

**INCOME TAX ACT**  
(Cap. 52:01)

**INCOME TAX (TAX AGREEMENT) (AMENDMENT) ORDER, 2007**  
(Published on 20th July, 2007)

**ARRANGEMENT OF PARAGRAPHS**

**PARAGRAPH**

1. Citation
2. Approval and effective date of commencement

**SCHEDULE**

WHEREAS in exercise of the powers conferred on him by section 54 of the Income Tax Act, the Minister of Finance and Development Planning has, on behalf of the Government of the Republic of Botswana, entered into a Tax Agreement with Tati Nickel Mining Company (Proprietary) Limited, which was concluded on the 3rd September, 1992;

AND WHEREAS pursuant to section 54 (2) (b) a Tax Agreement entered into may be amended, the Minister of Finance and Development Planning has, on behalf of the Government of the Republic of Botswana, entered into an agreement for the Amendment of the Tax Agreement concluded on the 3rd September, 1992 with Tati Nickel Mining Company (Proprietary) Limited;

AND WHEREAS in accordance with the provisions of section 54 (2) (a) of the Income Tax Act the said Tax Amendment Agreement shall be laid before the National Assembly and shall not take effect unless approved by resolution of the National Assembly;

NOW THEREFORE, pursuant to the provisions of the said section 54 (2) (a), this Order is presented to the National Assembly for approval.

Citation

**1. This Order may be cited as the Income Tax (Tax Agreement Amendment) Order, 2007.**

Approval and  
effective date  
of commence-  
ment

**2. The Tax Agreement Amendment set out in the Schedule hereto between the Government of the Republic of Botswana and Tati Nickel Mining Company (Proprietary) Ltd is approved and shall take effect from the date specified in the Agreement.**

**SCHEDULE**  
**AMENDMENT TO THE TERMS OF THE TAX AGREEMENT**  
  
between  
  
**THE GOVERNMENT OF THE REPUBLIC OF BOTSWANA**  
  
and  
  
**TATI NICKEL MINING COMPANY (PROPRIETARY) LIMITED**

This Agreement made this 8th day of June, 2007 between the Minister of Finance and Development Planning and Tati Nickel Mining Company (Proprietary) Ltd.

WHEREAS in terms of section 54 of the Income Tax Act, the parties on the 3rd day of September 1992 entered into a Tax Agreement, which was the subject of the Tati Nickel Mining Company Tax Agreement (Ratification) Act, 1994 (No. 8 of 1994) ("the Tax Agreement").

WHEREAS Tati Nickel Mining Company (Proprietary) Ltd has requested an amendment to the Tax Agreement.

WHEREAS in terms of Section 54 of the Income Tax Act Cap. 52:01, the said Minister is empowered on behalf of the Government of the Republic of Botswana to effect an amendment to a Tax Agreement.

**NOW THEREFORE THE PARTIES HERETO AGREE AS FOLLOWS —**

**1. The Tax Agreement is amended by —**

**1.1 The numbering of the current clause 4 of the Tax Agreement, from 4 to 6.**

**1.2 The insertion thereto of the following new clauses 4 and 5 —**

- "4**
- (i) For each of the ten consecutive tax years from 1st July, 2006, the tax payable by TNMC shall be calculated at a total rate of 12.5% of taxable income;**
  - (ii) For the avoidance of doubt, once the Activox refinery is treating Phoenix concentrate then the percentage metal value attributed to TNMC for the treatment of that concentrate for any particular month shall be equal to:  
— For nickel firstly the average concentrate grade for the month shall be determined and the concentrate grade column in appendix A closest to the actual shall be used (i.e. whichever of the following is the closest to the actual; "6.5% and above", "6.0%", "5.5%", "5.0%", "4.5%", or "4.0% and below"). Then the average London Metal Exchange (LME) price for the month following the month of treatment shall be determined and where that does not correspond to a point in the applicable column in appendix A, the percentage metal value attributed to TNMC shall be interpolated between the two closest prices in the applicable column in appendix A.  
— For copper, the percentage in appendix A applicable to the average London Metal Exchange (LME) price for the month following the month of treatment. Where the average London Metal Exchange (LME) price for the month following the month of treatment does not correspond to a point on the table, the percentage metal value attributed to TNMC shall be interpolated between the two closest prices on the table.**

- For cobalt 19.1%
- For palladium 45.5%
- For platinum 45.5%
- For gold 45.5%
- For silver 45.5%

(iii) This Tax Agreement does not in any way affect royalty payable to GRB under the Mines and Minerals Act”.

“5. In respect of the tax years following the ten consecutive years from 1st July, 2006, the total tax payable by TNMC shall be calculated at a total rate equal to 25% of taxable income.”

2. Save for the amendments set forth herein, which shall take effect from 1st July, 2006, the other terms of the Tax Agreement continue to be of force and effect as between the parties thereto.

Thus done and signed at Gaborone this 8th day of June, 2007.

For and on behalf of the Government of Botswana:

**Hon. Baledzi Gaolathe**  
*Minister of Finance and  
Development Planning*

As Witnesses  
1. **Wilfred J. Mandlebe**  
2. **Boikanyo M. Mathipa**

For and on behalf of Tati Nickel Mining Company (Pty) Ltd:

**Mike Smith**  
*Executive- Strategic Development*

As Witnesses  
1. **John Hinchliffe**  
2. **Keith Jefferis**

**APPENDIX A**

USD/lb (*)	Nickel Concentrate Grade						Copper USD/lb (*)	Net
	6.5% & above	6.0%	5.5%	5.0%	4.5%	4% & below	10.0	59.4%
\$25/lb and above	66.8%	66.7%	66.6%	66.4%	66.3%	66.0%	9.5	59.2%
\$24/lb	66.7%	66.6%	66.5%	66.3%	66.1%	65.9%	9.0	59.0%
\$23/lb	66.6%	66.5%	66.4%	66.2%	66.0%	65.7%	8.5	58.8%
\$22/lb	66.5%	66.4%	66.2%	66.1%	65.8%	65.6%	8.0	58.6%
\$21/lb	66.4%	66.2%	66.1%	65.9%	65.7%	65.4%	7.5	58.4%
\$20/lb	66.2%	66.1%	65.9%	65.7%	65.5%	65.2%	7.0	58.1%
\$19/lb	66.1%	65.9%	65.7%	65.5%	65.3%	65.0%	6.5	57.7%
\$18/lb	65.9%	65.7%	65.5%	65.3%	65.1%	64.7%	6.0	57.3%
\$17/lb	65.7%	65.5%	65.3%	65.1%	64.8%	64.5%	5.5	56.9%
\$16/lb	65.4%	65.3%	65.1%	64.8%	64.5%	64.2%	5.0	56.3%
\$15/lb	65.2%	65.0%	64.8%	64.5%	64.2%	63.8%	4.5	55.6%
\$14/lb	64.9%	64.7%	64.5%	64.2%	63.9%	63.4%	4.0	54.8%
\$13/lb	64.6%	64.4%	64.1%	63.8%	63.5%	63.0%	3.5	53.7%
\$12/lb	64.2%	63.9%	63.7%	63.4%	63.0%	62.5%	3.0	52.2%
\$11/lb	63.7%	63.5%	63.2%	62.8%	62.4%	61.9%	2.5	50.2%
\$10/lb	63.1%	62.9%	62.5%	62.2%	61.7%	61.1%	2.0	47.1%
\$9/lb	62.5%	62.2%	61.8%	61.4%	60.9%	60.2%	1.5	42.0%
\$8/lb	61.6%	61.3%	60.9%	60.4%	59.8%	59.1%	1.0	31.8%
\$7/lb	60.5%	60.1%	59.7%	59.1%	58.4%	57.6%	0.5	0.0%
\$6/lb	59.0%	58.6%	58.0%	57.4%	56.6%	55.7%		
\$5/lb	57.0%	56.4%	55.8%	55.0%	54.1%	52.9%		
\$4/lb	53.9%	53.2%	52.4%	51.5%	50.3%	48.8%		
\$3/lb	48.8%	47.9%	46.8%	45.5%	44.0%	42.0%		
\$2/lb	38.5%	37.1%	35.6%	33.6%	31.3%	28.4%		
\$1/lb and below	5.2%	2.5%	0.0%	0.0%	0.0%	0.0%		

\* – The average LME price for the month following the month of treatment.

MADE this 4th day of July, 2007.

**B. GAOLATHE,**  
*Minister of Finance and Development  
Planning.*