

BOTSWANA UNIFIED REVENUE SERVICE ACT, 2003



No. 17

of 2004

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An Act to provide for the establishment of the Botswana Unified Revenue Service, for the administration and enforcement of revenue laws, and for related matters.

Date of Assent: 13th April, 2004.

Date of Commencement: 3rd May, 2004.

ENACTED by the Parliament of Botswana.

PART I — *Preliminary*

Short title and
commence-
ment

1. This Act may be cited as the Botswana Unified Revenue Service Act, 2003, and shall come into force on such date as the Minister may, by Order published in the Gazette, appoint.

Interpretation

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

“Board” means the Board of the Revenue Service established under section 6;

“Chairman” means the Chairman of the Board;

“Commissioner General” means the Commissioner General of the Revenue Service, appointed under section 22 (1);

“contractor” includes a sub-contractor;

“member” means a member of the Board;

“revenue departments” means the Department of Customs and Excise and the Department of Taxes which, prior to the commencement of this Act, were departments of the Ministry of Finance and Development Planning;

“revenue laws” means the —

- (a) Customs and Excise Duty Act, Cap. 50:01;
- (b) Income Tax Act Cap. 52:01;
- (c) Capital Transfer Act Cap. 53:02;
- (d) Value Added Tax Act Cap.50:03, and

such legislation concerning revenue as the Minister may, by Order, prescribe;

“Revenue Service” means the Botswana Unified Revenue Service established under section 3;

“tax” includes the duties, fees or other charges payable in terms of the revenue laws; and

“Vice-Chairman” means the Vice Chairman of the Board.

PART II — *Botswana Unified Revenue*

3. There is hereby established a body, to be known as the Botswana Unified Revenue Service, which shall be a body corporate with a common seal, capable of suing and being sued, and subject to the provisions of this Act, of performing such acts as bodies corporate may, by law, perform.

Establishment
of the
Revenue
Service

4. (1) The Revenue Service shall be responsible for the assessment and collection of tax on behalf of the Government.

Functions of
the Revenue
Service

(2) Without prejudice to the generality of subsection (1), the functions of the Revenue Service shall be to —

- (a) administer and enforce the revenue laws;
- (b) promote compliance with the revenue laws;
- (c) take such measures as may be required to improve service given to taxpayers with a view to improving efficiency and maximising revenue collection;
- (d) take such measures as may be required to counteract tax fraud and other forms of tax evasion;
- (e) advise the Minister on matters relating to the administration and collection of tax; and
- (f) perform such other functions in relation to tax as the Minister may direct.

5. The Revenue Service shall, in the discharge of its functions under this Act, have power to —

Powers of the
Revenue
Service

- (a) study the revenue laws and propose to the Minister, such amendments as it considers appropriate thereto, so as to improve the administration of, and compliance with, such laws;
- (b) calculate the administrative costs, compliance costs and the operational impact of existing taxes and intended tax changes, and to advise the Minister accordingly;

- (c) collect and process statistics needed to provide forecasts of tax receipts and the effect on yield of any proposals for changes in the revenue laws, and to advise the Minister accordingly; and
- (d) subject to the provisions of this Act, take such other measures as it considers necessary or desirable for the achievement of the purposes or provisions of the Act.

PART III — *Board of the Revenue Service*

Establishment
of the Board

6. There is hereby established a Board of Directors, which shall be the governing body of the Revenue Service and shall be responsible for the direction of the affairs and operations of the Revenue Service.

Membership
of the Board

7. (1) The Board shall consist of the following persons who shall be appointed by the Minister —

- (a) the Secretary for Financial Affairs of the Ministry of Finance and Development Planning, who shall be the Chairperson;
- (b) a representative of the Ministry of Trade and Industry;
- (c) the Commissioner General;
- (d) a representative of the Bank of Botswana; and
- (e) three members appointed from the private sector on the basis of their knowledge of, and experience in, financial affairs, economics, business or legal affairs.

(2) The members shall elect a Vice Chairperson from amongst their number.

(3) The Minister shall publish the appointments made in terms of subsection (1), in the Gazette.

Powers and
functions of
the Board

8. (1) In the discharge of its functions under this Act, the Board may —

- (a) direct the Commissioner General to furnish it with any information, report or other document which the Board considers necessary for the performance of its functions;
- (b) give direction to the Commissioner General in connection with the management, performance, operational policies and implementation of such policies, of the Revenue Service;
- (c) on the recommendation of the Commissioner General, approve such organisational structures as the Commissioner General may consider necessary for the discharge of the functions of the Revenue Service;
- (d) prescribe such administrative measures as may be required to safeguard tax revenue; and
- (e) approve a code of conduct for the Revenue Service.

(2) The Board shall not intervene in the determination of any tax assessment, tax liability of, or tax appeal by, any taxpayer.

9. A member appointed in terms of section 7 (1) (e) shall hold office for a period of four years and shall be eligible for re-appointment.

10. (1) A person shall not be appointed as a member or be qualified to continue to hold office who has —

- (a) in terms of a law in force in any country —
 - (i) been adjudged or otherwise declared bankrupt and has not been discharged, or
 - (ii) made an assignment, arrangement or composition with his or her creditors, which has not been rescinded or set aside;
- (b) within a period of 10 years immediately preceding the date of his or her appointment, been convicted —
 - (i) of a criminal offence in any country;
 - (ii) of any criminal offence for which he or she has not received a free pardon and notwithstanding that the sentence has been suspended, which, if committed in Botswana, would have resulted in a criminal offence having been committed, the penalty for which would be at least six months imprisonment without the option of a fine;
- (c) a proven record of tax evasion against him or her; or
- (d) become an employee or contractor of the Revenue Service; or
- (e) become a holder of an office in a political party, a councillor in a local authority or a member of the National Assembly.

(2) The provisions of subsection (1) shall not apply to a person who holds office in terms of section 7 (1)(a) or (c).

11. (1) The Minister may remove a member from office where —

- (a) the member is absent, without reasonable cause, from three consecutive meetings of the Board, of which he or she has had notice;
- (b) the member is inefficient;
- (c) that member has been found to be physically or mentally incapable of performing his or her duties efficiently, and the member's medical doctor has issued a certificate to that effect;
- (d) the member contravenes the provisions of this Act or otherwise misconducts himself or herself to the detriment of the objectives of the Board;
- (e) the member is found guilty of unprofessional conduct by a tribunal, board or other body constituted for the purpose of adjudicating on matters of discipline or conduct;
- (f) the member has failed to comply with the provisions of section 13; or
- (g) any of the circumstances set out in section 10(1) arise.

(2) A member appointed in terms of section 7(1)(e) may resign from office by giving 30 days notice in writing to the Minister.

Tenure of office

Disqualification from membership to Board

Removal and resignation of member

- (3) The office of a member shall become vacant —
- (a) where the member has been appointed by the Minister in terms of section 7 (1) (b), (d) or (e), upon expiry of the period of his or her appointment;
 - (b) in the case of an ex-officio member, if the member ceases to hold his or her ex-officio position;
 - (c) if he or she is adjudged insolvent;
 - (d) if he or she is convicted of an offence under section 13 of this Act;
 - (e) if he or she is convicted of an offence for which the prescribed punishment is a term of imprisonment;
 - (f) if the member becomes, by reason of mental or physical infirmity, incapable of performing his or her duties as a member;
 - (g) if any circumstances arise that, if he or she were not a member, would cause that member to be disqualified for appointment as a member;
 - (h) if he or she is found guilty of unprofessional conduct by a competent tribunal, board or body constituted for the purpose of adjudicating on matters of discipline or conduct;
 - (i) after a period of 30 days from the date a ruling is made against the member on all appeals made in respect of a conviction referred to under section 10 (1)(b);
 - (j) where a member does not appeal against a conviction for an offence under section 10 (1)(b), 30 days from the date the member was convicted of the offence;
 - (k) if he or she becomes an office holder in a political party, a councillor in a local authority or a member of the National Assembly; or
 - (l) if he or she becomes a contractor or an employee of the Revenue Service.

Filling of
vacancy

12. Where the office of a member becomes vacant before the expiry of the member's term of office, the Minister shall, in accordance with section 7, appoint another person to be a member in place of the member who vacates office.

Disclosure of
interest

13. (1) Where a member is present at a meeting of the Board or a committee of the Board at which any matter which is the subject of consideration, and in which matter the member has a direct or indirect interest in his or her private capacity, is to be discussed, he or she shall forthwith upon the commencement of the meeting, disclose such interest to the Board or committee of the Board, as the case may be, and shall not, unless the Board or committee otherwise directs, take part in any consideration or discussion of, or vote on, any question with respect to the matter.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A member who contravenes subsection (1) commits an offence and is liable to a fine of P10, 000 or to imprisonment for a term not exceeding one year, or to both.

PART IV — *Meetings and Proceedings of the Board*

14. (1) Subject to the provisions of this Act, the Board shall regulate its own proceedings.

(2) The Board shall meet at least four times a year for the transaction of its business.

(3) The Chairperson may convene an ordinary meeting of the Board by giving 7 days written notice to the members.

(4) The Chairperson may, at his or her discretion, or at the request of 3 or more members of the Board, convene an extraordinary meeting of the Board at shorter notice than the period referred to under subsection (3), at such place and time as he or she may appoint.

(5) The quorum at any meeting of the Board shall be 4 members.

(6) There shall preside at any meeting of the Board —

(a) the Chairman;

(b) in the absence of the Chairman, the Vice Chairman; or

(c) in the absence of the Chairman and the Vice Chairman, such member as the members shall elect from amongst themselves for the purpose of that meeting.

(7) The decision of the Board at any meeting shall be that of the majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding shall have a casting vote in addition to his or her deliberative vote.

(8) The validity of any act, decision or proceedings of the Board shall not be affected by any vacancy among the members or by any defect subsequently discovered in the appointment of a member or by reason that some person who was not entitled to take part in the proceedings of the Board, took part therein.

(9) Subject to this Act, the Board may make standing orders for the regulation of its proceedings and business or the proceedings and business of any of its committees and may vary, suspend or revoke any such standing orders.

15. (1) The Board may appoint committees of a general or special nature, consisting of such number of members, with such qualifications, as the Board may determine.

(2) The Board may delegate any of its powers, functions or duties under this Act to a committee appointed under subsection (1).

(3) The Board shall appoint the chairman of each committee from amongst the members of that committee.

(4) An officer of the Revenue Service duly appointed in writing by the Commissioner General, shall be secretary to any committee of the Board, and shall, on the instructions of the chairman of the committee, convene meetings of the committee.

(5) The provisions of section 14 shall, with the necessary changes, apply to the meetings of any committee of the Board.

16. (1) The Board may, in its discretion, invite any person to attend any meeting of the Board for the purpose of assisting the Board in respect of any matter under consideration by it.

Meetings of
the Board

Committees
of the Board

Co-opted
members

(2) A person invited pursuant to subsection (1) may take part in the deliberations of the Board on that matter, but shall not be entitled to vote at any meeting of the Board.

Remuneration
of members

17. A member shall be paid, out of the funds of the Revenue Service, such allowances as the Board may, subject to the approval of the Minister, determine.

Appointment
of Secretary to
the Board

18. The Board shall, on the recommendation of the Commissioner-General, appoint a Secretary to the Board (hereinafter referred to as "the Secretary").

Functions of
the Secretary

19. The Secretary shall attend all meetings of the Board, but without the right to vote, and shall —

- (a) assist the Board on all legal and procedural issues in respect of its deliberations and decisions;
- (b) be responsible for maintaining a record of the Board's discussions and decisions; and
- (c) be responsible for the legal affairs of the Revenue Service.

Accountability
to the Board

20. The Secretary shall be accountable to the Board for his or her functions and responsibilities.

Conditions of
service of
Secretary

21. (1) The conditions of service including the remuneration package of the Secretary shall be set by the Board.

(2) The Secretary shall be appointed for a period of 4 years and may be eligible for re-appointment.

(3) The Board may terminate the services of the Secretary on any of the grounds set out in section 11(1).

PART V — *Officers of the Revenue Service*

Appointment
of
Commissioner
General

22. (1) The Revenue Service shall have a Chief Executive Officer to be called the Commissioner General, who shall be appointed by the Minister on the recommendation of the Board.

(2) The Board shall, subject to the approval of the Minister, determine the terms and conditions of service of the Commissioner General.

Functions of
Commissioner
General

23. (1) The Commissioner General shall, subject to the general supervision and control of the Board, be responsible for —

- (a) the day-to-day operations of the Revenue Service;
- (b) the management of the funds, property and business of the Revenue Service;
- (c) the organisation and control of the employees of the Revenue Service; and
- (d) the effective administration and implementation of the provisions of this Act.

(2) The Commissioner General may, subject to the provisions of this Act or the revenue laws, delegate any of his or her functions to an officer of the Revenue Service.

24. (1) The Commissioner General shall, subject to subsection (2), hold office for a period of 5 years and shall be eligible for re-appointment.

Tenure of
office of
Commissioner
General

(2) The Minister may, on the recommendation of the Board, terminate the appointment of the Commissioner General for —

- (a) conduct not consistent with the code of conduct of the Revenue Service; or
- (b) inability, incapacity or incompetence to perform the duties of his office.

25. (1) The Board shall, on the recommendation of the Commissioner General, and on such terms and conditions as the Board may determine, appoint Revenue Commissioners, Heads of Department and other management personnel of equal or higher rank to fill senior management positions of the Revenue Service.

Appointment
of employees
of the
Revenue
Service

(2) The Commissioner General may, on such terms and conditions as the Board shall determine, appoint such other employees of the Revenue Service as it may be necessary to employ.

PART VI — *Financial provisions*

26. (1) The funds of the Revenue Service shall consist of —

Funds of the
Revenue
Service

- (a) an amount appropriated by Parliament ;
- (b) grants and donations that the Revenue Service may receive;
- (c) such fees as may be charged and collected in respect of programmes, publications, seminars, documents, consultancy services and other services provided by the Revenue Service;
- (d) any percentage of tax revenue which the Minister may determine by notice in the Gazette; and
- (e) such monies as may otherwise vest in or accrue to the Revenue Service.

(2) Any funds received by the Revenue Service in respect of a financial year which are not expended by the end of that financial year shall be available to the Revenue Service to meet its expenditure in the ensuing financial year.

(3) The Revenue Service may, subject to the approval of the Minister, raise, by way of loans from any source in or outside Botswana, such money as it may require for the discharge of its functions.

(4) The Revenue Service may, subject to the approval of the Minister, invest in such manner as it considers appropriate, such of its funds as are not immediately required for the performance of its functions.

27. The financial year of the Revenue Service shall be a period of 12 months commencing on the 1st April each year and ending on the 31st March in the following year.

Financial
year

28. (1) The Revenue Service shall keep and maintain proper accounts and other records in respect of every financial year relating to its activities, and shall prepare, in respect of each financial year, a statement of such accounts.

Accounts
and audit

Annual report

(2) The Revenue Service shall, within 60 days of the end of each financial year, submit its books of accounts and statement of accounts to an auditor appointed by the Board, who shall audit the accounts no later than three months after the end of the financial year.

29. (1) The Revenue Service shall, within 6 months of the end of each financial year, submit, to the Minister, a comprehensive report on the operations of the Revenue Service during that financial year, together with the auditor's report and the audited accounts as provided for under section 28.

(2) A report compiled in terms of subsection (1) shall be in such form as the Minister may determine, and shall include the following information —

- (a) an audited balance sheet;
- (b) an audited statement of tax revenue collected by, and the income and expenditure of, the Revenue Service;
- (c) the total amount of tax remitted or foregone pursuant to section 31 (3); and
- (d) such other information as the Revenue Service may consider appropriate or as the Minister may direct, which shall be laid before the National Assembly, by the Minister, within 3 months of receiving the report.

30. All tax collected by, or due to, the Revenue Service under this Act, shall be paid into the Consolidated Fund.

Payment into
the
Consolidated
Fund

Exemptions

31. (1) Subject to the revenue laws, the Board may recommend to the Minister —

- (a) the criteria or factors by reference to which any exemption, mitigation, deferment or remission of any tax may be granted; and
- (b) the procedures to be followed in granting any exemption, mitigation, deferment or remission of any tax.

(2) The Minister shall, within 60 days of receiving the Board's recommendations, publish, by notice in the Gazette, the criteria or factors, and procedures referred to under subsection (1).

(3) The Commissioner General shall submit, to the Board, quarterly reports on the total amount of tax remitted or foregone in respect of each of the criteria specified under subsection (1).

(4) The Commissioner General shall, within 6 months of the end of the financial year of the Revenue Service, submit, to the Minister, a report setting out the total amount remitted or foregone pursuant to subsection (1).

PART VII — *General*

32. (1) Every member of the Board, the Commissioner General, or any other person employed by the Revenue Service in the carrying out of the provisions of this Act shall regard, and deal with, as confidential, all documents and information relating to the income, expenditure or other financial dealings or status of any taxpayer or other person involved in any operations in furtherance of the purposes of this Act, and all confidential instructions in respect of the administration of this Act which may come into his or her possession or to his or her knowledge in the course of his or her duties.

Confidentiality

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P10, 000 or to imprisonment for a term not exceeding 2 years, or to both.

33. No member of the Board, any committee of the Board, or an employee of the Revenue Service shall, in his or her personal capacity, be liable in civil or criminal proceedings in respect of any act done in good faith in the performance of his or her duties under this Act.

Exemption
from personal
liability

34. The Minister may make Regulations for any matter required to be prescribed under this Act and for the better carrying into effect of the purposes and provisions of this Act.

Regulations

35. (1) All property, except such property as the Minister may determine, which immediately before the coming into operation of this Act, vested in the Government for the use of the revenue departments shall, on the coming into operation of this Act, vest in the Revenue Service.

Savings and
transitional
provisions

(2) Subject to the provisions of subsection (1), in relation to property, all —

(a) contracts;

(b) obligations and liabilities,

of the Government, attributable to the revenue departments before the coming into operation of this Act, shall remain vested in the Government and may be enforced by or against the Government.

(3) All legal proceedings and claims which, before the coming into operation of this Act, were pending in respect of tax, shall be continued or enforced by or against the Revenue Service in the same manner as they would have been continued or enforced before the coming into operation of this Act.

(4) Upon the coming into operation of this Act —

(a) all references to the Director of Customs and Excise, the Director of Value Added Tax or the Commissioner of Taxes in the revenue laws or in any other law, shall be construed as references to the Commissioner General;

- (b) any reference to the revenue departments in the revenue laws or in any other law shall be deemed to be a reference to the Revenue Service; and
- (c) except as provided in paragraph (a), any reference in the revenue laws or in any other law, to an officer of the revenue departments, shall be deemed to be a reference to an officer of the Revenue Service.

PASSED by the National Assembly this 19th day of March, 2004.

A. MATLHAKU,
Clerk of the National Assembly.