being appointed to the position or taking possession of an asset in Botswana, whichever first occurs.

(3) The Director may, in writing, notify a receiver, of the amount which appears to the Director to be sufficient to provide for tax which is or will become payable by the person whose assets are in the possession of the receiver.

(4) A receiver —

- (a) shall set aside, out of the proceeds of sale of an asset, the amount specified by the Director under subsection (3), or such lesser amount as is subsequently agreed on by the Director;
- (b) is liable to the extent of the amount set aside for the tax of the person who owned the asset; and
- (c) may pay any debt that has priority over the tax referred to in this section notwithstanding any provision of this section.

(5) A receiver is personally liable to the extent of any amount required to be set aside under subsection (4) for the tax referred to in subsection (3) if, and to the extent that, the receiver fails to comply with the requirements of this section.

(6) A person who fails to comply with the requirements of subsection (4) commits an offence and is liable on conviction to a fine not exceeding P5,000 or to imprisonment for a term not exceeding 1 year, or to both.

Duties of
receivers

(7) Where a person is convicted of an offence under subsection (6) for failing to set aside an amount as required under subsection (4), the court may, in addition to imposing a fine or prison sentence, order the convicted person to pay to the Director, an amount not exceeding the amount which the person failed to set aside as required under subsection (4).

PART X — *Refund of Tax and Tax Relief*

Refund of tax

42. (1) Where —

- (a) the total amount deductible by a registered person under section 19(1) for a tax period exceeds the person's output tax for that period; or
- (b) the amount of tax paid by a person, other than in circumstances specified under paragraph (a), was in excess of the amount properly charged to tax under this Act, the amount of the excess shall be treated in the manner provided for in this section.

(2) Subject to this section, if, for any tax period, a registered person files a return reporting an excess referred to in subsection (1)(a), the return constitutes a claim for a refund and where the Director is satisfied that the registered person is due a refund —

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1993

(a) the Director may apply the amount of the refund in reduction of any tax, levy, interest, or penalty payable by the person in terms of this Act, the Customs and Excise Duty Act; the Income Tax Act; and any unpaid amounts in terms of the Sales Tax Act, 1993; and

(b) any excess remaining shall be refunded to the registered person —

(i) where —

(A) the Director is satisfied that the excess is due to excess input tax deductions that arise from the regular export of goods or services from Botswana as specified in a notice issued to the person by the Director; or

(B) the Director is satisfied that the excess is due to excess input tax deductions that arise from the operation under a certificate described in section 75, of a value added tax manufacturing warehouse or an international financial services centre company, at the end of the calendar month following the due date for the return reporting the excess; or

(ii) in any other case, at the end of the second calendar month following the due date for the return reporting the excess.

(3) Where a person has overpaid tax in the circumstances specified under subsection (1)(b), the person may apply in writing to the Director for a refund of the excess amount of tax, accompanied by documentary proof of payment of the excess amounts.

(4) Subject to this section, where the Director is satisfied that a person who has made an application under subsection (3) has overpaid tax, the Director shall —

(a) first apply the amount of the excess as specified under subsection (2)(a); and

(b) then repay any amount remaining to the person.

(5) The Director shall not make a refund under subsection (4), unless —

(a) the amount to be refunded is more than the amount specified in paragraph 4 of the Fifth Schedule; and

(b) the Director is satisfied that any amount of output tax claimed to be refundable to a registered person will, if such amount has been borne by any other person, in turn be refunded by the registered person to that other person.

(6) Where a registered person has failed to furnish a return for any tax period as required under this Act, the Director may withhold payment of any amount refundable under this section until the registered person furnishes such return as required.

(7) A claim for a refund referred to under subsection (2) or (3) shall be made within 3 years after the date the excess arose.

(8) The Director shall serve on a person claiming a refund, a notice in writing of the decision in respect of the claim.

(9) A person claiming a refund under this section who is dissatisfied with a decision referred to under subsection (8) may appeal against the decision only in accordance with the provisions of Part VIII.

(10) Where the Director fails to pay a refund of tax relating to an excess under subsection (1)(a) by the date specified under this section, the Director shall pay the registered person entitled to the refund, an additional amount as interest at the rate specified in paragraph 5 of the Fifth Schedule and calculated from the date on which the refund was due until the date on which the payment of the refund is made.

(11) A person who improperly claims a refund under this section, commits an offence and is liable on conviction, to a fine not exceeding P15 000 or to imprisonment for a term not exceeding 3 years, or to both.

43. (1) The Minister may authorise the granting of a refund of tax paid or borne on a supply to, or import by —

(a) any person to the extent provided under —

(i) the Diplomatic Immunities and Privileges Act,

(ii) an international convention having force of law in Botswana,

(iii) the recognised principles of international law, or

(iv) under the International Financial Organizations Act; or

(b) any diplomatic or consular mission of a foreign country established in Botswana, relating to transactions concluded for the official purposes of such mission;

Others eligible
for tax refund

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- (c) an organization or government to the extent provided under a technical assistance or humanitarian assistance agreement entered into between the Government of Botswana and any organization or government of any country;
 - (d) a non-resident individual on goods specified in the regulations that are exported from Botswana as accompanied baggage only if the total tax on such goods exceeds the amount specified in paragraph 6 of the Fifth Schedule, or
 - (e) a person not required to register under section 16 who exports goods within a period of three months from the date such goods were imported and subject to tax if, at the port of exit, the person identifies the goods and presents, to the customs officer, the documentary proof required by the Director.
- (2) A refund provided for under subsection (1)(a) and (d) is not available to a citizen or a resident of Botswana.
- (3) The Minister may authorise relief under this section on such conditions or subject to such restrictions as the Minister may deem fit.
- (4) A claim for a refund of tax under this section, shall be made in such form and at such time as the Minister may prescribe, and shall be accompanied by proof of payment of tax.

PART XI — *Representatives*

Persons acting
in a representa-
tive capacity

Act No. 12
of 1995

44. (1) In this section,
- “public officer”, in relation to a company, means the person who is the public officer of the company in terms of section 134 of the Income Tax Act; and
- “representative”, in relation to a registered person, means —
- (a) in the case of a company, other than a company in liquidation, —
 - (i) where the company has a public officer, that public officer;
 - (ii) in the case of an unincorporated association or body, a member of the committee of management of the association or body; or
 - (iii) in any other case, a person who is responsible for accounting for the receipt and payment of moneys or funds on behalf of the company;
 - (b) in the case of a company in liquidation, the liquidator of the company;
 - (c) in the case of the State, a person responsible for accounting for the receipt and payment of moneys under the provisions of any law or for the receipt and payment of public funds or of funds voted by Parliament;
 - (d) in the case of a local authority or board, a person who is responsible for accounting for the receipt and payment of moneys or funds on behalf of the local authority or board;

- (e) in the case of a partnership, a partner in the partnership;
- (f) in the case of a trust, a trustee of the trust; or
- (g) in the case of a non-resident person or a person referred to in paragraph (d) of the definition of "resident person" in section 2, a person controlling the non-resident person's affairs in Botswana, including any manager of any taxable activity of the non-resident person in Botswana.

(2) Every representative of a registered person is responsible for performing any duty, including the payment of tax, imposed by this Act on the registered person.

(3) Subject to subsection (5), any tax that by virtue of subsection (2) is payable by a representative, shall only be recoverable from the representative to the extent of any asset of the registered person that is in the possession or under the control of the representative.

(4) Every representative who in that capacity pays any tax payable under this Act by a registered person, shall be entitled to recover the amount so paid, from the registered person or to retain the amount so paid, out of any moneys of the registered person that are in the representative's possession or under the representative's control.

(5) Every representative shall be personally liable for the payment of any tax payable by the representative in his representative capacity if, while the amount remains unpaid, the representative —

- (a) alienates, charges, or disposes of money received or accrued in respect of which the tax is payable; or
- (b) disposes of or parts with any fund or money belonging to the registered person which is in the possession of the representative or which comes to the representative after the tax is payable if such tax could legally have been paid from or out of such fund or money.

(6) Nothing in this section shall be construed as relieving a registered person from performing any duty imposed by this Act, on the registered person, which the representative of the person has failed to perform.

45. (1) The Director may, if the Director considers it necessary to do so, declare any person to be an agent of a registered person and the person declared to be agent shall be deemed to be a representative of the registered person for the purposes of section 44.

Power to
appoint
agent

(2) A person dissatisfied with a decision of the Director under subsection (1) may appeal against the decision only in accordance with the provisions of Part VIII.

PART XII — *Special Cases*

46. (1) Subject to this Act, where a taxable activity is conducted by a registered person in a branch or division, the registered person is deemed to be a single person conducting the taxable activity for purposes of this Act.

Branches

(2) Subject to subsection (3) a registered person who conducts a taxable activity in a branch or division, shall be registered only in the name of the registered person.

(3) Notwithstanding subsection (2), the Director may, upon application in writing by a registered person, authorise the registered person to register one or more of its branches or divisions as separate registered persons where the Director is satisfied that the branch or division maintains an independent accounting system and can be separately identified by the nature of its activities or location.

(4) The registration of a branch or division under subsection (3) is subject to such conditions and restrictions as the Minister may deem fit.

Bodies of persons (other than incorporated companies)

47. (1) This Act applies to a partnership as if the partnership were a person separate from the partners of the partnership, except that —

- (a) obligations that would be imposed on the partnership are instead imposed on each partner, but may be discharged by any of the partners; and
- (b) the partners are jointly and severally liable to pay any amount due under this Act that would be payable by the partnership; and
- (c) any offence under this Act that would otherwise be committed by the partnership is taken to have been committed by each of the partners.

(2) This Act applies to an unincorporated association or body as if it were a person separate from the members of the association or body, but the obligations that would be imposed on the association or body are instead imposed on each member of the committee of management of the association or body, but may be discharged by any of those members.

(3) Where —

- (a) a partnership, or unincorporated association or body is dissolved, referred to as the “dissolved entity”, in consequence of —
 - (i) the retirement or withdrawal of one or more, but not all, of its partners or members; or
 - (ii) the admission of a new partner or member;
- (b) a new partnership, or association or body comes into existence, referred to as the “new entity”, consisting of the remaining members and one or more new members; and
- (c) the new entity continues to carry on the taxable activity of the dissolved entity as a going concern, the dissolved entity and the new entity shall, for the purposes of this Act, be deemed to be one and the same, unless the Director, having regard to the circumstances of the case, otherwise directs.

Death or insolvency; Mortgagee in possession

48. (1) Where, after the death of a registered person, or the sequestration of a registered person’s estate, a taxable activity previously carried on by the registered person is carried on by or on behalf of the executor or trustee of the person’s estate or anything is done in connection with the termination of the taxable activity, the estate of the registered person, as represented by the executor or trustee, shall for the purposes of this Act, be deemed to be the registered person in respect of the taxable activity.

(2) Where a mortgagee is in possession of land or other property previously mortgaged by a mortgagor who is a registered person, and the mortgagee carries on a taxable activity in relation to the land or other property, the mortgagee shall, from the date the mortgagee took possession of that land or property until such time as the mortgagee ceases to be in possession of the land or property, be deemed to be the registered person carrying on the taxable activity.

49. A person who is a trustee in more than one capacity is treated for the purposes of this Act as a separate person in relation to each of those capacities.

Trustee

PART XIII — *Records and Investigation Powers*

50. In this Part, “records” means any accounting records, accounts, books, computer-stored information, or any other documents.

Interpretation

51. (1) A registered person or any other person liable for tax under this Act, shall maintain in Botswana in the English or Setswana language —

Record
keeping

- (a) original tax invoices, tax credit notes, and tax debit notes received by the person;
- (b) a copy of all tax invoices, tax credit notes, and tax debit notes issued by the person;
- (c) customs documentation relating to imports and exports by the person;
- (d) accounting records; and
- (e) any other records as may be prescribed by the Director.

(2) Records required to be maintained under subsection (1) shall be retained for at least 7 years after the end of the tax period to which they relate.

(3) A person who fails to maintain proper records in accordance with this section commits an offence and is liable on conviction —

- (a) where the failure was made knowingly or recklessly, to a fine not exceeding P10 000 or to imprisonment for a term not exceeding 2 years, or to both; or
- (b) in any other case, to a fine not exceeding P5 000 or to imprisonment for a term not exceeding 1 year, or to both.

(4) A person who fails to maintain proper records in a tax period, in accordance with the requirements of this section, is liable to a penalty of P100 per day for each day or portion thereof that the failure continues.

(5) No penalty is payable under subsection (4) where the person has been convicted of an offence under subsection (3) in respect of the same act.

(6) If a penalty under subsection (4) has been paid and the Director institutes criminal proceedings under subsection (3) in respect of the same act, the Director shall refund the amount of penalty paid, and that penalty is not payable unless the prosecution is withdrawn.

52. (1) For the purpose of the administration of this Act, a taxation officer who has been authorised by the Director in writing may —

- (a) without previous notice and at any time, enter any premises or place where records are kept and on such premises search for any records;**
- (b) in carrying out a search referred to in paragraph (a), open or cause to be opened or removed and opened, any article in which the officer suspects that records are kept;**
- (c) seize records which in the officer's opinion may afford evidence that may be material in assessing a person's liability for tax payable under this Act;**
- (d) retain records seized under paragraph (c) for as long as they may be required for determining a person's liability under the Act or for any proceeding under the Act;**
- (e) examine and make extracts from, and copies of, any records, and require from any person an explanation of any entry therein;**
- (f) where a hard copy or computer disk of computer-stored information is not provided, seize and retain the computer in which the information is stored for as long as is necessary to copy the information required; and**
- (g) stop and board any vehicle which the officer has reasonable cause to believe is importing goods into Botswana, search such vehicle or any person found in the vehicle, and question the person with respect to any matter dealt with in this Act.**

(2) A taxation officer who attempts to exercise a power under subsection (1) on behalf of the Director is not entitled to enter or remain on any premises or at any place if, upon being requested by the occupier of the premises or place, the officer does not produce an authorisation in writing from the Director to the effect that the officer is authorised so to act.

(3) The owner, manager, or any other person lawfully on the premises or at the place entered or proposed to be entered under this section, is required to provide all reasonable facilities and assistance for the effective exercise of power under this section.

(4) A person whose records or computer have been removed and retained under subsection (1), may examine them and make copies or extracts from them during regular office hours under such supervision as the Director may determine.

(5) A taxation officer exercising a power under subsection (1) may, at any time, request such assistance from a police officer as the taxation officer may consider reasonably necessary and that police officer shall render such assistance as may be required by the taxation officer.

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

(7) This section has effect notwithstanding any rule of law relating to privilege or the public interest in relation to the production of, or access to records.

(8) A person who fails to provide a taxation officer with reasonable facilities and assistance as required by subsection (3), commits an offence and is liable on conviction, to a fine not exceeding P5 000 or to imprisonment for a term not exceeding 1 year, or to both.

53. Where any record referred to in section 51 or 52 is not in the English or Setswana language, the Director may, by notice in writing, require the person keeping the record, to provide, at that person's expense, a translation into the English or Setswana language by a translator approved by the Director for this purpose.

Records
not in
English or
Setswana

54.(1) The Director may, by notice in writing, require a person, whether or not liable for tax under this Act —

Notice to
obtain
information
or evidence

(a) to furnish such information as may be required by the notice; or

(b) to attend at the time and place designated in the notice for the purpose of being examined on oath before the Director or a taxation officer authorised by the Director for this purpose concerning the tax affairs of that person or any other person, and for that purpose the Director or the authorised officer may require the person examined to produce any record or computer in the control of the person.

(2) Where the notice requires the production of any record or computer, it is sufficient if such record or computer is described in the notice with reasonable certainty.

(3) A notice issued under this section shall be served by or at the direction of the Director by —

(a) a signed copy delivered by hand to the person to whom it is directed; or

(b) being left at the person's last and usual place of abode, and the certificate of service signed by the person serving the notice is evidence of the facts stated therein.

(4) This section has effect notwithstanding any rule of law relating to privilege or the public interest in relation to the furnishing of information or the production of records or documents.

(5) A person who fails to comply with a notice issued under this section, commits an offence and is liable on conviction, to a fine not exceeding P5 000 or to imprisonment for a term not exceeding 1 year, or to both.

PART XIV — *VAT Registration Number*

55. (1) The Director may require a person to include the VAT Registration Number issued by the Director to that person, in any return, notice, or other document prescribed or used for the purposes of this Act.

VAT
registration
number

(2) A person who knowingly uses a false VAT registration number, or the VAT registration number of another person, on a return, notice, or

other document prescribed or used for the purposes of this Act, commits an offence and is liable on conviction, to a fine not exceeding P10 000 or to imprisonment for a term not exceeding 2 years, or to both.

(3) Subsection (2) does not apply to a person who has used the VAT registration number of another person with the permission of that other person, on a return, notice, or other document relating to the tax affairs of that other person.

PART XV — *Offences and Penalties*

Division I: *Offences*

False or
misleading
statements

56. (1) A person who —

- (a) makes a statement that is false or misleading in a material particular, to a taxation officer; or
- (b) omits from a statement made to a taxation officer, any matter or thing without which the statement is misleading in a material particular,

commits an offence and is liable on conviction —

- (i) where the statement or omission was made knowingly or recklessly, to a fine not exceeding P10 000 or to imprisonment for a term not exceeding 2 years, or to both; or
- (ii) in any other case, to a fine not exceeding P5 000 or to imprisonment for a term not exceeding 1 year, or to both.

(2) A reference in this section to a statement made to a taxation officer is a reference to a statement made orally, in writing, or in any other form to that officer acting in the performance of the officer's duties under this Act, and includes a statement made —

- (a) in an application, certificate, declaration, notification, return, objection, or other document made, prepared, given, filed, lodged, or furnished under this Act;
- (b) in information required to be furnished under this Act;
- (c) in a document furnished to a taxation officer otherwise than pursuant to this Act;
- (d) in an answer to a question asked of a person by a taxation officer; or
- (e) to another person with the knowledge or reasonable expectation that the statement would be conveyed to a taxation officer.

(3) It is a defence to a prosecution under subsection (1) that the person did not know and could not reasonably be expected to have known that the statement to which the prosecution relates was false or misleading.

Obstructing
taxation
officers

57. A person who obstructs a taxation officer in the performance of the officer's duties under this Act, commits an offence and is liable on conviction, to a fine not exceeding P10 000 or to imprisonment for a term not exceeding 2 years, or to both.

58. A taxation officer who, in carrying out the provisions of this Act —

Offences
by taxation
officers

- (a) directly or indirectly asks for, or takes, in connection with any of the officer's duties, any payment or reward, whether pecuniary or otherwise, or any promise or security for such payment or reward, not being a payment or reward which the officer was lawfully entitled to receive; or
- (b) enters into or acquiesces in any agreement to do, abstain from doing, permit, conceal, or connive at any act or thing whereby the tax revenue is or may be defrauded or which is contrary to the provisions of this Act or to the proper execution of the officer's duty, commits an offence and is liable on conviction, to a fine not exceeding P25 000 or to imprisonment for a term not exceeding 5 years, or to both and the Court may, in addition to imposing a fine, order the convicted person to pay to the Director any amount of tax that has not been paid as a result of the officer's wrongdoing and which cannot be recovered from the person liable for the tax.

59. (1) Where an offence under this Act is committed by a company, any person who at the time of the commission of the offence —

Offences by
companies,
aiders and
abettors

- (a) was a representative officer, director, general manager, secretary, or other similar officer of the company; or
 - (b) was acting or purporting to act in such capacity, is deemed to have committed the offence.
- (2) Subsection (1) does not apply where —
- (a) the offence was committed without such person's consent or knowledge; and
 - (b) the person exercised all such diligence as ought to have been exercised, having regard to the nature of the person's functions and all the circumstances, to prevent the commission of the offence.

(3) A person aiding and abetting the commission of an offence under this Act also commits that offence and is liable to the same penalties as the person committing the offence.

60. (1) Where a person commits an offence under this Act other than an offence under section 58, at any time prior to the commencement of the court proceedings relating thereto, if —

Compounding
of offences

- (a) the fine does not exceed P5 000, or
 - (b) the fine exceeds P5 000, the Director, may, in the case of paragraph (b) with the approval of the Minister, compound such offence and order the person to pay such sum of money as specified by the Director, not exceeding the amount of the fine prescribed for the offence.
- (2) The Director shall only compound an offence under this section if the person who has committed the offence requests the Director, in writing, so to deal with the offence.

- (3) Where the Director compounds an offence under this section, the order referred to in subsection (1) —
- (a) shall be in writing and there shall be attached to it, the request referred to under subsection (2);
 - (b) shall specify —
 - (i) the offence committed;
 - (ii) the sum of money to be paid; and
 - (iii) the due date for the payment;
 - (c) shall be served on the person who committed the offence;
 - (d) shall be final and not subject to any appeal.
 - (e) may be enforced in the same manner as a decree of a court for the payment of the amount stated in the order.
- (4) Where the Director compounds an offence under this section, the person concerned shall not be liable for prosecution in respect of such offence or for penalty under section 16(9), 51(4), or 61; and the person shall not be subject to publication of names under subsection (5).
- (5) The Director shall from time to time publish by notice in the Gazette a list of persons who have been convicted of offences under —
- (a) section 16(8), 17(8), 18(13), 23(10) and (11), 4(7) and (8), 42(11), 51(3)(a), 55(2), 56(1)(c), 57, or 58; or
 - (b) section 59(3) where the person is guilty of aiding and abetting the commission of an offence referred to in paragraph (a).
- (6) Every list published in terms of subsection (5) shall specify —
- (a) the name, address, and principal enterprise of the registered person;
 - (b) such particulars of the offence as the Director may think fit;
 - (c) the tax period or tax periods in which the offence occurred;
 - (d) the amount or estimated amount of the tax evaded; and
 - (e) the amount, if any, of the additional tax imposed.

Division II: *Penalties*

Penalty for
false or
misleading
statements

- 61.** (1) Where a person knowingly or recklessly —
- (a) makes a statement to a taxation officer that is false or misleading in a material particular; or
 - (b) omits from a statement made to a taxation officer any matter or thing without which the statement is misleading in a material particular, and the tax properly payable by the person exceeds the tax that would be payable if the person were assessed on the basis that the statement is true, the person is liable for a penalty equal to double the amount of the excess.
- (2) Section 56(2) and (3) apply in determining whether a person has made a statement to a taxation officer.
- (3) No penalty is payable under this section where the person has been convicted of an offence under section 56 in respect of the same act or omission.
- (4) If a penalty under this section has been paid and the Director institutes a prosecution proceeding under section 56 in respect of the same act or omission, the Director shall refund the amount of the penalty paid, and that penalty is not payable unless the prosecution is withdrawn.

62. (1) Where good cause is shown, in writing, by the person liable for a penalty, the Director may remit in whole or in part any penalty payable.

Recovery of penalties

(2) Except as otherwise provided in this Act, the imposition of a penalty is in addition to any fine or prison sentence imposed as a result of a conviction for an offence under sections 15(8) or (9), 16(8), 17(8), 18(13), 23(10) or (11), 24(7) or (8), 26(4) or (5), 40(9), 41(6), 42(11), 51(3), 52(9), 54(5), 55(2), 65(5), or under Division I of Part XV.

(3) Penalties may be assessed and collected as if the amount of penalty is a tax due under this Act.

(4) A person dissatisfied with a decision of the Director under subsection (1) may appeal against the decision only in accordance with the provisions of Part VIII.

63. (1) Where a person is repeatedly in breach of —

- (a) section 23 in relation to tax invoices,
- (b) section 24 in relation to tax debit notes or tax credit notes;
- (c) section 26 by failing to furnish returns;
- (d) section 42 by improperly claiming tax refunds;
- (e) section 57 by obstructing taxation officers; or
- (f) section 15 or 33 by failing to pay tax when due,

Closure of business premises

the Director may, after obtaining a court order, forcibly close all business premises of the person.

(2) For purposes of subsection (1), the Director may use reasonable force and police assistance necessary to close all or any business premises of the person, barring access with locks, fencing, boarding, or other appropriate methods.

PART XVI — *Administration*

64. (1) The Director shall be responsible for carrying out the provisions of this Act.

Administration of Act

(2) The powers conferred and the duties imposed upon the Director under the provisions of this Act, may be exercised or performed by the Director personally, or by a taxation officer engaged in carrying out the said provisions under the control, direction, or supervision of the Director.

(3) Subject to subsection (4), any decision made and any notice or communication issued or signed by a taxation officer referred to in subsection (2), may be withdrawn or amended by the Director or by the officer concerned, and shall for the purposes of the said provisions, until it has been so withdrawn, be deemed to have been made, issued, or signed by the Director.

(4) A written decision made by a taxation officer, other than the Director, in the exercise of a discretionary power under the provisions of this Act, shall not be withdrawn or amended after the expiration of 2 years from the date of the written notification of such decision or of

a notice of assessment giving effect thereto, if all the material facts were known to the officer when the decision was made.

(5) A written decision made by the Director or other taxation officer in the exercise of a discretionary power under the provisions of this Act, shall not be withdrawn or amended by the Director if all the material facts were known to the Director at the time the decision was made.

(6) Where the Director, knowing all the material facts at the time makes a decision to the effect that a person is required or not required to register, and the person accepts the Director's decision, and subsequently the Director withdraws the decision, the Director's decision shall govern the liability or non-liability of such person for payment of tax on any transaction concluded or event which occurred before the withdrawal of the decision.

(7) Where the Director, knowing all the material facts at the time, makes a decision as to the nature of a transaction concluded by a person, and the person accepts the Director's decision, and the Director subsequently withdraws the decision, the Director's decision shall govern the liability or non-liability of that person for payment of tax on any transaction concluded before the withdrawal of the decision.

Confidentiality

65. (1) A taxation officer carrying out the provisions of this Act shall not —

- (a) disclose to any person or that person's representative, any matter in respect of another person, that may, in the exercise of the officer's powers or the performance of the officer's duties under the said provisions, come to the officer's knowledge; or
- (b) permit any person to have access to records in the possession or custody of the Director, except in the exercise of the officer's powers or the performance of the officer's duties under this Act or by order of a court.

(2) Nothing in this section shall prevent the Director from disclosing —

- (a) any document or information to —
 - (i) any person where the disclosure is necessary for the purposes of this Act or any other fiscal law;
 - (ii) the Auditor-General where the disclosure is necessary for the performance of duties under the Finance and Audit Act;
 - (iii) the competent authority of the government of another country with which Botswana has entered into an agreement for the avoidance of double taxation or for the exchange of information, to the extent permitted under the agreement;
 - (iv) the Directorate on Corruption and Economic Crime where the disclosure is necessary for the performance of duties under the Corruption and Economic Crime Act; or
 - (v) a law enforcement agency, not described above, where the Minister issues written authorization to make disclosure necessary for the enforcement of the laws under the agency's authority; or

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1994

- (b) information which does not identify any specific person to any person in the service of the State in a revenue or statistical department where such disclosure is necessary for the performance of the person's official duties.

(3) A person receiving documents or information under subsection (2) shall keep them confidential under the provisions of this section, except to the minimum extent necessary to achieve the purpose for which the disclosure was made.

(4) Any document or information obtained by the Director in the performance of the Director's duties under this Act, may be used by the Director for the purposes of any other fiscal law administered by the Minister or Director.

(5) A person who contravenes this section commits an offence and is liable on conviction, to a fine not exceeding P10 000 or to imprisonment for a term not exceeding 2 years, or to both.

PART XVII — *Notices*

66. A notice or other document issued, served or given by the Director under this Act, is sufficiently authenticated if the name or title of the Director, or authorised taxation officer, is printed, stamped or written on the document.

Authentica-
tion of
documents

67. Unless otherwise provided in this Act, a notice or other document required or authorised by this Act to be served, is considered sufficiently served —

Service of
notices and
other
documents

(a) on an individual, other than in a representative capacity, if it is —

- (i) personally served on that person;
- (ii) left at the person's usual or last known place of abode, office, or place of business in Botswana; or
- (iii) sent by registered post to such place of abode, office, or place of business, or to the person's usual or last known address in Botswana; or

(b) on any other person, if it is —

- (i) personally served on the representative of the person;
- (ii) left at the registered office of the person or the person's address for service of notices under this Act; or
- (iii) where there is no such office or address, left at or sent by registered post to any office or place of business of the person in Botswana.

PART XVIII — *General Provisions*

68. (1) Any price charged by a registered person in respect of a taxable supply shall, for the purposes of this Act, be deemed to include the tax charged on the supply under section 7(1)(a), whether or not the registered person has included tax in such price.

Tax-inclusive
pricing

(2) Subject to subsection (3), where a registered person advertises or quotes a price in respect of a taxable supply, the person shall include tax in the price advertised or quoted.

(3) A registered person may advertise or quote a price in respect of a taxable supply as exclusive of tax where —

- (a) the advertisement or quotation also states the amount of tax charged on the supply and the price inclusive of tax; and
- (b) the price inclusive of tax and the price exclusive of tax shall be advertised or quoted with equal prominence or impact.

(4) Subject to subsection (5), price tickets on goods supplied by a registered person, need not state that the price includes tax if this is stated by way of a notice prominently displayed at every entrance to the premises on which the registered person carries on a taxable activity and at every point on such premises where payment is effected.

(5) The Director may, in the case of a registered person or class of registered persons, approve any other method of displaying prices of goods or services by such persons.

Variation of
consideration

69. (1) Where —

(a) an agreement for a supply of goods or services by a registered person has been entered into; and

(b) subsequent to entering into the agreement, tax is imposed on the supply or the rate of tax applicable to the supply is increased, the supplier may, notwithstanding anything to the contrary in any agreement or law, recover from the recipient, in addition to the amount payable by the recipient, an amount equal to the amount of tax imposed or the amount by which tax was increased, as the case may be.

(2) Where —

(a) an agreement for a supply of goods or services by a registered person has been entered into; and

(b) subsequent to entering into the agreement, tax on the supply is withdrawn or the rate of tax applicable to the supply is decreased, the supplier shall, notwithstanding anything to the contrary in any agreement or law, reduce the amount payable by the recipient by an amount equal to the amount of tax withdrawn or the amount by which tax was decreased, as the case may be.

(3) Subject to subsections (4) and (5), where subsection (1) or (2) applies in respect of a supply of goods or services subject to a fee, charge, or other amount, whether a fixed, maximum, or minimum fee, charge, or other amount, prescribed by, or determined pursuant to, any Act, regulation, or measure having force of law, that fee, charge, or other amount may be increased or shall be decreased, as the case may be, by the amount of tax or additional tax chargeable, or the amount of tax no longer chargeable.

(4) Subsection (3) does not apply where the fee, charge, or other amount has been altered in any Act, regulation, or measure having force of law to take account of an imposition, increase, decrease, or withdrawal of tax.

(5) Nothing in subsection (3) shall be construed so as to permit a further increase or require a further decrease, as the case may be, in a fee, charge, or other amount where the fee, charge, or other amount is calculated as a percentage or fraction of another amount which represents the consideration in money for a taxable supply.

Application of
increased or
reduced rate

70. (1) Where goods, other than immovable property, are provided by a supplier before the date on which a change in the rate of tax levied under section 7(1)(a) becomes effective in respect of the supply of the goods, or the date on which the tax is imposed or withdrawn in respect

of the supply, and the supply is treated under section 8 as having been made on or after the said date, then —

- (a) in the case of a change in rate on the said date, the rate of tax applicable to the supply is the rate applicable immediately before the said date;
- (b) in the case of the imposition of tax on the said date, the supply is treated as not being subject to tax; or
- (c) in the case of withdrawal of the tax on the said date, the supply is deemed to be subject to tax as if the tax had not been withdrawn.

(2) Where —

- (a) services are performed; or
- (b) goods, other than immovable property, are provided in respect of a successive supply contemplated in section 8(11) or (12),

during a period beginning and ending before the date on which a change in the rate of tax levied under section 7(1)(a) becomes effective in respect of the supply of the goods, or the date on which the tax is imposed or withdrawn in respect of the supply, and the supply is deemed under section 8 to have been made on or after the said date, then in the case of —

- (i) a change in rate on the said date, the rate of tax applicable to the supply is the rate applicable immediately before the said date;
- (ii) the imposition of tax on the said date, the supply is treated as not being subject to tax; or
- (iii) withdrawal of the tax on the said date, the supply is deemed to be subject to tax as if the tax had not been withdrawn.

(3) Where —

- (a) services are performed; or
- (b) goods, other than immovable property, are provided in respect of a successive supply contemplated in section 8(11) or (12),

during a period beginning before and ending on or after the date on which a change in the rate of tax levied under section 7(1)(a) becomes effective in respect of the supply of the goods, or the date on which the tax is imposed or withdrawn in respect of the supply, and the supply is deemed under section 8 to have been made on or after the said date, the value of the supply shall, on the basis of a fair and reasonable apportionment, be deemed to consist of a part, referred to as the “first part”, relating to the performance of services or provision of goods before the said date and a part, referred to as the “second part”, relating to the performance of services or provision of goods on or after the said date.

(4) For purposes of subsection (3), in the case of —

- (a) a change in the rate on the said date, the tax payable in respect of the first part shall be determined at the rate applicable before the said date and the tax payable in respect of the second part shall be determined at the rate applicable on the said date;
- (b) the imposition of tax on the said date, the first part shall not be subject to tax; or

(c) the withdrawal of the tax, the first part shall be subject to tax as if the tax had not been withdrawn.

(5) For the purposes of subsections (1), (2), and (3), goods are deemed to be provided by the supplier of the goods when the goods are delivered to the recipient and goods supplied under a rental agreement are deemed to be provided to the recipient when the recipient takes possession or occupation of the goods.

(6) Subject to section 80, where, before the date on which an increase in the rate of tax becomes effective, a written agreement is concluded for —

(a) the sale of immovable property consisting of —

(i) a dwelling together with land on which it is erected, or of any real right conferring a right of occupation of a dwelling, or of any unit as defined in section 2 of the Sectional Titles Act, such unit being a dwelling; or

(ii) land, or of any real right conferring a right of occupation of land for the sole or principal purpose of the erection by or for the purchaser of a dwelling or dwellings on the land, as confirmed by the purchaser in writing; or

(b) the construction of a new dwelling by a registered person carrying on a construction business, and

(c) the price of the sale or construction in question was determined and stated in the agreement which was in force before the said date and signed by the parties thereto before that date; and

(d) the supply of such immovable property or construction services under the said agreement is deemed under section 8 to have been made on or after the said date,

the rate of tax levied under section 7 on that supply shall be the rate at which tax would have been levied had the supply taken place on the date on which such agreement was concluded.

71. (1) In this section —

“scheme” includes an agreement, arrangement, promise, or undertaking whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings, and any plan, proposal, course of action, or course of conduct; and

“tax benefit” includes

(a) a reduction in the liability of any person to pay tax;

(b) an increase in the entitlement of a person to an amount deductible under section 19(1) or to a refund of tax; or

(c) any other avoidance or postponement of liability for the payment of tax.

(2) Notwithstanding anything in this Act, if the Director is satisfied that a scheme has been entered into or carried out where —

(a) a person has obtained a tax benefit in connection with the scheme; and

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1999

Schemes for
obtaining tax
benefits

- (b) having regard to the substance of the scheme, it could be concluded that the person, or one of the persons, who entered into or carried out the scheme did so for the sole or dominant purpose of enabling the person to obtain the tax benefit,

the Director may determine the liability of the person who has obtained the tax benefit and of any other person related with the scheme as if the scheme had not been entered into or carried out, or in such manner as in the circumstances the Director considers appropriate for the prevention or reduction of the tax benefit.

72. (1) For the purposes of this Act, all amounts of money are to be expressed in Pula.

Currency
conversion

(2) Where an amount is expressed in a currency other than Pula —

(a) in the case of imports, the amount shall be converted at the exchange rate as determined in terms of the Customs and Excise Duty Act; or

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(b) in all other cases, the amount shall be converted at the exchange rate applying between the currency and the Pula at the time the amount is taken into account under this Act.

73. (1) The Minister may, on behalf of the Government, enter into an agreement with the government of another country or territory, referred to as the “other Contracting State”, whereby arrangements are made with that government —

International
agreements

(a) for the prevention, mitigation, or discontinuance of the levying, under the laws of Botswana and the other Contracting State, of value added tax or any other similar tax where a supply of goods or services is subject to such tax in both Botswana and the other Contracting State;

(b) for the refunding of value added tax or any similar tax, or any portion of such tax, levied under the laws of Botswana and the other Contracting State, in respect of the supply of goods or services in Botswana or the other Contracting State, as the case may be, where such goods or services are imported into Botswana or the other Contracting State, as the case may be;

(c) for regulating or co-ordinating any matter with regard to the levying and collection under the laws of Botswana or the other Contracting State of value added tax or any similar tax; or

(d) the rendering of reciprocal assistance in the administration and collection of value added tax or any similar tax under the laws of Botswana and the other Contracting State, or in respect of the execution of the arrangements provided for in an agreement entered into in terms of this section.

(2) As soon as may be possible after the conclusion of any such agreement, the agreement shall be laid before the National Assembly, but shall not take effect unless or until it is approved by resolution of the National Assembly, when 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, which shall be laid before the National Assembly, amend or cancel an agreement entered into under subsection (2), and if the amendment or cancellation is approved by resolution of the National Assembly, shall stand amended or cancelled from the date specified in such Order.

(4) The cancellation of an agreement under this section shall not affect the validity of anything previously done thereunder.

Registration of
certain goods
prohibited in
certain
circumstances

74. Where any form of registration is required under any law in respect of goods consisting of an aircraft, boat, fishing vessel, ship, yacht, motor cycle, motor vehicle, tractor, caravan, or trailer, hereinafter referred to as "registrable goods", no registering authority responsible for such registration under such law shall effect such registration upon change of ownership or importation into Botswana of the registrable goods unless the person applying for registration produces to such registering authority —

(a) in the case of —

(i) registrable goods which form the subject of any supply, or which are imported into Botswana and are not required to be cleared under the Customs and Excise Duty Act, a receipt or certificate issued by the Director of Customs and Excise or the Director showing that tax which is payable under this Act has been paid in respect of such supply or importation into Botswana or that no tax is payable under the Act in respect of such supply or importation, as the case may be, of the registrable goods in consequence of which the registration is required; or

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(ii) registrable goods imported into Botswana which are required to be cleared under the Customs and Excise Duty Act, a customs document issued by the Director of Customs and Excise or a document issued by the Director showing that tax which is payable under this Act has been paid in respect of such importation into Botswana, or a receipt or certificate showing that no tax is payable under this Act in respect of such importation, as the case may be, of the registrable goods in consequence of which the registration is required;

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(b) a declaration, in such form as the Director may prescribe, issued by any registered person who, in carrying on a taxable activity in the ordinary course of which registrable goods are dealt in, supplied such goods in consequence of which the registration is required, certifying that the tax payable under this Act has been, or will be, paid by such person; or

(c) a certificate issued by the Director, or other documentation acceptable to the Director, to the effect that the supply or import of the registrable goods was an exempt supply or exempt import, as the case may be.

75. (1) For purposes of this section, “manufacture” means the application of any operation or process for the conversion by manual or mechanical means of materials by changing the composition, shape, size, nature, or quality of such materials, including the assembly of parts or components, into a new product or article, but does not include the installation of machinery or equipment for the purpose of construction, or the packing, dividing into lots, sorting, grading, or marking of any material, product, or article.

VAT manu-
facturing
warehouse
certificate

(2) For purposes of this section, “international financial services centre company” means a company specified in section 137 of the Income Tax (Amendment) Act, 1999 that is operated by a registered person in possession of a certificate issued by the Director for the rendering of financial services for export from Botswana.

Act No. 12 of
1995

(3) A value added tax manufacturing warehouse is a facility operated by a registered person in possession of a certificate issued by the Director for the manufacture of taxable goods for export from Botswana.

(4) A certificate described in subsection (2) or (3) shall be subject to the terms, conditions, and limitations imposed by the Director.

(5) Where the Director is satisfied that a registered person operating a value added tax manufacturing warehouse or an international financial services centre company under a certificate described in subsection (2) or (3) no longer satisfies the conditions in that certificate, the Director may cancel the certificate.

(6) A registered person whose certificate is cancelled under subsection (5) is deemed to have made —

- (a) a taxable supply of any goods on hand, including capital goods, at the time the certificate is cancelled in respect of which the person has been allowed a deduction for input tax;
- (b) the taxable supply at the time the certificate was cancelled; and
- (c) the taxable supply for a value equal to the fair market value of the supply.

(7) The Minister may make regulations to carry out the purposes of this section, including the information to be included in an application for a certificate, and the standards for the issuance of a certificate.

(8) A person dissatisfied with a decision of the Director under this section to issue or cancel a person’s certificate may appeal against the decision only in accordance with the provisions of Part VIII.

76. (1) Where a taxable supply has been made in circumstances specified under section 4(26)(a) and the recipient of the supply is a registered person, the agent may issue a tax invoice in accordance with this Act in relation to the supply as if the agent had made the supply; and the principal shall not also issue a tax invoice in relation to the supply.

Auctioneer
and agent

(2) Where a taxable supply has been made in the circumstances specified under section 4(26)(b) and the principal is a registered person, at the request of the agent, a tax invoice in relation to the supply may be issued to the agent; and a tax invoice shall not be issued to the principal in relation to the supply.

(3) Where tax is payable by an auctioneer in respect of the supply of goods specified under section 4(28), the auctioneer shall charge the purchaser the amount of tax payable in respect of the sale by adding the tax to the amount of a successful bid or, in the case of sales out-of-hand, to the purchase price, and shall recover that tax from the purchaser.

Regulations

77. (1) The Minister may, after consulting with the Director, make regulations for any matter which under this Act is to be prescribed or for the better carrying out of the provisions and purposes of this Act, and without prejudice to the generality of the foregoing, such regulations may provide for —

(a) the establishment, appointment, and composition of the Board of Adjudicators, its procedures and matters relating to its operations and activities under this Act;

(b) the procedure to re-open premises closed under section 63; or

(c) prescribing any form, notice, return or other document published by the Minister for the efficient administration of this Act.

(2) The Minister may amend the Fourth and Fifth Schedules by statutory instrument, but with respect to any interest rate, by no more than two percentage points.

Variation in
rate of tax

78. (1) Notwithstanding section 77 and subject to subsection (2), the Minister may, including when Parliament is not in session, by notice in the Gazette, increase or decrease a rate of tax under section 7(1) by not more than two percentage points.

(2) Where the Minister changes a rate as specified under subsection (1) before Parliament has met for the first time for the dispatch of business in any session during which the Minister introduces the Appropriation Bill, the change in rate shall lapse 6 months after the effective date specified in the notice unless, within that time, the amended rate is confirmed by resolution of Parliament, but the amended rate shall be valid before it so lapses.

(3) Where the Minister during a session of Parliament, tables a tax proposal to increase or decrease a rate of tax under section 7(1) and publishes a notice of this action in the Gazette, the increased or decreased rate shall apply for the purposes of determining the amount of tax payable under this Act on any date on or after the effective date which the Minister has specified in the said notice of any such increase or decrease in the tax rate, as the case may be, except that the amended rate shall lapse 6 months after the effective date specified in the notice unless, within that time, the amended rate is confirmed by resolution of Parliament.

(4) Where, in any legal proceedings, the question arises as to whether the Minister has tabled a taxation proposal referred to in subsection (3), or as to the particulars contained in that proposal, a copy of a document purporting to be printed by order of the Speaker of the National Assembly and to contain such proposal, shall be accepted as sufficient evidence that such proposal was tabled and of the particulars contained therein.

79. (1) The Sales Tax Act, is hereby repealed.
(2) No reference to Sales Tax in any Act, other than this Act, shall be treated as a reference to tax under this Act.

Transitional

80. (1) In this section —

“qualifying goods” means any stock held for sale in the ordinary course of business;

“repealed Act” means the Sales Tax Act, and

“sales tax” means the tax imposed under the Sales Tax Act, 1993.

Act No. 1 of 1993

(2) The repealed Act, including the rules governing the levy, payment, assessment, reporting, and recovery of those taxes, continue to apply to a supply or import taking place prior to the date on which this Act comes into operation.

(3) Every appointment made under the repealed Act and subsisting at the date of commencement of this Act shall be deemed to be an appointment made under this Act; and an oath of secrecy taken under the repealed Act is treated as having been taken under this Act.

(4) Every form or document used in relation to the repealed Act may continue to be used under this Act, and any reference in such form or document to provisions of and expressions appropriate to the repealed Act, is taken to refer to the corresponding provisions and expressions of this Act.

(5) Notwithstanding section 19(3), in calculating the amount of tax payable by a registered person in respect of the first tax period after the tax becomes effective, the registered person may claim as an amount deductible under section 19, an amount equal to the sales tax deduction calculated in accordance with subsection (6) and deductible as provided under subsection (7).

(6) For the purposes of subsection (5), where a registered person —

(i) held, at the end of the last business day prior to the beginning of the first tax period after the tax becomes effective, qualifying goods being goods acquired not more than 4 months before the tax becomes effective; and

(ii) the Director is satisfied that sales tax has been paid on the acquisition or import of those goods,

the amount of the sales tax deduction shall be the amount of such taxes paid on such goods, but with respect to each item qualifying for the deduction, the sales tax shall not exceed the amount of tax which would have been payable had the goods been subject to tax chargeable under this Act.

(7) If, in any tax period, a registered person has sales tax deductible under subsection (5), the amount deductible is deemed to be input tax deductible under section 19 and subject to the provisions of section 42 relating to the overpayment of tax.

(8) No deduction shall be allowed under subsection (5) for any sales tax paid in respect of the acquisition of any goods if the VAT imposed on a supply in acquisition of those goods after the effective date of this Act would not qualify for the section 19 deduction.

(9) A person wishing to claim a deduction under subsection (5) for sales tax paid on qualifying goods on hand on the date on which this Act comes into force, shall register on such date.

(10) A person claiming a deduction under subsection (5) shall submit with the return an inventory of all qualifying goods on hand at the beginning of the first day on which this Act comes into force, supported by documentary evidence of the payment of sales tax.

(11) A disallowance of a deduction for sales tax imposed before the date on which this Act comes into force, shall not be treated as a disallowance for purposes of section 4(19).

(12) Where a contract is concluded between two or more parties before this Act comes into force, and no provision relating to tax is made in the contract, the supplier shall recover from the recipient, tax due on any taxable supply made under the contract and made after the date on which this Act comes into operation.

(13) Where a contract concluded after the date on which this Act comes into operation, does not include a provision relating to tax, the contract price shall be deemed to include tax and the supplier under the contract shall account for the tax due.

(14) Subject to subsection (16) if, in connection with a supply of goods or services,

(a) title to goods passes, delivery of goods is made or services are rendered after the date on which this Act comes into operation;

and

(b) payment is received or an invoice issued within 9 months before that date,

for the purposes of determining the tax period in which the supply occurs or an input tax deduction is allowable, the payment is treated as having been made or the invoice is treated as having been issued on the date on which this Act came into force.

(15) If services subject to sales tax were rendered before the date on which this Act came into force and payment is made within 4 months after the Act came into force, VAT is not imposed on the supply of the services.

(16) If —

(i) successive supplies described in section 8(11) or (12) were provided; or

(ii) services subject to sales tax were rendered,

during a period that began before and ended after this Act came into force, VAT is imposed on the consideration for the services rendered before this Act came into effect, except that to the extent the consideration for the services rendered is paid more than 4 months after the Act came into force, the consideration is treated as consideration for the supply of services rendered on the day after the end of that 4 month period.

(17) Notwithstanding subsection (16), if construction, manufacture or extension of building or civil engineering work is performed under a written agreement executed before this Act came into effect and the property is made available to the recipient after that date, VAT is imposed only on the value of work performed after that date if the value of the work on the day before this Act came into force is determined in a manner approved by the Director and is submitted to the Director by the end of the supplier's first VAT period after VAT becomes effective.

(18) If real property is provided under a rental agreement, for a period that commences before and ends after the date this Act comes into force, the consideration for the rental shall not include the amount attributable to the period that ends before the effective date of the Act.

(19) For the purposes of sections 4(9) and 19(1)(d), a claim does not include a claim related to an event that occurred before this Act came into force.

(20) For purposes of section 19(1)(c), an amount paid as a prize or winnings does not include an amount attributable to obligations or contingent obligations that exist immediately before this Act comes into force.

(21) The Minister may make regulations for other transitional measures relating to the end of sales tax, the start of value added tax, or the transition from sales tax to value added tax.

FIRST SCHEDULE

(section 10)

Zero-rated Supplies

1. In this Schedule —

“ancillary transport services” means stevedoring services, lashing and securing services, cargo inspection services, preparation of customs documentation, container handling services, and storage of transported goods or goods to be transported;

“export country” means any country other than Botswana and includes any place which is not situated in Botswana, but does not include any specific country or territory that the President by proclamation in the Gazette designates as one that is not an export country;

“exported from Botswana”, in relation to any movable goods supplied by any registered person under a sale or a credit agreement, means —

(a) consigned or delivered by the registered person to the recipient at an address in an export country as evidenced by documentary proof acceptable to the Director; or

(b) delivered by the registered person to the owner or charterer of any foreign-going aircraft when such aircraft is going to a destination in an export country and such goods are for use or consumption in such aircraft, as the case may be;

“foreign-going aircraft” means any aircraft engaged in the transportation for reward of passengers or goods wholly or mainly on flights between airports in Botswana and airports in export countries or between airports in export countries;

“intellectual property rights” means any patent, design, trade mark, copyright, know-how, confidential information, trade secret, or similar rights;

“international transport services” means —

(a) the services, other than ancillary transport services, of transporting passengers or goods by road, rail, water, or air —

(i) from a place outside Botswana to another place outside Botswana where the transport or part of the transport is across the territory of Botswana;

(ii) from a place outside Botswana to a place in Botswana; or

(iii) from a place in Botswana to a place outside Botswana;

(b) the services of transporting passengers from a place in Botswana to another place in Botswana to the extent that transport is by aircraft and constitutes

“international carriage” as defined in Article 3 of the Convention on International Civil Aviation;

(c) the services, including any ancillary transport services, of transporting goods from a place in Botswana to another place in Botswana to the extent that those services are supplied by the same supplier as part of the supply of services to which paragraph (a) applies; or

(d) the services of insuring or the arranging of the insurance or the arranging of the transport of passengers or goods to which paragraphs (a) to (c) applies;

“maize meal for human consumption” means —

(a) maize meal graded as super maize meal, special maize meal, sifted maize meal, unsifted maize meal, samp, or mealie rice, but only when they are provided for human consumption; or

(b) maize intended to be used for the production of maize meal contemplated in subparagraph (a); and

“sorghum” means sorghum or sorghum meal, but only if provided for human consumption.

2. Subject to paragraph 3, the following supplies are specified for the purposes of section 10 —

(a) a supply of goods where the supplier has entered the goods for export, pursuant to the Customs and Excise Duty Act, and the goods have been exported from Botswana by the supplier;

(b) a supply of goods where the Director is satisfied that the goods have been exported from Botswana by the supplier;

(c) a supply of goods where the goods are not situated in Botswana at the time of supply and are not to be entered into Botswana for home consumption pursuant to the Customs and Excise Duty Act by the supplier of the goods;

(d) a supply of the goods under a rental agreement, charter party, or agreement for chartering, where the goods are used exclusively in an export country;

(e) a supply of goods in the course of repairing, renovating, modifying, or treating any goods to which subparagraph (i)(ii) or (iv) applies and the goods supplied —

- (i) are wrought into, affixed to, attached to, or otherwise form part of those other goods; or
- (ii) being consumable goods, become unusable or worthless as a direct result of being used in that repair, renovation, modification, or treatment process;
- (f) a supply of goods or services referred to in section 4(11) by a registered person where the branch or main business is situated in an export country;
- (g) a supply of international transport services;
- (h) a supply of services directly in connection with land, or any improvement thereto, situated outside Botswana;
- (i) a supply of services directly in respect of —
 - (i) movable property situated outside Botswana at the time the services are rendered;
 - (ii) goods temporarily imported into Botswana under items 470.01, 470.02, 470.03, or 480.0 of Part 3 of the Fourth Schedule to the Customs and Excise Duty Act ;
 - (iii) a supply of goods referred to in paragraphs (a) or (b) of the definition of “exported from Botswana”; or
 - (iv) the repair, maintenance, cleaning, or reconditioning of a foreign-going aircraft;
- (j) a supply of services directly to a non-resident person not being a registered person, otherwise than through an agent or other person —
 - (i) comprising the handling, pilotage, salvage, or towage of any foreign-going aircraft while situated in Botswana;
 - (ii) provided in connection with the operation or management of any foreign-going aircraft; or
 - (iii) comprising the storage, repair, maintenance, cleaning, management, or arranging the provision of a container temporarily imported in terms of item 2(d)(ii)(A) of the Third Schedule, or the arranging of such services; or
- (k) a supply of services to a non-resident person who is not a registered person comprising the arranging for the person of —
 - (i) a supply of goods referred to in paragraphs (a) and (b) of the definition of “exported from Botswana”;
 - (ii) a supply of services to which sub-paragraph (i)(iv) or (j) applies; or
 - (iii) the transport of goods, including ancillary transport services, within Botswana;
- (l) a supply of services comprising the repair, maintenance, cleaning, or reconditioning of a railway train operated by a non-resident person who is not a registered person;
- (m) a supply of services physically rendered elsewhere than in Botswana;

- (n) a supply of services to a non-resident person who is outside Botswana at the time the services are supplied, other than a supply of services —
 - (i) directly in connection with immovable property situated in Botswana;
 - (ii) directly in connection with movable property situated in Botswana at the time the services are supplied unless the movable property is exported from Botswana subsequent to the supply of services;
 - (iii) comprising the refraining from undertaking any taxable activity in Botswana; or
 - (iv) comprising the tolerating of another person undertaking any taxable activity in Botswana;
 - (o) a supply of services comprising —
 - (i) the filing, prosecution, granting, maintenance, transfer, assignment, licensing, or enforcement of intellectual property rights for use outside Botswana;
 - (ii) incidental services necessary for the supply of services referred to in sub-paragraph (i); or
 - (iii) the acceptance by any person of an obligation to refrain from pursuing or exercising in whole or part, intellectual property rights for use outside Botswana;
 - (p) a supply by a registered person to another registered person of a taxable activity, or part of a taxable activity, as a going concern, provided a notice in writing signed by the transferor and transferee is furnished to the Director within 21 days after the supply takes place and such notice includes the details of the supply;
 - (q) a supply of sorghum or maize meal for human consumption, but does not include maize meal for human consumption when it is furnished or served as a meal, or as cooked or prepared food; or
 - (r) a supply of goods or services for the personal or official use of the President or any dependent member of the President's family.
3. Paragraph 2 shall not apply in respect of any supply of goods which have been or will be re- imported to Botswana by the supplier.
4. For purposes of paragraph 2, the export by a registered person to a non-resident supplier of goods previously imported and subject to tax is a supply of the goods and the exporter is the supplier if, at the port of exit, the exporter identifies the goods and presents the documentary proof required by the Director.

SECOND SCHEDULE
(section 11)

Exempt supplies

1. In this Schedule —

“commercial rental establishment” means —

- (a) accommodation in any hotel, motel, inn, boarding house, hostel, or similar establishment in which lodging is regularly or normally provided to five or more persons at a daily, weekly, monthly, or other periodic charge;
- (b) accommodation in any house, flat, apartment, or room, other than accommodation in respect of which the provisions of paragraph (a) or (c) apply, which is regularly or systematically leased or held for lease as residential accommodation for continuous periods not exceeding 45 days in the case of each occupant of such house, flat, apartment, or room, if the total annual receipts and accruals from the lease thereof exceeded the amount specified in paragraph 7 of the Fifth Schedule or there are reasonable grounds for believing that such total annual receipts and accruals will exceed that amount;
- (c) accommodation in any house, flat, apartment, room, caravan, houseboat, tent, or caravan or camping site which constitutes an asset, including a leased asset, of a business undertaking or a separately identifiable part of a business undertaking carried on by any person who —
 - (i) leases or holds for leasing as residential accommodation five or more houses, flats, apartments, rooms, caravans, houseboats, or caravan or camping sites in the course of such business undertaking;
 - (ii) derives total annual receipts and accruals from the leasing of all such houses, flats, apartments, rooms, caravans, houseboats, and caravan and camping sites which exceed the amount specified in paragraph 7 of the Fifth Schedule or there are reasonable grounds for believing that such total annual receipts and accruals will exceed that amount; and
 - (iii) regularly or normally leases or holds for lease as residential accommodation such houses, flats, apartments, rooms, caravans, houseboats, or caravan or camping sites for continuous periods not exceeding 45 days in the case of each occupant; or
- (d) any other accommodation designated by the Minister by regulation to be a commercial rental establishment but does not include, unless within paragraph (d) —

- (e) accommodation in a boarding establishment or hostel operated by an employer solely or mainly for the benefit of the employees of such employer or of a related person of such employer or their dependents, provided such establishment or hostel is not operated for the purpose of making profits from such establishment or hostel for the employer or such related person;
 - (f) accommodation in any boarding establishment or hostel operated by any local authority otherwise than for the purpose of making profits from such establishment or hostel; or
 - (g) accommodation in any registered hospital, maternity home, nursing home, convalescent home, hospice, or clinic;
- “dwelling” means any building, premises, structure, or any other place, or any part thereof, used predominantly as a place of residence or abode of any natural person or which is intended for use as a place of residence or abode of any natural person, together with any appurtenances belonging thereto and enjoyed therewith, but does not include a commercial rental establishment;
- “education services” means education and hostel facilities for students and scholars provided by —
- (a) a pre-primary, primary, or secondary school;
 - (b) a technical college or university; or
 - (c) an institution established for the promotion of adult education, vocational training, technical education, or the education or training of physically or mentally handicapped persons;

“public medical facility” means a Government operated medical facility or Government aided medical facility;

2. The following supplies are specified as exempt supplies for the purposes of section 11 —

- (a) a supply of financial services to the extent specified in the regulations;
- (b) a supply of prescription drugs specified under Schedules 1, 2, and 3 of the Drugs and Related Substances Act, and a supply of services specified in the regulations by a person in the ordinary course of operating a public medical facility, including a hospital, maternity home, nursing home, convalescent home, hospice, or clinic;
- (c) a supply of education services to the extent provided in the regulations;
- (d) a supply of —
 - (i) accommodation in a dwelling —
 - (A) under a lease or rental of the accommodation; or
 - (B) where the supplier is the employer of the recipient, the recipient is entitled to occupy the accommodation as a benefit of his office or employment and his right thereto is limited to the period of his employment or the term of his or her office or a period agreed upon by the supplier and the recipient; or

- (ii) leasehold land by way of lease (not being a grant or sale of the lease of that land) to the extent that the subject land is used or is to be used for the principal purpose of accommodation in a dwelling erected or to be erected on that land;
 - (e) a supply of any services to any of its members in the course of the management of an association as defined in section 2 of the Sectional Titles Act, where the cost of supplying such services is met out of contributions levied by such association; or
 - (f) a supply of any goods or services by the State, a local authority, or an association not for gain where the consideration for the goods or services is nominal in amount or not intended to recover the cost of such goods or services.
3. Nothing in paragraph 2(a) shall be interpreted to exempt goods or services that are rendered for stated consideration in the form of any fee, commission, or charge, other than discounting cost, and are listed in the regulations.

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THIRD SCHEDULE

(section 14)

Exempt imports

1. In this Schedule,—
“specified country” means Namibia, Lesotho, South Africa, and Swaziland.
2. The following imports are specified as exempt imports for the purposes of section 14 —
 - (a) an import of goods for the personal or official use of the President or any dependent member of the President’s family;
 - (b) an import of goods by a registered person operating a value added tax manufacturing warehouse or an international financial services centre company under a certificate described in section 75 for use in connection with the operations covered by that certificate;
 - (c) an import of services where the recipient of the services received the services in respect of a technical assistance agreement referred to in section 43(1)(c); or
 - (d) an import of goods which are entered or are required to be entered in terms of the Customs and Excise Duty Act., where —
 - (i) the goods fall under any heading and description mentioned below, to the extent indicated and subject to the Notes set out in Schedule No. 4 to the Customs and Excise Duty Act, and in respect of which either no customs duty is payable or a rebate of customs duty is granted in terms of the said Act;

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Item No. Heading and Description

- 405.04 Goods for welfare or charitable purposes;
- 406.00 Goods for Heads of State, Diplomatic and other Foreign Representatives.
- 407.01 Personal effects and sporting and recreational equipment, new or used:

00.00/01.01

Imported either as accompanied or unaccompanied passengers' baggage by non-residents of Botswana for their own use during their stay in Botswana;

00.00/01.02

Exported by residents of Botswana for their own use while abroad and subsequently re-imported either as accompanied or unaccompanied passengers' baggage by such residents.

- 407.02 Goods imported as accompanied passengers' baggage either by non-residents or residents of Botswana and cleared at the place where such persons disembark or enter Botswana:

Per person, any of the following consumable products:

22.00/01.00 Wine, not exceeding 2 litres;

22.00/02.00 Spirituous and other alcoholic beverages, a total quantity not exceeding 1 litre;

24.02/01.00 &
24.03/01.00 manufactured tobacco, not exceeding 400 cigarettes and 50 cigars and 250 g of cigarette or pipe tobacco;

33.03/01.00 perfumery not exceeding 50 ml and toilet water not exceeding 250 ml.

- 00.00/01.00 Other new or used goods of a total value not exceeding the amount specified in paragraph 8 of the Fifth Schedule.
- 407.04 Motor vehicles imported by natural persons on change of permanent residence.
- 407.06 Household furniture, other household effects and other removable articles, including equipment necessary for the exercise of the calling trade or profession of the person, other than industrial, commercial or agricultural plant and excluding motor vehicles, alcoholic beverages and tobacco goods, the bona fide property of a natural person (including a returning resident of Botswana after an absence of 6 months or more) and members of her family, imported for own use on change of her residence to Botswana:
 Provided these goods are not disposed of within a period of 6 months from the date of entry.
- 408.01 Cups, medals and other trophies awarded abroad to any person, and imported by him or on his behalf, and such articles imported for presentation;
 (i) as prizes at public exhibitions or shows, at public examinations or examinations in any educational institution, or for skill or sport in public competition or competition in any educational institution;
 (ii) as prizes for target shooting by air, military, naval or police forces; or
 (iii) for bravery, good conduct, humanity, for excellence in art, industry, invention, manufactures, learning, science, or for honourable or meritorious public services.
- 409.01 Imported goods (including packing containers) re-exported, thereafter returned to or brought back by the exporter or any other party, without having been subjected to any process of manufacture or manipulation and without a permanent change of ownership:
 Provided that the exemption shall not apply if at the time of export of such goods —

- (1) the supply of the goods was charged with tax at the rate of zero percent under section 10; or
- (2) the supply of those goods was made before the commencement date and that supply would have been charged with tax at the rate of zero percent under section 10, if the supply had taken place on or after the commencement date.

409.02

Goods (including packing containers) produced or manufactured in Botswana, exported therefrom and thereafter returned to or brought back by the exporter or any other party, without having been subjected to any process of manufacture or manipulation (excluding excisable goods exported ex a customs and excise warehouse):

Provided that the exemption shall not apply if at the time of export of such goods —

- (1) the supply of the goods was charged with tax at the rate of zero percent under section 10; or
- (2) the supply of those goods was made before the commencement date and that supply would have been charged with tax at the rate of zero percent under section 10, if the supply had taken place on or after the commencement date.

409.04

Imported or locally manufactured articles sent abroad for processing or repair, provided they are exported under customs and excise supervision, retain their essential character, are returned to the exporter, no change of ownership having taken place, and can be identified on re-importation:

Provided that the exemption shall apply only to the extent of the value of the goods sent from Botswana on the day the goods left Botswana.

409.06

Excisable goods exported ex a customs and excise warehouse and thereafter returned or brought back by the exporter, without having been subjected to any process of manufacture or manipulation and without a permanent change in ownership having taken place: Provided that the exemption shall not apply if at the time of export of such goods —

- (1) the supply of the goods was charged with tax at the rate of zero percent under section 10; or
- (2) the supply of those goods was made before the commencement date and that supply would have been charged with tax at the rate of zero percent under section 10, if the supply had taken place on or after the commencement date.

- 409.07 **Compensating products obtained abroad from goods temporarily exported for outward processing, in terms of a specific permit issued by the Permanent Secretary, Ministry of Commerce and Industry — Provided that,**
- (1) the specific permit is obtained before the temporary exportation of the goods;
 - (2) any additional conditions which may be stipulated in the said permit are complied with; and
 - (3) the exemption shall apply only to the extent of the value of the goods sent from Botswana on the day the goods left Botswana.
- 412.03 **Used personal or household effects (excluding motor vehicles) bequeathed to persons residing in Botswana.**
- 412.04 **Used property of a person normally resident in Botswana who dies while temporarily outside Botswana.**
- 412.10 **Bona fide unsolicited gifts of not more than two parcels per person per calendar year and of which the value per parcel does not exceed UA 400, excluding goods contained in passengers' baggage, wine, spirits and manufactured tobacco (including cigarettes and cigars) consigned by natural persons abroad to natural persons in Botswana.**
- 412.11 **Goods imported —**
- (1) for the relief of distress of persons in cases of famine or other national disaster;
 - (2) under any technical assistance agreement; or
 - (3) in terms of an obligation under any multilateral international agreement to which Botswana is a party.

- 412.12 Goods imported for any purpose agreed upon between the Governments of Botswana, Lesotho, South Africa, Swaziland, and Namibia.
- 470.01 Goods temporarily admitted for processing, Provided that such goods do not become the property of the importer.
- 470.02 Goods (including parts thereof) temporarily admitted for repair, cleaning or reconditioning.
- 470.03 Goods cleared in terms of a permit issued by the Permanent Secretary, Ministry of Commerce and Industry for use in the manufacture, processing finishing, equipping or packing of goods exclusively for export.
- 480.00 Goods temporarily admitted for specific purposes.
- 490.00 Goods temporarily admitted subject to exportation in the same state.

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- (ii) the goods are any of the following in respect of which the Director of Customs and Excise has in terms of section 39(2) of the Customs and Excise Act granted permission that entry need not be made:
 - (A) containers temporarily imported;
 - (B) human remains;
 - (C) goods which in the opinion of the Director for Customs and Excise are of no commercial value; or
 - (D) goods imported under an international carnet; or
- (iii) the goods are printed books, newspapers, journals and periodicals imported into Botswana by post of a value for duty purposes under the Customs and Excise Act not exceeding the amount specified in paragraph 9 of the Fifth Schedule;
- (e) an import of goods which are not entered or are not required to be entered in terms of the Customs and Excise Act, where the goods are imported into Botswana from any specified country and are —

- (i) goods referred to in paragraph (2) (d) (i) under Item Nos. 405.04, 406.00, 407.01, 407.02, 407.06, 412.02, 412.03, 412.04, 412.10, 412.11, 412.12, 470.01, 470.02, 480.00 and 490.00, to the extent indicated; or
- (ii) goods referred to in paragraph (2) (d) (ii) or (iii), to the extent indicated;
- (f) goods imported into or produced or manufactured in Botswana, exported therefrom to any specified country and thereafter directly returned to or brought back by the exporter without having been subjected to any manufacturing process, manipulation or modification and without a change in ownership, if such goods were acquired in Botswana before the commencement date or, where such goods were so acquired on or after that date, tax under this Act was paid in respect of the acquisition thereof; or
- (g) goods which are shipped or conveyed to Botswana for transhipment or conveyance to any other country.

FOURTH SCHEDULE (sections 23 and 24)

Tax Invoices, Tax Credit Notes, and Tax Debit Notes

1. Except as the Director may otherwise allow, a tax invoice as required by section 23 (1) shall contain the following particulars —

- (a) the words “tax invoice” in a prominent place;
- (b) the name, address, and VAT registration number of the registered person making the supply;
- (c) the name, address, and VAT registration number of the recipient of the supply;
- (d) the individualised serial number and the date on which the tax invoice is issued;
- (e) a description of the goods or services supplied;
- (f) the quantity or volume of the goods or services supplied; and
- (g) the total amount of the tax charged, the consideration for the supply, and the consideration including tax.

2. Except as the Director may otherwise allow, an invoice as required by section 23(9) shall contain the following particulars —

- (a) the words “not a tax invoice” in a prominent place;
- (b) the name, address, and VAT registration number of the registered person making the supply;
- (c) a description of the goods or services supplied;
- (d) the quantity or volume of the goods or services supplied; and
- (e) the total amount of the tax charged, the consideration for the supply, and the consideration including tax.

3. Except as the Director may otherwise allow, a tax credit note as required by section 24(1) shall contain the following particulars —

- (a) the words “tax credit note” in a prominent place;
- (b) the name, address, and VAT registration number of the registered person making the supply;
- (c) the name, address, and VAT registration number of the recipient of the supply;
- (d) the date on which the tax credit note was issued;
- (e) the value of the supply shown on the tax invoice, the correct amount of the value of the supply, the difference between those two amounts, and the tax charged that relates to that difference;
- (f) a brief explanation of the circumstances giving rise to the issuing of the tax credit note; and
- (g) information sufficient to identify the taxable supply to which the tax credit note relates.

4. Except as the Director may otherwise allow, a tax debit note as required by section 24(3) shall contain the following particulars —

- (a) the words “tax debit note” in a prominent place;
- (b) the name, address, and VAT registration number of the registered person making the supply;
- (c) the name, address, and VAT registration number of the recipient of the supply;
- (d) the date on which the tax debit note was issued;
- (e) the value of the supply shown on the tax invoice, the correct amount of the value of the supply, the difference between those two amounts, and the tax that relates to that difference;
- (f) a brief explanation of the circumstances giving rise to the issuing of the tax debit note; and
- (g) information sufficient to identify the taxable supply to which the tax debit note relates.

FIFTH SCHEDULE

Registration Threshold, Interest Rates, and Other Amounts

1. For purposes of section 16(1)(a) and (b), the amount is P250 000.
2. For purposes of section 22(1), the interest rate is 2 percent per month or part thereof, compounded monthly.
3. For purposes of section 23(2), the consideration shall not exceed P20.
4. For purposes of section 42(5)(a), the amount must exceed P50.
5. For purposes of section 42(10), the interest rate is 1 percent per month or part thereof, compounded monthly.

6. For purposes of section 43(1)(d), the minimum amount paid shall not be less than P500.00.
7. For purposes of the Second Schedule, paragraphs (1)(b) and (c)(ii), the amount must exceed P36 000.
8. For purposes of the Third Schedule, paragraph 2(d)(i), item 407.02, the amount for other new or used goods shall not exceed UA 500.
9. For purposes of the Third Schedule, paragraph 2(d)(iii), the value of the imports shall not exceed UA 400 per parcel.

PASSED by the National Assembly this 14th day of December, 2000.

C.T. MOMPEI,
Clerk of the National Assembly.