

**CHAPTER 52:01
INCOME TAX**

ARRANGEMENT OF SECTIONS

SECTION

PART I

Preliminary

1. Short title
2. Interpretation

PART II

Administration

3. Appointment of officers
4. Delegation by Commissioner General
5. Secrecy
6. Forms of notices and returns
7. Service of notice or documents

PART III

Imposition of Income Tax

DIVISION I

CHARGE TO TAX

8. Charge to tax, general
9. Scope of charge to tax
10. Effective date of accrual
11. Amounts deemed to have accrued in Botswana

DIVISION II

PERSONS CHARGEABLE TO TAX

12. Persons chargeable, general
13. Minor children
14. Settlements and wills
15. Revocable trusts
16. Deceased persons
17. Estates of deceased persons
18. Legally disabled persons
19. Trusts
20. Insolvent persons
21. Partnerships
22. Collective investment undertaking
23. Non-resident persons
24. Responsibility of representative taxpayers

PART IV

Ascertainment of Gross Income

DIVISION I

ACCOUNTING PERIODS AND RECORDS

25. Substituted accounting periods
26. Maintenance of proper record of transactions and methods of accounting

DIVISION II

GROSS INCOME

27. Gross income, general

- 28. Business, general
- 29. Business, farming
- 30. Farming, optional liability
- 31. Mines and minerals
- 32. Employment income
- 33. Interest and certain royalties and fees
- 34. Rents, premiums and improvements to land or buildings
- 35. Other provisions relating to gross income
- 36. Transactions designed to avoid liability to tax

PART V

Ascertainment of Assessable Income

- 37. Assessable income, general
- 38. Exemption from tax

PART VI

Ascertainment of Chargeable Income

- 39. Deductions allowable, general
- 40. Income from disposal of property of business
- 41. Deductions allowable, specific
- 42. Farming: average chargeable income
- 43. Deductions allowable: mines and minerals
- 44. Special deduction for approved training expenditure
- 45. Deductions not allowable under more than one provision
- 46. Deductions for assessed losses
- 47. Special deduction for farming assessed losses
- 48. Set-off of farming losses
- 49. Capital expenditure by an employee
- 50. Deductions not allowable
- 50A. Deduction in respect of payment of certain sums to non-residents

PART VII

Ascertainment of Taxable Income

- 51. Taxable income, general

PART VIII

Special Provisions relating to Certain Taxpayers

DIVISION I

ORDERS AND AGREEMENTS

- 52. Development approval orders and additional tax relief
- 53. International agreements for the avoidance of double taxation
- 54. Tax agreements

DIVISION II

SPECIAL CLASSES OF COMPANIES AND BUSINESS

- 55. Taxation of special classes of companies and businesses

DIVISION III

WITHHOLDING AND DEDUCTED TAX

- 56. Deduction of tax by employers
- 57. Deduction of tax due under certain contracts
- 58. Deduction of tax from payments of dividends, interest and certain royalties and fees

PART IX
Ascertainment of Tax Payable
DIVISION I
RATES OF TAX

- 59. Rates of tax, general
- 60. Set-off against additional company tax
- 60A. Taxation of corporations and shareholders

DIVISION II
CREDIT FOR TAX PAID

- 61. Credit for tax deducted at source
- 62. Credit for tax paid under section 114
- 63. Credit for tax paid outside Botswana
- 64. Calculation of tax credit
- 64A. Registration and allotment of Taxpayer Identification Number

PART X
Returns and Notices

- 65. Tax returns, general
- 66. Provisional tax return
- 67. Tax returns: cessation of income during a tax year
- 68. Tax returns: where no return is furnished
- 69. Further returns or information, production of books and giving of evidence to Commissioner General
- 70. Powers of entry, inspection and removal of documents
- 71. Submission of accounts with tax return and certificate relating to preparation of accounts
- 72. Annual returns by companies of interest and dividends paid
- 73. Annual return by private companies of shareholders
- 74. Companies: documents of incorporation, amendments thereof and prospectus
- 75. Returns deemed to be furnished by due authority and in full knowledge of contents
- 76. Returns: method of furnishing
- 77. Extension of time

PART XI
Assessment of Tax

- 78. Commissioner General to make assessment
- 79. Additional assessments
- 80. Reduced assessments
- 81. Reduced assessments in respect of persons other than companies or partnerships
- 82. Determination of assessed loss
- 83. Provisional assessments
- 84. Time limits for assessments
- 85. Notice of assessment
- 86. Record of assessments
- 87. Finality of assessment

PART XII
Objections and Appeals

- 88. Objection to assessment
- 89. Decision by Commissioner General
- 90. Board of Adjudicators
- 91. Appeal from decision of Commissioner General
- 92. Hearing by the Board of Adjudicators or High Court

- 93. Right of further appeal
- 93A. Production of additional evidence
- 94. Payment of tax not suspended by notice of objection or appeal

PART XIII

Payment, Recovery and Refund of Tax

- 95. When tax is payable
- 96. Extensions of time or payment by instalments
- 97. Interest on unpaid tax
- 98. When tax deducted by employer is payable
- 99. When tax deducted under section 57 is payable
- 100. When tax deducted under section 58 is payable
- 101. Interest on unpaid tax deductions
- 102. Recovery of tax, general
- 103. Procedure for recovery of tax by court action
- 104. Recovery of moneys from person leaving Botswana
- 105. When tax recoverable from assets of other spouse
- 106. Recovery of tax from representative taxpayers
- 107. Right of representative taxpayer to indemnity
- 108. Personal liability of representative taxpayer
- 109. Recovery of tax from person holding money for another person
- 110. Priority of tax debt upon insolvency or liquidation
- 111. Refund of tax overpaid
- 112. Remission of tax
- 112A. Tax Clearance Certificates
- 113.-115.

PART XIV

Offences

DIVISION I

CIVIL PENALTIES

- 116. Penalties: general
- 117. Penalties: failure to furnish tax return
- 118. Penalties: failure to furnish correct tax return or estimate of taxable income
- 119. Penalties: failure to appoint a public officer, precedent partner, agent or address for service of notices
- 119A. Penalties: Failure to comply with provisions of section 64A
- 119B. Penalties: Failure to comply with provisions of section 69

DIVISION II

CRIMINAL PROCEEDINGS

- 120. Sanction for prosecution
- 121. Offences: breach of secrecy
- 122. Offences: failure to comply with requirements of this Act
- 123. Offences: intent to evade liability to tax
- 124. Offences by employers
- 125. Offences: by employees
- 126. Offences: deduction from payments due under certain contracts with non-residents
- 127. Offences under section 58
- 128. Aiding and abetting an offence
- 129. Mitigation of penalties and compounding of offences

PART XV

Provisions Relating to Companies and Partnerships

- 130. Status of companies: public or private
- 131. Small companies
- 132. Meaning of close company
- 133. Payment of participators
- 134. Interest payable to participator
- 135. Public officer
- 136. Precedent partner

PART XVI

Taxation of International Financial Services Centre Companies

- 137. Definitions of terms
- 138. Tax certificate
- 139. Gross income
- 140. Specified foreign exchange
- 141. Foreign debt interest
- 142. Accounts

PART XVII

Miscellaneous

- 143. Free postage
- 144. Preservation of documents
- 145. Regulations

First Schedule

Second Schedule

Third Schedule - Capital Allowances

Fourth Schedule - Special Classes of Companies and Business

Fifth Schedule - Deduction of Tax by Employers

Sixth Schedule - Deduction of Tax from Payments Due under Certain Contracts

Seventh Schedule : Deduction of Tax on Certain Payments

Eighth Schedule : Rates of Tax for 2011/2012 and Subsequent Tax Years

Ninth Schedule - Board of Adjudicators

Tenth Schedule

Eleventh Schedule - Transitional Provisions

Twelfth Schedule

Act 12, 1995,
 Act 11, 1996,
 S.I. 50, 1996,
 Act 10, 1997,
 Act 18, 1998,
 Act 15, 1999,
 Act 11, 2000,
 Act 9, 2001,
 S.I. 55, 2001,
 Act 8, 2004,
 Act 21, 2004,
 Act 14, 2006,
 Act 18, 2006,
 Act 8, 2011,
 Act 21, 2012.

An Act to consolidate and amend the law relating to the imposition, assessment and collection of tax on incomes.

[Date of Commencement: 1st July, 1995.]

PART I
Preliminary (ss 1-2)

1. Short title

This Act may be cited as the Income Tax Act.

2. Interpretation

In this Act, unless the context otherwise requires-

"accounting period", in relation to any person, means the period for which that person makes up the accounts of his or her business;

"agent" includes any partnership, company or other body of persons, corporate or unincorporate, which is acting as an agent;

"approved benefit fund" means a fund which, in respect of any tax year, the Commissioner General is satisfied is a permanent fund *bona fide* established for the purpose of providing sickness, accident or unemployment benefits for its members, or mainly for such a purpose; and also for the purpose of providing benefits for the widows, children, dependants or nominees of deceased members;

"approved financial operations" means those operations specified in a tax certificate granted by the Minister under section 138;

"approved provident fund" means a permanent fund or scheme *bona fide* established for providing such benefits as may be prescribed by the Minister, other than those provided by an approved superannuation fund;

"approved superannuation fund" means a permanent fund, or a scheme which provides for the establishment and administration of such scheme exclusively by an insurer, and in either case *bona fide* established for the purpose of providing such pensions, annuities or other benefits as may be prescribed by the Minister;

"assessable income" means assessable income as defined in section 37;

"assessed loss" means an assessed loss determined under section 82 or the loss assessed under section 78(3) in respect of the carrying on of a business, and shall not include a loss, incurred on the disposal of a property, which is ascertained in accordance with the Tenth Schedule;

"assessment" in relation to any person means-

- (i) a determination by the Commissioner General-
 - (a) of the amount of taxable income upon which tax is chargeable;
 - (b) of the amount of any loss allowable as a deduction in any subsequent tax year; or
 - (c) that no tax is chargeable,and includes an additional assessment, a reduced assessment, a provisional assessment or a penalty imposed under section 117(2),
- (ii) an assessment under section 78(3), or
- (iii) a determination by the Commissioner General in respect of any withholding tax;

"associated company" in relation to a group of two or more resident companies means a resident company in which another resident company holds 20 per cent or more of every class of equity share:

Provided that the definition shall not apply to an international financial services company holding shares in a company resident in Botswana;

"associated person" means-

- (a) in relation to any individual carrying on mining operations, any relative or partner of that individual; and

- (b) in relation to any company carrying on mining operations, any other company, if either of those companies has control, directly or indirectly, of the other, or if both such companies are controlled, directly or indirectly, by the same person or persons;

"bank" has the same meaning as in the Banking Act;

"Board of Adjudicators" means the Board of Adjudicators established under section 90 and constituted in accordance with the provisions of the Ninth Schedule;

"building society" means a building society registered under the Building Societies Act;

"business" means any business, trade, adventure or concern in the nature of trade, profession or vocation and includes the letting of any property; and in a case where a person is carrying on more than one business, all amounts accrued to that person from all businesses except from farming, mining or any disposal of property under section 35 (1), shall be deemed to have accrued from one business;

"chargeable income" means chargeable income as ascertained in accordance with Part VI;

"child", in relation to an individual, includes a lawfully adopted child and a step-child;

"collective investment undertaking" means an undertaking-

- (a) the principle objective of which is the collective investment of its funds in real or personal property of whatever kind including securities and other liquid financial assets, with the aim of spreading investment risk and giving its members, shareholders or unit holders the benefit of the results of the management of its funds; and
- (b) the units of which are at the request of the holders, redeemed directly or indirectly, out of those undertaking's assets;

"commercial royalty" means any amount payable for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films, and films or tapes for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience, or the right to commercially develop and exploit software;

"Commissioner General" means the Commissioner General of Taxes appointed under section 3(1);

"Commissioner of Internal Revenue" means the Commissioner of Internal Revenue appointed under section 3(1);

"company" includes-

- (a) any body corporate;
- (b) any specified corporation;
- (c) collective investment undertaking; and
- (d) any association or society whether incorporated or registered or not, but does not include a partnership;
- (e) any charitable, religious or educational institution or a trust established for public purposes;

"connected persons" means-

- (a) at least two companies where either of the companies has control directly or indirectly, of the other, or if both companies are controlled, directly or indirectly, by the same person or persons; and
- (b) any person if that person has control of a company or if the person or persons connected to that person together have control of the company; and

"control" means where a person exercises, is able to exercise or is entitled to acquire control whether directly or indirectly, over the company's affairs and in particular if the person possesses or is entitled to acquire-

- (i) the greater part of the share capital of or voting rights in the company;

- (ii) such part of the share capital that would entitle them to the greater part of the distribution of all the income of the company; or
- (iii) such rights as would entitle the person to the greater part of the assets of the company upon winding up, or in any circumstances.

"debt" means the greatest amount at any time during the year of assessment of any debt obligation owed by the company on which interest is payable and deductible;

"dividend" means any amount distributed, whether in cash or otherwise, by a company to its shareholders; and in this definition the expression "amount distributed" includes-

"disposal", for the purposes of section 35 and the Tenth Schedule, includes-

- (a) the sale, lease, exchange or relinquishment of the asset or the extinguishment of any rights in the asset;
- (b) the compulsory acquisition of the asset under any law;
- (c) the conversion by the owner of a capital asset into stock-in-trade of a business carried on by the owner; or
- (d) any transaction which has the effect of transferring or enabling the use or enjoyment of any immovable property;

"dividend" means any amount distributed, whether in cash or otherwise, by a company to its shareholders; and in this definition the expression "amount distributed" includes-

- (a) in relation to a company which is not being wound up or liquidated, any profits distributed, whether of a capital nature or not, including an amount, other than an amount representing a return of capital, equal to the nominal value of any bonus shares, debentures or securities awarded to the shareholders:

Provided that bonus shares shall not include shares issued by a company to a shareholder in satisfaction of bonus award and is included in its equity share capital;

- (b) in the event of the partial reduction of the capital of a company, any cash or the value of any property which is given to a shareholder in excess of the amount by which the nominal value of the shares of that shareholder is reduced;
- (c) in the event of the reconstruction of a company, any cash or the value of any property which is given to a shareholder in excess of the nominal value of the shares held by him or her before the reconstruction; and
- (d) where a dividend consists of property other than cash, it shall be deemed to be of an amount equal to the market value of the property at the time of the distribution of the dividend:

Provided that-

- (i) there shall be excluded from such amount any distribution of profits by an investment company, a unit trust or collective investment undertaking, a variable rate loan stock company or similar company, where such distribution is made out of dividends accrued to such investment company, unit trust, other undertaking or company, if withholding tax had been deducted from such dividends, in accordance with the provisions of section 58(1)(a) and the Seventh Schedule, by the company which declared the dividends; and
- (ii) where any such distribution of profits as is referred to in proviso (i) is made partly out of dividends accrued and partly out of interest, proviso (i) shall apply only to such proportion of the distribution as is made from dividends;

"employment" means any employment in which the relationship of master and servant subsists, or an appointment or office, whether public or not, and whether or not that relationship subsists; and the terms

"employee" and **"employer"** shall, except for the purposes of the Fifth Schedule, be construed accordingly;

"employment income", in relation to any person, means the gross amount, whether in cash or otherwise, accrued or deemed to have accrued to such person from employment and includes any pensions, annuities or other benefits;

"entertainment fee" means any amount payable to an entertainer (including any cabaret, motion picture, radio, television or theatre artiste and any musician) or a sportsman or sportswoman, for the personal activity of such entertainer, sportsman or sportswoman, and includes any payment made to any other person in relation to such activity;

"equity" means paid up value of all shares and the amount standing to the credit of the share premium account of a company, the accumulated profits and the asset revaluation reserves of the company at the beginning of the year of assessment, reduced by the sum of any debt obligation owed by the company and accumulated losses at the beginning of the year of assessment;

"equity share capital", in relation to the share capital of a company, means its issued share capital, excluding any part thereof which does not carry any right to participate beyond a specified amount in any distribution by way of dividend or capital made by the company; and the expression "equity share" shall be construed accordingly;

"executor" means the executor, administrator or other person administering or managing the estate of a deceased person;

"farming" means the carrying on of farming operations;

"farming operations" includes livestock, agricultural and pastoral farming;

"group", in relation to one or more associated companies and the companies with which they are associated, shall not include a non-resident company;

"gross income" means gross income as defined in section 9;

"industrial building" means any building-

- (a) which contains and is used solely or mainly for the purpose of operating machinery;
- (b) which is on the same premises as any building to which paragraph (a) applies, and in respect of which the Commissioner General is satisfied that depreciation is caused by reason of the operation of machinery installed in that other building;
- (c) in respect of which the Commissioner General is satisfied that depreciation is caused by reason of the use of chemicals, corrosive substances, furnaces of any kind or any substance or thing directly used in the particular business of which the building forms an integral and essential part;
- (d) erected and used for carrying out industrial research, including scientific experiments, into new or improved methods of manufacture;
- (e) in respect of which, by reason of the nature of the business carried on, the Commissioner General is satisfied that it is used for industrial purposes; or
- (f) erected and used as an hotel, and includes any structure or work of a permanent nature directly related or attached to such a building;

"international financial services centre" means a centre established under section 138;

"international financial services centre company" means a company in possession of a valid certificate granted under section 138;

"investment company" means a company or trust engaged in the business of investing the pooled capital of shareholders in financial instruments (including shares, debentures and units) of other companies, and the term "similar company" shall be construed accordingly;

"investment income" means income accrued by way of interest and net aggregate gains as determined under the Tenth Schedule;

"livestock" includes cattle, sheep, goats, horses, donkeys, mules, pigs and poultry;

"management or consultancy fee" means any amount payable for administrative, managerial, technical or consultative services or any similar services, whether such services are of a professional nature or not, including the development or customisation of software;

"member of the Botswana Development Corporation Limited group of companies", in relation to any tax year, means-

- (a) the Botswana Development Corporation Limited;
- (b) any company of which the whole of every class of equity share issued is, throughout the whole of that tax year, held by the Botswana Development Corporation Limited; or
- (c) any company of which the whole of every class of equity share issued is, throughout the whole of that tax year, held by the company referred to under paragraph (b);

"mineral" means any constituent of the crust of the earth whether lying on the surface of the earth or which can be obtained by mining, digging, drilling, quarrying or other operations, and includes precious metals, precious stones, semi-precious stones, oil shale, natural oil, natural gas, petroleum, bituminous shale and salt, but does not include-

- (a) water; or
- (b) soil, sand, clay, gravel or stone (other than limestone or marble) if these mineral substances are extracted for the purpose of agriculture, fencing, building, road making or other construction activities;

"mining capital expenditure" means expenditure incurred by any person in carrying on mining operations-

- (a) on the acquisition for the purposes of the carrying on of his or her mining operations, of a mineral, mining or prospecting right or mining or prospecting information from another person, and the expenditure incurred in such acquisition shall be deemed to be the amount for which such property was disposed of, or deemed to have been disposed of, for the purposes of section 31;
- (b) on the preparation of a site for his or her mining operations, including expenditure on exploratory work done on the site to determine the best means for the carrying on of his or her mining operations;
- (c) on buildings, structures, works of a permanent nature, other improvements, including plant, machinery or equipment, directly or primarily connected with the carrying on of the mining operations;
- (d) on providing, or by way of contribution to the cost of providing water, light or power for use on, access to or communication with, the site of mining operations carried on or to be carried on by that person;
- (e) on residential accommodation and welfare facilities for employees; and
- (f) on general administration and management, including any interest payable on any loan for the time being utilized to finance such mining operations, incurred prior to the commencement of carrying on a business of mining or during any period when such business of mining is not being carried on;

"Mining Commissioner" means the public officer holding or acting in that office in the public service;

"mining operations" means mining operations carried on by any person on a mining property in Botswana for the extraction of minerals from their natural site, and their treatment, transportation or storage;

"mining or prospecting information" means geological, geophysical or technical information, being information that relates to the presence, absence or extent of deposits of minerals in an area, or is likely to be of assistance in determining the presence, absence or extent of such deposits, and has been obtained from prospecting or mining for minerals;

"mining or prospecting right" means a mineral concession as defined in the Mines and Minerals Act, or a development licence or exploration licence as defined in the Petroleum (Exploration and Production) Act;

"partnership assessed loss" means an assessed loss calculated in the same manner as partnership chargeable income;

"partnership chargeable income" means the gross income of the partnership calculated as if the partnership were a person chargeable to tax, less any amounts which would be exempt under Part V, and all deductions which would be allowable to such person under Part VI in respect of such gross income;

"person" includes an individual, a trustee, the estate of a deceased person, a company, whether incorporated or unincorporated, a partnership and every other juridical person;

"petroleum" has the meaning assigned to it in the Petroleum (Exploration and Production) Act;

"Productive Employment Development Fund" means the Fund established under the Productive Employment Development Fund Order;

"prospecting operations" means any of the following-

- (a) geological mapping, geophysical surveys, systematic search for areas containing minerals, and search by drilling or other means for minerals within those areas; and
- (b) search for ore within or in the vicinity of an ore body by drives, shafts, cross-cuts, winzes, rises and drilling, preliminary to the establishment of a mine, but does not include operations in the course of working a mine;

"qualifying foreign participation" means a participation held by an international financial services centre company in a company which is not resident in Botswana, where the international financial services centre company controls either directly or indirectly, alone or with connected persons, 25 per cent or more of the share capital including 25 per cent or more of the voting rights of the non resident company;

"regulation" means a regulation made under this Act;

"relative", in relation to an individual, means-

- (a) his or her spouse;
- (b) any ancestor, lineal descendant, brother, sister, uncle, aunt, nephew, niece, stepfather, stepmother, stepchild or adopted child of the taxpayer or his or her spouse, and in the case of an adopted child his or her adopter; and
- (c) the spouse of any relative mentioned in paragraph (b) of this definition;

"representative taxpayer" means-

- (a) in relation to a company, the public officer of that company;
- (b) in relation to the estate of a deceased person, a person under a legal disability, a trust or a settlement, the trustee of that person;
- (c) in relation to a non-resident, any person appointed under section 23 to act as agent on his or her behalf;
- (d) in relation to tax due and payable by a deceased person at the date of his or her death, the executor of the estate of that deceased person; and
- (e) in relation to tax due and payable at the commencement of liquidation or judicial management of a company which is being wound up or has been placed under judicial management, the liquidator or judicial manager of that company;

"resident in Botswana", in relation to a tax year, means-

- (a) in the case of an individual, that-
 - (i) his or her permanent place of abode is in Botswana;
 - (ii) he or she is physically present in Botswana for not less than 183 days in that tax year, whether or not he maintains a place of abode in Botswana;

- (iii) he or she maintains a place of abode and is physically present in Botswana for not less than 183 days in that tax year; and for the purposes of this subparagraph he or she shall be deemed to be physically present in any part of that period notwithstanding that he or she is temporarily absent for business, recreation or similar purposes; or
- (iv) he is physically present in Botswana for any period of time in that tax year and such period is continuous with a period of physical presence in the immediately preceding or immediately succeeding tax year, and provided he or she is treated as resident for such preceding or succeeding tax year under subparagraph (iii);
- (b) in the case of a company, that-
 - (i) its registered office or place of incorporation is in Botswana; or
 - (ii) is managed and controlled from Botswana;
- (c) in the case of a trust, that the trust-
 - (i) was established in Botswana; or
 - (ii) is administered in Botswana; and
 - (aa) the terms "resident" and "non-resident", in relation to a person, mean that such person is resident or not resident in Botswana, as the case may be, and when used as nouns mean a person who is resident or not resident in Botswana, as the case may be;
- (bb) in computing any period of time under subparagraphs (ii) and (iii) of paragraph (a), a part of a day shall be counted as a day;

"residential accommodation and welfare facilities for employees", in relation to mining capital expenditure of any person carrying on a business of mining, means-

- (a) residential accommodation provided by that person at or adjacent to the site of the mining operations, being accommodation provided for the use of employees of that person engaged in mining operations on that site or operations connected with such mining operations and for the use of dependants of such employees; and
- (b) health, educational, recreational or other similar facilities or facilities for the provision of meals provided by that person at or adjacent to the site of the mining operations being facilities which-
 - (i) are provided principally for the welfare of such employees or of dependants of such employees; and
 - (ii) are not conducted for the purpose of profit-making by that person or any other person, and includes structures and works of a permanent nature carried out directly in connection with such accommodation or facilities, including the provisions of water, light, power, access or communications;

"retirement annuity insurance" ... **"securitization"** means the process of creating a financial instrument by combining other financial assets, which are then marketed to investors;

"scientific research" means any activity in the field of natural or applied science for the extension of knowledge;

"special purpose vehicle" means a legal entity whose operations are limited to the acquisition, financing and selling of specific assets;

"specified collective investment undertaking" means a collective investment undertaking which-

- (a) is managed by an international financial services company;
- (b) except to the extent that the units are held by the undertaking itself, an international financial services centre, company, or another specified collective investment undertaking, is an undertaking, none of whose unit holders are resident in Botswana.

"specified corporation" means-

- (a) the Botswana Development Corporation Limited;

- (b) the Botswana Housing Corporation;
- (c) the Botswana Power Corporation;
- (d) the Botswana Telecommunications Corporation;
- (e) the National Development Bank;
- (f) the Water Utilities Corporation; and
- (g) any other corporation which the Minister may prescribe to be a specified corporation for the purposes of this Act;

"stock" includes anything produced, manufactured, purchased or otherwise acquired for the purposes of manufacture, sale or exchange, or the proceeds from the disposal of which form, or will form, any part of gross income; and in the case of a business of farming shall include livestock and produce;

"tax" means the tax charged under this Act and for the purpose of recovery of tax includes any penalty, interest, fee or other charge imposed under this Act; and any reference to tax payable under the laws of another country means a tax of substantially similar nature to the tax charged under the Act;

"taxable income" means taxable income as ascertained in accordance with Part VII;

"tax year" means a period of 12 months beginning on 1st July and ending on the next succeeding 30th June;

"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;
- (b) a liquidator or judicial manager;
- (c) any person having or taking upon himself or herself the administration or control of any property subject to a trust;
- (d) any person acting in any fiduciary capacity; and
- (e) any person having the possession, control or management of the property of a person under any legal or other disability;

"unit" means any investment such as a subscription for shares or a contribution of capital in a collective investment undertaking which entitles the investor to a share in the profits or capital of the undertaking;

"unit holder" means a person who by reason of the holding of a unit or under the terms of a unit, has a beneficial interest in the profits or capital of an undertaking;

"units" means a right or interest in a unit trust;

"variable rate loan stock company" means a company with limited liability in Botswana in terms of the Companies Act, the objects of which in terms of its Memorandum of Association are restricted to investment in immovable property and the development, refurbishment and maintenance thereof, and which, in terms of its Articles of Association, issues shares and debentures which together comprise linked units.

PART II

Administration (ss 3-7)

3. Appointment of officers

(1) For the administration of this Act and the management of the tax imposed thereunder there shall be appointed a Commissioner General of Taxes and a Commissioner of Internal Revenue, and such other officers as may be necessary for such purposes.

(2) The Commissioner General shall perform the duties imposed on him or her, and may exercise all the powers conferred upon him or her, under this Act.

(3) The Commissioner of Internal Revenue shall, under the control of the Commissioner General, perform such official duties as he or she is required to perform by the Commissioner General, and shall, on any occasion when the Commissioner General is unable to perform any of his or her functions under subsection (2), act in his or her own name, and while so acting

shall perform the duties imposed on, and may exercise the powers conferred upon, the Commissioner General under this Act.

(4) A notification in the *Gazette* that a person has been appointed to any office referred to in subsection (1) shall be conclusive evidence of such appointment.

4. Delegation by Commissioner General

(1) The Commissioner General may delegate to any person employed in carrying out the provisions of this Act any powers, functions or duties conferred or imposed upon the Commissioner General by this Act, other than the power of delegation conferred by this section.

(2) In this Part the expression "any person employed in carrying out the provisions of this Act" shall include any person whose services, under agreement with the Government, are provided by any other government or international agency to assist with the administration of this Act.

(3) Except as especially provided by this Act, any decision made or communication issued or signed by any person to whom the Commissioner General has delegated any power, function or duty under subsection (1) may be amended or withdrawn by the Commissioner General or that person within three years from the date on which such decision was made or communication issued or signed, but shall, for the purposes of this Act, be treated as having been made, issued or signed by the Commissioner General unless it has been so withdrawn.

5. Secrecy

(1) Subject to this section, every person appointed under, or employed in carrying out the provisions of, this Act shall regard and deal with all documents and information relating to any person, and all confidential instructions in respect of the administration or management 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, as secret and shall not disclose the contents of any such document or communicate any such information or instruction to any other person, other than the person to whom the document or information or instruction relates or his or her lawful representative, except as required in the performance of his or her functions under this Act or by order of a court.

(2) Any person appointed by a competent authority to audit the assessment and accounts of the Commissioner General shall, for the purposes of this section, be deemed to be a person employed in carrying out the provisions of this Act.

(3) Nothing in this section shall apply to the disclosure of any confidential information-

- (a) to the Attorney-General;
- (b) to the Governor of the Bank of Botswana or his or her lawful representative;
- (c) to the Minister, or any other person, where such disclosure is necessary for the purposes of this Act;
- (d) to the Director or Deputy Director of the Directorate on Corruption and Economic Crime, or to the authorized representative of the Director, to the Director of Public Prosecutions, or to the authorized representative of the Director, or to the commissioner of Police or his or her authorized representative for the purposes of an investigation into corruption or economic crime, including any offence against any fiscal law, or other criminal offence, and a prosecution in respect of such crime, or to any other person for the purposes of a prosecution under this Act;
- (e) to any person being a consultant to or an officer employed by the Government who is approved by the Minister to receive such confidential information; or
- (f) to any authorized officer of the Government of a country with which an agreement for the avoidance of double taxation or an agreement for the exchange of information in tax matters exists, for the purposes of that agreement.

(4) Any information obtained by the Commissioner General in the performance of his or her duties under this Act, or any other Act administered by him or her, may be used by him or

her, or disclosed by him or her to any other public officer, for the purposes of any fiscal law administered by him or by such other public officer.

(4A) Notwithstanding subsection (4), any information obtained from a competent authority of the government of any other country in pursuance of an agreement provided for under section 53, unless expressly authorized pursuant to the agreement, either as part of a request for information from the competent authority of the government of any other country or in response to a request for information by the Botswana Unified Revenue Service to the competent authority of the government of any other country, shall be disclosed only to persons or authorities, including courts of competent jurisdiction and administrative bodies concerned with-

- (i) the assessment or collection of,
- (ii) the enforcement or prosecution in respect of, or
- (iii) the determination of appeals in relation to,

taxes covered by such agreement, the persons or authorities to whom the information is disclosed shall use the information only for the purposes provided in this subsection.

(5) Every court officer shall treat any document or information referred to in subsection (1) as secret until it is produced as evidence in any proceedings before the court, and the provisions of this section shall apply to every such officer as if he or she were a person appointed under, or employed in carrying out, the provisions of this Act.

(6) Every person appointed under or employed in carrying out the provisions of this Act and every person to whom confidential information is disclosed under paragraph (c) or (e) of subsection (3), except the Minister, shall make an oath or declaration of secrecy in such manner and form as may be prescribed.

6. Forms of notices and returns

(1) Subject to this Act, the Commissioner General may prescribe the form of any notice, tax return or other return required for the purposes of this Act, and where any form has been so prescribed such form of notice or return shall be used for such purposes.

(2) Any notice given by the Commissioner General under this Act may be signed by any officer authorized by him or her in that behalf, and any notice purporting to be signed on behalf of the Commissioner General shall, unless the contrary is proved, be presumed to have been signed by an officer so authorized.

(3) Every form, notice or other document issued, served or given by the Commissioner General under this Act shall be sufficiently authenticated if the name or title of the Commissioner General, or the officer authorized in that behalf, is printed, stamped or written thereon.

7. Service of notice or documents

Where under this Act any notice or other document is required or authorized to be served on or given to any person by the Commissioner General, then such notice or other document shall be sufficiently served-

- (a) in the case of a person other than a company or a partnership, if personally served on him or her or, where the Commissioner General is satisfied that such service is not practicable, by such of the following methods as appears to the Commissioner General to be the most satisfactory-
 - (i) left at his or her usual or last place of abode or office or place of business in Botswana;
 - (ii) sent by post to such place of abode, office or place of business or to his or her usual or last known postal address in Botswana; or
 - (iii) sent by post in care of the District Commissioner or Chief in the area in which his or her usual or last place of abode or place of business is situated;
- (b) in the case of a company if-

- (i) personally served on the public officer of the company;
- (ii) left at the company's address appointed under section 135 for service of notices under this Act; or
- (iii) where no address for service of notices has been appointed under section 135, left at or sent by post to any office or place of business of the company in Botswana; or
- (c) in the case of a partnership, if-
 - (i) personally served on the precedent partner or an agent of the partnership;
 - (ii) left at the partnership's address appointed under section 136 for service of notices; or
 - (iii) where no address for service of notices has been appointed under section 136, left at or sent by post to any office or place of business of the partnership in Botswana.

PART III

Imposition of Income Tax (ss 8-23)

DIVISION I

CHARGE TO TAX (ss 8-11)

8. Charge to tax, general

(1) Subject to this Act, tax shall be charged for each tax year on the taxable income of every person for that tax year.

(2) The persons chargeable to tax shall be those persons specified in Division II of this Part.

(3) Subject to Part VIII, the taxable income of any person shall be ascertained in accordance with Parts IV, V, VI and VII.

(4) The tax payable by any person shall be calculated in accordance with Part IX.

9. Scope of charge to tax

Subject to Parts IV and VIII, the gross income of every person for each tax year shall be the total amount, whether in cash or otherwise, accrued or deemed to have accrued to him or her in that tax year from every source situated or deemed to be situated in Botswana but shall not include any amount of a capital nature except to the extent specified in this Act.

10. Effective date of accrual

For the purposes of this Act, an amount which accrues to a person shall be deemed to have accrued-

- (a) in the case of employment, at the time it is-
 - (i) received by him or her;
 - (ii) due and payable, even though not actually paid to him or her; or
 - (iii) credited in account, reinvested, accumulated, capitalized, carried to reserve or otherwise disposed of by him or her or on his or her behalf;
- (b) in the case of a business, in relation to which the Commissioner General is satisfied that a commercially recognized system of accounting is regularly followed, at the time it is credited in the books of account of such person; or
- (c) in any other case, at the time it becomes due and payable to him or her.

11. Amounts deemed to have accrued in Botswana

An amount accrued to any person shall be deemed to have accrued from a source situated in Botswana where it has accrued to such person in respect of-

- (a) any contract made by such person in Botswana for the sale of goods, whether such goods have been or are to be delivered in or out of Botswana;
- (b) any service rendered or work done by such person in Botswana, whether the payment therefor is made by a resident or a non-resident and wherever payment is made;
- (c) any service rendered or work done out of Botswana-
 - (i) by such person under a contract of employment with the Government; or

- (ii) by such person, being a resident, for or on behalf of his or her employer in Botswana during his or her temporary absence from Botswana, whether the payment for such services rendered or work done is made by a resident or a non-resident and wherever the payment is made;
- (d) any pension, bonus, gratuity or compensation granted to such person in respect of past services-
 - (i) by the Government; or
 - (ii) where such past services were performed in Botswana by any other person, and wherever payment is made or the funds from which payment is made are situate:

Provided that where any pension, bonus, gratuity or compensation to which subparagraph (ii) applies is payable in respect of past services performed partly in Botswana and partly elsewhere, only such part of such pension, bonus, gratuity or compensation as, in the opinion of the Commissioner General, is reasonable shall be deemed to have accrued in Botswana;
- (e) any business carried on by such person, being a resident, as the owner or charterer of any aircraft, wherever such aircraft may be operated;
- (f) any service rendered or work done out of Botswana by such person, being a resident, as an officer or a member of the crew of any aircraft referred to in paragraph (e), wherever payment is made;
- (g) the disposal by such person of any interest in mineral rights over land situate in Botswana or the disposal of any share or interest in the capital or income of a company holding such mineral rights;
- (h) the disposal by such person of mining or prospecting information or mining or prospecting rights over land situate in Botswana; or
- (i) any investment made outside Botswana or any business carried on outside Botswana by a resident of Botswana:

Provided that paragraph (i) shall not apply to foreign investment income of non-citizens resident in Botswana.

DIVISION II

PERSONS CHARGEABLE TO TAX (ss 12-24)

12. Persons chargeable, general

Subject to this Part, the taxable income of any person shall be charged to tax in the name of that person.

13. Minor children

(1) Where, by reason of any donation, settlement or other disposition (in this section referred to as "a settlement") made by any person (in this section referred to as "the settlor") for the benefit of a minor child, any amount has accrued to that child, such amount shall, during the minority of that child or until the prior death of the settlor, be deemed to have accrued to the settlor and shall be included in his or her gross income.

(2) In this section a settlement does not include any donation which the Commissioner General is satisfied has been made pursuant to and in accordance with customary tradition by a citizen of Botswana.

14. Settlements and wills

(1) Where any deed of donation, settlement or other disposition (in this section referred to as "the settlement") made by any person (in this section referred to as "the settlor") contains a stipulation to the effect that the beneficiaries therein, or one or more of them, shall not receive any amount accrued under the settlement until the happening of an event, whether fixed or contingent, any such amount as would, but for the stipulation, have accrued to the beneficiaries, shall, until the happening of that event, or the prior death of the settlor, be deemed to have accrued to the settlor and shall be included in his or her gross income.

(2) Where any person has made, in a will or other testamentary disposition, a stipulation to the effect that the beneficiaries therein, or one or more of them, shall not receive any amount accrued under such will or disposition until the happening of an event, whether fixed or contingent, any such amount as would, but for the stipulation, have accrued to the beneficiaries shall, until the happening of that event, be deemed to have accrued to the trust and shall be included in the gross income of the trust and the taxable income ascertained therefrom shall be charged to tax in the name of the trustee.

15. Revocable trusts

Where any deed of donation, settlement or other disposition (in this section referred to as "the settlement") made by any person (in this section referred to as "the settlor") contains a stipulation that the right of any person to receive any amount accrued under the settlement may be revoked by the settlor or conferred upon some other person, such amount as is subject to the stipulation shall be deemed to have accrued to the settlor and shall be included in his or her gross income.

16. Deceased persons

Any amount accrued to a person and not included in any assessment made prior to his or her death shall be included in his or her gross income and the taxable income ascertained therefrom shall be charged to tax in the name of his or her executor.

17. Estates of deceased persons

(1) Any amount accruing to the estate of a deceased person before there is a beneficiary entitled to the immediate benefit thereof shall be included in the gross income of the estate and the taxable income ascertained therefrom shall be charged to tax in the name of the executor.

(2) Any amount accruing to the estate of a deceased person on or after the date on which there is a beneficiary entitled to the immediate benefit thereof, other than a legatee, shall be deemed to have accrued to the beneficiary and shall be included in his or her gross income.

(3) Where a beneficiary of the estate of a deceased person is a legatee any amount accruing in respect of the property of which he or she is the legatee, on and after the date of the handing over of the property or on and after the date of the completion of the administration of the estate, whichever is the earlier, shall accrue to or be deemed to accrue to such legatee and shall be included in his or her gross income.

(4) For the purposes of this section-

- (a) a beneficiary shall be deemed to be entitled to the immediate benefit of any amount accrued to the estate of a deceased person on and after the date of completion of the administration of the estate; and
- (b) the date of completion of the administration of the estate means the date upon which the whole of the debts relating to the estate of the deceased person have been ascertained and paid or provided for.

18. Legally disabled persons

Subject to this Part, any amount accrued to a person being a minor, a mentally defective person or any other person disabled under a legal disability, shall be included in his or her gross income and the taxable income ascertained therefrom shall be charged to tax in the name of the trustee in the same amount as would have been charged if that person had not been legally disabled.

19. Trusts

(1) Any amount accrued to a trust for the benefit of any person shall be included in the gross income of the trust and the taxable income ascertained therefrom shall, except in a case to which section 14(2) applies, be charged to tax in the name of the trustee in the same sum as would have been charged if such amount had been included in the gross income of such person.

(2) In this section "trust" includes-

- (a) a will or other testamentary disposition; and
- (b) a deed of donation, settlement or other disposition.

20. Insolvent persons

Where a person becomes insolvent-

- (a) any amount accrued to that person in his or her own right after the date of sequestration and prior to the date sequestration ceases (in this section referred to as "the period of insolvency") shall be included in the gross income of that person; and
- (b) any amount accrued in respect of the estate of that person held by his or her trustee during the period of insolvency shall be included in the gross income of the estate and the taxable income ascertained therefrom shall be charged to tax in the name of the trustee.

21. Partnerships

(1) A partnership shall not be charged to tax in its own name but all amounts accrued thereto in any tax year shall be charged on the partners in such tax year in accordance with this section.

(2) The chargeable income of a partner for any tax year shall-

- (a) include an amount equal to that proportion of the partnership chargeable income of that tax year which the amount of the net partnership profit or income to which he or she is entitled under the partnership agreement, as ascertained under that agreement, bears to the net partnership profit or income; or
- (b) be calculated after deducting an amount equal to that proportion of the partnership assessed loss of that tax year which the amount of the net partnership loss for which he or she is responsible under the partnership agreement, ascertained under that agreement, bears to the net partnership loss:

Provided that a partner shall not be entitled to set off such loss against any amount accruing to him or her in any tax year from any source outside the partnership.

22. Collective investment undertaking (1) A collective investment undertaking shall be charged to tax on the undistributed amount of the chargeable income and the amount of the chargeable income that has been distributed to shareholders shall retain its form and be taxed as such in the hands of shareholders.

(2) The proceeds of a collective investment undertaking derived in the ordinary course of its business from the sale of shares and securities shall be treated as part of its business income.

23. Non-resident persons

(1) The taxable income of a non-resident shall, where it is not charged to tax directly on him or her, be charged to tax on his or her agent in the same amount as would have been charged on the non-resident.

(2) For the purposes of this section "agent", in relation to a non-resident, means a resident who has the management or control of property in Botswana of such non-resident or who is appointed by the non-resident to act on his or her behalf.

24. Responsibility of representative taxpayers

Any person in whose name the taxable income of a deceased person, an estate of a deceased person, a person under a legal disability, a non-resident or any other person is chargeable, shall be responsible for doing all such things as are under this Act required to be done by a person liable to tax.

PART IV

Ascertainment of Gross Income (ss 25-36)

DIVISION I

ACCOUNTING PERIODS AND RECORDS (ss 25-26)

25. Substituted accounting records

(1) Where any person carries on a business he or she shall, subject to this section, regularly make up the accounts of that business for a period of 12 months.

(2) Where any person regularly makes up the accounts of his or her business-

(a) for the tax year; or

(b) for a period of 12 months ending on a date other than 30th June, then, in respect of any tax year,

his or her taxable income shall be calculated by reference to such accounts for that tax year or period of 12 months ending within that tax year:

Provided that, where, in relation to the tax year immediately preceding the commencement of this Act, the taxable income has been calculated by reference to accounts regularly made up by that person for a period of 12 months ending after 30th June in that tax year then, in respect of each subsequent tax year, his or her taxable income shall be calculated by reference to accounts for the same accounting period.

(3) Where any person makes up the accounts of his or her business for a period less than 12 months, the Commissioner General may, subject to such adjustments as he or she considers necessary to avoid loss of tax, determine the taxable income of the tax year in which such accounting period ends by reference to such accounts and to the accounts for the immediately preceding or immediately succeeding accounting periods in such manner as appears to him or her to be reasonable.

(4) Where any person makes up the accounts of his or her business for a period greater than 12 months, the Commissioner General may, subject to such adjustments as he or she considers necessary to avoid loss of tax, determine the taxable income of the tax year in which such accounting period ends, and the taxable income of each previous tax year in which any part of the accounting period falls, by reference to such accounts and to the accounts for preceding or succeeding accounting periods in such manner as appears to him or her to be reasonable.

(5) References in this Act to a tax year shall include references to any other period by reference to which business chargeable income for such tax year is to be calculated.

26. Maintenance of proper record of transactions and methods of accounting

(1) Every person carrying on any business shall keep a proper record in English or in Setswana of his or her business transactions.

(2) In this section "a proper record" means-

(a) in the case of a business of farming carried on by any person other than a company, such records as the Minister may prescribe; and

(b) in the case of any business other than a business referred to in paragraph (a), such records or books of account as the Commissioner General considers reasonable to reflect the true and full nature of the transactions of the business, regard being had to the nature of the activities concerned and the scale on which they are carried on.

(3) In relation to any business to which subsection (2)(b) applies, the Commissioner General may, in the case of any person or class of persons, direct the method of accounting or the manner in which payments should be made or commercial transactions should be recorded.

DIVISION II GROSS INCOME (ss 27-38)

27. Gross income, general

(1) Subject to Part VIII, the gross income of every person for each tax year shall be ascertained in accordance with this Part.

(2) Where gross income is derived from more than one source, the amount accrued from each source shall be ascertained separately.

28. Business, general

(1) Subject to this Act, the gross income of any person for any tax year insofar as it is derived from a business shall be the gross amount, whether in cash or otherwise, accrued or deemed to have accrued therefrom during that tax year.

(2) The gross income referred to in subsection (1) shall include:

- (a) any excess of the value of any stock, ascertained in accordance with the First Schedule, held and not disposed of at the end of that tax year over the value of any stock, so ascertained, held and not disposed of at the beginning of that tax year;
- (b) any amount accrued under any contract of insurance or indemnity against loss of profits or by way of compensation or damage for loss of profits;
- (c) any amount accrued by way of recovery or reimbursement of-
 - (i) any expenditure or loss;
 - (ii) any bad or doubtful debt which has been allowed as a deduction under section 41; or
 - (iii) any amount which has been allowed as a deduction under section 41(1)(g);
- (d) any amount accrued by way of subsidy for or in relation to the carrying on of a business;
- (e) any amount accrued after the cessation of a business which, if it had accrued prior to cessation, would have been included in the gross income from that business but, where such amount relates to any stock realized after the cessation of business, it shall be deemed to be an amount equal to the excess of the amount accrued for that stock over the value of that stock at the date of cessation, ascertained in accordance with the First Schedule;
- (f) the amount of any balancing charge or recovery charge ascertained in accordance with the Third Schedule;
- (g) the market value of any benefit, whether or not convertible into cash, accruing in the course of business;
- (h) the amount of a debt released or waived by a creditor which was owing to him or her by a person referred to in subsection (1);
- (i) any amount paid into an account in Botswana, or brought into Botswana, in money or money's worth, out of income accrued from a business referred to in section 11(i).
- (j) any payment made under the Vocational Training (Reimbursement) Regulations, to the taxpayer by way of reimbursement of training costs incurred by the taxpayer. (3)

Subject to section 31 and Part VIII, where a person carries on a business both inside and outside of Botswana, the amount which shall be deemed to have accrued to him or her from a source situate in Botswana in respect of that business shall be such sum as appears to the Commissioner General to be reasonable having regard to-

- (a) the nature of the operations carried on inside and outside of Botswana;
- (b) the turnover of the business inside and outside of Botswana;
- (c) the situation and value of the assets employed in the business;
- (d) the market value of any stock imported into or exported from Botswana; and
- (e) any other matters which appear to him or her to be relevant.

29. Business, farming

(1) Where, in relation to a business of farming carried on by any person, there have been granted in previous years farming deductions allowable under paragraph 1(a) of Part IV of the Third Schedule, any amount accrued to such person during any tax year in respect of such allowances or deductions on disposal of the property in relation to which they were allowed shall be included in the gross income of that person for that tax year derived from the business of farming, and the provisions of Part V of the Third Schedule shall not apply to such disposal.

(2) Where any person carrying on a business of farming makes a donation of any livestock or produce during a tax year to any other person, there shall be included in the gross

income of the person making the donation an amount equal to the current market price of such livestock or produce at the date of making the donation.

(3) Where any person ceases to carry on a business of farming during any tax year but does not dispose of the whole of his or her livestock or produce, the value of such livestock or produce held at the end of the tax year shall be included in his or her gross income for that year.

(4) Where a person, in relation to whom the provisions of subsection (3) apply, makes a donation of any livestock or produce after ceasing to carry on such business during any tax year, an amount equal to the current market price of such livestock or produce at the date of making the donation shall for the purposes of section 28(2)(e) be deemed to be the amount accrued for that livestock or produce.

30. Farming, optional liability

(1) Subject to subsection (2), any amount accrued from farming operations carried on in a tax year by a resident individual which involve the rearing for slaughter of cattle, sheep or goats or dryland farming, or both rearing for slaughter of cattle, sheep or goats and dryland farming, shall not form part of such individual's gross income for that tax year, if-

- (a) in respect of livestock farming operations the total number of livestock at all times during the tax year consisted of not more than 300 cattle, or the equivalent in whole or in part of sheep or goats, on the basis that six sheep or goats are equivalent to one head of cattle; and
- (b) in respect of dryland farming, the total extent of the land involved in such farming operations did not exceed 100 hectares at any time during the tax year.

(2) Any resident individual to whom subsection (1) applies in respect of any tax year, may, within six months after the end of such tax year, by notice in writing to the Commissioner General, elect to have such farming operations included together with other sources of gross income for that and all succeeding tax years:

Provided that once such election is made it shall be irrevocable.

(3) For the removal of doubt, and without prejudice to the natural meaning of the words, it is hereby declared that the rearing of cattle for slaughter does not include the rearing of dairy cattle for milk and dairy products, stud farming, poultry farming, pig farming or the rearing of sheep for wool or pelts, and dryland farming does not include irrigated agriculture or horticulture.

31. Mines and minerals

(1) Subject to Part VIII, where a person carries on a business of mining, the gross income of that person for any tax year from mining operations shall-

- (a) include all amounts accrued to him or her during that tax year from all mining and prospecting operations carried on by him or her;
- (b) notwithstanding section 9, be deemed to include all amounts, whether in cash or otherwise, accrued to him or her or to any associated person, during that tax year from processing, marketing, servicing, financial or administrative operations whether-
 - (i) any such operation is carried on in or out of Botswana;
 - (ii) the source of any such amount is situate in or out of Botswana, to the extent to which the Commissioner General is of the opinion that such amounts are related to the mining operations;
- (c) be deemed to include the amount of any royalty-
 - (i) remitted, exempted or repaid during that tax year under section 66(5) or 67 of the Mines and Minerals Act where such royalty has been allowed as a deduction under section 43(1)(c);
 - (ii) repaid, remitted or exempted during that tax year under section 74 or 76 of the Petroleum (Exploration and Production) Act, where such royalty has been allowed as a deduction under section 43(1)(d); and

- (d) be deemed to include the amount of any excess of disposal value of any property, disposed of in that tax year and included in mining capital expenditure incurred in that tax year or any previous tax year.

(2) The gross income of any person, whether or not carrying on a business of mining, for any tax year shall be deemed to include all amounts, whether in cash or otherwise, accrued to him or her during that tax year-

- (a) by way of royalty, premium or other consideration, however described, for the right to extract minerals from land situate in Botswana; or
- (b) in respect of the disposal of any share or interest in the capital or income of a company holding mineral rights over land situate in Botswana.

(3) The gross income of any person, not being a person carrying on a business of mining, for any tax year shall be deemed to include all amounts, whether in cash or otherwise, accrued to him or her during that tax year in respect of the disposal of any interest in mineral rights or any mining or prospecting information or any mining or prospecting rights over land situate in Botswana.

(4) Where a disposal is made to which subsection (2)(b) or subsection (3) applies and, in the opinion of the Commissioner General the disposal was-

- (a) for a consideration which cannot be valued; or
- (b) made otherwise than by way of a transaction at arm's length,

the disposal shall be deemed to have been made for a consideration which the Commissioner General considers to be equal to the market value of such interest, share or rights at the date such disposal was made.

(5) The minister responsible for mines and minerals shall, before approving the transfer or assignment of a licence or minerals permit under the Mines and Minerals Act, notify the Commissioner General. **32. Employment income**

(1) The employment income of any person for any tax year shall include-

- (a) any amount accrued by way of wages, salary, leave pay, severance pay, fee, commission, bonus or gratuity;
- (b) any amount accrued in commutation of moneys due under any contract of employment or service, or any amount received in commutation of a pension;
- (c) any travelling, entertainment or other allowance to the extent to which it does not represent moneys wholly, exclusively and necessarily expended for the purposes of the employment;
- (d) the annual value of any quarters or residence provided for an employee;
- (e) subject to subsection (2), the value of any other benefit or advantage granted to an employee in respect of his or her employment, included in which may be the difference in the amount of any preferential rate of interest granted to the employee by the employer in respect of any loan made by the employer to the employee, and the normal commercial rate currently prevailing; and
- (f) the amount of any balancing charge ascertained under the Third Schedule.

(2) The employment income of any person for any tax year shall not include-

- (a) the value of any free medical attention provided or medical attention paid for by the employer;
- (b) the value of any free passage by air, rail, road or sea provided for an employee, his wife or his or her dependent children pursuant to the terms of his or her employment.

(3) For the purposes of this section, the value of any quarters or residence provided for an employee in respect of his or her employment shall be deemed to be-

- (a) in the case where such quarters or residence is a rateable property in accordance with the provisions of the Townships Act and regulations made thereunder, an amount

equal to 10 per cent of the rateable value shown in the valuation roll in force in respect of such property at the commencement of the tax year;

- (b) in the case where such quarters or residence becomes a rateable property in the course of the tax year after the completion of the current valuation roll, an amount equal to 10 per cent of the interim valuation made of such property;
- (c) in the case where such quarters or residence is not a rateable property or has not been valued, an amount equal to eight per cent of such amount as may be prescribed as being the value of the property (in this section referred to as "the current capital valuation") at the commencement of the tax year or the date of the completion of the construction of the property if such completion took place during the tax year; or
- (d) where the period for which the quarters or residence is provided in a tax year is less than 12 months, such amount (determined either under paragraph (a), (b) or (c) as the case may be) as bears to that amount the same ratio as that period bears to 12 months, less any amount payable by the employee as rent for the quarters or residence in the tax year:

Provided that-

- (i) in the case of any quarters or residence provided during any tax year or an employee whose employment income, excluding the value of the quarters or residence, for that year does not exceed that portion of the taxable income upon which in terms of section 59 no tax is leviable, the value of the quarters or residence shall be deemed to be nil; and
- (ii) in any other case, the amount deemed to be the value to an employee of any quarters or residence provided for him or her in any tax year shall not be greater than-
 - (aa) where the quarters or residence is provided for the whole of a tax year, the excess of the relevant percentage of his or her employment income, excluding the value of the quarters or residence, for that year over any amount payable by him or her as rent for the quarters or residence during that year; or
 - (bb) where the quarters or residence is provided in the tax year for a period of less than 12 months, the excess of the relevant percentage of his or her employment income, excluding the value of the quarters or residence, for that period over any amount payable by him or her as rent for the quarters or residence during that period.

(4) Where any quarters or residence is provided for an employee in respect of his or her employment and the Commissioner General is of the opinion that any arrangement made in relation to-

- (a) the acquisition or lease of such quarters or residence by the employer;
- (b) the amount of rent payable by the employee for such quarters or residence;
- (c) the employment of the employee or any of his or her relatives; or
- (d) the amount of the employment income of the employee or any of his or her relatives,

was made to avoid or reduce the liability to tax of such employee then the provisions of subsection (3) shall not apply and the value to such employee of the quarters or residence shall be deemed to be such amount as the Commissioner General considers reasonable having regard to all matters which appear to him or her to be relevant.

(5) For the purposes of subsections (3) and (4), "employer" includes any person who, with the agreement, authority, consent or knowledge of the employer of any employee, provides or assists in the provision of any quarters or residence for that employee in respect of his or her employment.

(6) The Minister may prescribe the amounts of-

- (a) the current capital valuation referred to in subsection (3)(c); and
- (b) the relevant percentage of the employment income, excluding the value of the provided quarters or residence, of an employee for the purposes of paragraph (ii) of the proviso to subsection (3).

(7) Where in any tax year an approved service gratuity or severance pay accrues to a citizen, whether during the course of or on termination of his or her employment, the whole of such gratuity or severance pay shall be excluded from the gross income of such person if it is directly invested on his or her behalf in an approved pension fund or approved retirement annuity fund or scheme, and where it is not so invested one third only of such gratuity or severance pay shall be so excluded and, at the option of the Commissioner General, the remaining two thirds thereof may be deemed to have accrued at the time it is payable, or accrued in three successive equal annual instalments, the last of such instalments being deemed to have accrued on the date on which the whole amount became payable:

Provided that the exercise of the option by the Commissioner General would reduce the tax liability of the employee; and

Provided further that the employee is not-

- (i) a relative of the employer where the employer is an individual;
- (ii) a relative of one or more of the partners where the employer is a partnership; or
- (iii) a participator within the meaning in section 132, or a relative or nominee of such a participator of the company where the employer is a close company,

unless the Commissioner General is satisfied that it is a *bona fide* arm's length payment.

(8) "Approved service gratuity" means a payment made to an employee in accordance with the written conditions of employment, approved by the Commissioner General, which conditions shall include provisions that-

- (a) the conditions must apply to all permanent employees of the employer to whom no retirement benefit accrues under any retirement benefit scheme established by their employer whether such scheme has been approved under this Act or not;
- (b) the payment is to be in recognition of a period of continuous employment of not less than five years;
- (c) a payment made in the course of the employment may be made only at the end of a period of continuous employment of five years or a multiple of five years;
- (d) a payment made shall not exceed five weeks pay for each year of service at the rate of pay applicable to the last year of service in respect of which the payment is made;
- (e) a payment made on cessation of employment may be made in respect of any residual period of service of less than five years provided that the employee has served in the employment for a continuous period of not less than five years;
- (f) a period of service may be recognized by a payment of gratuity once only;
- (g) the total gratuity up to the time any payment is made must not exceed two years' pay at the rate current when the payment is due; and
- (h) any changes in the conditions shall only apply on approval by the Commissioner General:

Provided that where the Commissioner General is of the opinion that there is good reason for so doing he or she may approve conditions which do not comply with these requirements in all respects.

(9) Where a citizen employed in the service of government is entitled to a gratuity on the same terms as for an approved service gratuity in accordance with paragraphs (b) to (h) of subsection (8), the provisions of subsection (7) shall apply to the gratuity.

(10) Where a citizen, other than a citizen referred to in subsection (9), is entitled to a gratuity under a contract of employment, one third of such gratuity shall be excluded from his or her gross income, and the remaining two thirds thereof shall be deemed to have accrued evenly

over the duration of the contract, or over the last three years thereof, whichever is the lesser, or over the last year of the contract, at the option of the Commissioner General:

Provided that the exercise of the option by the Commissioner General would reduce the tax liability of the employee.

(11) Where a non citizen employee is entitled to a bonus or gratuity under a contract of employment, one third of such bonus or gratuity shall be excluded from his or her gross income, and the remaining two thirds thereof shall be deemed to have accrued evenly over the duration of the contract or over the last three years thereof, whichever is the lesser, or over the last year of the contract, at the option of the Commissioner General:

Provided that the exercise of the option by the Commissioner General would reduce the tax liability of the employee:

Provided further that one third of the bonus or gratuity mentioned herein shall only be excluded from the gross income of a non-citizen employee if in the opinion of the Commissioner General the payment is reasonable in the circumstances having regard to-

- (a) the period of the employment;
- (b) the nature of the employment;
- (c) the salary payable to the employee; and
- (d) the measure of retirement benefits generally prevailing at that time.

(12) Where an employee elects to receive severance pay from his or her employer in accordance with section 27 of the Employment Act, one third of the amount payable shall be excluded from his or her gross income, and the remaining amount shall be deemed to have accrued evenly over the period of service, or over the last three years thereof, whichever is the lesser, or over the last year of the contract, at the option of the Commissioner General:

Provided that the exercise of the option by the Commissioner General would reduce the tax liability of the employee.

(13) Where an employee elects to withdraw his or her contributions to an approved superannuation fund in accordance with the rules of the fund and the Income Tax (Superannuation Funds) Regulations, the whole of the amount withdrawn shall be deemed to accrue to him or her from employment, and shall be included in his or her gross income for the tax year in which the amount was withdrawn.

(14) Where an employee receives a retrenchment package, one third of the amount received in money or money's worth or equivalent of the threshold, whichever is greater, shall be exempt from tax and at the option of the Commissioner General, the remaining two thirds thereof may be deemed to have accrued at the time it is payable or accrued in three successive equal instalments, the last of such instalments being deemed to have accrued on the date on which the whole amount becomes payable:

Provided that the exercise of the option would reduce the tax liability of the employee.

(15) For the purposes of subsection (14), retrenchment package means remuneration made to an employee on termination of his or her or her contract of employment for the purpose of reducing the size of the work force.

(16) Where an employee receives a lump sum payment after reinstatement following a dismissal or suspension from duty with reduced or without pay, such lump sum payment shall be spread back over the period in which such income was earned or would have been paid.

33. Interest and certain royalties and fees

(1) The gross income of any person for any tax year shall include any commercial royalty, entertainment fee or management or consultancy fee accrued or deemed to have accrued to him or her from a source situated or deemed to be situated in Botswana; and

- (a) in the case of a resident, any interest accrued or deemed to have accrued to him or her from a source situated or deemed to be situated in Botswana, and any dividend or interest accrued from an investment such as is referred to in section 11(i); or

- (b) in the case of a non-resident, any interest accrued or deemed to have accrued to him or her from a source situated or deemed to be situated in Botswana.

(2) Subsection (1) shall not apply to any interest, commercial royalty or management and consulting fees accrued or deemed to have accrued to a non-resident where the payment is made by an international financial services centre company or a specified collective investment undertaking.

(3) Notwithstanding the provisions of Parts V, VI and VII, where gross income to which subsection (1) relates accrues or is deemed to accrue to a non-resident, and tax is deducted from the payment thereof under section 58 and in accordance with the Seventh Schedule, that tax shall be a final charge in relation to such gross income and such gross income shall not form part of the assessable income of the non-resident.

(4) In this Act-

- (a) the source of any interest shall be deemed to be situated in any country where the person paying the interest is resident or has in that country a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by that permanent establishment; and
- (b) the source of any commercial royalty or management or consultancy fee shall be deemed to be situated in Botswana where the person paying the commercial royalty or management or consultancy fee is resident in Botswana, or has in Botswana a permanent establishment and such commercial royalty or management or consultancy fee is borne by that permanent establishment.

(5) For the purposes of subsection (4), "permanent establishment" means a fixed place of business or a fixed base for the performance of professional services, and the expression "fixed place of business" includes-

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a mine or any other place of extraction of natural resources;
- (f) an installation or structure used for exploration of natural resources; and
- (g) a building site or construction or assembly project.

34. Rents, premiums and improvements to land or buildings

(1) The gross income of any person for any tax year insofar as it is derived from rents or premiums in relation to land, buildings and other property shall include-

- (a) the gross rent payable to him or her by a lessee of any property;
- (b) any premium or other consideration, however described, payable to him or her by a lessee for the right of use or occupation of any property; and
- (c) in the case of any person to whom, in terms of any agreement relating to the grant to any other person of the right of use or occupation of land or buildings or by reason of the cession of any rights under any such agreement, there has accrued in that tax year the right to have improvements effected on the land or to the buildings by any other person-
 - (i) the amount stipulated in the agreement as the value of the improvements or as the amount to be expended on the improvements; or
 - (ii) if no amount is so stipulated, such amount as in the opinion of the Commissioner General is a fair and reasonable valuation of the improvements.

(2) Any person to whom the right has accrued in any tax year to have improvements effected on his or her land or to his or her buildings under subsection (1)(c) may, within six months after the end of that tax year, by notice in writing to the Commissioner General, elect that the value of such improvements shall not be included in his or her gross income for that tax

year, but that instead an amount equal to the market value of the improvements in the tax year in which such property reverts to him or her shall be included in his or her gross income for that tax year.

(3) For the purposes of subsections (1)(c) and (2), any grant of land or buildings for a fixed period, other than a fixed period State grant, shall be deemed to be an agreement relating to the grant by one person to another person of the right of use or occupation of land or buildings.

35. Other provisions relating to gross income

(1) Except as otherwise provided in the Tenth Schedule, the gross income of any person for any tax year shall include any amount whether in cash or otherwise accruing to him or her on the disposal of any property, including-

- (a) any movable or immovable property of a business carried on by him or her in Botswana;
- (b) any shares in or debentures of a company; and
- (c) a residential property;
- (d) assets of an international financial services centre company situated in Botswana;
- (e) any immovable property other than property referred to in paragraph (a) or (c):

Provided that the provisions of this subsection shall not apply to any amount which would otherwise be included in the gross income under-

- (i) section 9, accruing on the disposal of any property in the ordinary course of business;
- (ii) section 139, accruing on the disposal of any property by an international financial services centre company in the ordinary course of business; or
- (iii) section 140 in respect of any specified foreign exchange gain.

(2) Except as otherwise provided in the Tenth Schedule, the gross income of any person for any tax year shall, in relation to a company which is being wound up or liquidated, include any amount, whether in cash or otherwise, distributed, other than an amount representing a return of capital.

36. Transactions designed to avoid liability to tax

(1) Where the Commissioner General is of the opinion that a transaction, operation or scheme, in this section referred to as a "transaction", including a transaction for the alienation of property, is fictitious or artificial, or is entered into or carried out otherwise than as a transaction between independent persons dealing at arm's length and that such transaction has the effect of avoiding, reducing or postponing the liability to tax of any person for any tax year, he or she may disregard such transaction for the purposes of this Act and determine the liability for the tax chargeable under this Act as if the transaction had not been entered into or carried out, or in such manner as in the circumstances he or she deems appropriate to counteract such avoidance, reduction or postponement.

(2) Without prejudice to the generality of the expression "at arm's length", a transaction of any of the following kinds shall for the purposes of subsection (1) be deemed not to be a transaction at arm's length-

- (a) a contract of employment or agency where the employee or agent, or the relative or nominee of such employee or agent, is the employer or principal, or one of the employers or principals, of such employee or agent:

Provided that for the purposes of this paragraph-

- (i) where the employer or principal is a close company in terms of section 132, every participator or relative or nominee of such participator shall be deemed to be an employer or principal of such employee or agent;
- (ii) where the employer or principal is a firm carrying on business in partnership, every partner with an interest in the capital of the business, or a relative or nominee of

such partner, shall be deemed to be an employer or principal of such employee or agent;

- (b) an agreement or contract for the payment of a commercial royalty or for the provision of management or consultancy services to which both parties to the agreement or contract are in effect the same person or substantially the same person, or if each party is a partnership, any partner of one party is a partner of the other, or a relative or nominee of any partner of one party is a partner of the other;
- (c) a contract for the sale of goods or other property where the buyer controls the seller or the seller controls the buyer, or a third person controls both the buyer and the seller; or
- (d) a trust established for the benefit of any person, the instrument of which contains conditions of appointments that enable the settlor or any other person instrumental in the establishment of the trust to retain control of the trust property or to derive benefits from the trust or to prevent the beneficiary from legally enforcing his or her rights under the trust.

(3) Where any agreement in relation to, or any change in, the share-holding in any company has been entered into or effected, whether before or after the commencement of this Act, and the Commissioner General is of the opinion that the purpose, or one of the purposes, of such agreement or change was to utilize an assessed loss or any balance of an assessed loss incurred by the company, in order to avoid or reduce the liability to tax of the company or any other person for any tax year, a deduction in respect of such assessed loss or balance of assessed loss shall not be allowed.

PART V

Ascertainment of Assessable Income (ss 37-38)

37. Assessable income, general

The assessable income of every person from any source for each tax year shall be his or her gross income from that source for that tax year less any amount exempt from tax under this Part.

38. Exemption from tax

The persons and classes of gross income specified in Parts I and II of the Second Schedule shall be exempt from tax to the extent specified therein.

PART VI

Ascertainment of Chargeable Income (ss 39-50)

39. Deductions allowable, general

(1) The chargeable income of every person for each tax year shall be ascertained in accordance with this Part.

(2) In ascertaining the chargeable income of any person for any tax year there shall, upon due claim and subject to such evidence as the Commissioner General may require, be deducted from the assessable income of such person all expenditure wholly, exclusively and necessarily incurred by that person during the tax year in the production of his or her assessable income.

(3) Subject to this Act, where such assessable income accrues in respect of more than one source of gross income, the expenditure incurred by that person and any other deductions to which he or she may be entitled under this Part in relation to each such source shall be deducted only from that part of the assessable income which accrues from that source.

(4) Where the expenditure deductible under this Part for any tax year relates to the assessable income from more than one source of gross income, and it is necessary in order to give effect to any of the provisions of this Part to apportion such expenditure between such sources, the Commissioner General shall make such apportionment as appears to him or her to be reasonable.

(5) Where the expenditure incurred by any person, other than a company, which is deductible under this Part for any tax year has been apportioned to any source of income under subsection (4), and such apportioned amount exceeds the amount of assessable income of that person which accrues from that source, the excess shall not be deducted in ascertaining the chargeable income of that person for that tax year.

(6) For the purposes of this Part, where amounts accrued to a person are deemed to have accrued to some other person, any expenditure incurred by either person in relation to such amounts shall be deemed to have been incurred by the person to whom such amounts are deemed to have accrued.

40. Income from disposal of property of business

Notwithstanding the other provisions of this Part, the gross income of any person under section 35(1) shall be chargeable income under this Part.

41. Deductions allowable, specific

(1) Subject to this Part, and notwithstanding the generality of section 39(2), the deductions allowed from the assessable income of any person for any tax year shall include-

- (a) any allowance to which that person is entitled in respect of capital expenditure under the Third Schedule;
- (b) any excess of the value of any stock, ascertained in accordance with the First Schedule, held and not disposed of by that person at the beginning of the tax year over the value of any stock, so ascertained, held and not disposed of at the end of that tax year;
- (c) any legal expenses incurred by that person during the tax year in respect of any claim, dispute or action at law arising in the course of, or by reason of, the ordinary operations undertaken by him or her in the course of carrying on a business;
- (d) where such person is an employer, any amount contributed by him to any approved benefit fund or approved superannuation fund established for the benefit of his or her employees or, for any tax year to an approved benefit fund, an approved pension fund or an approved retirement annuity fund or scheme established for the benefit of his or her employees:

Provided that-

- (i) in respect of any lump sum contribution, the Commissioner General may determine that such amount shall be deducted in a number of successive equal annual deductions, the first such deduction being allowed in the tax year in which such contribution was made; and
- (ii) in respect of an annual contribution of a recurrent nature made in any tax year, the deduction allowable shall not exceed 20 per cent of the employment income which accrued from that employer to each employee who was a member of the fund in that tax year;
- (e) where such person is an employer, any amount paid by him or her by way of annuity during the tax year to-
 - (i) a former employee who has retired from employment by that employer by reason of age or infirmity; or
 - (ii) any person who was dependent for his or her maintenance upon a former employee of that employer where the former employee is deceased;
- (f) (i) an allowance in respect of any premium or other consideration, however described, incurred by that person for the right of use or occupation of any land or buildings, or for the right of use of any plant, machinery, patent, design, trade mark, copyright or any other property where such land, buildings or other property is used or occupied in the production of his or her assessable income:

Provided that in respect of a motor car (which expression shall include a station wagon) used by a person other than a person whose principal business is that of hiring or leasing of motor vehicles, an allowance under subparagraph (i) shall not exceed the amount of annual allowance claimable in respect of a motor vehicle under the proviso to paragraph 5(1) of Part II of the Third Schedule;

- (ii) the allowance referred to in subparagraph (i) shall consist of a number of successive annual deductions equal to the amount of the premium or consideration divided by the number of years for which that person is entitled to such use or occupation, or one twenty-fifth of that amount, whichever is the greater, the first such deduction being allowed in the tax year in which the premium or consideration was incurred:

Provided that where that person is entitled to such use or occupation for an indefinite period he or she shall be deemed to be entitled to such use or occupation for such period as, in the opinion of the Commissioner General, represents the probable duration of such use or occupation, or 25 years, whichever is the lesser;

- (g) (i) an allowance in respect of any expenditure incurred by that person pursuant to an obligation to effect improvements on land or to buildings under an agreement whereby the right of use or occupation of such land or buildings is granted by any other person, where such land or buildings are used or occupied in the production of his or her assessable income;
- (ii) the allowance referred to in subparagraph (i) shall consist of a number of successive annual deductions equal to the amount of expenditure incurred divided by the number of years, calculated from the date on which the improvements are completed, for which that person is entitled to such use or occupation, or one twenty-fifth of that amount, whichever is the greater, the first such deduction being allowed in the tax year in which the improvements are completed;
- (iii) for the purposes of this paragraph any grant of land or buildings for a fixed period, including a fixed period State grant, shall be deemed to be an agreement whereby the right of use or occupation of land or buildings is granted by one person to another person:

Provided that where that person is entitled to such use or occupation for an indefinite period he or she shall be deemed to be entitled to such use or occupation for such period as, in the opinion of the Commissioner General, represents the probable duration of such use or occupation, or 25 years, whichever is the lesser;

- (h) the amount of any debts due to that person to the extent which they are bad and provided they have been brought to account by that person in the ascertainment of his or her assessable income of any tax year;
- (i) such amount as the Commissioner General deems reasonable in respect of debts due to that person which he or she considers to be doubtful of recovery and provided they have been brought to account in the ascertainment of his or her assessable income of any tax year;
- (j) any provision for bad or doubtful debts, in the case of a bank, not exceeding an amount as may be prescribed by the Minister:

Provided that the provision had been made in the accounts of such bank for the relevant tax year or accounting period, as the case may be;

- (k) any expenditure incurred during the tax year by way of interest on any loan made to that person, including interest payable on debentures or debenture stock, where the

Commissioner General is satisfied that the amount of such loan was used by that person in the production of his or her assessable income:

Provided that, except in the case of a variable rate loan stock company where, in the opinion of the Commissioner General, the rate of interest payable on such loan is excessive by reference to the commercial rate generally prevailing at the time the loan was made, the deduction shall be limited to such amount as the Commissioner General deems reasonable;

- (l) expenditure incurred by that person during the tax year-
 - (i) on scientific research undertaken by him or her for the development of his or her business, not being expenditure of a capital nature; or
 - (ii) by way of contributions to any association, institution, college or university, where the Commissioner General is satisfied that such contribution will be used in scientific research relating to that person's business;
- (m) expenditure incurred by him or her during the tax year on the replacement of any implement, utensil or similar article used by him or her in a business;
- (n) any periodic subscription paid during the tax year by that person in respect of his or her membership of a trade union or an association of employees or employers to which items (viii) and (ix) of Part I of the Second Schedule apply;
- (o) any licence fees or licence levy paid under the Casino Act; and
- (p) expenditure incurred in any tax year by a company solely for the purpose of having its shares listed by the Botswana Stock Exchange, and for maintaining the listing annually;
- (q) any amount of value added tax included in any expenditure, other than an expenditure to which the Third Schedule applies, to the extent that an input tax credit is not allowed in terms of the Value Added Tax Act. (r) any training levy paid in accordance with the provisions of section 24 of the Vocational Training Act and the Vocational Training (Structured Training) Regulations. (2) Notwithstanding the provisions of section 39(2), in ascertaining the chargeable income of any person for any tax year, any expenditure incurred by him or her-
 - (a) on hospitality or entertainment during the tax year, shall be allowed as a deduction only to the extent to which, in the opinion of the Commissioner General, such expenditure was wholly, exclusively and necessarily incurred in the production of the assessable income of that person;
 - (b) on management or consultancy fees payable to a non-resident shall be allowed as a deduction only if it is proved to the satisfaction of the Commissioner General that such expenditure was wholly, exclusively and necessarily incurred by him or her in the production of his or her assessable income.

42. Farming: average chargeable income

(1) Subject to the provisions of this section and except as provided in section 46, any person other than a company carrying on a business of farming may, within six months after the end of any tax year by notice in writing to the Commissioner General, elect that his chargeable income derived from the business of farming for that tax year and each of the two preceding tax years shall be determined by substituting for the chargeable income for each of the three years the annual average of the chargeable income derived from his or her business of farming for those three tax years.

(2) Where an election has been made in respect of any tax year under subsection (1), no further election shall be made with regard to that tax year.

(3) Notwithstanding the provisions of section 87(1), the Commissioner General shall take such action as is necessary to give effect to an election made under subsection (1).

43. Deductions allowable: mines and minerals

(1) Subject to Part VIII, and notwithstanding the generality of section 39(2), in ascertaining the chargeable income of any person for any tax year from mining operations, the deductions allowed shall include-

(a) expenditure wholly, exclusively and necessarily incurred-

- (i) in Botswana, during the tax year by that person or any associated person in the production of his or her assessable income from mining operations;
- (ii) outside Botswana, during the tax year by that person or any associated person in the production of his or her assessable income from mining operations to the extent specified in the Twelfth Schedule:

Provided that deductions shall be subject to the provisions of the Twelfth Schedule;

- (iii) during the tax year by that person on prospecting operations carried on by him or her in Botswana;
 - (b) for the tax year in which that person commences mining operations, an amount equal to any assessed loss incurred by him or her in respect of prospecting operations carried on prior to the commencement of his or her mining operations to the extent that any such assessed loss has not been deducted under section 46;
 - (c) any liability to pay royalties under Part X of the Mines and Minerals Act which arose during that tax year, whether or not payment thereof has been deferred under section 68 of that Act; and
 - (d) any liability to pay royalties under Part V of the Petroleum (Exploration and Production) Act which arose during the tax year, whether or not payment thereof has been deferred under section 76(2) of that Act.
- (e) amounts contributed to a mine rehabilitation fund, approved by the Minister responsible for finance, and set up for the rehabilitation of a mine owned by the taxpayer.

(2) In ascertaining the chargeable income of any person, not being a person carrying on mining operations, for any tax year from prospecting operations, the deductions allowed shall include expenditure wholly, exclusively and necessarily incurred during the tax year by that person on the acquisition of mineral rights, mining or prospecting information or mining or prospecting rights over land situate in Botswana:

Provided that where such rights or information were acquired by that person-

- (i) for a consideration which cannot be valued; or
- (ii) otherwise than by way of a transaction at arm's length,

there shall be deducted the amount which the Commissioner General considers to be equal to the market value of the rights or information at the time they were acquired.

44. Special deduction for approved training expenditure

In ascertaining the chargeable income of any person carrying on business for any tax year, there shall be deducted from his or her assessable business income for that year an amount equal to two hundred per cent of any expenditure actually incurred by him or her during that tax year on training approved by the Commissioner General in accordance with such rules as the Minister may from time to time prescribe:

Provided that nothing contained in this section shall apply to any expenditure incurred by the taxpayer in respect of which the taxpayer is entitled to reimbursement under the Vocational Training (Structured Training) Regulations.

45. Deductions not allowable under more than one provision

No amount shall be deducted under any provision of this Act in respect of expenditure which has been or will be taken into account as a deduction or in calculating a deduction under any other provision of this Act.

46. Deductions for assessed losses

(1) Any assessed loss determined by the Commissioner General as incurred by any person in relation to any tax year shall be deducted in ascertaining the chargeable income of such person from a business for a subsequent tax year to the extent provided in this section.

(2) The deduction provided for in subsection (1) shall not exceed the amount of the chargeable income of the next subsequent tax year, ascertained in accordance with section 39(3), but before the operation of this section, and hereinafter in this section referred to as "the relevant chargeable income", and where the assessed loss exceeds the relevant chargeable income of such subsequent tax year, or there is no relevant chargeable income of such subsequent tax year, the excess or amount of the assessed loss, as the case may be, shall be carried forward and deducted in like manner in ascertaining the chargeable income of the following tax year, and so on until the assessed loss has been fully allowed:

Provided that, except in the case of an assessed loss incurred in carrying on a business of farming, mining or prospecting, no assessed loss shall be carried forward as a deduction for more than the five years next succeeding the tax year in which that loss arose.

(3) Where an assessed loss has been determined in respect of two or more tax years then, for the purposes of this section, the whole of such loss, determined in respect of the earliest of such tax years, shall, subject to the proviso to subsection (2), be deducted before any part of such loss determined in respect of a later year.

(4) The deduction provided in subsection (2) shall not apply in relation to any person whose estate has been voluntarily or compulsorily sequestered (unless such sequestration is set aside), or to the trustee of any such person in respect of any tax year subsequent to the date of sequestration:

Provided that for the purposes of this subsection that part of the tax year in which sequestration occurs which is subsequent to the date of sequestration, shall be deemed to be a tax year.

(5) The assessed loss of any person determined by the Commissioner General for any tax year shall be reduced by the amount or value of any benefit accruing to that person in that tax year as a result of a concession granted by or a compromise made with his or her creditors whereby his or her liabilities to them have been reduced or extinguished, to the extent to which such liabilities arose in the ordinary course of business and have been taken into account in ascertaining his or her chargeable income of any tax year.

(6) Where an assessed loss is determined in relation to any person in the carrying on of a business, the deduction provided in subsection (2) shall not be affected by reason only of the temporary discontinuance of the carrying on of that business by that person.

(7) Where, in respect of the disposal-

- (a) by any person other than a person carrying on a mining or prospecting business, of any interest in mineral rights or mining or prospecting rights or mining or prospecting information over land situated in Botswana; or
- (b) by any person, of any share or interest in the capital or income of a company holding mineral rights over land situated in Botswana, the deductions allowed under this Part in relation to such source of gross income exceed the assessable income from that source, the loss arising therefrom shall be deemed to be an assessed loss to be allowed only as a deduction against future gross income from that source.

47. Special deduction for farming assessed losses

(1) Subject to subsection (2), and notwithstanding section 46, where an assessed loss is incurred in any tax year in carrying on a business of farming by any person, other than a company, such person may elect, within three years after the end of that tax year by notice in writing to the Commissioner General, that the whole or any part of such assessed loss shall be deducted in ascertaining his or her chargeable income for that tax year:

Provided that the amount of such assessed loss deducted shall not exceed 50 per cent of the aggregate amount of such chargeable income.

(2) Where an election is made in respect of an assessed loss under this section, the Commissioner General may, notwithstanding the provisions of section 87, make any reduced assessment in accordance with the provisions of subsection (1).

(3) For the purposes of this section, chargeable income referred to in subsections (1) and (2) shall not include any chargeable income ascertained in accordance with the provisions of section 40.

48. Set-off of farming assessed losses

(1) Where in any tax year an assessed loss is incurred by any person in carrying on a business of farming, he or she may set off all or part of such loss against his or her farming chargeable income in the two years preceding the year in which the loss was incurred, commencing with the year immediately preceding such loss.

(2) Where an election is made in respect of an assessed loss under this section, the Commissioner General may, notwithstanding the provisions of section 87, make any reduced assessment in accordance with the provisions of subsection (1).

49. Capital expenditure by an employee

Notwithstanding anything in the Third Schedule to the contrary, where, in any tax year, an employee incurs capital expenditure on plant or machinery which, in the opinion of the Commissioner General, was necessarily incurred for the purposes of his or her employment, the provisions of Parts II, V and VI of the Third Schedule shall apply to such expenditure and any allowance to which he or she may be entitled under the Third Schedule shall be deducted in ascertaining his or her chargeable income.

50. Deductions not allowable

Subject to any express provision in this Part authorizing a specified deduction in ascertaining chargeable income, no deduction shall be allowed in respect of-

- (a) domestic or private expenses;
- (b) any amount not wholly, exclusively and necessarily laid out or expended for the purpose of producing assessable income;
- (c) any capital withdrawn or any expenditure or loss of a capital nature;
- (d) any tax imposed under this Act;
- (e) any income tax or tax of a similar nature charged in a country outside Botswana; or
- (f) any contribution to a benefit, superannuation, pension, provident or similar fund which is not an approved benefit fund or an approved superannuation fund.

50A. Deduction in respect of payment of certain sums to non-residents

(1) A deduction otherwise allowable for computing the chargeable income of any person for any tax year in respect of interest, commercial royalty, management or consultancy fee, or entertainment fee payable to a non-resident, shall be allowed as a deduction only in the tax year in which the withholding tax has been deducted and paid to the Commissioner General, or deducted but paid in the next tax year before the expiry of the time prescribed under section 100:

Provided that where in respect of any such sum tax has been deducted and paid in any subsequent tax year; or deducted in the previous tax year but paid in any subsequent tax year after the expiry of the time prescribed under section 100, such sum shall be allowed as a deduction in computing the chargeable income of the tax year in which such tax has been paid to the Commissioner General.

(2) Notwithstanding the provisions of subsection (1), where a deduction in respect of any sum referred to above in computing the chargeable income of the tax year 2010 or any earlier tax year in which the liability to pay such sum was incurred by the taxpayer, the taxpayer shall not be entitled to any deduction under this section in respect of such sum in computing the

chargeable income of the tax year in which the withholding tax was deducted and paid by the taxpayer.

PART VII

Ascertainment of Taxable Income (s 51)

51. Taxable income, general

(1) Subject to the provisions of this Part, the taxable income of any person for any tax year shall be the aggregate of his or her chargeable income from all sources, other than chargeable income under section 40, and the amount of his or her net aggregate gains ascertained under the Tenth Schedule for the tax year, less any deductions he or she may be entitled to under subsections (2) and (3).

(2) Where a person makes a donation to-

- (a) any educational institution recommended by the Ministry of Education; or
- (b) any sports clubs or sports associations recommended by the Ministry responsible for sports,

and approved by the Commissioner General, the taxable income ascertained in respect of that person under subsection (1) shall be subject to the deduction of not less than P1,000 of the aggregate value in money's worth of donations made by him or her:

Provided that such deduction does not exceed 20 per cent of the person's aggregate chargeable income for that tax year.

(3) In the case of a resident individual, the taxable income as ascertained in respect of any other person under subsection (1) shall be subject to the deduction of 15 per cent of his or her chargeable income, other than his or her investment income in respect of contributions made by him or her to an approved superannuation fund for that tax year:

Provided that-

- (i) this subsection shall not apply to an employee who, not being a citizen of Botswana, commenced a contract of employment before the 1st July, 1999, and is entitled on the termination of that contract to a bonus or gratuity which is exempt from tax under paragraph (xviii) of Part II of the Second Schedule.
- (ii) a Minister or Member of Parliament who is entitled to pension and gratuity which is exempt from tax under paragraph (xxxiv) of Part II of the Second Schedule;
- (iii) an employee who is entitled on termination of his or her contract to a gratuity which is exempt from tax under paragraph (xxxv) of Part II of the Second Schedule;
- (iv) the contributions made and which are claimed as deductions, were made wholly out of income accrued from a source situated in or deemed to be situated in Botswana.

(4)

(5) No person shall be entitled to any deduction under this Part except upon due claim and subject to the production of such evidence as the Commissioner General may require.

PART VIII

Special Provisions relating to Certain Taxpayers (ss 52-58)

DIVISION I

ORDERS AND AGREEMENTS (ss 52-54)

52. Development approval orders and additional tax relief (1) The Minister may make an Order, to be known as a development approval order, prescribing-

- (a) any business which proposes to carry out a project which would be beneficial to the economy of Botswana or to the economic advancement of the citizens of Botswana as a business which may be granted additional tax relief;
- (b) any business activity which would be beneficial to the economy of Botswana or to the economic advancement of the citizens of Botswana as an activity which, if carried out by any business, will entitle that business to the grant of additional tax relief;

- (c) the type of development project or activity in respect of which additional tax relief may be granted;
- (d) the area in which any such development project or activity is to be carried out; or
- (e) the types and rates of additional tax relief which may be granted in respect of any development project or activity.

(2) Notwithstanding any other provision of this Act, the Minister may, in any development approval order, prescribe that such additional amount as he or she may determine shall be deducted in ascertaining the chargeable income of the business insofar as it is derived from the development project or activity and such deduction may relate to any expenditure incurred by the business in relation to the development project or activity, including any expenditure to which Part VI applies.

(3) A business which wishes to be granted additional tax relief in respect of a development project or in respect of any activity under this section shall apply on such form as may be prescribed or approved by the Minister, and shall submit such application to the Permanent Secretary of the Ministry responsible for finance.

(4) In considering any application made under subsection (3), the Minister shall have regard to-

- (a) the number of Botswana citizens who will be employed in relation to the project or activity and the capacities in which they will be employed;
- (b) any facilities proposed for the training and imparting of skills to Botswana citizens;
- (c) any provisions made for the eventual replacement of non-resident employees by Botswana citizens;
- (d) any provision made for participation by Botswana citizens in the management of the business;
- (e) the degree of investment in the business of capital owned by Botswana citizens;
- (f) the area in which the proposed development project or activity will be carried on; and
- (g) any effect which the proposed project or activity might be expected to have-
 - (i) on stimulating the development of other economic, industrial or commercial activities in Botswana, whether of the business or otherwise; or
 - (ii) in reducing the price in Botswana of consumer goods or services.

(5) Where the Minister is satisfied that the proposed project or activity would be beneficial to the development of the economy of Botswana or to the economic advancement of its citizens, he or she may issue a development approval order in respect of such business or business activity.

(6) A development approval order may be issued subject to such conditions and for such period of time as the Minister deems fit.

(7) The Minister may, at any time, by a further order, amend or revoke a development approval order if he or she is satisfied that-

- (a) a business has failed substantially to carry out the development project or activity specified in the order; or
- (b) there has been a substantial breach of any conditions specified in the order, but no such order of amendment or revocation shall be made until the business has, by notice in writing, been given the opportunity to rectify that failure or breach, or to show cause within such time as may be specified, not being less than 30 days from the date of such notice, why the development approval order should not be amended or revoked.

(8) Any person who is aggrieved by the proposed amendment or revocation of a development approval order may appeal to a magistrate's court presided over by a Magistrate Grade I or above, on the grounds that it has carried out the development or activity specified in the order, or that it is not in breach of any condition of the order; and if such appeal is upheld the proposed amendment or revocation of the development approval order shall not proceed.

(9) A business to which a development approval order relates shall be entitled to the relief specified in the order where the Commissioner General is satisfied that the development project or activity to which the order relates has been carried out.

(10) Where, under subsection (7), the Minister has, by further order, amended or revoked a development approval order relating to a development project or activity carried on by any business, such adjustment shall be made in respect of the liability to the tax of such business for any tax year as is necessary to give effect to that further order.

(11) A development approval order or further order made under this section shall be laid before the National Assembly as soon as possible after it is made, and shall not take effect until one month thereafter, provided that it is not sooner disapproved by resolution of the National Assembly, but upon taking effect, it shall come into operation or be deemed to have come into operation from the date specified in the order or further order.

(12) Where a development approval order made in respect of any business activity has been approved by the National Assembly and has come into operation in accordance with the provisions of subsection (11), then any subsequent development approval order made by the Minister in respect of a business activity which carries on such business activity as that approved by the National Assembly shall not be laid before the National Assembly.

53. International agreements for the avoidance of double taxation

(1) The Minister may, on behalf of the Government, enter into an agreement with the government of any other country with a view to the prevention, mitigation or discontinuance of double taxation, the levying of tax under this Act and the income tax laws of that other country, or to the rendering of reciprocal assistance in the administration of and in the collection of tax under this Act and such income tax laws.

(2) Any agreement entered into under this subsection (1) shall, by order, be laid before the National Assembly as soon as possible after the agreement is entered into 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 on the date specified in the agreement.

(3) The Minister may at any time by order, which shall be laid before the National Assembly as soon as may be after it is issued, amend or cancel any agreement entered into under subsection (1), and if such order of amendment or cancellation is approved by resolution of the National Assembly such agreement shall, as the case may be, from the date specified in such order-

- (a) stand amended, and operate in its amended form; or
- (b) cease to operate.

(4) Where the Minister enters into an agreement under subsection (1), the Commissioner General shall have the power to obtain information, or to give information in response to a request for information by a competent authority of the government of that other country under such agreement.

54. Tax agreements

(1) The Minister may, on behalf of the Government, enter into a tax agreement with any person who is or may become liable to tax under this Act.

(2)(a) Any agreement entered into under this section shall, by order, be laid before the National Assembly as soon as possible after it is entered into, and 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 on the date specified in the agreement.

(b) Any agreement entered into under this section may be amended or cancelled in like manner as is provided in paragraph (a).

(3) Any agreement entered into under this section may, in respect of the person with whom it is made, vary the provisions of this Act insofar as such provisions either impose liability to tax, or regulate the imposition of such liability, and may provide for-

- (a) the exemption of any dividend, interest, commercial royalty, entertainment fee or management or consultancy fee paid by that person to a non-resident;
- (b) the exemption or limitation of liability in respect of any amount accrued or deemed to have accrued, or any benefits derived from employment carried on by a person or any class of persons who are not citizens of Botswana, in terms of a contract of employment entered into by the person with whom the tax agreement under this section is made; or
- (c) the relief of that person from any duty, responsibility and liability under any provision of this Act.

(4) If any agreement entered into under this section imposes any liability to tax such liability shall be deemed to be a liability imposed under this Act and all the provisions of this Act including any variations thereto which may have been made under subsection (3) shall apply thereto.

DIVISION II

SPECIAL CLASSES OF COMPANIES AND BUSINESS (s 55)

55. Taxation of special classes of companies and business

Notwithstanding anything contained in this Act-

- (a) the taxable income of the Botswana Meat Commission shall be ascertained in accordance with the provisions of Part I of the Fourth Schedule;
- (b) the chargeable income of any company which is a member of the Botswana Development Corporation Limited group of companies shall be ascertained in accordance with the provisions of sections 36 to 49 inclusive and Part II of the Fourth Schedule;
- (c) the chargeable income derived from the carrying on of insurance business by any person shall be ascertained in accordance with the provisions of Part III of the Fourth Schedule; and
- (d) the chargeable income of mining operations shall be ascertained in accordance with the provisions of the Twelfth Schedule.

DIVISION III

WITHHOLDING AND DEDUCTED TAXES (ss 56-58)

56. Deduction of tax by employers

(1) Every employer shall deduct tax from the remuneration paid to his or her employees in accordance with and in the manner specified in the Fifth Schedule and shall carry out such other obligations as are imposed by that Schedule.

(2) In this section the word "employer" has the meaning given to it in the Fifth Schedule.

57. Deduction of tax due under certain contracts Every person who makes any payment to any person under a contract relating to construction operations shall deduct tax from such payment in accordance with and in the manner specified in the Sixth Schedule and shall carry out such other obligations as are imposed by that Schedule:

Provided that this section shall not apply to-

- (a) contracts with a value of less than P2 000 000 being executed by construction companies which have been classified as falling under categories OC, A and B by the Public Procurement and Asset Disposal Board in terms of section 121 of the Public Procurement and Asset Disposal Act; and
- (b) contracts exclusively for design, engineering, surveying work, and other related professional services.

58. Deduction of tax from payments of dividends, interest and certain royalties and fees

- (1) Every person who-
- (a) being a resident company, makes any payment of dividend to a resident or a non-resident;
 - (b) makes any payment of interest to a resident or a non-resident;
 - (c) makes any payment of commercial royalty, entertainment fee, or management or consultancy fee to a non-resident;
 - (d) makes any payment of rent, by whatever name called, to a resident or a non-resident for the use of any land or building, or both under an agreement or arrangement, except where the rent is paid by an individual and such rent is not claimed or will not be claimed as a business expenditure by such person;
 - (e) makes payment on behalf of any mine rehabilitation fund referred to in section 43 (1) (e), to a person having contributed to such fund, any amount being surplus after the rehabilitation of the mine; or
 - (f) makes payment of commission or brokerage for or in connection with the procurement of any goods or services,

shall deduct tax from such payment in accordance with and in the manner specified in the Seventh Schedule and shall carry out such other obligations as are imposed by that Schedule:

Provided that the provisions of paragraph (d) shall not apply where the rent paid by a person in respect of any property is less than P36,000 during any tax year; or to payment for accommodation in a hotel, motel, guesthouse or lodge:

Provided further that the provisions of paragraph (f) shall not apply where the commission paid by a person in respect to the procurement of goods or services is less than P36,000 during any tax year.

(2) For the purposes of this section a person, including a partnership, to whom any payment is made to which this section applies shall be presumed, unless the contrary is proved, to be a non-resident if such payment is made to an address outside Botswana.

(3) The Commissioner General may direct that this section shall not apply to any payment of interest to a non-resident, if he or she is satisfied that, by reason of the small amount of the payment or any other special circumstances, it is reasonable to so direct.

(4) This section shall not apply to-

- (a) any payment of interest, commercial royalty or management consultancy fee;
- (b) the payment of a dividend to a non-resident, an international financial services centre company or a collective investment undertaking;
- (c) any payment of interest to a resident where the recipient of such interest is a person exempt from taxation;
- (d) any payment of interest to an IFSC company, a banking company or a financial institution receiving such interest in its ordinary course of business; and
- (e) any payment of rent where the recipient of such rent is a person exempt from taxation:

Provided that the provisions of paragraphs (a) and (b) will apply only to cases where payment is made by an international financial services centre company or a collective investment undertaking which is exempt from tax under paragraph (xvi) of Part I of the Second Schedule.

PART IX
Ascertainment of Tax Payable (ss 59-64)
DIVISION I
RATES OF TAX (ss 59-60)

59. Rate of tax, general

(1) Subject to this Part, tax shall be charged on the taxable income for each tax year at the relevant rates specified in the Eighth Schedule:

Provided that in the case of an individual, the tax payable on the amount of his or her net aggregate gains shall be calculated in accordance with Table IV of the Eighth Schedule.

(2) Where any interest, commercial royalty, entertainment fee, or management or consultancy fee accrues from Botswana to a non-resident, tax shall be charged for each tax year at the rates specified in paragraph 2 of the Seventh Schedule.

(3) Where a resident company pays withholding tax under paragraph 2 of the Seventh Schedule, at the rate specified therein, on dividends distributed to a shareholder, this shall be a final charge to tax, and the dividends shall not form part of the assessable income of the shareholder.

(3A) Where a resident individual pays withholding tax under paragraph 2 of the Seventh Schedule, at the rate specified therein, on interest that accrued from a bank or building society, this shall be a final charge to tax, and the interest shall not form part of the assessable income of the resident individual.

(4) Where an international financial services centre company pays a dividend which is exempt from withholding tax under section 58(4), such dividend shall not form part of the assessable income of the shareholder.

(4A) Where a mine rehabilitation fund referred to in section 43 (1) (e) makes a payment, to a person having contributed to such fund, of a surplus amount after rehabilitation of the mine, and a withholding tax is paid under paragraph (2) (f) of the Seventh Schedule, at a rate specified therein, this shall be a final charge to tax, and the amounts so paid shall not form part of the assessable income of such person.

(5) The tax rate specified in Table III paragraph 7 of the Eighth Schedule or such lesser rate as Parliament may from time to time specify, shall apply for each tax year until the tax year 2019/2020.

60. Set-off against additional company tax

(1) Subject to subsections (2) and (3), where in any tax year a resident company is liable to deduct tax from dividends in accordance with section 58(1) and the Seventh Schedule, hereinafter referred to as "withholding tax", and has paid such tax to the Commissioner General, and such company is also liable for additional company tax as provided in Table III of the Eighth Schedule, the amount of withholding tax shall be set off, in whole or in part, against the additional company tax due for that tax year:

Provided that the withholding tax shall be set-off in chronological order of withholding, and no amount of such deducted tax shall be set-off more than once.

(2) Where additional company tax due for any tax year exceeds the amount of withholding tax, paid or payable, which can be set-off against such additional company tax under subsection (1), the excess is payable upon assessment for that tax year.

(3) Where additional company tax has been paid for a tax year under subsection (2), the amount paid shall be carried over to the next tax year as a set-off against the withholding tax in that tax year; and the remaining amount of withholding tax shall be set-off against any additional company tax due for that tax year.

(3A) No additional company tax shall be carried forward for set-off against withholding tax for more than five years following the tax year in which it was paid.

(4) Notwithstanding the provisions of subsections (1), (2) and (3) and any other provision of this Act, the liability to tax of any company carrying on business under an agreement with the Government in terms of section 54 of this Act, or any other agreement, or the liability to tax of any other person which is determined by such agreement, shall be in terms of the law in force at the time such agreement was signed, and such law shall be applicable for the duration of the agreement, unless the Government and the parties thereto agree otherwise.

(5) ...

60A. Taxation of corporations and shareholders

(1) Notwithstanding the provisions of section 60, subsection (3), and any other provision of this Act, there shall be no additional company tax for the tax year ending on 30th June, 2012 and subsequent tax years.

(2) Additional company tax shall not be carried forward after the tax year ending on 30th June, 2011, except for the purposes of subsection (3).

(3) Where the accounting period of a company is other than the tax year, and-

- (a) the company has unutilized carried forward additional company tax for the year ending 30th June, 2012; and the company has paid dividends on or before 30th June, 2011,
- (b) the withholding tax payable on the payment of such dividends shall be set off against the additional company tax which has not been used and carried forward, and thereafter, the provisions of subsection (1) shall apply.

DIVISION II

CREDIT FOR TAX PAID (ss 61-64)

61. Credit for tax deducted at source

Where under Division III of Part VIII any tax has been deducted from any amount accrued to any person, the tax so deducted shall be set off against the tax charged under section 59 for the tax year in which such amounts accrued or are deemed to have accrued:

Provided that any tax deducted from-

- (a) dividends payable to a resident or non-resident; or
- (b) interest, commercial royalty, entertainment fee or management or consultancy fee, payable to a non-resident which is a final charge under this Act shall not be deducted from any tax charged under section 59.

62. Credit for tax paid under section 114

Where any tax has been paid by a person under subsection (2), (3) or (4) of section 95 or section 114, the tax so paid shall be set off against the tax charged under section 59, for the tax year in respect of which such payment was made.

63. Credit for tax paid outside Botswana

(1) Where an agreement which has effect under section 53 provides that tax payable under the laws of the country with which such agreement has been made shall be allowed as a credit against tax charged in Botswana, credit for such tax shall be calculated in the manner provided in section 64, and shall be set off against the tax charged under this Act.

(2) Subject to subsection (1), where employment income, interest or dividends accrued to a resident from a source outside Botswana are charged to tax under this Act, credit for any tax payable under the laws of the country from which such employment income, interest or dividends accrued shall be calculated in the manner provided in section 64, and shall be set off against the tax charged under this Act.

(3) Subject to subsection (1), where an amount accrued to any person from a source outside Botswana is charged to tax under section 11 or section 31, credit for any tax payable under the laws of the country from which such amount accrued shall be given to such extent as in the opinion of the Commissioner General is reasonable.

(4) Notwithstanding the provisions of subsection (3), where an amount accrued to a resident of Botswana from a source outside Botswana is charged to tax under section 11, credit for any tax payable under the laws of the country from which such amount accrued shall be allowed as a credit against tax charged in Botswana, and credit for such tax shall be calculated in the manner provided under section 64.

(5) Where an international financial services centre company has gross income accrued from a source outside Botswana which is charged to tax under this Act, credit for any tax payable under the laws of the country from which such gross income accrued shall be calculated in accordance with section 64 and shall be set off against the tax charged under this

Act and the credit shall apply whether or not an agreement referred to in section 53 is in place with that country.

64. Calculation of tax credit

(1) The credit to be set off in respect of tax payable in another country on the amount referred to in section 63, shall be the lesser of the following-

- (a) the tax payable in the other country; or
- (b) the tax charged under this Act, on such amount.

(2) In this section-

"the tax payable in the other country" means the amount of tax payable, either directly or by deduction, for which the taxpayer was personally liable and ultimately bears in that other country; and

"the tax charged under this Act", in relation to any tax year, means that proportion of such tax which the amount accrued from a source outside Botswana referred to in section 63 bears to the chargeable income of that tax year.

(3) In the case of an international financial services centre company, the tax charged under this Act in relation to any tax year, means that proportion of such tax which is equal to the proportion that gross income which is accrued from a source outside Botswana bears to the gross income of that tax year as defined in section 139 and the credit available for foreign tax shall be restricted in accordance with the following formula:

Tax payable	X	<u>Gross income from foreign source</u>
in Botswana		Gross income

Provided that the foreign tax credit will be restricted to the tax payable in the foreign country if less than the amount determined by the above formula.

64A. Registration and allotment of Taxpayer Identification Number

(1) Every person, if his or her taxable income, or the taxable income of any person in respect of which he or she is assessable under this Act during any tax year exceeds the maximum amount which is not chargeable to income tax, shall apply to the Commissioner General for the allotment of a Taxpayer Identification Number.

(2) The Commissioner General may allot to any other person a Taxpayer Identification Number.

(3) A person who has been issued with a Taxpayer Identification Number in accordance with subsections (1) and (2) shall quote his or her Taxpayer Identification Number in all his or her returns and in all invoices for the payment of any tax due under this Act.

(4) A person who receives any sum, income or amount from which tax has been withheld under the provisions of Division III of Part VIII shall provide his or her Taxpayer Identification Number, in writing, to the person responsible for withholding such tax.

(5) Where any sum of money has been paid to a person after tax has been deducted in accordance with the provisions of Division III of Part VIII, the person withholding tax in accordance with those provisions shall quote, the Taxpayer Identification Number of the person in all tax deduction certificates furnished to the person to whom payment was made.

PART X

Returns and Notices (ss 65-77)

65. Tax returns, general

(1) Subject to section 77, every person shall furnish a return in the prescribed form of his or her gross income (hereinafter referred to as a "tax return") in respect of any tax year, either personally or in a representative capacity, within three months after the end of that tax year, and

such form shall be signed by him or her or by an agent authorized by him or her on his her behalf.

(2) Subject to section 77, every person shall furnish a return of the gross income and such other particulars as may be required in the return, computation of taxable income and tax payable as well as payments made thereof, in the prescribed form, in respect of any tax year in accordance with the provisions of this Act, either personally or in a representative capacity within four months of the end of that tax year, or in the case of a person whose accounting period is different from that of the tax year, within four months from the end of such accounting period, and such form and other documents shall be signed by the person or by an agent authorized by such person:

Provided that the provisions of this subsection shall become applicable to taxpayers or to categories of taxpayer's from such dates as the Minister, by order, may determine:

Provided further that upon the application of this subsection to a taxpayer, the provisions of subsection (1) shall cease to apply to such taxpayer.

(3) The Commissioner General shall give general notice in the *Gazette* and in such other manner and at such other places as he or she deems fit of the obligations imposed by this section, but failure to give any such notice shall in no way relieve any person liable to furnish a tax return from his or her obligation to comply with subsection (1).

(4) Tax return forms may be obtained from the Commissioner General or from any income tax office or from any other place specified in the notice under subsection (3), and it shall be the duty of all persons liable to furnish a tax return to obtain such forms.

(5) Notwithstanding subsection (4) the Commissioner General may, if he or she deems it so advisable, cause forms to be delivered by hand or post to any person.

(6) Notwithstanding the provisions of subsection (1), the following persons shall not, unless specifically requested by the Commissioner General, be required to furnish a return-

- (a) any person who has been informed in writing or by any general notification that a return is not required for the tax year;
- (b) any resident individual in respect of whose taxable income for any tax year there is no liability to tax;
- (c) any individual the whole of whose income is remuneration subject to the provisions of the Fifth Schedule and whose taxable income is within the categories of taxpayers prescribed by the Minister under the proviso to subsection (2); or
- (d) a person whose gross income accrued or is deemed to have accrued from sources situated or deemed to be situated in Botswana to a non-resident for any tax year, and consists only of amounts to which section 33(1) relates, and tax is deducted from the payment of all such amounts under section 58 and in accordance with the Seventh Schedule.

66. Provisional tax return

Where under section 77 the Commissioner General has extended the period in which a tax return for any tax year is to be furnished by any person other than a person to whom section 65(2) applies, he or she may by notice in writing require such person, within such time as may be specified in the notice, not being less than seven days from the date of service of that notice, to furnish a provisional return containing an estimate by such person of his or her taxable income for such tax year.

67. Tax returns: cessation of income during a tax year

Where it appears to the Commissioner General that-

- (a) a person may leave Botswana during the current tax year or shortly after its expiry, and that the absence from Botswana of such person is unlikely to be temporary only;
- (b) a person has ceased to carry on business in any tax year; or

- (c) in the case of any other person it is expedient to do so, the Commissioner General may at any time serve upon such person a notice in writing requiring him or her to furnish within such time as may be specified in the notice, not being less than seven days from the date of service of such notice, a tax return for any tax year.

68. Tax returns: where no return is furnished

(1) Where it appears to the Commissioner General that any person is or may be liable to furnish a tax return for any tax year and has not done so, he or she may, by notice in writing, require such person to furnish a tax return within such time as may be specified in the notice, not being less than seven days from the date of service of such notice.

(2) Nothing in this section shall be construed as extending the time limits provided by section 65 for the furnishing of any tax return.

69. Further returns or information, production of books and giving of evidence to Commissioner

(1) For the purpose of obtaining full information in respect of the chargeable income of any person, the Commissioner General may, by notice in writing, require any person-

- (a) to furnish to the Commissioner General such further tax return, statement of assets and liabilities or other information as may be required by the Commissioner General;
- (b) to produce at such time and place as may be specified in such notice, for examination by the Commissioner General or for retention by him or her for such period as may be reasonable for their examination, any accounts, books of account, statement of assets and liabilities or other documents which the Commissioner General may consider necessary for such purpose and, if any such information is not available in the English or Setswana language, to produce at the taxpayer's expense a translation in English prepared and certified by an approved translator; or
- (c) to attend at such time and place as may be specified in such notice, for the purpose of being examined by the Commissioner General respecting his or her chargeable income or the chargeable income of any other person or any transactions or matters appearing to be relevant thereto.

(2) Where any person is required to attend and give information under subsection (1) in relation to any other person, he or she may be allowed such expenses of attending as may be prescribed.

(3) Notwithstanding the provisions of subsection (1), the Commissioner General may, by notice in writing, require any person to furnish annually, or at such intervals as the Commissioner General may determine, any information that the Commissioner General considers necessary to enable him or her to fulfil his or her duties under this Act.

70. Powers of entry, inspection and removal of documents

(1) The Commissioner General, or any officer authorized by him or her, may, for the purposes of obtaining information which he or she considers necessary in relation to the liability of any person to tax, enter any premises at any time during the day, without previous notice, and search for any moneys or documents; and in carrying out any search he or she may-

- (a) open, or cause to be removed and opened, any article in which he or she considers any moneys or documents may be contained;
- (b) seize any documents which he or she considers may afford material evidence of the liability of any person to tax;
- (c) retain any such documents for such period as may be reasonable for their examination or for the purposes of a prosecution; or
- (d) make copies of any such documents.

(2) Any officer exercising any power under subsection (1) shall, upon demand, produce the authority furnished to him or her by the Commissioner General.

(3) Where any documents are seized and retained under subsection (1), the person to whom such documents belong shall be entitled to examine and make copies of or extracts from them at such time and place and under such supervision as the Commissioner General may determine.

(4) In this section "documents" includes any books, records or accounts.

71. Submission of accounts with tax return and certificate relating to preparation of accounts

(1) Where any person carries on business in any tax year, his or her tax return for such year shall be accompanied by a copy of the accounts of the business together with a reconciliation of the accounts with the chargeable income disclosed in that return in relation to the business.

(2) Where the accounts referred to in subsection (1) have been prepared by the person carrying on the business, he or she shall furnish together with the accounts a certificate signed by him or her stating-

- (a) the nature of the books of account and documents from which such accounts were prepared; and
- (b) whether such accounts present a true and fair view of the profits from his or her business for the accounting period.

(3) Where the accounts referred to in subsection (1) have been prepared by a person other than the person carrying on the business, such other person shall provide on the face of such accounts a certificate giving his or her name, address and occupation and stating-

- (a) the extent of the examination made of the books of account and of the documents from which such books of account were prepared; and
- (b) whether or not, as far as he or she was able to ascertain from such examination, the entries in those documents and books of account disclosed the true nature of every transaction, receipt, accrual, payment and debit.

(4) The manager or trustee of any charitable, religious or educational institution or a trust or an association referred to in the proviso to paragraph (xxxix) or in paragraph (xl) of Part II of the Second Schedule shall, in accordance with the provisions of section 65, furnish a tax return of the gross income of such institution, trust or association, for the tax year including statements of accounts, certificates and other relevant documents in relation to the return, signed by such manager or trustee, as the case may be, and shall also furnish such evidence as may be required by the Commissioner General as to the application of such income during the tax year.

72. Annual returns by companies of interest and dividends paid

Every resident company shall, on or before 31st August next following each tax year, furnish to the Commissioner General a return showing the name and address of each person-

- (a) to whom interest was paid in such tax year in respect of any debentures, debenture stock, loans or advances and the amount of interest paid; or
- (b) to whom dividends were paid or any bonus shares, debentures or securities were awarded in such tax year and the amount or value of such payment or award,

and, for the purposes of this section, where any interest or dividend is not paid but is reinvested, accumulated, capitalized, carried to any reserve or otherwise dealt with on his or her behalf or as he or her directs, it shall be deemed to have been paid.

73. Annual return by private companies of shareholders

Every resident private company shall, on or before 31st August next following each tax year, furnish to the Commissioner General a return showing the name and address of, and number of shares held by, each shareholder on the last day of that tax year.

74. Companies: documents of incorporation, amendments thereof and prospectus

(1) Every company shall furnish to the Commissioner General, within the time specified in this section-

- (a) a copy of the memorandum and articles of association constituting the company, or any other documents setting out the powers, aims and objects of and the rules or regulations governing the company;
- (b) a copy of any amendment made to such documents; and
- (c) a copy of any prospectus proposed to be issued by the company.

(2) In the case of a company incorporated or formed in Botswana, the documents referred to in subsection (1) shall be furnished within 60 days of the date of incorporation or formation, amendment thereof or, in the case of a prospectus, registration thereof.

(3) In the case of a company incorporated or formed outside Botswana but carrying on business in Botswana, the documents referred to in subsection (1) shall be furnished within 60 days of the date of commencing to carry on business in Botswana, amendment of the documents constituting or governing the company or, in the case of a prospectus, registration thereof.

75. Returns deemed to be furnished by due authority and in full knowledge of contents

Every return, statement or form purporting to be furnished under this Act by or on behalf of any person shall for all purposes of this Act be deemed to have been furnished by that person or with his or her authority, as the case may be, unless the contrary is proved; and any person signing such return, statement or form shall be deemed to be cognizant of all matters contained therein.

76. Returns: method of furnishing

Any return required to be furnished shall be delivered by hand or post to the address specified in the prescribed form.

77. Extension of time Where under this Act any return is required to be furnished by any person within a specified period, such person may, on just cause, request for an extension of the period in which such return is to be furnished, and the Commissioner General may, by notice in writing served on that person, extend the period in which the return is to be furnished.

PART XI

Assessment of Tax (ss 78-87)

78. Commissioner General to make assessment

(1) Where a person is required to furnish a tax return in terms of sections 65(1) and 67, the Commissioner General shall proceed to assess the person chargeable with tax as expeditiously as possible after the time allowed for such person or as extended under section 77.

(2) Where a person is required to furnish a tax return in terms of section 65(2), the person shall estimate the tax payable for the current tax year for the purpose of making the quarterly payments as provided for under section 95(2) for that tax year.

(2A) Where a person, other than a company, has the option to furnish a tax return in terms of section 65(2), the person may estimate the tax payable for the current tax year for the purpose of making a lump sum payment of tax for that tax year as provided in section 95(5).

(3) Subject to subsection (4), the return furnished in terms of section 65(2) shall be the assessment of taxable income or assessed loss, and the tax payable on the basis of the return shall be the assessed tax of that person for the tax year.

(4) Where a person has delivered a tax return in terms of section 65(1), the Commissioner General may accept such return and make an assessment in accordance therewith.

(5) Where a person has delivered a tax return in terms of section 65(2) the Commissioner General may accept such return and the assessment made by the person of that person's taxable income or assessed loss and the tax payable in terms of subsection(6), if the tax thereon is duly paid in full in terms of the provisions of section 95.

(6) Where-

- (a) a person fails to furnish a tax return; or
- (b) the Commissioner General is not satisfied that the tax return furnished by any person is true and correct;
- (c) a person fails to pay the tax for any tax year under section 95(2) and (3) in full, within the specified period.

the Commissioner General may make an assessment to the best of his or her judgement.

(7) Notwithstanding the provisions of subsection (6), where the Commissioner General is of the opinion that a person in any of the circumstances specified in section 67 is chargeable to tax for any tax year, he or she may at any time assess such person without first requiring him or her to furnish a tax return under any of the provisions of this Act.

(8) When a person fails to furnish a tax return for any tax year, the Commissioner General shall serve on such person a notice in writing requesting him or her to furnish the tax return within such time as may be specified in the notice.

(9) If after the expiration of the time specified in the notice referred to in subsection (8) the person on whom the notice was served fails to furnish the tax return, the Commissioner General shall, where a penalty has been imposed under section 117(2), make an assessment on him or her in respect of the penalty.

(10) The provisions of section 88 shall not apply to an assessment made on any person under subsection (9), except where the person so assessed objects that he or she is not liable to furnish a tax return.

79. Additional assessments

Where, in relation to an assessment made on any person for any tax year, the Commissioner General is of the opinion that-

- (a) the tax charged is less than the amount which should have been charged;
 - (b) any assessed loss is greater than the amount at which it should have been assessed; or
 - (c) a refund has been made in excess of the amount which should have been refunded,
- the Commissioner General shall make an additional assessment accordingly.

80. Reduced assessments

(1) Where, in relation to an assessment made on any person for any tax year, the Commissioner General is satisfied that-

- (a) the tax charged is greater than the amount which should have been charged;
- (b) any assessed loss is less than the amount at which it should have been assessed; or
- (c) a refund has been made which is less than the amount which should have been refunded,

by reason of some error, mistake or omission in the assessment, the Commissioner General may, within four years of the date of the notice of the assessment, make a reduced assessment accordingly.

(2) Where, on the determination of an appeal made under Part XII, the High Court or the Board of Adjudicators orders the reduction of an assessment, the Commissioner General shall reduce the assessment accordingly.

(3) Where, for any tax year, a person who has furnished a tax return for that tax year and has been assessed under section 78 or section 79, notifies the Commissioner General in writing within one year after the date of the notice of assessment that by reason of some error or mistake of fact in such return the assessment was excessive, the Commissioner General, after taking into account all relevant circumstances, may reduce the assessment to provide such relief as is fair and reasonable:

Provided that no relief shall be given under this subsection if the assessment was properly made in accordance with the practice generally prevailing at the time such return was made.

81. Reduced assessments in respect of persons other than companies or partnerships

Where any person other than a company or partnership fails to lodge an objection to an assessment in the absence of a tax return or otherwise, and the Commissioner General is satisfied that the tax charged is greater than the amount which should have been charged, he or she may within four years after the date of the notice of assessment reduce or cancel the assessment accordingly:

Provided that this section shall not apply in a case where tax chargeable in respect of any person in any tax year exceeds P1,000.

82. Determination of assessed loss

(1) Where, in relation to any tax year, the amount, as determined by the Commissioner General, by which the deductions allowable to any person under Part VI in relation to the carrying on of a business by that person exceed that part of the assessable income of that person which accrues from that business, the Commissioner General shall make a determination of such excess (referred to in this Act as "the assessed loss").

(2) The determination of the assessed loss of any person for any tax year under subsection (1) shall constitute the making of an assessment by the Commissioner General, and such assessment shall be notified in writing to the person assessed, and the provisions of this Act other than sections 85 and 86 shall apply as if such determination were the determination of the amount of the taxable income of such person for such tax year.

(3) For the purposes of this Act "assessed loss" shall not include a loss ascertained under the Tenth Schedule.

83. Provisional assessments

(1) Without prejudice to the powers of the Commissioner General under section 77, where a provisional return has been furnished by any person under section 66, the Commissioner General may proceed to make a provisional assessment in the amount of the taxable income disclosed in such return, and shall determine the tax payable accordingly.

(2) Notwithstanding any extension of time which has been granted under section 77 for the furnishing of a tax return for any tax year, any tax payable under a provisional assessment shall be due and payable within the time specified in section 95, and may be recovered in the manner provided in Part XIII, but upon the furnishing of such tax return the Commissioner General shall make an additional assessment or a reduced assessment or confirm the provisional assessment, as the case may be.

(3) Any provisional assessment made under this section shall be subject to the right of objection and the time within which any such objection may be made in accordance with section 88 shall not commence to run until the date of service of the notice of additional assessment, reduced assessment or confirmation of the provisional assessment, as the case may be.

84. Time limits for assessments

(1) Subject to the provisions of this section, an assessment may be made in relation to any person under this Act at any time prior to the expiry of four years after the end of the tax year to which it relates.

(2) An assessment may be made at any time prior to the expiry of four years from the end of the four years specified in subsection (1) if the Commissioner General is satisfied that an amount which was subject to tax and should have been assessed under subsection (1) has not been assessed because the person in relation to whom an assessment should have been made under the said subsection (1)-

- (a) has misrepresented certain material facts or neglected or failed to disclose such facts;
- (b) has failed to furnish a tax return; or
- (c) has furnished an incorrect tax return.

(3) Where a person in relation to whom an assessment should have been made under subsection (1) is deceased, such assessment may only be made within three years after the end of such tax year.

(4) Where any fraud or wilful default has been committed in connection with tax for any tax year by or on behalf of any person, and-

- (a) such person is an individual who is alive at the time the assessment is made, or a person other than an individual, an assessment in relation to such tax year may be made at any time; or
- (b) such person is deceased, subject to subsection (5), an assessment may only be made in respect of the tax year in which he or she died and the five immediately preceding tax years.

(5) In the case of an assessment made upon the executor of an estate of a deceased person in accordance with section 16, the assessment shall be made within three years of the end of the tax year in which such person died.

85. Notice of assessment

(1) Subject to subsection (2), a notice of assessment in respect of every person chargeable with tax shall be made and issued to such person in the prescribed form.

(2) The Commissioner General shall not be required to issue a notice of assessment other than a notice of reduced assessment to any person where-

- (a) no liability to tax arises;
- (b) the balance of tax due to be paid by him or her does not exceed P5; or
- (c) the balance of refund of tax due to him or her does not exceed P1,

unless that person makes a request to the Commissioner General for the issue of a notice of assessment.

(3) In this section "notice of assessment" includes a notice of a reduced assessment, an additional assessment and a provisional assessment.

86. Record of assessments

The Commissioner General shall maintain in such manner as he or she thinks fit a record of all assessments made in respect of each tax year.

87. Finality of assessment

(1) Subject to section 80(1) and (3) and section 81, where in relation to an assessment-

- (a) no valid notice of objection has been given under section 88;
- (b) subsequent to the determination of an objection, no valid notice of appeal has been given under section 91; or
- (c) an appeal has been determined and there is no right of further appeal,

such assessment shall be final and not subject to appeal.

(2) Nothing in this section shall prevent the Commissioner General from making any additional assessment for any tax year which does not involve reopening any matter which has been determined on appeal for such tax year.

(3) Notwithstanding subsections (1) and (2), where any fraud or wilful default has been committed by or on behalf of any person in relation to his or her liability to tax for any tax year, the Commissioner General may make an additional assessment for such tax year even though it may involve reopening a matter which has been determined on appeal.

PART XII

Objections and Appeals (ss 88-94)

88. Objection to assessment

(1) Any person aggrieved by an assessment made on him or her may, by notice in writing lodged with the Commissioner General within 60 days after the date of the notice of assessment, object to the assessment accordingly:

Provided that no objection shall be considered unless-

- (a) a tax return for the tax year to which the assessment relates has been furnished; and
- (b) tax due on the taxable income declared has been paid.

(2) Where the assessment is-

- (a) an additional assessment; or
- (b) a reduced assessment which, in part, imposes a fresh liability,

the person assessed shall have no further right of objection than he or she would have had if that assessment had not been made, except to the extent to which the assessment has imposed a fresh liability on him or her.

(3) An objection shall specify particulars of the grounds on which it is made.

(4) In this section "aggrieved by an assessment" means aggrieved by-

- (a) the inclusion in an assessment of an amount as part of the taxable income;
- (b) the disallowance in an assessment of an amount claimed as a deduction in ascertaining the taxable income;
- (c) the determination by the Commissioner General of the amount of an assessed loss;
- (d) the amount set off under section 61 or section 63;
- (e) the imposition of any amount of penalty for failure to lodge a tax return within the prescribed time or any extended time allowed under section 77;
- (f) the imposition of any amount of penalty for failure to lodge a correct tax return;
- (g) any decision relating to the status of a company under sections 130, 131 and 132;
- (h) a determination by the Commissioner General of the amount of capital losses on disposal of assets;

(i) a denial of issuance of a Tax Clearance Certificate under section 112A.

(5) Notwithstanding the provisions of subsection (1), the Commissioner General may consider an objection to an assessment-

- (a) lodged with him or her any time after the 60 days' period prescribed by subsection (1), if the assessment was made following the furnishing to him or her of a tax return for the tax year to which the assessment relates;
- (b) lodged with him or her, in the absence of such tax return, if such tax return is subsequently furnished to him or her within such period as he or she shall specify; or
- (c) lodged with him or her within such further period as he or she shall specify if a tax return was furnished to him or her:

Provided that the Commissioner General shall not consider an objection to an assessment in terms of this subsection unless he or she is satisfied that reasonable cause has been shown for the delay in lodging the objection or furnishing the tax return, as the case may be, and tax due on the tax return furnished has been paid.

89. Decision by Commissioner General

(1) The Commissioner General shall consider any valid objection made under section 88 and may either disallow it or allow it either wholly or in part, and shall by notice in writing inform the person concerned of his or her decision.

(2) If a decision of the Commissioner General requires the reduction of an assessment made on any person, the Commissioner General shall issue a notice of reduced assessment to that person, together with the notice of his or her decision, or as soon as is practicable thereafter.

90. Board of Adjudicators

For the purposes of this Part there shall be a Board of Adjudicators constituted and regulated in accordance with the provisions of the Ninth Schedule.

91. Appeal from decision of Commissioner General

(1) Any person who is aggrieved by the decision of the Commissioner General on an objection (hereinafter referred to as the appellant) may, by notice of appeal, appeal therefrom to the Board of Adjudicators.

- (2) Notice of appeal shall-
- (a) be made in writing, in a format prescribed by the Minister;
 - (b) be served to the Commissioner General within a period of 14 days from the date of lodging the notice of appeal to the Board of adjudicators;
 - (c) be lodged with the Board of Adjudicators within 60 days after the date of service of the notice of the Commissioner General's decision on the objection, or within such further time as the Board of Adjudicators may for good cause allow;
 - (d) be restricted to the grounds stated in the objection given to the Commissioner General except for such modifications as may be necessary arising from the partial allowance by the Commissioner General of the objection; and
 - (e) contain an address for service of notice of the date and place of hearing.
- (3) In this section "aggrieved by a decision of the Commissioner General" means aggrieved by-
- (a) the inclusion in an assessment of an amount as part of the taxable income;
 - (b) the disallowance in an assessment of an amount claimed as a deduction in ascertaining the taxable income;
 - (c) the determination by the Commissioner General of the amount of an assessed loss;
 - (d) the amount set off under section 61 or 63;
 - (e) the imposition of an amount of penalty for failure to lodge a tax return within the prescribed time or any extended time allowed under section 77;
 - (f) the imposition of any amount of penalty for failure to lodge a correct tax return; or
 - (g) any decision relating to the status of a company under sections 130, 131 and 132.
- (4) Upon lodging a valid notice of appeal with the Board of Adjudicators, the appellant shall, within a period of 14 days from the date that he or she lodged the notice of appeal, lodge a comprehensive memorandum of appeal with the Board of Adjudicators, in a format prescribed by the Minister, and the memorandum of appeal shall not be valid unless it contains the following documents-
- (a) the tax return;
 - (b) the notice of assessment;
 - (c) the notice of objection;
 - (d) the decision of the Commissioner on-
 - (i) the tax assessment,
 - (ii) the objection,
 - (iii) a refund application,
 - (iv) a taxpayer registration, or
 - (v) any other decision as the case may be;
 - (e) the notice of appeal; and
 - (f) the statement setting out the matter in dispute between the appellant and the Commissioner General.
- (5) Upon lodging the memorandum of appeal with the Board of Adjudicators, the appellant shall serve, immediately, a copy of the memorandum of appeal to the Commissioner General.
- (6) Upon receipt of the memorandum of appeal, the Commissioner General shall, within a period of 14 days or such other period as may be granted by the Board of Adjudicators, lodge a reply thereto with the Board of Adjudicators and immediately serve a copy of the reply to the appellant.
- (7) A party aggrieved by the decision of the Board of Adjudicators may appeal to the High Court in the manner provided under section 93.

92. Hearing by the Board of Adjudicators or High Court

(1) Upon every hearing of an appeal by the Board of Adjudicators, the Board may confirm, increase, annul or order the reduction of any assessment, or may make such other order as it deems fit.

(2) On any appeal to which this section relates both the appellant and the Commissioner General shall bear their own costs, except where the Board of Adjudicators is of the opinion that-

(a) the decision of the Commissioner General on the objection was arbitrary and unreasonable; or

(b) the grounds of appeal by the appellant were frivolous, when the Board of Adjudicators may make such order as to costs as it deems fit.

(3) On any appeal the burden of proof shall lie upon the appellant.

(4) At least 30 days before the date fixed for the hearing of an appeal by the Board of Adjudicators the Chairman shall, by notice in writing, advise the appellant and the Commissioner General of the date and place on and at which the appeal has been set down for hearing.

(5) At every hearing by the Board of Adjudicators the appellant and the Commissioner General shall be entitled to appear in person or by representation.

(6) The sittings of the Board of Adjudicators for the hearing of any appeal shall be open to the public, save for reasons reserved by the Board of Adjudicators, the hearing may be in camera.

(7) The decisions of the Board of Adjudicators may, from time to time, be published.

(8) The Minister may make regulations for the administration of the affairs of the Board of Adjudicators.

93. Right of further appeal

(1) The Commissioner General or the appellant may appeal to the High Court from any decision of the Board of Adjudicators which involves a question of law, including a question of mixed fact and law, or where the amount of tax in dispute exceeds the sum of P10,000, but in any other case the decision of the Board of Adjudicators on an appeal shall be final and not subject to further appeal.

(2) The Commissioner General or the appellant may appeal to the Court of Appeal as of right from any decision of the High Court which involves a question of law, including a question of mixed fact and law, but in any other case the decision of the High Court on an appeal shall be final and not subject to further appeal.

(3) On any further appeal to which this section relates the High Court or Court of Appeal, as the case may be-

(a) may confirm, increase, annul or order the reduction of any assessment;

(b) may make such other order as it deems fit; and

(c) may make such order as to costs as it deems fit.

(3A) On any further appeal to which this section relates, both the Commissioner General and appellant shall bear their own costs, except where High Court is of the opinion that-

(a) the decision of the Commissioner General on the objection was arbitrary and unreasonable; or

(b) the grounds of appeal by the appellant were frivolous, then the Court may make such order as to costs as it deems fit.

93A. Production of additional evidence

(1) The appellant shall not produce before the Board of Adjudicators or the High Court new evidence, whether oral or documentary, or a new witness, other than the evidence or witness produced by the appellant during the course of proceedings before the Commissioner General, except in the following circumstances-

(a) where the Commissioner General refused to admit evidence which ought to have been admitted;

- (b) where the appellant was prevented, by sufficient cause, from producing the evidence which he or she was called upon to produce by the Commissioner General;
- (c) where the appellant was prevented, by sufficient cause, from producing before the Commissioner General any evidence which is relevant to any ground of appeal; or
- (d) where the Commissioner General has granted the order appealed against without giving sufficient opportunity to the appellant to adduce evidence that is relevant to any ground of appeal.

(2) No evidence shall be admitted under subsection (1) unless the Board of Adjudicators or the High Court records, in writing, the reasons for the admission of the evidence and a copy of the record is given to the Commissioner General.

(3) The Board of Adjudicators or the High Court shall not take into consideration any evidence produced under subsection (1) unless the Commissioner General has been allowed to-

- (a) examine the new evidence or cross-examine the new witness produced by the appellant; and
- (b) produce any new evidence, whether oral or documentary, or a new witness in rebuttal of the new evidence or witness produced by the appellant.

(4) Nothing contained in this section shall affect the powers of the Board of Adjudicators or the High Court to direct the production of any document or the examination of any witness to enable the Board of Adjudicators or the High Court to dispose of the appeal.

94. Payment of tax not suspended by notice of objection or appeal

The obligation to pay any tax chargeable under an assessment shall not be suspended by reason of any notice of objection or appeal having been given against such assessment, and the tax charged may be recovered as if no such notice of objection or appeal had been given.

PART XIII

Payment, Recovery and Refund of Tax (ss 95-115)

95. When tax is payable

(1) Subject to this Part, any tax charged shall be due and payable by the person chargeable within 30 days of the date of service on him or her of the notice of assessment.

(2) Every person to whom section 65(2) applies shall pay the tax as estimated under section 78(2) in any tax year, in four equal instalments, the first of which shall commence on or before the end of the three month period as from the commencement of that tax year or where the commencement of the accounting year in respect of that tax year is earlier than the commencement of that tax year, three months from the commencement of that accounting year, and thereafter on or before the end of three months from the end of the period of the first quarterly payment in either case until the fourth quarterly payment:

Provided that during a transition period of two years as from 1st July, 2001, the Commissioner General may vary the dates for payment of the quarterly instalments.

(2A) Persons to whom section 65(2) applies shall also have an option to pay the tax in monthly instalments on condition that the proportion of the tax paid would not be less than one third of the tax payable in the case of payment by quarterly instalments.

(3) The balance of the tax payable for any tax year in accordance with the return furnished under section 65(2), including the interest payable under section 97(3), shall be paid on or before the due date for furnishing of a tax return under section 65(2) of that tax year or such extended period as allowed by the Commissioner General in terms of section 77.

(4) Notwithstanding subsection (3), where a person, other than a company designated under section 113, has tax payable as estimated under section 78(2) in any tax year, that is less than P50,000, the person may either pay such tax in quarterly instalments or pay the lump sum in one instalment the due date for furnishing of a tax return under section 65(2) for that tax year.

(5) Notwithstanding subsections (2), (3) and (4), where a person, not being a company, has tax payable as estimated under section 78 (2A) in any tax year, that person may pay such tax in one lump sum by the due date of the furnishing of a tax return under section 65 (2) for that tax year.

96. Extensions of time or payment by instalments

(1) On application by the person chargeable, the Commissioner General may in any case grant such extension of time for payment, or permit payment to be made by such instalments and within such time as he or she considers the circumstances warrant.

(2) Where, under subsection (1), the tax is permitted to be paid by instalments and there is default in payment of any instalment, the whole of the balance of tax outstanding shall become payable forthwith.

97. Interest on unpaid tax

(1) Any tax not paid within the time specified in section 95 shall bear interest at the rate of one and a half per cent for each month or part of a month during which it remains unpaid, compounded monthly.

(2) The Commissioner General may remit the interest charged, if the interest so charged is due to a mistake committed by the Department of Taxes.

(3) Where for any tax year-

- (a) the amount of each quarterly payment made by any person in accordance with section 95(2) is less than one-fifth of the tax due on the return for that tax year, or where a tax return has not been furnished for the year, less than one fifth of the tax due under an assessment made under section 78(6); or
- (b) the final payment made by any person is less than the balance of tax due in accordance with section 95(3),

that person shall be liable to bear interest calculated at the rate of one and a half per cent for each month or part of the month during which the tax payable remains unpaid.

98. When tax deducted by employer is payable

(1) Any tax deducted or deductible by an employer under section 56 from the remuneration paid to an employee shall be due and payable by the employer-

- (a) within 15 days after the end of the month during which that tax was deducted or deductible; or
- (b) in the case of a person who ceases to be an employer, within 15 days after the date on which he or she so ceases.

(2) On application by an employer, the Commissioner General may grant such extension of time for payment as he or she considers the circumstances warrant, and in such case the tax deducted or deductible shall be payable accordingly.

(3) In this section the words "employer", "remuneration" and "employee" have the meaning assigned to them in the Fifth Schedule.

99. When tax deducted under section 57 is payable

Any tax deducted or deductible by any person under section 57 in respect of a contract relating to construction operations, shall be due and payable by that person within 15 days after the end of the month during which that tax was deducted or deductible.

100. When tax deducted under section 58 is payable

Any tax deducted or deductible by any person under section 58 shall be due and payable by that person within 15 days after the end of the month during which such tax was deducted or deductible.

101. Interest on unpaid tax deductions (1) Any tax deducted or deductible by any person and not paid within the time specified in section 98, 99 or 100 shall bear interest at the rate of one and a half per cent for each month or part of a month during which it remains unpaid, compounded monthly.

(2) Any interest imposed on any person by subsection (1) shall be a debt due by that person and shall not be recoverable by him or her from the person in respect of whom the tax was deducted or should have been deducted.

102. Recovery of tax, general

(1) Tax shall, when it becomes due and payable, be a debt due to the Government and payable to the Commissioner General in the manner and at the place prescribed.

(2) Proceedings in any court for the recovery of tax shall be deemed to be proceedings for the recovery of a liquid debt.

(3) In any proceedings for the recovery of tax it shall not be competent for the defendant to enter a defence that-

- (a) the taxable income is incorrect;
- (b) the tax charged is excessive; or
- (c) the assessment is the subject of objection or appeal.

103. Procedure for recovery of tax by court action

(1) If any person fails to pay any tax when it becomes due and payable, the Commissioner General may file with the clerk or registrar of any court of competent jurisdiction a statement, certified by him or her as correct, of the amount of tax due and payable and unpaid.

(2) A statement filed under subsection (1) shall have the effect of a civil judgment given in that court in favour of the Commissioner General for a liquid debt of the amount specified in the statement, and the court shall, subject to subsection (3), issue a writ of execution in respect thereof against the person who has so failed to pay.

(3) No writ of execution shall be issued against any person pursuant to subsection (2) until 14 days after service on him or her by the court of a notice informing him or her that a writ of execution will be issued by the court in respect of tax due by him or her and unpaid, unless before the expiration of that period of 14 days he or she produces proof of payment thereof satisfactory to the court.

(4) After giving the Commissioner General the opportunity of being heard, in the event of-

- (a) proof of payment being produced with which the court is satisfied, the writ of execution shall not be issued;
- (b) no proof of payment being produced with which the court is satisfied, the writ of execution shall be issued and execution thereon shall proceed forthwith; or
- (c) proof of payment being produced which appears to the court to be inconclusive, the court shall proceed to set down a case for hearing and both parties shall be entitled to be heard personally or by representation; and upon completion of the hearing the court shall direct whether or not the writ of execution shall be issued.

(5) Notwithstanding the provision of any other law, the Registrar of the High Court may, in order to facilitate the operation of the procedure prescribed by the preceding subsections, appoint the Commissioner General, or any other officer appointed in terms of section 3(1), to be a Deputy Sheriff in terms of section 18(2) of the High Court Act and a court bailiff in terms of the Magistrates' Courts Act.

(6) The issue of a writ of execution under subsection (2) shall be without prejudice to the right of the Commissioner General to apply for any other form of execution of the judgment debt.

104. Recovery of moneys from person leaving Botswana

(1) Where the Commissioner General has reason to believe that any person may leave Botswana owing moneys or might, upon assessment, owe moneys to the Commissioner General under this Act, the Commissioner General may, by notice in writing served on that person, require that he or she pay the amount owing or give security to the satisfaction of the

Commissioner General for the payment thereof, or to cover the amount which might be owing, within the time specified in the notice.

(2) The Commissioner General may issue to the Chief Immigration Officer-

- (a) a copy of the notice served under subsection (1); and
- (b) a request for the person charged to be prevented from leaving Botswana until he or she pays the amount owing or gives security as provided in subsection (1).

(3) Where a notice has been served under subsection (1) and a request has been made under subsection (2), upon payment of the amount owing or the giving of satisfactory security as required under subsection (1), the Commissioner General shall, as soon as possible, issue to the Chief Immigration Officer a withdrawal of his or her request made under subsection (2), and shall furnish the person charged with a copy thereof, which shall be sufficient evidence for any immigration officer to permit the departure of that person.

(4) If any person fails to pay any moneys owing or to give satisfactory security as required under subsection (1), the Chief Immigration Officer shall take such steps as may be necessary to prevent such person from leaving Botswana pending compliance with the notice served on him or her.

(5) Where the Commissioner General has reason to believe that any person owing money or who, upon assessment, might owe monies to the Commissioner General, or might transfer assets to avoid payment of such monies to the Commissioner General, the Commissioner General may, by notice in writing served on the person, require that person to pay the amounts owing or furnish security for the amount that might be owed within the time specified in the notice, failing which the Commissioner General may provisionally attach the assets of the person.

(6) Any transfer of assets made after a notice served on the person concerned in terms of subsection (5) shall be void.

(7) A copy of the notice of provisional attachment served on any person in terms of subsection (5) shall be given to the authorities responsible for effecting the transfer or release of the assets in question.

(8) A notice served in terms of subsection(5) shall be valid for a period of six months from the date of issue and shall be renewable every six months for a period not exceeding two years.

(9) If a person against whom a notice is issued in terms of this section furnishes adequate security to the satisfaction of the Commissioner General, the Commissioner General shall withdraw the notice of provisional attachment.

105. When tax recoverable from assets of other spouse

(1) No tax due and payable by a married person may be recovered from the assets of the other spouse unless the Commissioner General is satisfied that there has been a transfer of assets from the spouse liable to tax to the other and that such transfer was intended to avoid the recovery of the tax due.

(2) So much of any tax due and payable by a settlor as is attributable to amounts accrued in a settlement but charged to tax in the name of the settlor under section 13, 14(1) or 15 may be recovered from assets of the settlement.

(3) For the purposes of this section, tax attributable to amounts deemed to have accrued to any person under section 13, 14(1) or 15 means the amount by which the tax charged under section 59 has been increased by the inclusion of such amounts in the gross income of the person charged to tax.

(4) In subsection (2) the words "settlor" and "settlement" shall have the meaning assigned to them respectively in sections 13, 14(1) and 15.

106. Recovery of tax from representative taxpayers

(1) Where any person dies, then in respect of any tax payable under an assessment-

- (a) made upon him or her prior to and remaining unpaid at his or her death;
- (b) made upon his or her executor under section 16 in respect of amounts accrued prior to his or her death; or
- (c) made upon his or her executor under section 17 in respect of amounts accrued after death to the estate of the deceased person,

the amount of tax unpaid by that person in his or her lifetime or payable under an assessment made on his or her executor shall be a debt due and payable out of the estate of the deceased person.

(2) Where a company is being wound up or has been placed under judicial management, then in respect of any tax payable under an assessment-

- (a) made upon the company, prior to and remaining unpaid at the commencement of the liquidation or judicial management;
- (b) made upon the liquidator or judicial manager in respect of amounts accrued prior to commencement of the liquidation or judicial management; or
- (c) made upon the liquidator or judicial manager in respect of amounts accrued during the winding-up or judicial management of the company,

the amount of tax unpaid by the company or payable by the liquidator or judicial manager shall be a debt due and payable out of the assets of the company.

(3) Where any person is chargeable to tax under section 14(2) as trustee of a trust the income of which is accumulated, then any tax payable by the trustee shall be due and payable out of the assets of the trust.

(4) Where any person is chargeable to tax under section 18 as trustee for a legally disabled person, any tax payable by the trustee shall be due and payable out of the assets of the legally disabled person.

(5) Where any person is chargeable to tax under section 19 as trustee for the beneficiaries of a trust, any tax payable by the trustee shall be due and payable out of the assets of the trust.

(6) Where any person is chargeable to tax under section 23 as agent for a non-resident, any tax payable shall be due and payable out of the assets in Botswana of the non-resident.

(7) Where any person is chargeable to tax as public officer of a company, any tax payable shall be due and payable by the company.

107. Right of representative taxpayer to indemnity

Every person who as a representative taxpayer pays any tax shall be entitled to recover the amount paid from the person on whose behalf it was paid, or to retain out of any moneys which may be in his or her possession, or may come to him or her, in his or her representative capacity, an amount equal to the amount paid.

108. Personal liability of representative taxpayer

(1) Every representative taxpayer shall be personally liable for any tax payable by him or her in his or her representative capacity if, while it remains unpaid-

- (a) he or she alienates, charges or disposes of any amounts in respect of which the tax is charged; or
- (b) he or she disposes of or parts with any assets or money which is in his or her possession or comes to him or her after the date on which the tax is payable,

if the tax could legally have been paid out of such amounts, assets or money.

(2) If the representative taxpayer referred to in subsection (1) was representing a company, every person who was a director of the company at the time of the commission of the acts referred to in that subsection or thereafter shall also be liable, jointly and severally, for any tax payable by the company unless he or she proves, to the satisfaction of the Commissioner General, that the failure of the representative to pay the tax was not due to any negligence on his or her part.

109. Recovery of tax from person holding money for another person

(1) For the purpose of recovery of any tax due from any person the Commissioner General may, by notice in writing, declare any other person-

- (a) from whom any money is due or may become due to the first-mentioned person;
- (b) who holds or may subsequently hold money for or on account of the first-mentioned person;
- (c) who holds money on account of some other person for payment to the first-mentioned person; or
- (d) who has authority from some other person to pay money to the first-mentioned person, to be the agent of that person and to pay to the Commissioner General within 15 days of the date of service of that notice, or if on such date no money is due from him or her to that person, within 15 days of the date on which money becomes due to that person, the amount specified in the notice, or if the money due is less than the amount specified, the whole amount of the money due.

(2) Where any person declared to be an agent under subsection (1) fails to make any payment within the time specified in a notice under that subsection, the provisions of this Act shall apply as if such amount were tax due and payable by that person on the date by which he or she was required to make such payment to the Commissioner General.

110. Priority of tax debt upon insolvency or liquidation

From the date on which any tax becomes due and payable the Commissioner General shall have such preferential claim for such debt upon the assets of-

- (a) an insolvent person as is specified in section 86 of the Insolvency Act; or
- (b) a company in liquidation or under judicial management as is specified in section 261 or 275(4) of the Companies Act.

111. Refund of tax overpaid

(1) Where the Commissioner General is satisfied that any person has paid tax for any tax year, by deduction or otherwise, in excess of the amount finally determined to be payable under this Act for such tax year, that person shall, subject to section 80, be entitled to have the amount of the excess refunded, and such refunds shall be charged on and paid out of the Consolidated Fund, and the amount of the excess will also include any amount of interest paid in excess.

(2) The burden of proof that any amount of tax has been paid, by deduction or otherwise, shall rest with the person referred to in subsection (1), but any tax certificate issued to such person under the Fifth, Sixth or Seventh Schedule shall be *prima facie* evidence that the amount of tax shown therein has been paid by such person.

(3) Subject to the provisions of subsection (4), where, for any tax year commencing on or after 1st July 2001, any person is entitled to a refund of excess tax in terms of subsection (1) of this section, and where the amount has not already been refunded by the Commissioner General-

- (a) if such refund arises in consequence of the reduction of the amount of an assessment on a determination given on an objection filed under section 88 or an appeal lodged under section 91, and where such amount has not been refunded by the Commissioner General to that person before the end of six months from the date of such determination; or
- (b) in any other case, within a period of six months from the date on which an application in writing was received by the Commissioner General for such refund, or from the date on which the tax return, with full details as required under this Act, was filed with the Commissioner General in relation to such refund,

that person shall be entitled to receive interest on the amount of the refund due, calculated at the rate of one per cent for each month or part thereof, for which such amount remains unpaid after the period of six months referred to in paragraphs (a) and (b).

(4) Subsection (3) shall not apply to any amount of tax paid in excess as a result of deduction of assessed loss under sections 47 and 48 in respect of farming.

112. Remission of tax

(1) The Minister may remit wholly or in part any tax payable by any person where he or she is satisfied that it is just and equitable to do so, or where he or she is satisfied that such tax is irrecoverable.

(2) Any decision made by the Minister under this section shall be final and not subject to appeal.

(3) After first consulting the accounting officer for the purposes of the Finance and Audit Act the Commissioner General may, if he or she is satisfied that the same is irrecoverable, remit any amount of tax, not exceeding P25 000, unpaid by any person in respect of any tax year.

112A. Tax Clearance Certificates

(1) The Minister shall have the powers to make it compulsory, by order, for any person or category of persons to produce a Tax Clearance Certificate for a tender to be awarded in accordance with the Public Procurement and Asset Disposal Act. (2) It shall be the duty of any person, institution or authority entrusted with the responsibility of authorising the transactions referred to in subsection (1) to authorise such transactions only after a Tax Clearance Certificate is produced by the parties to the transaction.

(3) The Commissioner General shall, within two weeks of receipt of an application for a Tax Clearance Certificate-

- (a) issue the Tax Clearance Certificate if-
 - (i) there is no tax liability against the taxpayer, or
 - (ii) in the view of the Commissioner General, the taxpayer has made satisfactory arrangements for the payment of his or her tax liability; or
- (b) deny the issue of the Tax Clearance Certificate and give reasons for such denial.

113. - 115. ...PART XIV

Offences (ss 116-129)

DIVISION I

CIVIL PENALTIES (ss 116-119)

116. Penalties: general

The penalties imposed by this Division of this Part may be imposed by the Commissioner General at his or her discretion, and shall be in addition to any right to institute criminal proceedings against any person for an offence under this Act, and any fine payable on conviction for an offence shall be in addition to the penalties provided herein.

117. Penalties: failure to furnish tax return

(1) Where any person who is required to furnish a tax return including a withholding return for any tax year fails to do so within the prescribed time or any extended time allowed under section 77, he or she shall be liable to-

- (a) interest at the rate of one and a half per cent for each month or part of a month during which it remains unpaid, compounded monthly on the amount of tax charged-
 - (i) commencing 30 days after the date on which the return should have been lodged; and
 - (ii) ending on the date on which the tax becomes due and payable under the assessment made for that tax year under section 78, or 30 days after the day when the return was furnished; and
- (b) a penalty not exceeding the amount of tax chargeable for that tax year.

(2) Without prejudice to the provisions of subsection (1), if a person on whom a notice has been served in accordance with section 78(8), requiring him or her to furnish a tax return, fails to do so within the time specified in the notice, the Commissioner General may, if he or she considers it appropriate in the circumstances to do so, impose on such person a penalty not exceeding P2,000 at any time after the date on which the tax return is due to be furnished, and such penalty shall be in addition to any amount of interest and penalty to which he or she is liable in accordance with subsection (1):

Provided that, upon submission of the tax return, a penalty imposed under this subsection may be mitigated, in whole or in part, without the application of the provisions of section 129.

118. Penalties: failure to furnish correct tax return or estimate of taxable income

(1) Where any person has failed to lodge a correct tax return for any tax year by reason of-

- (a) his or her failure to disclose any gross income accrued to him or her from any source;
- (b) the deduction or set off by him or her of any amount which is not allowable as a deduction;
- (c) the claim by him or her of an expenditure or loss of an amount which was not expended or lost; or
- (d) his or her failure to disclose any fact, the disclosure of which would result in an increase in his or her taxable income,

he or she shall be liable to a penalty in accordance with subsection (2).

(2) Where the incorrectness of the tax return, statement or information was attributable to-

- (a) neglect or carelessness, he or she shall be liable to a penalty not exceeding the amount of tax which would have been lost if he or she had been assessed on the basis of the incorrect return, statement or information furnished by him or her; or
- (b) fraud or wilful default, he or she shall be liable to a penalty not exceeding twice the amount of tax which would have been lost if he or she had been assessed on the basis of the incorrect return, statement or information furnished by him or her.

(3) If, in any tax year in which the determination of the taxable income of any person does not result in an assessed loss, that person is entitled to the deduction of a balance of assessed loss from the previous tax year, and the balance to which he or she is entitled is less than it would have been if it had been calculated on the basis of the tax return, statement or information furnished by him or her for the tax year in which it was incurred, he or she shall be deemed for the purposes of this section to have omitted from his or her tax return of the first-mentioned tax year an amount equal to the difference between the amount at which such balance of loss is finally determined and the amount at which it would have been determined if the incorrect return, statement or information had been accepted by the Commissioner General as correct under section 78(4).

(4) Where for any tax year a person furnishes a provisional return under section 66 whereby the tax payable under section 83 is less than three-quarters of the tax chargeable under an assessment made under section 78 for that tax year, that person shall be liable to pay a penalty calculated at the rate of one and a half per cent per month, compounded monthly, on the amount of the difference between the tax payable under the provisional assessment issued under section 83 and the tax charged in relation to an assessment made under section 78 for the period commencing 30 days after the due date for furnishing a tax return under section 65 for that tax year.

(5) Where for any tax year the amount of estimated tax paid in accordance with the provisions of section 114 by a company designated under section 113(1) is less than the tax due on its tax return for that year, the company shall be liable to pay a penalty calculated at the

rate of one and a half per cent per month, compounded monthly, on the amount of the difference between the tax payable on its tax return and the estimated tax paid for the period commencing on 1st July of the next tax year and ending on the date on which the tax return is furnished.

(6) For the purposes of withholding taxes as contained under the provisions of Division III of Part VIII, the Commissioner General shall impose on a person who after reasonable request-

- (a) fails to give access to books and records;
- (b) fails to appear at a tax office for determination of the tax liability of such person for withholding of tax; or
- (c) otherwise impedes the determination or collection or withholding tax under Division III of Part VIII,

a penalty of P100 per day or one per cent of the tax due for each month or part of a month during which such failure or impediment continues, whichever is greater.

(7) A person who-

- (a) within the prescribed time fails to register as an employer, to notify any change of address or to notify that he or she has ceased to be an employer;
- (b) within the prescribed time fails to deduct any amount of tax from the remuneration paid to an employee;
- (c) within the prescribed time fails to pay to the Commissioner General any amount of tax deducted from an employees' remuneration;
- (d) fails to comply with any direction issued or condition specified by the Commissioner General under the Fifth Schedule;
- (e) fails to maintain a record of remuneration paid to his or her employees and tax deducted therefrom;
- (f) fails to deliver to any employee a certificate of tax deducted from remuneration as and when required;
- (g) furnishes to his or her employer or Commissioner General an incorrect return of personal particulars, or gives incorrect information to his or her employer in relation to a matter affecting the amount of tax to be deducted from his or her remuneration;
- (h) issues, possesses, uses or causes to be issued or used any certificate of remuneration and tax deducted which is incorrect;
- (i) fails to deduct any tax from payment made to any person to which section 57 applies;
- (j) within the prescribed period, fails to pay to the Commissioner General any amount deducted under section 57;
- (k) within the prescribed period fails to notify the Commissioner General that he or she has entered into a contract to which the Sixth Schedule applies;
- (l) fails to comply with the provisions of section 58; or
- (m) fails to deliver to any contractor a certificate of tax deducted within the time prescribed in the Sixth Schedule.

shall be liable to a penalty of P100 per day or one percent of the tax due for each month or part of a month that the violation continues, whichever is the greater.

119. Penalties: failure to appoint a public officer, precedent partner, agent or address for service of notices

(1) Where a company makes default-

- (a) in appointing a public officer;
- (b) in appointing an address for service of notices; or
- (c) in notifying the Commissioner General of any change of public officer or address for service of notices,

it shall be liable to a penalty not exceeding P10 for every day during which the default continues.

(2) Where a partnership makes default-

- (a) in notifying the Commissioner General of the name of its precedent partner or in appointing an agent of the partnership;
- (b) in appointing an address for service of notices; or
- (c) in notifying the Commissioner General of any change of precedent partner, agent or address for service of notices,

it shall be liable to a penalty not exceeding P10 for every day during which the default continues.

119A. Penalties: Failure to comply with provisions of section 64A

(1) Any person who fails to comply with the provisions of section 64A, before the end of the period allowed for filing tax returns under section 65 (1) or (2), shall be liable to a penalty not exceeding P10,000.

(2) The provisions of subsection (1) shall not apply where a person proves that he or she had a just cause for failing to comply with the provisions of section 64A and unless he or she is given an opportunity to be heard.

119B. Penalties: Failure to comply with provisions of section 69

(1) Any person who fails to comply with the provisions of section 69 (1) or (3), shall be liable to a penalty not exceeding P10,000.

(2) For any subsequent failure to comply with the provisions of section 69 (1) or (3), the penalty shall not exceed P20,000.

(3) The provisions of subsection (1) shall not apply where a person proves that he or she had a just cause for failing to comply with the provisions of section 69 (1) or (3) and unless he or she is given an opportunity to be heard.

DIVISION II

CRIMINAL PROCEEDINGS (ss 120-129)

120. Sanction for prosecution

(1) Subject to the powers of the Director of Public Prosecutions under the Constitution, no criminal proceedings in respect of any offence under this Act shall be commenced except with the sanction of the Commissioner General.

(2) Criminal proceedings under this Act shall be commenced in the name of the Commissioner General.

121. Offences: breach of secrecy

Any person appointed under or employed in carrying out the provisions of this Act who, in contravention of the oath or declaration of secrecy made by him or her under section 5 discloses to any unauthorized person any document, information or confidential instruction which has come into his or her possession or to his or her knowledge in the course of his or her duties, or permits any unauthorized person to have access to any records in the possession or custody of the Commissioner General, shall be guilty of an offence and liable to a fine of P1,000 and to imprisonment for one year.

122. Offences: failure to comply with requirements of this Act

(1) Any person who-

- (a) fails or neglects to furnish to the Commissioner General any return or document as and when required under this Act;
- (b) fails to comply with the requirements of any notice in writing served on him or her under this Act;
- (c) refuses or neglects to answer truly and fully any questions put to him or her or to supply any information required from him or her respecting his or her gross income or the gross income of any other person;

- (d) fails to keep a proper record of his or her transactions as required under section 26;
- (e) fails to preserve any books of account or document which he or she is required to preserve under section 144;
- (f) obstructs or hinders any person appointed or employed under this Act in the discharge of his or her duties;
- (g) fails to disclose in any tax return made by him or her any gross income accrued to him or her or any material facts which should have been disclosed; or
- (h) signs any return or statement rendered to the Commissioner General without reasonable grounds for believing that return or statement or any part thereof to be correct,

shall be guilty of an offence and liable to a fine of P1,000 and to imprisonment for one year.

(2) Any person who, having been convicted under subsection (1) of failing to do anything required to be done by him or her under this Act, fails, within any further period specified by the Commissioner General in a notice served on that person, to comply with the requirements of the notice, shall be guilty of a further offence and shall be liable for each day during which the default continues to a fine of P10 and to imprisonment for one month.

123. Offences: intent to evade liability to tax

(1) Any person who wilfully and with intent to evade assessment or liability to tax-

- (a) makes or causes or allows to be made any incorrect statement in any return lodged under this Act;
- (b) signs any statement in any return lodged under this Act having reason to believe such statement or any part thereof to be incorrect;
- (c) gives any incorrect answer, verbally or in writing, to any request for information made by the Commissioner General;
- (d) prepares or maintains any incorrect books of account or other records, or falsifies any books of account or other records;
- (e) authorizes the preparation or maintenance of any incorrect books of account or other records or the falsification of any books of account or other records; or
- (f) makes use of or authorizes the use of any fraud whatever,

shall be guilty of an offence and liable to a fine of P4,000 and to imprisonment for two years.

(2) In any proceedings under this section, if it is proved that any incorrect statement or entry is wilfully made in any return, answer, books of account or other records, certificate or statement by any person, he or she shall be presumed, until the contrary is proved, to have made or caused or allowed to be made that incorrect statement or entry with intent to evade assessment or liability to tax.

124. Offences by employers

(1) Any person who, wilfully and with intent to evade liability to tax-

- (a) within the prescribed time fails to register as an employer, or to notify any change of address or to notify that he or she has ceased to be an employer;
- (b) within the prescribed time fails to deduct any amount of tax from remuneration paid to an employee;
- (c) within the prescribed time fails to pay to the Commissioner General any amount of tax so deducted;
- (d) fails to comply with any direction issued or condition specified by the Commissioner General under the Fifth Schedule;
- (e) fails to maintain a record of remuneration paid to his or her employees and tax deducted therefrom; or
- (f) fails to deliver to any employee a certificate of tax deducted from remuneration, as and when required,

shall be guilty of an offence and liable to a fine of P4,000 and to imprisonment for two years.

(2) In this section the words "employer", "remuneration" and "employee" have the meanings assigned to them in the Fifth Schedule.

125. Offences by employees

(1) Any person who wilfully with intent to evade assessment or liability to tax-

- (a) furnishes to his or her employer or the Commissioner General an incorrect return of personal particulars, or gives any incorrect information to his or her employer in relation to any matter affecting the amount of tax to be deducted from his or her remuneration;
- (b) issues, possesses, uses or causes to be issued or used any certificate of remuneration and tax deducted which is incorrect;
- (c) alters any certificate of remuneration and tax deducted, issued by any other person, pretends to be the employee named in any certificate of remuneration and tax deducted, or in any other way to his or her own advantage or benefit obtains credit with respect to or payment of the whole or any part of any amount of tax deducted from remuneration received by another person; or
- (d) not being an employer and without being authorized by any person who is an employer issues or causes to be issued any document purporting to be a certificate of remuneration and tax deducted from remuneration,

shall be guilty of an offence and liable to a fine of P4,000 and to imprisonment for two years.

(2) In this section the words "employer", "remuneration" and "employee" have the meanings assigned to them in the Fifth Schedule.

126. Offences: deduction from payments due under certain contracts with non-residents

Any person who, wilfully and with intent to evade liability to tax-

- (a) fails to deduct any tax from a payment made to any person to which section 57 applies;
- (b) within the prescribed time fails to pay to the Commissioner General any amount deducted under section 57;
- (c) within the prescribed time fails to notify the Commissioner General that he or she has entered into a contract to which the Sixth Schedule applies; or
- (d) fails to deliver to any contractor a certificate of tax deducted within the time prescribed in the Sixth Schedule,

shall be guilty of an offence and liable to a fine of P4,000 and to imprisonment for two years.

127. Offences under section 58

Any person who, wilfully and with intent to evade liability to tax fails to comply with the provisions of section 58 shall be guilty of an offence and liable to a fine of P4,000 and to imprisonment for two years.

128. Aiding and abetting an offence

(1) Where any person-

- (a) wilfully makes or delivers on behalf of another person; or
- (b) aids or abets another person to make or deliver,

an incorrect return, account, statement or any incorrect information relating to any matter affecting the tax liability of that other person, the first-mentioned person shall be guilty of an offence and liable to a fine of P2,000 and to imprisonment for one year.

(2) Where any person wilfully and with intent to assist any other person to evade assessment or liability to tax does any of the matters referred to in section 123, he or she shall be guilty of an offence and liable to a fine of P4,000 and to imprisonment for two years.

(3) In any proceedings under subsection (2), if it is proved that any incorrect statement or entry is wilfully made in any return, answer, book of account or other record, certificate or statement by such person, he or she shall be presumed, until the contrary is proved, to have made such incorrect statement or entry with intent to assist such other person to evade assessment or liability to tax.

129. Mitigation of penalties and compounding of offences

(1) Where any person has committed a breach of the provisions of this Act for which a penalty is provided under Division I of this Part, then in relation to such breach the Commissioner General may mitigate any penalty imposed by him or her, either wholly or in part, and whether before or after judgment for its recovery has been obtained.

(2) Nothing in subsection (1) shall be construed so as to authorize the Commissioner General to mitigate any penalty where the penalty imposed by the Commissioner General has been the subject of appeal under section 91.

(3) Where any penalty has been mitigated under subsection (1) by agreement with the person concerned then, notwithstanding the provisions of sections 88 and 91, that person shall not be entitled to object to or appeal against the imposition of, or the amount of, the penalty as so mitigated.

(4) Subject to the direction of the Director of Public Prosecutions, where any person has committed an offence against this Act for which criminal proceedings may be taken under Division II of this Part, then in relation to such offence the Commissioner General may, at any time prior to the commencement of the hearing by any court of such proceedings, compound the offence and order the person to pay such sum of money, not exceeding the amount provided in Division II of this Part for such offence, as the Commissioner General may think fit.

(5) The Commissioner General shall not exercise his or her power to compound under this section unless the person who has committed the offence requests the Commissioner General in writing to so deal with the offence.

(6) Where the Commissioner General compounds any offence under this section and makes an order accordingly-

- (a) the order shall be made in writing and there shall be attached to it the request referred to in subsection (5);
- (b) the order shall specify-
 - (i) the offence committed;
 - (ii) the sum of money ordered to be paid; and
 - (iii) the date on which payment is to be made or the dates on which instalments of that sum are to be paid;
- (c) a copy of the order shall be given, if he or she so requests, to the person who committed the offence;
- (d) that person shall not be liable to any criminal proceedings or further criminal proceedings, as the case may be, in respect of such offence, and if any such proceedings are taken it shall be a good defence for that person to prove that the offence has been compounded under this section;
- (e) the order shall be final and shall not be subject to any appeal; and
- (f) a statement of the amount due by reason of the order may be filed with any court of competent jurisdiction in the manner provided in section 103 and such amount shall be deemed to be an amount of tax due and payable and unpaid, and recovery thereof shall be made in accordance with the provisions of that section.

(7) Where under subsection (6)(b)(iii) any sum is to be paid by instalments and there is default in payment of any instalment, the whole of the balance then outstanding shall become due and payable forthwith.

PART XV

Provisions relating to Companies and Partnerships (ss 130-136)

130. Status of companies: public or private

(1) For the purposes of this Act the expression "private company", in respect of each tax year, means-

- (a) a company which by its memorandum or articles of association-
 - (i) restricts the right to transfer its shares;

- (ii) limits the number of its members to fifty, not including persons who are in the employment of the company and persons who have been formerly in the employment of the company and who were while in that employment and after the termination of that employment, members of the company; or
 - (iii) prohibits any invitation to the general public to subscribe for any shares or debentures of the company;
 - (b) a company whose membership is less than seven persons; or
 - (c) a company which is not recognised as a public company by the Registrar of Companies under the Companies Act.
- (2) For the purposes of this Act, a company, not being a private company, shall be recognised as a public company in relation to a tax year if-
- (a) (i) in the case of a resident company all classes of its equity shares are listed for quotation on the Botswana Stock Exchange on the last day of the tax year or any substituted accounting period:
 Provided that in respect of a tax year prior to the establishment of the Botswana Stock Exchange all classes of its shares are listed for quotation by Stock Brokers Botswana Ltd. with the approval of the Interim Stock Exchange Committee appointed by the Minister; or
 - (ii) it is a subsidiary of a public company; or
 - (iii) it is an insurance company transacting life insurance business; or
 - (iv) it is a society or company registered under the Co-operative Societies Act;
 - (v) it is a Collective Investment Undertaking or Unit Trust; or
 - (vi) it is a specified corporation;
 - (b) in the case of a non-resident company, it is recognized as a public company under the law of the country in which it is resident.
- (3) For the purposes of this section, a company is a public company in relation to a tax year if more than 50 per cent of every class of equity shares issued by it are owned, throughout the tax year, by one or more public companies.
- (4) For the purposes of subsection (2)(a)(ii), a company is a subsidiary of a public company if it is controlled, directly or indirectly, by that public company; and a subsidiary of the first-mentioned company shall itself be a subsidiary of that public company.
- (5) In this section, "control", in relation to a company, means that a person is able to control a majority of voting power either directly by ownership of more than 50 percent of every class of equity shares, or indirectly by ownership of shares in any other company by means of which that person is able to control a majority of voting power in the first-mentioned company.
- (6) Where, by reason of changes in the constitution or shareholding of any company, or for any other reason, a company which has been recognised as a public company ceases to satisfy the requirements of subsection (2) in any tax year, such company shall be recognised as a private company in relation to that tax year.

131. Small companies

- (1) For the purposes of this section a small company means a resident private company whose gross income does not exceed P300, 000 in any tax year.
- (2) In respect of any such tax year the shareholders of a small company may elect unanimously, and so notify the Commissioner General in writing, within six months after the end of that tax year, that they be treated for tax purposes as a business carried on in partnership:
 Provided that, where all the shares are beneficially owned by a single resident individual, he or she may elect to be treated for tax purposes as an individual carrying on business.
- (3) Where a valid election is made under subsection (2), it shall apply to that and the next two subsequent tax years, unless the company is not, or ceases to be, eligible for treatment as a small company for any of those tax years.

(4) Where, in any tax year, a company is treated as a partnership under this section, the chargeable income of the company shall be apportioned among the shareholders in the proportions in which they own the equity capital, and such apportioned shares or income shall be included in the chargeable income of such shareholders:

Provided that, if the business for any tax year results in a loss, the assessed loss shall be apportioned among the share holders in like manner.

(5) Notwithstanding the provisions of subsection (4), the shareholders may elect unanimously and apply in writing to the Commissioner General for a different basis of apportionment and, subject to subsection (6), the Commissioner General may vary the basis of assessment under subsection (4) and adopt a procedure he or she considers reasonable in respect of the apportionment of the tax withheld from dividends under the Seventh Schedule.

(6) The Commissioner General may reject an election under subsection (2), or an application under subsection (5), if he or she is satisfied that the election or application, as the case may be, is made in pursuance of a tax avoidance scheme.

132. Meaning of close company

(1) For the purposes of this section and sections 133 and 134, and subject to subsection (2), a "close company" is a resident company recognized as a private company in accordance with section 130(1) in which a person (in this section and sections 133 and 134 referred to as a "participator") is, either on his or her own or with a relative or nominee-

- (a) the beneficial owner of or able to control, directly or indirectly, five per cent or over of the equity share capital of the company;
- (b) the beneficial owner, directly or indirectly, of shares in the company carrying five per cent or over of the voting powers; or
- (c) a loan creditor.

(2) The expression "close company" referred to in subsection (1) does not apply-

- (a) to a company in which the Government of Botswana owns shares; or
- (b) to a company with which the Government of Botswana has a tax agreement under section 54.

(3) In subsection (1)(c), the term "loan creditor", in relation to a company, means a creditor or other person having a beneficial interest in respect of any redeemable loan capital issued by the company or any debt incurred by the company-

- (a) for any money borrowed or capital assets acquired by the company; or
- (b) for any right to receive income created in favour of the company:

Provided that a person carrying on a business of banking shall not be deemed to be a loan creditor in respect of any loan capital or debt issued or incurred by the company for money lent by him or her to the company in the ordinary course of that business.

133. Payment of participators

(1) Where any amount paid by a close company in any tax year to or for a participator, or to a relative or nominee of such participator is-

- (a) a gratuity in respect of employment;
- (b) the cost of any passage or other benefit or advantage granted in respect of that participator's employment which has not been included in his or her gross income under section 32;
- (c) the cost of any other passage, travel or entertainment which, in the opinion of the Commissioner General, has not been incurred by the company wholly, exclusively and necessarily in the production of its assessable income; or
- (d) a loan made to the participator, relative or nominee out of amounts available for distribution to shareholders, including distribution from reserves, either free of interest or on conditions which, in the opinion of the Commissioner General, are not characteristic of a transaction between independent persons dealing at arms length,

such amount shall, notwithstanding any provision to the contrary in this Act, be treated as dividend income for that tax year accrued and shall form part of the taxable income of such a participator and be charged to tax at the prevailing dividend withholding tax rate to the participator:

Provided that the amount shall not be so treated if the Commissioner General is satisfied that it is the cost of a passage such as is referred to in paragraph (b) paid to a participator not more than once in every two years during his or her residence in Botswana and does not exceed the reasonable cost of direct travel between Botswana and the participator's country of permanent residence.

(2) Where in any tax year any loan made by a close company under subsection (1)(d) to a participator has been repaid, in whole or in part, during the tax year and no further loan has been made to the participator within nine months of the repayment, then in arriving at the amount to be treated as dividend income of the participator under subsection (1)(d), there shall be deducted from the amount of any loan made under the said subsection so much of the amount that has been repaid.

(3) For the purposes of subsection (1)(d), where a loan is made by a close company to a person who is not a participator in that company but is a participator in another company and the companies are acting under arrangements made between them, then the loan shall be treated as having been made by that other company.

134. Interest payable to participator

(1) Where in any tax year a loan is made by a participator, or by a relative or nominee of a participator, to a close company, either free of interest or at a rate of interest lower than the commercial rate generally prevailing at the time the loan is made, and the Commissioner General is of the opinion that the loan is not one between independent persons dealing at arm's length with each other, interest on the loan shall be deemed to have accrued to the participator for that tax year and any subsequent tax year in which the loan remains unpaid at such commercial rate as the Commissioner General deems reasonable in the circumstances.

(2) In the case of a person who is not resident in Botswana, every amount of interest deemed to have accrued to him or her by virtue of subsection (1) shall be deemed, for the purposes of section 58, to have been paid to him or her.

(3) Any amount of interest which is deemed to have accrued to any person by virtue of this section shall not be deducted in ascertaining the chargeable income of the company for that tax year.

(4) If a loan referred to in subsection (1) is repaid in full by the issue of equity shares in any tax year to the participator, the provisions of subsection (1) shall not apply to that tax year.

(5) The provisions of this section shall not apply to transactions between companies which are participators of each other.

135. Public officer

(1) Every company carrying on business in Botswana shall at all times be represented for the purposes of this Act by a public officer residing in Botswana and duly appointed by the company or its authorized agent or attorney.

(2) Every company, if it has not appointed a public officer and an address for service of notices before the commencement of this Act, shall appoint a public officer and an address for service of notices-

- (a) within two months after the commencement of this Act; or
- (b) in the case of a company which begins to carry on business in Botswana after the commencement of this Act, within one month after the commencement of business.

(3) Every change of public officer or of the address for service of notices on the company shall be notified to the Commissioner General by the public officer within 15 days of such change occurring.

(4) No appointment of a public officer shall be deemed to be duly made until notice thereof in writing, specifying the name of the public officer and an address for service of notices, has been given to the Commissioner General.

(5) The appointment of a public officer shall be subject to the approval of the Commissioner General, who may decline to approve the appointment of a public officer or may subsequently withdraw his or her approval of a person who had previously been appointed.

(6) The public officer shall be answerable for the doing of all such things as are required under this Act to be done by the company of which he or she is the representative and in case of default he or she shall be liable to the same penalties.

(7) Everything done by the public officer, which he is required to do in his or her representative capacity, shall be deemed to have been done by the company, and any notice given to or request made upon the public officer shall be deemed to be given to or made upon the company.

(8) The absence of or failure to appoint a public officer shall not excuse a company from the necessity of complying with any of the provisions of this Act, and the company shall be subject to and liable to comply with its provisions as if there were no requirement to appoint a public officer.

(9) Every notice, process or proceeding which under this Act may be given to, served on or taken against any company may be given to, served on or taken against the public officer, and if at any time there is no public officer then any such notice, process or proceeding may be given to, served on or taken against any officer or person acting in the management of the business of the company or as agent for the company, and such person shall have the same liability in respect of that notice, process or proceedings as the company or public officer would have had if it had been given to, served on or taken against the company or public officer.

(10) In the event of any company being placed in liquidation or under judicial management the liquidator or judicial manager, as the case may be, shall be required to exercise all the functions and assume all the responsibilities of a public officer under this Act during the continuance of the liquidation or judicial management, and any person previously appointed as public officer of the company shall cease to be public officer at such time.

136. Precedent partner

(1) Every partnership carrying on business in Botswana shall at all times be represented by a resident individual who shall be-

- (a) the precedent partner; or
- (b) if no acting partner is resident in Botswana, the agent of the partnership in Botswana.

(2) The precedent partner shall be the person who, being an acting partner resident in Botswana-

- (a) is first named in the partnership agreement;
- (b) if there is no partnership agreement, is specified by name or initial singly or with precedence to the other partners in the usual name of the partnership,

or, in any case where neither paragraph (a) or (b) is applicable, such other person as is specified by the partnership.

(3) Every partnership shall notify the Commissioner General of the name of the precedent partner or, if there is no acting partner resident in Botswana, shall appoint and notify the Commissioner General of the name of its agent in Botswana-

- (a) if it is carrying on business at the commencement of this Act, within two months after such commencement; or
- (b) if it begins to carry on business after the commencement of this Act, within one month after the commencement of business.

(4) Every partnership shall within the period specified in subsection (3) appoint an address for service of notices.

(5) Every change of precedent partner or agent of the partnership or of address for service of notices shall be notified to the Commissioner General within 15 days of such change.

(6) The precedent partner or the agent, as the case may be, shall be answerable for the doing of all such things as are required under this Act to be done by the partnership of which he or she is the representative and in case of default he or she shall be liable to the same penalties.

(7) Everything done by the precedent partner or the agent, as the case may be, which he or she is required to do in his or her representative capacity, shall be deemed to have been done by the partnership, and any notice given to or request made upon the precedent partner or the agent shall be deemed to have been given to or made upon the partnership.

PART XVI

Taxation of International Financial Services Centre Companies (ss 137-142)

137. Definitions of terms In this Part, unless the context otherwise requires-

"average foreign exchange rate" means the average of the monthly foreign exchange rates between the currency of the state and the functional currency of an international financial services centre company, as published by the Bank of Botswana for the relevant period, or where published, the average rate applicable to that tax year;

"currency of the state" means the Pula;

"functional currency" means in relation to an international financial services centre company, the currency of the primary economic environment in which the international financial services centre company operates or, if elected by the company, the currency of the state.

138. Tax certificate (1) The Minister may by Order published in the *Gazette*, provide for-

- (a) the establishment, marketing and operation of an international financial services centre;
- (b) the constitution of an international financial services centre certification committee; and
- (c) powers, duties and functions of a committee established under paragraph (b).

(2) The Minister or his or her authorized representative may, on the recommendation of a committee established in accordance with subsection (1)(b), issue a tax certificate certifying that activities of a company as are specified in the certificate are, with effect from the date specified in the certificate, approved financial operations.

(3) A certificate issued in accordance with subsection (2) may be given subject to such conditions as the Minister on the recommendation of a committee established in accordance with subsection (1)(b) considers proper and specifies in the tax certificate.

(4) A certificate issued in accordance with subsection (2) shall be granted to a person who agrees, in writing, with the Bank that he or she shall comply with the reporting requirements stipulated under section 47 of the Bank of Botswana Act, or is exempted from the requirements by Regulations made under section 46 of that Act.

(5) Where in the case of a company in relation to which a certificate under subsection (2) has been given the Minister is satisfied that-

- (a) the company has ceased to carry on business;
- (b) the company has breached any of the conditions referred to in subsection (3);
- (c) the licence granted in accordance with section 3 of the Banking Act has been revoked or the registration under the Insurance Industry Act has been cancelled;
- (d) the company has carried on activities that have had or may have an adverse effect on the use or development of the international financial services centre or are otherwise inimical to the development of the international financial services centre;
- (e) a change in the ownership of the company has occurred since the grant of the certificate without the prior written approval of the Minister; or
- (f) the company has carried on business with persons other than those approved under subsection (7); or

- (g) recommendation for revocation of the tax certificate has been made by the Bank of Botswana under section 49 of the Bank of Botswana Act.

the Minister may, on the recommendation of the international financial services centre certification committee, by notice in writing served on the company require the company to rectify the position or revoke the certificate with effect from such date as may be specified in the notice.

(6) For the purposes of subsection (5)-

- (a) ownership of a company shall be deemed to have changed if the beneficial ownership of one quarter or more of its share capital or one quarter or more of the voting rights affecting the day to day management of its business shall have changed hands in comparison with the date on which the certificate is granted; and
- (b) the holding of shares in a company resident in Botswana shall not constitute the carrying on of business with persons resident in Botswana.

(7) The following shall be approved financial operations for the purpose of subsection (2) provided that they shall be carried on with persons not resident in Botswana or international financial services companies or specified collective investment undertakings-

- (a) banking and financing operations transacted in foreign currency;
- (b) the broking and trading of securities denominated in foreign currency;
- (c) investment advice;
- (d) management and custodial functions in relation to collective investment schemes;
- (e) insurance and related activities;
- (f) registrars and transfer agency services;
- (g) exploitation of intellectual property;
- (h) development and supply of computer software for use in the provision of services described in (a) to (f) above;
- (i) accounting and financial administration; and
- (j) other operations that the Minister may declare by order from time to time to be approved financial operations for the purposes of this section:

Provided that transactions incidental to financial operations referred to in this subsection carried on at arm's length with connected persons resident in Botswana shall be considered as approved financial operations for the purposes of this subsection.

(8) In considering an application for a tax certificate, the international financial services centre certification committee shall have regard to-

- (a) the number of Botswana citizens who will be employed in relation to the approved operation and the capacities in which they will be employed;
- (b) facilities proposed for the training and imparting of skills to Botswana citizens;
- (c) provisions made for the eventual replacement of non resident employees by Botswana citizens; and
- (d) provision made for the participation by Botswana citizens in the management of the business.

(9) A tax certificate shall entitle a company to carry on the approved financial operations either on its own account or through a wholly owned subsidiary.

(10) The Commissioner General may by notice in writing require a company claiming relief from tax by virtue of this section to furnish him or her with such information, participation or particulars as may be necessary for the purpose of giving effect to this section.

139. Gross income Notwithstanding section 9 and subject to Parts IV and VIII, the gross income of an international financial services centre company shall be the total amount whether in cash or otherwise, accrued or deemed to have accrued to it in that tax year from all sources both inside and outside Botswana, but shall not include any amount of a capital nature except to the extent specified in this Act.

140. Specified foreign exchange (1) The gross income of an international financial services centre company shall include the amount of any specified foreign exchange gain, provided the gain has been credited in the profit and loss account of the international financial services centre company under a commercially recognised system of accounting.

(2) In ascertaining the chargeable income of an international financial services centre company, there shall be deducted the amount of any specified foreign exchange loss, provided the loss has been debited in the profit and loss account of the international financial services centre company under a commercially recognised system of accounting.

(3) A contract which, for the purposes of this section is a relevant contract shall be disregarded for all purposes of the Act except under this section.

(4) In this section, unless the context otherwise requires-

"rate of exchange" means the price at which two currencies might reasonably be expected to be exchanged between persons dealing at arms length and, unless there is evidence to the contrary, this price shall be the rate quoted by the Bank of Botswana;

"relevant asset or liability" means the assets and liabilities of an international financial services centre company, other than shareholders equity, which are held for the purposes of the approved financial operations of the company as stated in its tax certificate granted in accordance with section 138, including a liability for the discharge of a tax under section 50(d) and (e);

"relevant contract" means a contract entered into for the purpose of reducing or eliminating the risk of loss arising in respect of a relevant asset or liability due to a change in a rate of exchange, whether or not the contract is recognised on the balance sheet of a company;

"shareholder's equity" means the share capital and reserves of a company which are classified as equity or its equivalent in the balance sheet under a commercially recognised system of accounting;

"specified foreign exchange gain" means a gain whether realised or unrealised, that results directly from a change in a rate of exchange and is attributable to a relevant asset, liability or contract; and

"specified foreign exchange loss" means a loss whether realised or unrealised that results directly from a change in a rate of exchange and is attributable to a relevant asset, liability or a relevant contract.

141. Foreign debt interest (1) Where an amount of foreign debt interest is, apart from this section, allowable as a deduction from the gross income of an international financial services centre company in a particular tax year and, at any time during that tax year, the total foreign debt of the tax payer exceeds the foreign equity product for that year, then the amount of foreign debt interest ascertained in accordance with the following formula:

$$1 \times \frac{A}{B} \times \frac{C}{365}$$

where-

- A is the amount of the excess of the total foreign debt over the foreign equity product;
- B is the total foreign debt;
- C is the number of days in that tax year during which the total foreign debt exceeded the foreign equity product by that amount; and
- I is the foreign debt interest,

shall not be allowable as a deduction.

(2) The formula in subsection (1) shall be reapplied in every circumstance in which the excess represented by A changes in order to identify the total amount of

foreign debt interest which is not allowable as a deduction for an international financial services centre company in the relevant tax year.

(3) In this section-

"approved multiple" means the maximum number of times that the foreign debt is divisible by the foreign equity and such multiple shall be fixed by the Commissioner General on application by an international financial services centre company, at a level which the Commissioner General deems reasonable:

Provided that in the absence of such an application, the approved multiple shall be-

- (i) in the case of banks, a multiple of 12; and
- (ii) in the case of other international financial services centre companies, a multiple of 3;

"bank" ...

"foreign controller" means in relation to an international financial services centre company, a non resident who either alone or together with a connected person has control, directly or indirectly, of the resident company;

"foreign debt" means the balance outstanding on any amount owing by an international financial services centre company to its foreign controller, or to a connected person of the foreign controller, and where interest is, or may become payable in respect of the amount owed:

Provided that where an amount is owing by an international financial services centre company to a non resident other than its foreign controller, or a connected person of the foreign controller, and the amount owing is wholly or partly guaranteed directly or indirectly by the foreign controller, or by a connected person of the foreign controller, the amount shall be treated for the purpose of this definition as an amount owing by the international financial services centre company to its foreign controller;

"foreign debt interest" means the interest payable by an international financial services centre company in respect of an amount of foreign debt, which, is apart from this section, allowable as a deduction from the gross income of the company;

"foreign equity" means so much of the amount standing to the credit calculated under a commercially recognised system of accounting of the-

- (i) share or branch capital account, both equity and non equity;
- (ii) share premium account;
- (iii) accumulated profits account excluding, accumulated losses, if any; and
- (iv) other reserve accounts;

of an international financial services centre company that its foreign controller or a connected person of its foreign controller would be beneficially entitled to receive by way of distribution on a liquidation of the international financial services centre company; and

"foreign equity product" means the foreign equity outstanding at the end of the accounting period of an international financial services centre company multiplied by the approved multiple.

142. Accounts (1) The accounts of an international financial services centre company together with the reconciliation of the accounts with the chargeable income, which must be submitted with the tax return in accordance with section 71(1) shall be prepared in the functional currency of an international financial services centre company.

(2) The chargeable income in the reconciliation shall be translated into the currency of the state at the average foreign exchange rate for the period.

PART XVII

Miscellaneous (ss 143-145)

143. Free postage All correspondence relating to the assessment and collection of tax including tax returns addressed to the Commissioner General and posted within Botswana by any person may be sent free of postage in envelopes which are marked "Income Tax" and "On the Service of the Botswana Unified Revenue Service".

144. Preservation of documents (1) Subject to this section, every person carrying on business in Botswana shall maintain and preserve in Botswana all books of account and other documents which are essential to the explanation of any entry in such books of account relating to that business for a period of eight years after the end of the tax year or accounting period to which such books of account or documents relate.

(2) In the case of foreign business not registered in Botswana and whose presence in Botswana is in relation to specific contractual transactions, the business shall make available to the Commissioner General for examination and audit in Botswana, such books of account and documents as the Commissioner General may request for a period of eight years.

(3) Where-

- (a) a company has gone into liquidation; or
- (b) a person has died,

the Commissioner General, on application by the liquidator or the executor prior to completion of the winding up of the company or administration of the estate, may approve of the disposal of any books of account or other documents within such lesser period than eight years as he or she thinks fit.

(4) The Commissioner General may, subject to such conditions and in respect of such books of account or other documents as he or she may specify, authorize the retention of a microfilm copy or durable computer disc of any books of account or other documents in lieu of the original books or documents.

(5) For the purposes of this section the books of account and other documents required to be preserved shall be deemed to include the record required to be kept under-

- (a) paragraph 11 of the Fifth Schedule;
- (b) paragraph 6 of the Sixth Schedule; and
- (c) paragraph 5 of the Seventh Schedule.

145. Regulations The Minister may make regulations for the better carrying out of the purposes of this Act and without prejudice to the generality of the foregoing such regulations-

- (a) may prescribe all matters which are required or permitted to be prescribed;
- (b) may provide for the imposition by the Commissioner General of penalties not exceeding P1,000 for any breach of the regulations; and
- (c) may provide for the imposition by a court of fines not exceeding P4,000 for any breach of the regulations.

FIRST SCHEDULE

PARAGRAPH

PART I

Stock

1. Value of stock held to be included in tax return
2. Value of stock held at beginning of tax year
3. Value of stock held at end of tax year
4. Cost price of stock
5. Deemed cost of certain stock

PART II

Farming Livestock and Produce

1. Value of livestock and produce to be included in tax return
2. Value of stock held at beginning of tax year

3. Value of livestock held at end of tax year
 4. Revaluation of livestock at beginning of tax year
 5. Value of produce held at end of tax year
 6. Livestock deemed to be held at end of tax year
- Table of standard values

PART I

Stock (paragraphs 1-5)

(Sections 28 and 41)

1. Value of stock held to be included in tax return

Every person carrying on business, excluding a business of farming, shall include in his or her tax return for each tax year the value of all stock held and not disposed of by him or her (hereinafter referred to as "the value of stock held") at the beginning and end of each tax year.

2. Value of stock held at beginning of tax year

The value of stock held by any person at the beginning of any tax year shall be deemed to be-

- (a) where he or she carried on his or her business on the last day of the previous tax year, the value of stock held on that date; and
- (b) where he or she commenced business during the tax year, the cost to him or her of any stock acquired prior to the commencement of the business.

3. Value of stock held at end of tax year

The value of the stock held at the end of a tax year shall be deemed to be the cost to the person carrying on business less such amount, if any, as in the opinion of the Commissioner General, is reasonable as representing the amount by which the value of such stock has been diminished because of damage, deterioration, obsolescence or other cause.

4. Cost price of stock

For the purposes of this Part the cost of any stock in relation to any date shall be-

- (a) the cost incurred in acquiring such stock; and
- (b) any further costs incurred up to such date in getting such stock into its then existing condition or location.

5. Deemed cost of certain stock

Where any stock has been acquired by any person-

- (a) for a consideration which cannot be valued; or
- (b) otherwise than by way of a transaction at arm's length, such stock shall be deemed to have been acquired at a cost equal to the price which, in the opinion of the Commissioner General, was the current market price of such stock on the date of acquisition.

PART II

Farming Livestock and Produce (paragraphs 1-6)

(Sections 29 and 41)

1. Value of livestock and produce to be included in tax return

Every person shall include in his or her tax return for each tax year the value of all livestock or produce held and not disposed of by him or her (hereinafter referred to as "the value of stock held") at the beginning and end of each tax year:

Provided that horses, donkeys and mules used as working animals or held for purposes other than for the business of farming shall not be included in the value of stock held.

2. Value of stock held at beginning of tax year

The value of stock held at the beginning of a tax year shall be deemed to be-

- (a) where the person carried on farming operations on the last day of the previous year, the value of stock held on that day:

Provided that where a person, carrying on the business of farming, has used the relevant standard value in valuing any of his or her stock, such person may, in respect of any tax year, adopt the current standard value specified in paragraph 3 in valuing any such stock held by him or her at the beginning of the tax year; and

- (b) where the person commenced farming during the tax year, the cost to him or her of any stock acquired prior to commencement of farming.

3. Value of livestock held at end of tax year

(1) Subject to subparagraph (2), the value of any livestock held by any person carrying on farming operations at the end of any tax year shall be ascertained in accordance with any of the following methods as the person may choose to adopt-

- (a) where the livestock was acquired by the person by purchase, the value shall be-
- (i) an amount equal to the purchase price of such livestock;
 - (ii) an amount equal to the current market price of such live stock; or
 - (iii) an amount equal to the relevant standard value of such livestock; or
- (b) where the livestock was acquired by the person otherwise than by purchase, the value shall be either-
- (i) an amount equal to the current market price of such livestock; or
 - (ii) an amount equal to the relevant standard value of such livestock.

(2) The exercise of an option by a person under subparagraph (1) in respect of any class of livestock specified in the Table containing the amounts of standard value for livestock for any tax year shall be binding upon such person in that tax year and every subsequent tax year in respect of which that livestock is specified in the Table.

(3) Where the Table containing the amounts of standard value for any particular class of livestock is amended in any tax year-

- (a) by including any class of livestock not included in the previous year, any person having such livestock may, at the end of that tax year, exercise a further option in accordance with the provisions of subparagraph (1) and the exercise of such option shall be binding on him or her in accordance with the provisions of subparagraph (2); and
- (b) by excluding any class of livestock included in the previous year, any option exercised by any person in respect of such livestock before its removal from the Table shall lapse and the value of such stock held by the person at the end of that tax year shall be ascertained-
- (i) in the case of livestock acquired by purchase in accordance with either the provisions of subparagraph (1)(a)(i) or (ii), as the person may choose to adopt, and whichever method is adopted by him or her shall be binding on him or her in accordance with the provisions of subparagraph (2); and
 - (ii) in the case of livestock acquired otherwise than by purchase, in accordance with the provisions of subparagraph (1)(b)(i).

(4) In this paragraph "the relevant standard value", in relation to any livestock, means-

- (a) the amount of the standard value specified in the Table to this Schedule, or such amount as may be prescribed for the class of such livestock; or
- (b) any amount not greater than 125 per cent of the amount of such standard value and not less than 75 per cent of the amount of such standard value.

4. Revaluation of livestock at beginning of tax year

Notwithstanding the provisions of paragraph 2(a), any person referred to in the said paragraph whose livestock is affected by any amendment made in any tax year to the Table, shall revalue the livestock held by him or her at the beginning of that tax year by adopting the same method which he or she used in valuing his or her stock at the end of that tax year.

5. Value of produce held at end of tax year

The value of any produce held by any person to whom this Schedule applies at the end of a tax year shall be such amount as, in the opinion of the Commissioner General, is reasonable.

6. Livestock deemed to be held at end of tax year

For the purposes of this Part any livestock which is the subject of any agreement between the owner and any other person whereby the owner retains the right of ownership of such livestock or of any progeny thereof shall be deemed to be livestock held and not disposed of by such owner.

TABLE OF STANDARD VALUES

(Para. 3)

<i>Class of Livestock</i>	<i>Standard Value</i>
CATTLE	

Fully grown animals	P430
Tollies and heifers	P230
Calves	P90
SHEEP AND GOATS	
Grown animals	P45
Kids	P10

SECOND SCHEDULE (Sections 38, 41 and 51)

PART I

Persons Exempted

The following persons shall be exempt from tax for any tax year-

- (i) any local authority;
- (ii) Bank of Botswana or any other bank or corporation wholly owned by Botswana Government, other than the Botswana Development Corporation, the Botswana Meat Commission or any other body corporate wholly owned by Botswana Government which is liable to tax under any other provision of the Act;
- (iii) any organization in respect of which an order has been made under section 4 of the Diplomatic Immunities and Privileges Act;
- (iv) ... (v) any approved benefit fund, approved provident fund or approved superannuation fund;
- (vi) any building society;
- (vii) any institution which is, in the opinion of the Commissioner General, a mutual savings bank or a mutual loan association;
- (viii) any trade union or employees' association registered under the Trade Unions and Employers' Organizations Act;
- (ix) any association of employers established for a purpose approved by the Minister;
- (x) ... (xi) any political party listed in the Schedule to the Societies Act;
- (xii) Motor Vehicle Insurance Fund;
- (xiii) Southern African Centre for Ivory Marketing;
- (xiv) Botswana Institute of Accountants or any other professional institution established by statute;
- (xv) a stock exchange established in Botswana by statute and any ancillary organ thereof;
- (xvi) any specified collective investment undertaking;
- (xvii) any international financial organisation to which Botswana is a member under the International Financial Organisations Act;
- (xviii) any special purpose vehicle formed by the government for securitization of public assets

PART II

Classes of Gross Income Exempted

The following classes of amounts included in gross income shall be exempt from tax to the extent indicated-

- (i) the official emoluments and allowances of the President;
- (ii) the official salaries and emoluments payable in respect of their offices to-
 - (a) heads of diplomatic missions and consulates accredited to Botswana; and
 - (b) members of the staffs of such missions and consulates who are resident in Botswana solely for the purpose of carrying out duties as members of such missions;
- (iii) the official salary and emoluments of an official of any organization in respect of whom an order has been made under section 4 of the Diplomatic Immunities and Privileges Act;
- (iv) allowances exempted under the National Assembly (Salaries and Allowances) Act;
- (v) allowances exempted under the *Ntlo ya Dikgosi* (Salaries and Allowances) Act;
- (vi) allowances and gratuities exempted under the Judges (Miscellaneous Provisions) Act;
- (vii) any amount accrued to a public servant, teacher or consultant to the government as director of any company other than his or her principal employer, where such amount is paid to his or her principal employer or to the Government;

- (viii) any amount accrued to a public servant or teacher as a foreign service allowance while serving outside Botswana in a diplomatic mission of Botswana;
- (ix) war pensions or gratuities;
- (x) interest payable by the Botswana Savings Bank, including interest on Botswana Savings Bank Certificates;
- (xi) interest on national development bonds exempted under the National Development Bank Act;
- (xii) interest on bonds exempted under the Development Loan (Botswana Registered Bonds) Act;
- (xiii) any amount accrued to the government of any other country, or to any non-resident institution or company by way of interest on any loan, to the extent to which the Minister is satisfied that the exemption of such amount is in the public interest;
- (xiv) any amount payable as interest on any subscription share issued by any building society resident in Botswana;
- (xv) payments to members by any co-operative thrift and loan society;
- (xvi) payments by way of sickness or accident benefits to any person or to his or her dependants or heirs, by any approved benefit fund, a trade union, or under a policy of insurance covering sickness or accident;
- (xvii) amounts received by way of periodical payments in the nature of maintenance or alimony by a woman from her husband or former husband:
 Provided that no exemption shall apply under this item where, for the purpose of making such payments, the husband or former husband has divested himself of any assets which produce gross income, or divested from himself or herself amounts which would otherwise have been taken into account in ascertaining his or her taxable income;
- (xviii) any amount payable to an employee, not being a citizen of Botswana whose contract of employment commenced before the 1st July, 1999, upon the *bona fide* termination of his or her employment where such payment is made by the employer-
 - (a) pursuant to the terms of a written contract of employment; or
 - (b) by reasons of any law in force in Botswana, by way of bonus or gratuity to the extent to which, in the opinion of the Commissioner General the payment is reasonable in amount having regard to-
 - (i) the period of the employment;
 - (ii) the nature of the employment;
 - (iii) the salary payable to the employee; and
 - (iv) the measure of retirement benefits generally prevailing at that time;
- (xix) any amounts accrued from a business or employment carried on in Botswana by a citizen of any other country or by a company registered under any law in force in any other country, where such business or employment is carried on in Botswana under an agreement with the Government for the provision of technical assistance to the Government to the extent to which the Minister may, by notice in writing to the Commissioner General, declare such amounts to be exempted from tax;
- (xx) any amount payable by way of interest-
 - (a) by Bamangwato Concessions Limited or BCL (Sales) Limited; or
 - (b) by Botswana RST Limited, to the extent that such interest is in respect of moneys borrowed by the company and made available to Bamangwato Concessions Limited for the purposes of its mining operations or exploration in Botswana, to any non-resident who does not carry on business in Botswana through a permanent establishment situated therein where such interest is interest to which Clause 112(C) or 11(F) of the Schedule to the Selibe-Phikwe Tax Agreement Ratification Act applies;
- (xxi) any amount accrued from an employment carried on by a non-resident aboard an aircraft or road or rail vehicle in the course of the operation of an international transport service by a non-resident;
- (xxii) any amount payable as a pension under the Overseas Officers' Pensions Agreement (Implementation) Act, 1976;

- (xxiii) any amount received by way of a scholarship or bursary for the purposes of education and maintenance during such education;
- (xxiv) any amount exempted under an agreement entered into under section 53 or 54;
- (xxv) any amount paid to the Commissioner General out of the Productive Employment Development Fund as tax payable by any person for any tax year;
- (xxvi) terminal, sitting, ward, subsistence and meal allowances payable to a councillor of a local authority, or to a member of a land board or a subordinate land board;
- (xxvii) where under any law in force in Botswana an employee is permitted to commute a portion of his or her pension, an amount not exceeding one third of the pension entitlement at the time of retirement;
- (xxviii) in the case of any person other than a person subject to paragraph (xxvii), who, being entitled to a pension or annuity on retirement, elects to receive a part of such pension or annuity as a commuted lump sum, an actuarially calculated sum representing a commutation of not more than one third of his or her full entitlement at the date of his or her retirement;
- (xxix) in the case of any person other than a person referred to in paragraphs (xxvii) and (xxviii) who is entitled *bona fide* to an annual pension or annuity of not more than five hundred Pula, an actuarially calculated sum representing the commutation of that pension or annuity;
- (xxx) the investment income, as defined in section 51(3) of a statutory life insurance fund;
- (xxxi) any amount payable as interest accrued in any year to any resident individual from any banking institution or building society in Botswana, up to a limit of P7,800;
- (xxxii) the salary and other emoluments of an employee of the Commonwealth of Virginia Trade Office who is not a citizen of Botswana;
- (xxxiii) any amount paid as a subsidy or a grant to any person from the Productive Employment Development Fund under the Financial Assistance Scheme;
- (xxxiv) former President's pension and benefits under the Presidents (Pension and Benefits) Act, 1998;
- (xxxv) pensions and gratuities payable to a Minister and Member of Parliament under the Ministers and National Assembly Gratuities and Pension Act, 1998; and
- (xxxvi) salaries, emoluments, obligations, securities, dividends or any other cash or non-cash benefits received by the employees of any international financial organisation to which Botswana is a member;
- (xxxvii) any dividends received by an international financial services centre company in respect of a qualifying foreign participation as defined under section 2;
- (xxxviii) ...
- (xxxix) any income of a charitable, religious or educational institution or a trust established for public purposes:
 Provided that where a person to whom this paragraph applies, carries on any business or derives any gains from disposal of any property chargeable to tax under section 35, exemption under this paragraph shall not be granted to such person unless it is proved to the satisfaction of the Commissioner General that the income of that person has been applied exclusively for public purposes within that tax year or such extended period as may be allowed by the Commissioner General;
- (xl) any income of an association formed for the purpose of promoting social or sports amenities and not involving the acquisition of gain or the possibility of future gains to the extent that such income is applied exclusively for the purposes of such association within that tax year or such extended period as may be permitted by the Commissioner General;
- (xli) any amounts received by non-resident telecommunication companies on settlement of international telephone traffic under international telecommunication regulations;
- (xl ii) any amount of dividend distributed by a special purpose vehicle formed by the government for the securitization of public assets; and
- (xliii) any investment income of a mine rehabilitation fund referred to in section 43 (1) (e).

THIRD SCHEDULE
CAPITAL ALLOWANCES
(Sections 41 and 49)
 ARRANGEMENT OF PARAGRAPHS

PART I
Initial Allowances

PARAGRAPH

1. Initial allowance for industrial building
2. Computation of initial allowance

PART II
Annual Allowances

1. Limitation on annual allowance
2. Industrial building, capital expenditure
3. Annual allowances, industrial buildings
4. Plant or machinery, capital expenditure
5. Annual allowances, plant or machinery
6. Deductions in relation to commercial building
7. Computation of allowances deductible

PART III
Residential Accommodation for Employees

1. Deductions in relation to commercial building
2. Computation of allowances deductible

PART IV
Farmers

1. Computation of allowances deductible

PART V
Disposal of Property

1. Charge or allowance on disposal
2. Balancing allowance
3. Balancing charge
4. Replacement property
5. Annual allowance on replacement property
6. Effect of election

PART VI
Definitions

1. Definitions

PART I
Initial Allowances (paragraphs 1-2)

1. Initial allowance for industrial building

In ascertaining the chargeable income of any person for any tax year derived from an approved industrial business, there shall be deducted from his or her business assessable income an allowance (in this Part referred to as "an initial allowance") in respect of expenditure incurred by that person on-

- (a) the erection or purchase of any new industrial building; or
- (b) any improvements, other than repairs, to any industrial building, if that building was used solely for the purposes of such business carried on by that person.

2. Computation of initial allowance

The initial allowance deductible under paragraph 1 shall be an amount equal to 25 per cent of the expenditure incurred by him or her on the building or improvements and such allowance shall be deducted in the tax year during which-

- (a) in the case of a building, it was first used; or

- (b) in the case of improvements, they were completed.

PART II

Annual Allowances (paragraphs 1-7)

1. Limitation on annual allowance

(1) When the aggregate of the allowances granted to any person in respect of any property to which this Part applies equals the annual expenditure incurred by him or her on such property, no further annual allowance shall be granted in respect of that property.

(2) Where any item of property to which this Part applies is used partly for purposes of a business and partly for other purposes, the annual allowance in respect thereof which would otherwise be granted shall be reduced by such amount as the Commissioner General considers to be fair and reasonable having regard to the extent of use for such other purposes.

2. Industrial building, capital expenditure

In ascertaining the business chargeable income of any person for any tax year derived from the letting or use of an industrial building, there shall be deducted from his or her business assessable income an annual allowance in respect of the expenditure incurred by him or her on any industrial building or improvements thereto, if that building was used in that tax year for the purposes of such business carried on by that person.

3. Annual allowances, industrial buildings

(1) Subject to the provisions of subparagraph (2), the annual allowance deductible under paragraph 2 shall, in respect of expenditure incurred on or after 1st July 1982, be made in respect of the tax year during which the building was first used or the improvements were completed and of the next 39 succeeding tax years and such allowance shall be of an amount equal to two and one half per cent of the expenditure incurred:

Provided that where an expenditure was incurred on a building before 1st July, 1982, but the building was not first used in that business before that date, then such expenditure shall be deemed to have been incurred on the date the building was first brought into use.

(2) Where the aggregate amount of any initial and annual allowances deductible in respect of any industrial building in accordance with the provisions of Part I and the preceding provisions of this paragraph equals the expenditure incurred in respect of such building, no further allowance shall be deductible in respect of such building.

4. Plant or machinery, capital expenditure

In ascertaining the business chargeable income of any person for any tax year there shall be deducted from his or her business assessable income an annual allowance in respect of expenditure incurred by him or her on any plant or machinery used by him or her in that tax year for the purposes of his or her business.

5. Annual allowances, plant or machinery

(1) Subject to the provisions of this paragraph, the annual allowance deductible under paragraph 4 shall be such amount, not being less than 10 per cent nor more than 25 per cent, of the expenditure incurred by him or her on such plant or machinery as the Commissioner General may consider to be fair and reasonable having regard to the expected life of the plant or machinery:

Provided that in respect of a motor car (which expression may include a station wagon but not a commercial vehicle) owned by a person or held by him under a lease, leaseback or similar arrangement and used for the purpose of his business, by a person other than a person whose principal business is that of hiring or leasing of motor vehicles, any annual allowance shall only be claimable in respect of expenditure up to a maximum of P175,000.

(2) Where the aggregate amount of annual allowances given in respect of any plant or machinery in accordance with the provisions of paragraph 4 equals the expenditure incurred in respect of such plant or machinery, no further annual allowance shall be given in respect of the plant or machinery.

(3) Where any plant or machinery used by a non-resident is used in Botswana for a period of less than 12 months in any tax year, the annual allowance in respect of such plant or machinery shall be such amount as the Commissioner General may consider to be fair and reasonable having regard to the period of use of such plant or machinery in Botswana.

6. Deductions in relation to commercial building

In ascertaining the business chargeable income of any person for any tax year, there shall be deducted from his or her business assessable income an annual allowance in respect of the expenditure incurred by him or her on the construction or purchase of a commercial building or on any improvements, other than repairs, thereto, used in that tax year solely for commercial purposes.

7. Computation of allowances deductible

The annual allowance deductible under paragraph 6 shall be made in respect of the tax year during which the building was first used or improvements thereto were completed and of the next 39 succeeding tax years and such allowance shall be of an amount equal to two and a half per cent of the expenditure incurred on the building when it was first used or when the improvements thereto were completed.

PART III

Residential Accommodation for Employees (paragraphs 1-2)

1. Deductions in relation to commercial building

In ascertaining the business chargeable income of any person for any tax year from a business other than a business of mining there shall be deducted from his or her business assessable income the amount of any expenditure incurred by him or her during the tax year on the erection of dwelling houses for his or her employees:

Provided that the deduction allowed shall not exceed P25 000 in relation to each dwelling house.

2. Computation of allowances deductible

Where, for any tax year within a period of nine years after the tax year in which a deduction has been allowed under paragraph 1 to any person, the dwelling house in respect of which such deduction has been allowed is used for any purpose other than the residential accommodation of an employee, there shall be included in the gross income of that tax year of the first-mentioned person an amount equal to 10 per cent of the deduction allowed:

Provided that where a dwelling house was used for any purpose other than the residential accommodation of an employee for a period of less than 12 months in that tax year, the amount to be included in gross income shall be equal to that proportion of 10 per cent of the deduction as that period bears to 12 months.

PART IV

Farmers (paragraph 1)

1. Computation of allowances deductible

In ascertaining the business chargeable income of any person for any tax year from a business of farming, there shall be deducted from his or her business assessable income-

- (a) any expenditure incurred by him or her during the tax year on-
 - (i) the eradication of noxious plants;
 - (ii) the prevention of soil erosion;
 - (iii) dipping tanks;
 - (iv) the sinking of boreholes and wells, the provision of piping and pumping plants or the construction of-
 - (aa) structural improvements for the conservation of water including dams, tanks and reservoirs; or
 - (bb) irrigation channels and water furrows;
 - (v) the erection of fences, yards and crushes;
 - (vi) the erection of buildings used in connection with farming operations, other than buildings designed to provide residential accommodation;
 - (vii) the establishment of trees, plantations, orchards and vineyards;
 - (viii) the building of roads, bridges or airstrips used in connection with farming operations;
 - (ix) the carrying of electric power from the main transmission lines to the farm apparatus and the erection of buildings or structures connected with the generation of power;
 - (x) the making of firebreaks; and
 - (xi) any other works of a capital nature which, in the opinion of the Commissioner General, are reasonably associated with the classes of expenditure enumerated in items (i) to (x); and
- (b) such annual allowances in respect of any other property as is provided under Parts II and III.

PART V
Disposal of Property (paragraphs 1-6)

1. Charge or allowance on disposal

Where, in relation to any business carried on by any person, there have been allowances granted in respect of any property and that property is disposed of in any tax year, a balancing allowance or a balancing charge shall be made for that tax year as provided in this Part.

2. Balancing allowance

Where the expenditure incurred by any person on the property referred to in paragraph 1 disposed of in any tax year exceeds the aggregate of-

- (a) the allowances granted in respect thereof; and
- (b) the disposal value, the amount of such excess (referred to in this Act as "a balancing allowance") shall be deducted from the business assessable income of such person for that tax year.

Provided that in the case of a motor car to which the proviso to subparagraph (1) of paragraph 5 of Part II of the Third Schedule applies, the expenditure incurred on the property for the purposes of this paragraph shall not exceed the amount of expenditure on which an annual allowance is grantable under that proviso in respect of that property.

3. Balancing charge

Subject to paragraph 2 hereof, where the disposal value of the property referred to in paragraph 1 disposed of in any tax year exceeds the difference between-

- (a) the expenditure by that person on that property; and
- (b) the allowances granted in respect thereof,

the amount of such excess (referred to in this Act as a "**balancing charge**") shall be included in the gross income of such person for that tax year:

Provided that where the property disposed of is a property to which the Tenth Schedule applies, the balancing charge shall be limited to so much of the said difference as does not exceed the sum of the allowances granted in respect of the said property.

4. Replacement property

Where, but for this paragraph, the amount of any balancing charge arising from the disposal of any plant or machinery would be taken into account in ascertaining the gross income of any person for any tax year, that person may elect, by notice in writing given to the Commissioner General, when lodging his or her tax return for that year, that, in lieu of the balancing charge being so taken into account, it may be deducted, in accordance with paragraph 5 or 6, from the expenditure incurred on any plant or machinery (hereinafter referred to as "the replacement plant or machinery") acquired by him or her for the purposes of his or her business during the tax year, to replace the plant or machinery disposed of:

Provided that the provisions of this paragraph shall not apply in respect of a car owned by a person or held by him or her under a lease or lease-back arrangement, for the purposes of a business other than the business of a car rental or taxi service.

5. Annual allowance on replacement property

For the purposes of determining annual allowances under Part II, the expenditure incurred on the replacement plant or machinery in respect of which an election is made under paragraph 4 shall be reduced by the amount of the balancing charge referred to therein.

6. Effect of election

Where an election is made by any person under paragraph 4 in respect of the amount of any balancing charge and that balancing charge exceeds the expenditure incurred on the replacement plant or machinery-

- (a) no annual allowance shall be granted under Part II in respect of the replacement plant or machinery; and
- (b) the amount of the excess shall be included in the gross income of that person for that tax year.

PART VI
Definitions (paragraph 1)

1. Definitions

In this Schedule-

"**allowances granted**" means the aggregate of all allowances and deductions granted under-

- (a) Parts I and II of this Schedule; and
- (b) any amount by which any expenditure incurred on the replacement of any plant or machinery is reduced by the amount of a balancing charge under paragraph 5 of Part V;

"annual allowance", in relation to any case to which paragraph 1(2) of Part II applies, means the annual allowance which would have been granted in respect of any item of property if no restriction had been imposed under that subparagraph;

"approved industrial business" means-

- (a) an hotel business;
- (b) any business the predominant activity of which is a process of manufacture; or
- (c) the letting of an industrial building or plant or machinery for use by the lessee thereof in any business of the kind referred to in item (a) or (b);

"business assessable income" means that part of the assessable income of any person derived from a business carried on by him or her;

"business chargeable income" means that part of the chargeable income of any person derived from a business carried on by him or her;

"commercial building" means any building in use for the purposes of a business other than-

- (a) a building in respect of which allowances or deductions relating to the expenditure incurred on such building are provided for under any other provisions of this Act; or
- (b) any residential building;

"disposal value" means, in relation to-

- (a) the scrapping of property, the scrap value thereof;
- (b) the disposal of property by way of-
 - (i) sale, the net proceeds of sale;
 - (ii) exchange, the market value of any asset acquired through such exchange adjusted to take into account any monetary consideration made;
 - (iii) compulsory acquisition, the amount for which it was compulsorily acquired; or
 - (iv) gift, the market value thereof;
- (c) withdrawal of property from use in the business or removal from Botswana, the market value thereof; or
- (d) the loss or destruction of property, any amount received for the remains of such property together with any amounts accrued by way of compensation or indemnity for such loss or destruction;

"disposed of", in relation to a unit of property, means scrapped, sold, exchanged, compulsorily acquired, given away, withdrawn from use, removed from Botswana, lost or destroyed;

"dwelling house" includes a unit of residential accommodation in a building constructed for the accommodation of more than one person;

"expenditure" means expenditure of a capital nature but does not include any amount of value added tax allowable as an input tax credit under the Value Added Tax Act;

"expenditure incurred", in relation to property acquired by any person, means the cost to that person of such property or, where such property was acquired by him or her-

- (a) for a consideration which cannot be valued;
- (b) otherwise than by way of a transaction at arm's length; or
- (c) prior to being brought into use in his or her business, the amount which the Commissioner General considers to be equal to the market value of the property at the time it was acquired;

"residential building" means any building or structure or part thereof which the Commissioner General is satisfied is in use as a dwelling house or for any purposes ancillary thereto.

FOURTH SCHEDULE SPECIAL CLASSES OF COMPANIES AND BUSINESS

(Section 55)

PART I

Botswana Meat Commission (paragraphs 1-3)

1. Gross income

The gross income of the Botswana Meat Commission (hereinafter referred to as "the Commission") for any tax year shall comprise the aggregate of-

- (a) the gross proceeds of sale by the Commission of-
 - (i) its products from the slaughtering of livestock; and
 - (ii) cattle sold on the hoof; and
- (b) any amounts recovered by way of insurance against loss or damage to such livestock or products, during the tax year.

2. Taxable income

Subject to paragraph 3, the taxable income of the Commission for any tax year shall be ascertained by deducting from the gross income of that tax year all direct marketing expenses incurred during that tax year by the Commission in the marketing of its products by way of-

- (a) bank exchange;
- (b) charges incurred for the handling and storage of its products outside Botswana;
- (c) cartage and railway and shipping freight charges;
- (d) insurance premiums in respect of such cartage and freightage;
- (e) sales commission;
- (f) survey and inspection fees charged and government taxes imposed outside Botswana;
- (g) advertising and sales promotion expenses; and
- (h) royalties paid in respect of trade marks and labels, and shall be a proportion of the amount remaining after deducting such expenses (hereinafter referred to as "the remainder") calculated as follows-
 - (i) where the remainder does not exceed three million pula, one-tenth of the remainder;
 - (ii) where the remainder exceeds three million pula but does not exceed six million pula, the sum of one-fifth of such part of the remainder as exceeds three million and three hundred thousand pula;
 - (iii) where the remainder exceeds six million pula but does not exceed nine million pula, the sum of three-tenths of such part of the remainder as exceeds six million pula and nine hundred thousand pula; or
 - (iv) where the remainder exceeds nine million pula, the sum of one-third of such part of the remainder as exceeds nine million and one million eight hundred thousand.

3. Special deductions

From the amount calculated in paragraph 2 there shall be deducted in ascertaining the taxable income of the tax year therein referred to an allowance to the extent approved by the Minister in respect of expenditure incurred in connection with development projects approved by the Minister for the time being responsible for agriculture, with the concurrence of the Minister.

PART II

Members of the Botswana Development Corporation Limited Group of Companies (paragraphs 1-3)

1. Interest on loans made within group

(1) In this Part "member of the Botswana Development Corporation Limited group of companies", as defined in section 2, is referred to as "member of the Development Corporation".

(2) Where a member of the Development Corporation lends money to another member of the Development Corporation there shall be included in the gross income of the member lending the money in any tax year only such amount of interest on the loan which has been actually paid to such member by the borrowing member of the Development Corporation.

(3) In ascertaining the chargeable income or the assessed loss for any tax year of a member of the Development Corporation to whom a loan has been granted under subparagraph (2) there shall be deducted any amount of interest paid on such loan.

2. Interest on loans payable to persons outside group

Where a person, other than a member of the Development Corporation, lends money to a member of the Development Corporation and such member (in this paragraph referred to as "the lending member of the Development Corporation") in turn lends such money to another member of the Development Corporation, then, in ascertaining the chargeable income or determining the assessed loss of the lending member of the Development Corporation for any tax year, there shall be deducted any expenditure incurred by way of interest on the loan made to the lending member of the Development Corporation,

whether or not any interest has accrued on the loan made to the other member of the Development Corporation.

3. Offsetting of losses incurred within group

(1) Subject to subparagraph (2), where in any tax year a member of the Development Corporation has incurred any assessed loss, such member may, during the current tax year, by notice in writing to the Commissioner General, elect that the whole or any part of the assessed loss shall be deducted in ascertaining the chargeable income of one or more of the other members of the Development Corporation and such member shall be notified accordingly by the member making the election.

(2) Any member, in relation to whom an assessed loss is to be deducted in ascertaining his or her chargeable income in accordance with the provisions of subparagraph (1), may by notice in writing to the Commissioner General make a claim within three months of the notification of the election that such assessed loss shall be deducted in ascertaining his or her chargeable income for that tax year and the Commissioner General may make any reduced assessment required to give effect to the provisions of this paragraph:

Provided that the aggregate of deductions allowed under this paragraph for that year for the assessed loss shall not exceed the amount of such assessed loss.

(3) For the purposes of section 46 any assessed loss referred to under subparagraph (1) shall be reduced by such amount of assessed loss deducted under subparagraph (2) and, in ascertaining the chargeable income for any subsequent tax year of the member of the Development Corporation incurring such assessed loss, no deduction shall be made in respect of any portion of the assessed loss deducted in accordance with the provisions of subparagraph (2).

(4) For the purposes of subparagraphs (1) and (2) an assessed loss incurred in any tax year means an assessed loss incurred in the tax year for which the election is made and does not include-

- (a) any assessed loss, or part thereof, incurred in any preceding tax year; or
- (b) any assessed loss, or part thereof, which has been deducted under section 46 in ascertaining the chargeable income for any tax year.

PART III

Person Carrying on Business of Insurance

including Re-insurance (paragraphs 1-3)1. Insurance other than life insurance

The chargeable income derived by any person from the carrying on in Botswana of an insurance business other than life insurance business shall be ascertained by deducting from the sum of all premiums (including premiums on re-insurance) accrued to such person during any tax year in respect of the insurance of any risk, and other amounts accrued from the carrying on of such business, the sum of-

- (a) the total amount of the liability incurred in respect of premiums on re-insurance;
- (b) the actual amount of the liability incurred in respect of any claims during the tax year in respect of that business of insurance, less the value of any claims recovered under any contract of insurance, guarantee, security or indemnity;
- (c) the expenditure, not being expenditure falling under paragraph (a) or (b), incurred in respect of that business of insurance in accordance with sections 39 to 48;
- (d) such deduction as may be allowed by the Commissioner General in respect of unexpired risks:

Provided that the deduction allowed under this paragraph in respect of any tax year shall be included in the assessable income of the following tax year;

- (e) such deductions as may be allowed by the Commissioner General in respect of claims which have been intimated but not paid:

Provided that the deduction allowed under this paragraph in respect of any tax year shall be included in the assessable income of the following tax year; and

- (f) such deduction as may be allowed by the Commissioner General in respect of claims which have not been intimated or paid:

Provided that the deduction allowed under this paragraph in respect of any tax year shall be included in the assessable income of the following tax year.

2.

Payments into a Statutory Reserve Solvency Account established under the Insurance Industry Act, will be deductible in ascertaining chargeable income and payments out of such fund will be included in gross income.

3.

The Commissioner General may recognize the establishment of a claims equalization account for tax purposes, transfers into the account being deductible in ascertaining chargeable income, and transfers out being included in gross income.

FIFTH SCHEDULE DEDUCTION OF TAX BY EMPLOYERS (Section 56)

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

1. Definitions
2. Registration of employers
3. Deduction of tax
4. Tax deduction tables
5. Variations from tax deduction tables
6. Liability to deduct tax not abated by other rights or obligations
7. Payment to or recovery by Commissioner General
8. Payment of remuneration free of tax
9. Certificate of remuneration and tax deducted
10. Personal liability of employer and employee
11. Employer to keep records
12. Tax remittance returns
13. Employer's annual return of deductions and remittances
14. Representative employers

1. Definitions

In this Schedule-

"employee" means any person (other than a company) who, in respect of an employment receives remuneration from an employer, and includes any person to whom remuneration accrues-

- (a) as a director of a company;
- (b) from a former employer or from an approved superannuation fund; or
- (c) as a dependant of a deceased person where such remuneration accrues to that dependant as a consequence of the former employment of that deceased person;

"employer" means any person who pays remuneration to any employee and includes-

- (a) a representative employer; and
- (b) the trustee of an approved superannuation fund;

"remuneration" means any amount accrued to an employee by way of-

- (a) wages, salary, leave pay, fee, commission, bonus, gratuity or compensation;
- (b) commutation of moneys due under any contract of employment or service; or
- (c) pension, lump sum payment or other benefit but does not include any amount accrued to any resident individual in respect of services rendered where such amount does not exceed the annual rate of P600;
- (d) any other cash and non cash employee benefits;

"representative employer" means-

- (a) in the case of a company, the public officer or, in the case of a company in liquidation or under judicial management, the liquidator or judicial manager, as the case may be;
- (b) in the case of a partnership, the precedent partner or the agent of the partnership;
- (c) where the employer is the Government, a local authority or other similar authority, or a body corporate or unincorporate (not being a company or a partnership), the person responsible for paying remuneration on behalf of such employer;
- (d) in the case of an employer in respect of whose taxable income a representative taxpayer is chargeable to tax, the representative taxpayer; or
- (e) in the case of a non-resident employer, the agent having authority to pay remuneration on behalf of such employer,

but nothing in this definition shall be construed as relieving any employer from any duty or liability imposed upon him or her by this Schedule.

2. Registration of employers

(1) Every person who pays or becomes liable to pay remuneration to any employee shall register as an employer with the Commissioner General.

(2) Every employer who has not registered as an employer before the commencement of this Act shall register with the Commissioner General in the prescribed form-

- (a) within 30 days after the commencement of this Act; or
- (b) in the case of a person who becomes an employer after the commencement of this Act, within 30 days after the end of the month in which he or she became an employer.

(3) Every employer who changes his or her business address or ceases to be an employer shall notify the Commissioner accordingly within 30 days of such change of address or of his or her ceasing to be an employer, as the case may be.

3. Deduction of tax

(1) Every employer shall, unless the Commissioner General otherwise authorizes, deduct tax in accordance with this Schedule.

(2) Subject to paragraph 5, the amount of tax to be deducted shall be determined in accordance with tax deduction tables prescribed by the Commissioner under paragraph 4.

(3) Where an employer deducts from a resident employee's remuneration the employee's current contribution to an approved superannuation fund, the amount of tax to be deducted shall be calculated on the balance of remuneration remaining after deducting that contribution:

Provided that the deduction for any such contribution shall be based on an annual rate not exceeding 15 per cent of the employee's remuneration.

4. Tax deduction tables

(1) The Commissioner General shall prescribe tax deduction tables (in this Schedule referred to as "the tables") which shall come into force on the date of commencement of this Act.

(2) The tax to be deducted in accordance with the tables prescribed under this paragraph shall take into account the rates of tax payable under section 59.

(3) In the case of a resident individual tax shall be deducted by a reference to Table I of the Eighth Schedule.

(4) The tables shall specify the manner of calculations of the tax to be deducted from any payments or remuneration by way of-

- (a) annual and other bonuses;
- (b) overtime;
- (c) leave pay; and
- (d) other payments of an abnormal nature.

(5) In the event of any variation of the rates of tax payable in relation to any tax year to which this Act applies, the Commissioner General shall prescribe new tables to take into account such variations and shall, by notice published in the *Gazette*, specify the date upon which such tables shall come into force.

(6) Notwithstanding subparagraph (4)(d), where a payment of remuneration is to be made to an employee by way of-

- (a) bonus, gratuity, compensation or other lump sum on termination of his or her employment; or
- (b) lump sum payment by a superannuation fund on his or her retirement, the employer shall, not less than 15 days prior to the date such payment is to be made, apply to the Commissioner General for a direction as to the amount of tax, if any, which shall be deducted therefrom, and the employer shall comply with that direction.

5. Variations from tax deduction tables

(1) The employer shall, at the written request of an employee, deduct from his or her remuneration an amount of tax greater than that required to be deducted under the tables.

(2) Where, in respect of any tax year, the Commissioner General is of the opinion that the amount of tax required to be deducted by an employer in accordance with the tables from the remuneration payable to any employee will be substantially less than the amount of tax which is likely to be charged for that tax year he or she may direct the employer by notice in writing to deduct such greater amount than is

prescribed in the tables as appears to the Commissioner General to be appropriate to the circumstances of that employee, and the employer shall comply with that direction.

(3) Where, in respect of any tax year, an employee is of the opinion that the amount of tax required to be deducted by his or her employer in accordance with the tax tables will be substantially greater than the amount of tax which is likely to be charged for that tax year, he or she may apply in the prescribed form to the Commissioner General for the issue of a direction under subparagraph (2) and if the Commissioner General is satisfied that it would be reasonable to do so he or she may direct the employer by notice in writing to deduct either no tax or such lesser amount than is prescribed in the tables as appears to the Commissioner General to be appropriate to the circumstances of that employee, and the employer shall comply with that direction.

(4) A request by an employee to an employer under subparagraph (1) or a direction made by the Commissioner General to an employer under subparagraph (2) or (3) may be withdrawn at any time by notice in writing given to the employer and upon receipt of any such notice the employer shall deduct tax in accordance with the tables.

(5) Nothing in subparagraph (3) shall be construed so as to authorize the repayment to an employee by the employer of any amount of tax which has been deducted.

(6) Any request under subparagraph (1), direction under subparagraph (2) or (3), or notice of withdrawal under subparagraph (4) shall be complied with by the employer on and after the pay day next succeeding a period of seven days following the receipt by him or her of the request, direction or notice.

6. Liability to deduct tax not abated by other rights or obligations

The liability of any employer to deduct tax under this Schedule shall not be abated or extinguished by reason of-

- (a) the fact that the employer has a right or is, otherwise than in terms of any law, under an obligation to deduct any other amount from the employee's remuneration and such right or obligation shall, notwithstanding anything to the contrary contained in any other law, be deemed to refer only to the balance of remuneration remaining after tax has been deducted; or
- (b) the provisions of any law which may provide that the amount of remuneration shall not be reduced or be subject to attachment.

7. Payment to or recovery by Commissioner General

Any tax deducted under this Schedule shall-

- (a) be due and payable within the time specified in section 98; and
- (b) when it becomes due and payable, be a debt due to the Government and if unpaid shall bear interest at the rate specified in section 101 and may be recovered in the manner provided in section 102.

8. Payment of remuneration free of tax

(1) Any agreement between an employer and an employee whereby the employer agrees to pay, as remuneration to an employee, an amount expressed to be free of tax, shall be deemed to be an agreement providing for payment to the employee of such an amount of remuneration as, after deduction of tax in accordance with the table appropriate to that employee, would leave an amount equal to the remuneration paid.

(2) In any case to which subparagraph (1) applies-

- (a) the employer shall be liable to pay to the Commissioner General an amount equal to the difference between the remuneration deemed to be paid and the amount of the remuneration paid;
- (b) such amount shall be deemed to be tax to be deducted under this Schedule; and
- (c) the employee shall be deemed to have received as employment income the amount deemed to have been paid by the employer.

9. Certificate of Remuneration and tax deducted

(1) Every employer who has deducted any tax under this Schedule in any tax year shall, within the time and in relation to the period of employment specified in subparagraph (2), furnish to every employee or former employee to whom remuneration has been paid a certificate in the prescribed form the contents of which shall include-

- (a) the total remuneration accrued to that employee or former employee; and
- (b) the total of the amounts of tax deducted from such remuneration.

(2) The certificate referred to in subparagraph (1) shall specify the period of employment to which it relates and shall be furnished to the employee or former employee-

- (a) where the employer has not ceased to be an employer in relation to that employee at the end of the tax year, within 31 days after the end of the tax year;
- (b) where the employer has ceased to be an employer in relation to that former employee but has continued to be an employer in relation to other employees, on the date of cessation of the employment of that person;
- (c) where the employer has ceased to be an employer in relation to all employees, within 15 days after the date on which he or she ceased to be an employer; or
- (d) notwithstanding sub-subparagraph (a), (b) or (c), as and when directed by the Commissioner General, and where an employee, other than a casual employee to whom subparagraph (3) applies, is employed by the same employer for more than one period in any tax year the employer shall furnish a certificate in respect of each such period.

(3) Where the Commissioner General so directs for the purposes of subparagraph (2), an employer shall be deemed not to have ceased to be an employer in relation to any of his or her casual employees who are likely to be re-employed from time to time by such employer in a tax year.

(4) Any employee or former employee who has not received a certificate within the time specified in subparagraph (2) shall apply to the employer forthwith for such certificate to be furnished and in the event of such certificate not being furnished within a further period of 15 days he or she shall notify the Commissioner General of such failure by the employer to furnish the certificate.

(5) Every employee, when furnishing his or her tax return for any tax year, shall attach to such return the certificate furnished under this paragraph.

(6) The certificate to be furnished under this paragraph by an employer to an employee or former employee may be delivered-

- (a) by hand to such employee or his or her authorized agent;
- (b) by registered letter addressed to that employee at his or her usual or last known postal address; or
- (c) where the taxable income of that employee is not chargeable to tax in his or her name, by hand or registered letter addressed to the person so chargeable.

(7) In the event of inability to deliver a certificate under subparagraph (6), the employer shall retain such certificate and forward it to the Commissioner General with the return required under paragraph 13.

(8) At the request of an employee or former employee an employer may issue a duplicate certificate in the prescribed form.

(9) The Commissioner General may control the issue to employers of stocks of unused certificates and may prescribe conditions in regard to the manner in which they shall be used or as to the surrender of unused stocks.

(10) Every employer shall furnish to the Commissioner General, within 31 days after the end of the tax year, a return in the prescribed form giving details of all certificates used during the tax year.

(11) Where an employer uses a mechanical accounting system the Commissioner General may, subject to such conditions as he or she may impose, authorize the use by that employer of certificates in a form other than that prescribed.

(12) If any employer to whom subparagraph (11) applies fails to comply with any condition imposed by the Commissioner General, the Commissioner General may withdraw his or her authorization of the use of the certificates referred to therein and the employer shall forthwith or from any date specified by the Commissioner General cease to use such certificates.

(13) Any certificate bearing the name or the trade name of any employer shall, unless the contrary is proved, be deemed to have been issued by such employer where such certificate-

- (a) is in the form prescribed by the Commissioner General and was supplied by the Commissioner General to and for the use of such employer; or
- (b) is in a form authorized by the Commissioner General under subparagraph (11) for use by such employer.

10. Personal liability of employer and employee

(1) Where in any tax year an employer fails to deduct any tax under paragraph 3, he or she shall, in addition to any penalty for which he or she may be liable, be personally liable to pay to the Commissioner General within the time specified in section 98, the amount which he or she has failed to deduct.

(2) Where an employer pays to the Commissioner General the amount of tax which he failed to deduct, such amount shall be deemed to have been deducted under this Schedule.

(3) The employer shall be entitled to recover from the employee any amount paid to the Commissioner General under subparagraph (2).

(4) Where, in relation to any payment of remuneration, an employer has failed to deduct tax under paragraph 3 but the Commissioner General is satisfied-

- (a) that such failure to deduct tax was not due to any intent to postpone payment or to avoid the employer's obligations under this Schedule and that there is reasonable probability of recovering the tax from the employee by means other than under this Schedule; or
- (b) that tax deducted under this Schedule from earlier or later payments of remuneration is sufficient to meet the amount of tax which he or she has failed to deduct, the Commissioner General may absolve the employer from his or her liability under subparagraph (1).

(5) Where an employer pays any amount to the Commissioner General under this paragraph, he or she shall not be required to include any such amount in a certificate under paragraph 9 unless he or she recovers that amount from that employee.

(6) Where the Commissioner General is satisfied that any amount of tax which has been set off under section 61 pursuant to a certificate under paragraph 9 has not been deducted by the employer, the employer and the employee shall be jointly and severally liable to pay to the Commissioner General the amount which has been so set off and such amount shall be recoverable under section 102:

Provided that where the Commissioner General is satisfied that the employee alone was responsible for the incorrect amount being shown on the employee's tax certificate, the employer shall be absolved from liability under this subparagraph.

(7) Where it is proved to the satisfaction of the Commissioner General that any amount of tax has been deducted from the remuneration of an employee, notwithstanding that the employer has failed to pay such amount to the Commissioner General, no action shall be taken by the Commissioner General for the recovery thereof from the employee.

11. Employer to keep records

Every employer shall, in respect of each of his or her employees, maintain a record showing, in relation to each tax year-

- (a) the amounts of remuneration accrued to that employee; and
- (b) the amounts of tax deducted from such remuneration and such record shall be kept available for examination by the Commissioner General as and when required.

12. Tax remittance returns

Every employer shall, when making any payment under section 98, furnish a tax remittance return in the prescribed form:

Provided that in respect of the final month of a tax year or the month in which he or she ceases to be an employer such return shall be lodged with the return required under paragraph 13.

13. Employer's annual return of deductions and remittances

(1) Every employer shall in respect of any tax year-

- (a) within 31 days after the end of that tax year; or
- (b) where he or she ceases to be an employer during that tax year, within 31 days after such cessation, or within such further time as the Commissioner General may allow, furnish to the Commissioner General a return, in the prescribed form, showing the total amount of tax deducted by him or her in respect of all his or her employees during that tax year and the total payments of such tax which have been made the Commissioner General.

(2) The return referred to in subparagraph (1) shall be accompanied by the first carbon copy or such other copy as may be approved by the Commissioner General of all certificates issued under paragraph 9.

(3) In the event of there being any difference between the total amount of tax deducted and the total payments of such tax made to the Commissioner General, the employer shall be required to account to the Commissioner General for such difference.

14. Representative employers

(1) Every representative employer, in relation to any remuneration paid by him or her in his or her representative capacity to any employee, shall be subject to the same duties and liabilities under this Schedule as if such remuneration had been paid by him or her in his or her personal capacity.

(2) Any tax which should be deducted by a representative employer under this Schedule, any interest due by him or her under section 101 or fine imposed under section 124 or 125 on him or her shall be recoverable from him or her, but to the extent only of any assets of the person whom he or she represents which may be in his or her possession or may come to him or her while acting in his or her representative capacity.

(3) The executor of the estate of any deceased employer or the trustee of the estate of any insolvent employer shall fulfil such obligations of that employer under this Schedule as were not fulfilled at the time of his or her death or insolvency.

SIXTH SCHEDULE **DEDUCTION OF TAX FROM PAYMENTS DUE UNDER CERTAIN CONTRACTS**

(Section 57)

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

1. Notice to be given to Commissioner General
2. Direction for deduction
3. Amount to be deducted
4. Liability under this Act
5. Certificate of amount of tax deducted
6. Record to be kept of payments made and tax deducted
7. Tax remittance returns
8. Annual return of deductions and remittances
9. Personal liability where failure to deduct tax

1. Notice to be given to Commissioner General

Where any person enters into a contract under which payments will be made to which this Schedule applies, and where the total of such payments will exceed P5,000, that person shall notify the Commissioner General in writing within 30 days from the date of entering into the contract-

- (a) the nature of the contract;
- (b) its likely duration;
- (c) the name, address and taxpayer identification number of the person to whom payments are to be made;
- (d) the amount estimated to be payable under the contract,

and in this paragraph "a contract" means a single contract or a series of contracts.

2. Direction for deduction Any person upon making any payment to which this Schedule applies, shall deduct tax in accordance with paragraph 3.

3. Amount to be deducted

(1) The amount of tax to be deducted by the person making any payments under a contract relating to construction operations shall be three per cent of the total amount payable under the contract.

(2) Any person responsible for deducting tax from payments made to a subcontractor under this Schedule may apply to the Commissioner General in the prescribed form, specifying the amount payable to the subcontractor, and the Commissioner General may direct that the person responsible for making payments to the applicant under this Schedule, deduct tax on only so much of the amount as reduced by the payments to be made by the applicant to the subcontractor as furnished in the application made by him or her.

(3) Upon an application by any person, affected by the provisions of this Schedule, the Commissioner General may, if satisfied that the person has complied with his or her obligations under the Act, issue a tax certificate to the taxpayer for purposes of tax to be deducted under this Schedule, and a copy of the certificate shall be issued to the person responsible for deducting tax from the payments to the applicant.

(4) The tax certificate issued in terms of subparagraph (3) may either vary the amount of tax to be deducted under this Schedule or direct that no tax need be deducted from payments to which this

Schedule applies and such certificate shall be valid only for the duration of the contract in respect of which it has been issued.

(5) Any exclusion in terms of subparagraphs (2), (3) and (4) shall not relieve any person from any other obligation or tax payment imposed on him or her by this Act.

4. Liability under this Act No deduction of tax under this Schedule from any payment made to any person shall relieve that person from the obligations to furnish any tax return under or from any other obligations imposed by this Act.

5. Certificate of amount of tax deducted Every person who has deducted any tax under paragraph 2 shall, by the due date of payment of withholding tax under section 99, furnish to the person to whom payment was made a certificate in the prescribed form showing the amount of the payment made and the tax which has been deducted therefrom.

6. Record to be kept of payments made and tax deducted Every person making any payment to which this Schedule applies shall maintain a record showing, in relation to each tax year the amounts of tax deducted from such payments, and such record shall be kept available for examination by the Commissioner General as and when required.

7. Tax remittance returns

Every person when making any payment under section 99 shall furnish a tax remittance return in the prescribed form.

8. Annual return of deductions and remittances

(1) Every person to whom this Schedule applies shall, in respect of each tax year, within 31 days after the end of that tax year or within such further time as the Commissioner General may allow, furnish to the Commissioner General a return in the prescribed form showing the total amount of tax deducted by him or her during the tax year and the total payments of such tax which has been made to the Commissioner General.

(2) The return referred to in subparagraph (1) shall be accompanied by the first carbon copy of all certificates issued under paragraph 5.

(3) In the event of there being any difference between-

(a) the total amount of tax deducted; and

(b) the total payments of such tax made to the Commissioner General,

that person shall be required to account to the Commissioner General for any such difference.

9. Personal liability where failure to deduct tax

(1) Where any person fails to deduct any tax under paragraph 2 he or she shall, in addition to any penalty for which he or she may be liable, be personally liable to pay to the Commissioner General within the time specified in section 99 the amount which he or she has failed to deduct.

(2) Where any person pays to the Commissioner General the amount of tax which he failed to deduct, such amount shall be deemed to have been deducted under this Schedule.

(3) The person making such payment to the Commissioner General under subparagraph (1) shall be entitled to recover such amount from the person to whom a payment was made under the contract.

(4) Where, in relation to any payment to which this Schedule applies, any person has failed to deduct tax under paragraph 2 but the Commissioner General is satisfied that-

(a) the failure to deduct tax was not due to any intent to postpone or to avoid that person's obligations under this Schedule and that there is reasonable probability of recovering the tax from the payee by means other than under this Schedule; or

(b) that tax deducted under this Schedule from earlier or later payments is sufficient to meet the amount of tax which he or she has failed to deduct,

the Commissioner General may absolve the person who should have deducted tax from his or her liability under subparagraph (1).

**SEVENTH SCHEDULE
DEDUCTION OF TAX ON CERTAIN PAYMENTS**

(Section 58)

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

1. Person making payment to deduct tax
2. Amount to be deducted
3. Liability of resident or non-resident
4. Certificate of amount of tax deducted
5. Record to be kept of payments made and tax deducted
6. Tax remittance returns
7. Annual return of deductions and remittances
8. Personal liability where failure to deduct tax
9. Deduction of withholding tax at lower rate

1. Person making payment to deduct tax

Every person who makes any payment to which this Schedule applies shall deduct tax in accordance with paragraph 2.

2. Amount to be deducted

Except as provided in section 60 and subject to the provisions of section 58 (4), the amount of tax to be deducted shall be-

- (a) 15 per cent of each payment of dividend made to any person if the dividend is paid on or before 30th June, 2011 and seven and a half per cent of each payment of dividend made to any person if the dividend is paid after 30th June, 2011;
- (b) 15 per cent of each payment of interest, commercial royalty or management or consultancy fee made to a non-resident;
- (c) 10 per cent of each payment of entertainment fee made to a non-resident;
- (d) 10 per cent of interest to a resident in excess of P1 950 in a quarter of a year;
- (e) five per cent of each payment of rent referred to in section 58 (1) (d);
- (f) 10 per cent of the amount of payment of any surplus money by amine rehabilitation fund referred to in section 43 (1) (e); or
- (g) 10 per cent of the amount of payment of commission or brokerage referred to in section 58 (1) (f).

3. Liability of resident

A deduction of tax under this Schedule from-

- (a) any payment of dividend made to a resident; or
- (b) income described in section 34 made to a resident or nonresident,

shall not relieve that person from the obligation to furnish any tax return under or from any other obligations imposed by this Act.

4. Certificate of amount of tax deducted

Every person who has deducted any tax under paragraph 1 shall furnish to the person to whom payment is made a certificate, in the prescribed form, showing the amount of the payment made and the tax which has been deducted therefrom within 15 days after the end of the month during which the tax was deducted.

5. Record to be kept of payments made and tax deducted

Every person making any payment to which this Schedule applies shall maintain a record showing, in relation to each tax year-

- (a) the payments of dividends made to each resident and tax deducted from such payments; and
- (b) the payments of dividends, interest, commercial royalties, entertainment fees, or management or consultancy fees made to each non-resident and tax deducted from such payments,

and such record shall be kept available for examination by the Commissioner General as and when required.

6. Tax remittance returns

Every person when making any payment under section 100 shall furnish a tax remittance return in the prescribed form.

7. Annual return of deductions and remittances

(1) Every person to whom this Schedule applies shall, in respect of each tax year, within 31 days after the end of that tax year or within such further time as the Commissioner General may allow, furnish to the Commissioner General a return in the prescribed form showing the total amount of tax deducted by him

or her during the tax year and the total payments of such tax which have been made to the Commissioner General.

(2) The return referred to in subparagraph (1) shall be accompanied by the first carbon copy of all certificates issued pursuant to paragraph 4.

(3) In the event of there being any difference between-

(a) the total amount of tax deducted; and

(b) the total payments of such tax made to the Commissioner General,

that person shall be required to account to the Commissioner General for any such difference.

8. Personal liability where failure to deduct tax

(1) Where any person fails to deduct any tax under paragraph 1, he or she shall, in addition to any penalty for which he or she may be liable, be personally liable to pay to the Commissioner General within the time specified in section 100 the amount which he or she has failed to deduct.

(2) Where any person pays to the Commissioner General the amount of tax which he or she failed to deduct, such amount shall be deemed to have been deducted under this Schedule.

(3) The person making such payment to the Commissioner General under subparagraph (1) shall be entitled to recover such amount from the person to whom a payment to which this Schedule applies was made.

(4) Where any person has failed to deduct tax as required under paragraph 1 but the Commissioner General is satisfied that-

(a) the failure to deduct such tax was not due to any intent to postpone payment or to avoid that person's obligations under this Schedule and that there is reasonable probability of recovering the tax from the payee by means other than under this Schedule; or

(b) that tax deducted under this Schedule from earlier or later payments is sufficient to meet the amount of tax which he or she has failed to deduct,

the Commissioner General may absolve the person who should have deducted tax from his or her liability under subparagraph (1).

9. Deduction of withholding tax at lower rate

Where the Commissioner General is satisfied that the taxable income of any person in receipt of the rent referred to in section 58 (1) (d), for any tax year, justifies the deduction of withholding tax at a lower rate or no deduction of withholding tax, the Commissioner General may, on an application for a tax certificate for the deduction of withholding tax or no deduction of withholding tax, grant the applicant the tax certificate.

EIGHTH SCHEDULE RATES OF TAX FOR 2011/2012 AND SUBSEQUENT TAX YEARS

(section 59)

TABLE I

<i>Taxable Income</i>	<i>Tax</i>
0 - 36,000	0
36,001 - 72,000	0 + 5% of excess over P36,000
72,001 - 108,000	1,800 + 12.5% of excess over P72,000
108,001 - 144,000	6,300 + 18.75% of excess over P108,000
144,001 and above	13,050 + 25% of excess over P144,000

Table I applies to resident individuals.

TABLE II

<i>Taxable Income</i>	<i>Tax</i>
0 - 72,000	5% of every Pula
72,001 - 108,000	3,600 + 12.5% of excess over P72,000
108,001 - 144,000	8,100 + 18.75% of excess over P108,000
144,001 and above	14,850 + 25% of excess over P144,000

Table II applies to non-resident individuals, trusts falling under section 14 (2) and estates of deceased persons.

TABLE III

1. Resident company	Taxable income	22%
2. Non-resident company	All taxable income	30%
3. Botswana Meat Commission	All taxable income	15%
4. Pension and Provident Fund not approved by the Commissioner General	Investment income defined under section 2	7.5%
5. Dividends accruing outside Botswana	Gross income	15%
6. Persons not included in paragraphs 1-5 above	Taxable income	25%
7. International Financial Services Centre company	(a) Income arising from approved financial transactions with nonresidents, International Financial Services Centre companies and Specified Collective Investment Undertakings	15%
	(b) All other income	22%

TABLE IV

<i>Taxable income</i>	<i>Tax</i>
0 - 18 000	0
18 001 - 72 000	0 + 5% of excess over P18,000
72 001 - 108 000	2 700 + 12.5% of excess over P72,000
108 001 - 144 000	7 200 + 18.75% of excess over P108,000
144 000 and above	13 950 + 25% of excess over P144,000

Table IV applies to net aggregate gains of individuals.

NINTH SCHEDULE BOARD OF ADJUDICATORS

(section 90)

1. (1) The Minister may by notice, establish a Board to be known as the Board of Adjudicators which shall have jurisdiction to hear and determine an appeal from any decision made by the Commissioner General in relation to determining a tax assessment objection, refund application, matters relating to taxpayer registration or any other matter in the course of administering the provisions of this Act.

(2) The jurisdiction of the Board of Adjudicators for purposes of this Act extends to every place within Botswana.

(3) The Board shall consist of the following members appointed by the Minister-

- (a) the Chairman;
- (b) three members;
- (c) two alternative members to the members in subparagraph (b); and
- (d) a Secretary who shall have no voting rights.

(4) The duties of the Secretary shall be to-

- (a) receive appeal papers from appellants on behalf of the Board of Adjudicators;
- (b) convene meetings of the Board of Adjudicators; and
- (c) perform all administrative functions and may be assigned any other duties by the Chairman.

(5) A person may be appointed to be a-

- (a) Chairman, if he or she has worked as a magistrate in a court of law for a period of not less than eight years, or if he or she has worked as an attorney at law for a period of not less than eight years;
- (b) member of the Board of Adjudicators, if he or she has-
 - (i) knowledge of taxation,
 - (ii) knowledge of commercial or financial practice; or
 - (iii) more than five years experience in taxation, commercial or financial practice,

save for persons who are employed to assess, collect and account for government revenue provided that such persons have ceased to be such employees for the past five years; and

(c) Secretary, if he or she is a public officer discharging administrative or directive functions.

(6) For purposes of subparagraph 5 (c), public officer has the same meaning as in the Constitution.

(7) Where any appointment relates to a person from the Judiciary, the Minister shall consult the Chief Justice with regard to the appointment of that person to be a member of the Board.

2. Members of the Board shall be appointed for a period of five years, but shall be eligible for reappointment.

3. (a) Vacancies in the Board, for any reason, may be filled by appointments made by the Minister in the same manner as in paragraph 1, and temporary vacancies may be filled by temporary appointments made in the same manner.

(b) The Minister may temporarily appoint an employee from the ministry responsible for finance to assist the Board in the performance of its administrative duties.

4. At any meeting of the Board, the Chairman and any other member shall form a quorum, and in the event of an equal division of opinion amongst those present, the Chairman shall have a casting vote.

5. The members of the Board shall receive such remuneration, in the form of a sitting allowance, travelling allowance and other allowances out of public funds as the Minister shall determine.

6. The Board shall have the following powers-

(a) power to summon to attend at the hearing of an appeal any person who in its opinion is or might be able to give evidence relevant to the subject of the appeal;

(b) power to examine on oath or otherwise any person summoned or required to give evidence;

(c) power to require any person to produce any books or documents which are in his or her custody or under his or her control and which the Board considers necessary for the purposes of the appeal;

(d) power to grant reimbursement of any reasonable expenses incurred in connection with his or her attendance by any person summoned to attend;

(e) all the powers of a magistrate with regard to the enforcement of attendance of witnesses hearing evidence on oath and punishment for contempt of court;

(f) power to admit or reject evidence adduced, whether or not admissible under the provisions of any written law for the time being in force relating to the admissibility of evidence;

(g) power to postpone the hearing of an appeal where the Board is satisfied that, owing to sickness, accident or other reasonable cause the appellant has been prevented from attending on the date fixed for the hearing;

(gA) power to resolve any complaint or appeal by mediation, conciliation or arbitration;

(gB) power to dismiss any matter before it;

(gC) power to prepare and deliver judgments and decrees in relation to all appeals before the Board; and

(h) such other powers as the Minister may, by regulations, prescribe.

7.(a) Any judgment or decree of the Board shall be enforced in the same manner as a judgment or decree of a court of law within Botswana.

(b) Where the Board pronounces a judgment or decree in favour of the appellant or Commissioner General, and where the appellant or Commissioner General wishes to execute the judgment or decree, the appellant or Commissioner General shall make an application, to the Secretary, for a writ of execution in a form prescribed by the Minister.

8. The Board shall not be bound by the rules and procedures of the courts of law in conducting the hearing of an appeal before the Board.

9. Any person who files any document, regarding an appeal before the Board shall pay a fee prescribed by the Minister.

TENTH SCHEDULE

(section 35)

1. Any amount accruing to any person from the disposal of the following properties shall not be included in gross income under section 35 (1) and section 35 (2), and the provisions of this Schedule shall not apply to gains from the disposal of such property-

- (a) any property of a business, other than land and buildings thereon, in respect of which an allowance has been granted under Part II of the Third Schedule in ascertaining chargeable income for any tax year;
- (b) any property referred to in section 31;
- (c) the principal private residence of an individual who has owned the residence for the last five years prior to the date of the disposal, provided that the exemption shall not be allowed for any subsequent disposals for a period of five years from the tax year on which the exemption was allowed;
- (d) any shares, units or debentures of a resident company which have been held by the taxpayer for a period of at least one year prior to the date of disposal, if-
 - (i) the company is a public company under section 130,
 - (ii) the shares, units or debentures are actually traded on the Botswana Stock Exchange, or
 - (iii) the company has released for trading, 49 per cent or more of its equity shares on the Botswana Stock Exchange;
- (e) immovable property owned by a company the shares of which are wholly owned by one or more of the following funds, where such property is disposed of within three months of the date of acquisition by such funds of all the shares of that company
 - (i) an approved provident fund,
 - (ii) an approved superannuation fund,
 - (iii) the Motor Vehicle Accident Fund, or a statutory life insurance fund;
- (f) any property which represents a qualifying foreign participation as defined under section 2;
- (g) any bonds and debentures issued by the Government of Botswana, Bank of Botswana, a statutory body and special purpose vehicles formed by the Government of Botswana for the securitization of public debt; or any shares in an International Financial Services Centre company.
- (h) any shares in an International Financial Services Centre company.

1A. ...

2. Where any class of property is disposed of in consequence of the re-structure or merger of two or more resident companies (including a subsidiary company of such companies), and where the Commissioner General is satisfied that the re-structure or merger is carried out in such manner that the beneficial ownership of the shares of the companies concerned in the re-structure or merger remains unchanged and that no shareholder benefits at the expense of another, the disposal of the property shall not be deemed to take place at market value but shall be deemed to take place at a value which is not greater than the cost of such property to the company disposing of it.

3. Where any class of property is disposed of as a consequence of the re-organisation of a resident company, including a re-structure or merger as in paragraph 2, and the Commissioner General is satisfied that the sole object of the re-organisation, re-structure or merger is the offer of its shares for listing on the Botswana Stock Exchange, the disposal of the property shall not be deemed to take place at market value but shall be deemed to take place at a value which is not greater than the cost of such property to the person disposing of it:

Provided that an application for listing of the shares is made to the Botswana Stock Exchange within a period of one month after the completion of the re-organisation, re-structure or merger, and the application is successful before the expiration of 12 months from the date of application.

4. Subject to the provisions of paragraphs 5, 6, and 7, in ascertaining the gain of any person in any tax year on disposal of any property to which section 35(1) applies, there shall, upon due claim and subject to such evidence as the Commissioner General may require, be deducted from the amount included in the chargeable income of such person under section 40-

- (a) the cost of acquiring the property disposed of including any expenditure wholly, exclusively and necessarily incurred for the purposes of the acquisition;
- (b) the cost of any improvements to the property effected by the person disposing of it or if any improvements were effected or to be effected by any other person under an agreement, the amount in respect of such improvements which was included under section 34(1)(c) in the gross income of the person disposing of such property;
- (c) any expenditure wholly, exclusively and necessarily incurred for the disposal;

- (d) if a leasehold property is disposed of by a lessee, any expenditure, including any premium paid, incurred by the lessee in obtaining the leasehold, the cost of any improvements effected to the property by him or her or any amount paid by him or her of the required improvements under the terms of the lease and any expenditure wholly, exclusively and necessarily incurred by him or her in disposing of the property:

Provided that no allowance shall be made under this subparagraph in respect of-

- (i) any expenditure or any proportion thereof if for the same or any other tax year an allowance is or can be made in respect of it under section 41(1)(g)(i) to the extent to which such amounts have not been included in the gross income of such person under section 28(2)(c)(iii) for the tax year; and
- (ii) any premiums allowed as a deduction under section 41(1)(f);
- (e) if the property disposed of is immovable property, the deduction ascertained in accordance with paragraph 8 hereof:

Provided that a sale of shares of a company owning immovable property as the dominant underlying asset of the company shall be deemed to be a sale of the immovable property; and

- (f) in the case of any property other than property referred to in subparagraph (e), 25 per cent of the difference between the chargeable income accruing from such disposal under section 40 and the total of any other deduction allowable under this paragraph:

Provided that the provisions of this paragraph shall not apply to any amount which would otherwise be deducted, in ascertaining the chargeable income of an international financial services centre company, under section 140(2) in respect of any specified foreign exchange loss.

5.(1) Subject to subparagraph (2), where any property disposed of by any person was acquired by him or her by way of gift or inheritance, the cost of acquisition of the property shall be-

- (a) where the property was acquired before 1st July, 1982, the market value as at 1st July, 1982; and
- (b) where the property was acquired on or after 1st July, 1982, the market value as at the date of acquisition.

(2) In the determination of market value for the purposes of subparagraph (1) account may be taken of any expenses incurred and taxes or duties paid in respect of any gift or inheritance, but excluding, in the case of inheritance succession duty and the proportion of estate duty (if any) attributable to the property disposed of.

6. (1) Subject to the provisions of subparagraph (2) where an amount accruing to any person on the disposal of a property is in respect of immovable property acquired by such person before 1st July, 1982 there shall be added to the cost of acquisition and the cost of any improvements effected thereto before that date whether by the person making the disposal or any other person under agreement, an amount compounded at the rate of 10 per cent of such cost for every 12 months from the date on which the property was acquired or the improvements thereto were effected, as the case may be, up to 30th June, 1982.

(2) Where a loss is incurred by a person on the disposal of a property by virtue of the application of the provisions of subparagraph (1), such loss shall be reduced by so much of the amount which has been added as a result of which a loss has been incurred.

7. For the purposes of paragraph 8 herein, the cost to any person of immovable property disposed of by him or her shall-

- (a) where the property is property acquired by him or her before 1st July, 1982, be the cost as ascertained under the provisions of paragraph 6 above as at 1st July, 1982;
- (b) where the property was acquired by him or her after 1st July, 1982, be the actual cost of acquisition; and
- (c) where property was acquired by way of gift or inheritance, be the cost as ascertained under paragraph 5.

8.(1) The deduction referred to in paragraph 4(e) shall be ascertained by-

- (a) applying the percentage difference between the cost of living index at the date of acquisition of the property or 1st July, 1982, whichever is later, and the cost of living index at the date of disposal to the cost of the property as ascertained under paragraph 7; and

- (b) by applying the percentage difference between the cost of living index as at the date, after 1st July, 1982, when any improvements were completed to the property and the cost of living index at the date of disposal of the property to the cost of the said improvements.

(2) The cost of living index for any day shall be the national cost of living index for the month in which it occurs.

9. Where the property disposed of is a business sold as a going concern the person disposing of the business shall furnish the Commissioner General with a breakdown of the price at which the property was disposed of showing the value apportioned to each asset and the net aggregate gain or loss of such person shall be ascertained by ascertaining the gain or loss on each such asset.

10. Where any property disposed of by any person in accordance with the provisions of paragraph 4 consists of bonus shares, debentures, securities or any other property falling to be treated as a dividend under this Act, the cost of acquisition of such property shall be the amount included in the assessable income of such person as dividend as defined in section 2.

11. Where an amount accruing to any person on the disposal of property is in respect of farming property, there shall, in addition to such allowance as may be allowed under paragraph 4, be deducted from such amount so much of the aggregate of any assessed loss (other than deductions of expenditure of a capital nature allowed under Part IV of the Third Schedule which have been included in such loss) in the tax year in which the property was disposed of and the five preceding tax years in relation to his or her business of farming which has not been deducted or fully deducted under sections 46, 47 and 48 in ascertaining chargeable income under section 39(1).

12. (1) The net aggregate gain of any person for any tax year shall be the amount by which the aggregate amount of gains exceeds the aggregate amount of any losses for that year:

Provided that if the aggregate amount of losses incurred in any tax year exceeds the aggregate amount of gains in that year, such excess loss shall be deducted from the excess of aggregate gains over aggregate losses, if any, accruing in the next succeeding tax year.

(2) For the purposes of this paragraph "loss" means the amount by which the total deductions under this Schedule exceeds the chargeable income under section 40.

13. Where in ascertaining the gain accruing to or the loss incurred by any person the Commissioner General is not satisfied that the value of the property at the date of acquisition or the date of disposal as declared by that person is a true and accurate value, he or she may substitute the market value of the said property at the relevant time as ascertained by him or her for such declared value.

14. (1) In respect of any tax year, where any person reinvests the whole of his or her original investment in and all or part of the gain from the disposal of any immovable property of a business, within a year of his or her disposal of that property, in another immovable property for his or her business he or she may, upon a claim made by him or her and subject to such evidence as the Commissioner General may require, be permitted to treat so much of the gain so reinvested as a gain accruing only upon the disposal of the property in which it was reinvested:

Provided that so much of his or her original gain as was not reinvested shall be taken into account in ascertaining the net aggregate gain or loss of that person under paragraph 12 in respect of the tax year in which it accrued to him or her.

(2) A claim under subparagraph (1) shall not be valid unless it is made within 12 months of the date of the disposal of the first-mentioned property.

ELEVENTH SCHEDULE TRANSITIONAL PROVISIONS

(sections 113, 114 and 115)

PAYMENT OF ESTIMATED INCOME TAX BY DESIGNATED COMPANY DURING CURRENT TAX YEAR OF ASSESSMENT

A company designated by the Commissioner General under section 113 shall calculate the amount of its estimated tax-

- (a) for the first tax year, by 31st March in that year, and shall pay that tax in four instalments of 30 per cent of the estimated tax for each of the first three instalments and 10 per cent for the last instalment on or before 31st March, 30th June, in that tax year and 30th September and 31st December, in the following tax year;

- (b) for the second tax year, by 31st December in that year, and shall pay that tax in four instalments of 20 per cent, 30 per cent, 30 per cent and 20 per cent of the estimated tax on or before 31st December, 31st March, 30th June, in that tax year and 30th September in the following tax year; and
- (c) for the third tax year, by 30th September in that year, and shall pay that tax in four instalments of 10 per cent of the estimated tax for the first instalment and 30 per cent of the estimated tax for each of the remaining three instalments on or before 30th September, 31st December, 31st March and 30th June respectively in that tax year.

TWELFTH SCHEDULE (paragraphs 1-11)(section 43)

1. Mining capital allowance

In ascertaining the business chargeable income of any person for any tax year from a business of mining, there shall be deducted from his or her business assessable income an allowance to be known as a mining capital allowance, computed in accordance with 100 per cent of the mining capital expenditure made in the year in which such expenditure was incurred with unlimited carry forward of losses.

2. Separate calculations for different mines

Where separate and distinct mining operations are carried on in mines which are not contiguous, the deduction to be allowed shall be calculated separately and shall not be transferable between such operations, except expenditure on a license or lease which has been relinquished by the mining company.

3. Balancing allowance and balancing charge

Where a mine to which this Part applies is disposed of or the mineral concession in respect thereof is terminated in any tax year, the provisions of paragraphs 2 and 3 of Part V of the Third Schedule shall apply; and the references therein to allowances shall be deemed to relate to the mining capital allowances granted in respect of the mining capital expenditure in relation to that mine.

4. Mining profits

Mining profits, other than profits from diamond mining, shall be taxed according to the following formula-

$$\text{Annual tax rate} = 70 - \frac{1500}{X}$$

where X is the profitability ratio, given by taxable income as a percentage of gross income:
Provided that the tax rate shall not be less than the company rate.

5. Head office expenses

Head office expenses allowed as a deduction in ascertaining gross revenue from mineral licence shall be limited to 1.5 per cent of gross income for the year of assessment and an excess of such expense above the limit shall be treated and taxed as a dividend.

6. Foreign controlled company

Where a foreign controlled resident company has a foreign debt-to-equity ratio in excess of 3 to 1 at any time during the year of assessment, the amount of interest paid by the resident company during that year on that part of the debt that exceeds the ratio shall be disallowed as a deduction and an amount so disallowed shall be treated and taxed as a dividend.

7. Foreign based company

Where a foreign based company grants a loan to an affiliated company resident in Botswana, at an interest rate which the Commissioner General considers to be in excess of the market rate which a borrower dealing at arm's length with a lender would pay for that type and currency of loan, that part of interest payment which exceed the market rate shall be disallowed as a deduction and the amount of interest so disallowed shall be treated and taxed as a dividend.

8. Royalty payments

Royalty payments made by the mining company under the provisions of the Mines and Minerals Act during any year of assessment shall be allowed as a deduction in the computation of the company's chargeable income in the year of assessment.

9. Withholding taxes

The rate of withholding taxes shall be-

- (a) 15 per cent on each payment of dividend made to a resident;

- (b) 15 per cent on each payment of dividend, interest, commercial royalty, management or consultancy fee made to a non resident; and
- (c) 10 per cent on each payment of entertainment fee made to a non resident.

10. Request of documents

(1) The Commissioner General may request the company to furnish such documents as he or she may require to show that all minerals sold or disposed by the company in any year of assessment have been valued at a fair market price for the purpose of determining the company's income tax liability for the year.

(2) Where the Commissioner General is not satisfied that the minerals were sold at a fair market price, he or she may make a determination as to the appropriate valuation of the minerals for income tax purposes.

11. Application

(1) The provisions of this Schedule, with exception to diamond mining, shall not be subject to negotiations under section 54 or any other section of the Act.

(2) Any mining company which is subject to the existing mining tax agreement may continue to operate under the terms of such agreement or make a once only election to come under the provisions of this Schedule by written notice to the Commissioner General, not later than 30th June, 1999.

(3) Where a company makes an election to be taxed under this Schedule, the provisions of the mining tax agreement shall not be applicable.