

Bill No. 36 of 2025

INCOME TAX BILL, 2025
(*Published on 15th December, 2025*)

MEMORANDUM

1. A draft of the above Bill which it is intended to present to the National Assembly is set out below.

2. The object of the Bill is to consolidate and modernise the law relating to income tax.

3. Part I of the Bill deals with preliminary issues including the interpretation provision, determination of fair market value, non-profit organisations, permanent establishments, resident and non-resident persons and what geographic sources of income are.

4. Part II of the Bill deals with how tax is charged for each tax year on the taxable income of a taxpayer for the tax year.

5. Part III of the Bill provides for the basic principles of income tax. The Part, amongst others, deals with the calculation of gross income, business income, employment income, investment income, exempt income, special industries and tax concessions.

6. Part IV of the Bill deals with capital gains tax that applies to any asset other than stock, a depreciable asset, or a business intangible and business asset, that is revenue in nature.

7. Part V of the Bill provides for rules relating to assets. The Part includes rules relating to jointly owned assets, acquisition and disposal assets and for matters incidental thereto.

8. Part VI of the Bill puts in measures to deal with countering tax avoidance, such as avoidance schemes. The Part deals with persons that lower the total tax payable on income by income splitting, transfer pricing, tax avoidance schemes and the use of low tax entities.

9. Part VII of the Bill provides for general procedural rules pertaining to income tax. This includes rules relating to record-keeping, income tax return, payment of income tax and capital gains tax, collection of international transport income tax, instalments of income tax and the non-lodging of income tax returns.

10. Part VIII of the Bill deals with miscellaneous matters such as transitional arrangements and the making of regulations.

NDABAN. GAOLATHE,
Minister of Finance.

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A Bill

– entitled –

An Act to make provision for the charge, assessment, collection and administration of income tax; and for matters incidental thereto.

Date of Assent:

Date of Commencement:

ENACTED by the Parliament of Botswana.

PART I — *Preliminary*

1. This Act may be cited as the Income Tax Act, 2025, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint

Short title and commencement

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

Interpretation

“accounting period”, in relation to a company, means the period of 12 months ending on the date of the annual balance of the company’s financial accounts;

“amount” includes a non-cash benefit;

“approved benefit fund” means a fund that —

(a) is established to provide for sickness, accident, or unemployment benefits for its members or dependents of deceased members; and

(b) is approved by the Commissioner General as an approved benefit fund under this Act;

“approved retirement fund” means a pension fund, provident fund, retirement annuity fund or superannuation fund approved by the Commissioner General in accordance with this Act;

“approved service gratuity” means a service gratuity as may be prescribed;

“assessed business loss” means a loss for a tax year as determined under section 26 (3);

“asset” means any movable or immovable property, and includes —

(a) any option, chose-in-action, goodwill, or other right; and

(b) any resource owned or controlled by a person that has a measurable value and is likely to give rise to future economic benefits;

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- Act No. of 2025
Cap. 46:04
- “associate” has the same meaning assigned to it under the Tax Administration Act;
- “bank” has the same meaning assigned to it in the Banking Act;
- “beneficial owner”, in relation to a membership interest in an entity, means an individual who ultimately —
- (a) owns the interest either directly or indirectly through one or more interposed entities; or
 - (b) controls the exercise of rights attaching to the interest, or benefits from the interest, through an agreement, trust or other form of influence;
- “Botswana asset” means —
- (a) Botswana immovable property;
 - (b) a right granted under the law of Botswana, or in an agreement with the Government, which provides for the use of resources that are naturally present in Botswana and that are under the jurisdiction of the Government;
 - (c) a membership interest in, or debentures issued by a resident company, resident partnership, or resident trust;
 - (d) a membership interest in an entity, where at any time during the 365 days preceding the disposal of the interest, more than 50 per cent of the value of the interest is derived, directly or indirectly through one or more interposed entities, from —
 - (i) Botswana immovable property held by the entity,
 - (ii) a right referred to in paragraph (b) held by the entity,
 - (iii) interests or debentures referred to in paragraph (c) held by the entity, or
 - (iv) any combination of assets referred to in the preceding subparagraphs; or
 - (e) an option over, or right to acquire an asset referred to in paragraph (a), (b), (c), or (d);
- “Botswana immovable property” means —
- (a) immovable property located in Botswana;
 - (b) a mining right or petroleum right as defined in section 82 relating to immovable property located in Botswana; or
 - (c) mining or petroleum information relating to a mining or petroleum right referred to in paragraph (b);
- Cap. 74:04
- “Botswana Meat Commission” means the Botswana Meat Commission established under the Botswana Meat Commission Act;
- “Botswana source income” has the meaning assigned to it under section 8;
- Cap. 18:01
- “burial society” means a body, association or society registered under the Societies Act, solely consisting of members who have agreed to provide mutual financial support to each other for the provision of burials;

“business” includes —

- (a) any industrial or commercial activity, trade, profession, or vocation;
- (b) a venture or concern in the nature of trade; or
- (c) any activity of a body corporate or a partnership;

“business asset” means stock, depreciable assets, business intangibles, goodwill, or any other asset, whether revenue or capital in nature, used in the conduct of a business wholly or partly to derive taxable business income;

“business intangible” means —

- (a) a copyright, patent, design or model, plan, secret formula or process, trademark, or other like property or right that has a limited useful life and is used wholly or partly to derive taxable business income;
- (b) a customer list, distribution channel, or unique name, symbol or picture, or other marketing intangible that has a limited useful life and is used wholly or partly to derive taxable business income;
- (c) contractual rights, including rights arising as a result of a prepayment of expenses with a benefit for a limited period, but which exceeds one year, used wholly or partly to derive taxable business income;
- (d) expenditure incurred wholly or partly to derive taxable business income that provides an advantage or benefit for a period of more than one year, other than expenditure incurred to acquire —
 - (i) a business intangible referred to in paragraph (a), (b), or (c), or
 - (ii) any corporeal movable or immovable property;
- (e) expenditure incurred before the commencement of a business if the income to be derived by the business will be wholly and exclusively included in taxable business income, other than expenditure incurred to acquire tangible movable or immovable property; or
- (f) any expenditure or asset treated as a business intangible under this Act;

“Capital Gains Tax asset”, referred to under this Act as “CGT asset”, means any asset other than stock, a depreciable asset, a business intangible or a business asset that is revenue in nature;

“class of income” means the following —

- (a) taxable business income;
- (b) taxable employment income;
- (c) taxable investment income; and
- (d) exempt income;

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Cap. 56:09

“collective investment undertaking” has the same meaning assigned to it under the Collective Investment Undertakings Act;

Cap. 53:03

“Commissioner General” means the Commissioner General of the Botswana Unified Revenue Service appointed under the Botswana Unified Revenue Service Act;

“company” has the same meaning assigned to it under the Tax Administration Act;

“debt obligation” means an obligation to make a repayment of money to another person, including accounts payable, and obligations arising under promissory notes, bills of exchange, and bonds;

“depreciable asset” means any corporeal movable property or a building or other improvement to land that —

- (a) has an ascertainable useful life exceeding one year;
- (b) is likely to lose value as a result of normal wear and tear, or obsolescence; and
- (c) is used wholly or partly to derive gross income;

“derived” means —

- (a) for income tax imposed under section 9, received or arising of the right to receive as determined under section 46; or
- (b) for any other tax imposed under this Act, received;

“director’s fee” means a fee or other similar payment made by a company to an individual in his or her capacity as a member of the board of directors of the company;

“dividend” means —

- (a) a distribution of profits by a company to a member and includes an entitlement to income of the holder of an interest in a collective investment undertaking that is a unit trust;
- (b) an amount returned by a company to a member in respect of a membership interest on a partial reduction in the capital of the company to the extent that the amount returned exceeds the amount by which the nominal value of the membership interest was reduced;
- (c) an amount returned by a company to a member on redemption or cancellation of a membership interest, including on liquidation of a company or termination of a collective investment undertaking that is a unit trust, to the extent that the amount returned exceeds the nominal value of the membership interest;
- (d) an amount paid by a company to a member on a reconstruction, reorganisation, or amalgamation of the company in respect of a membership interest in the company to the extent that the amount returned exceeds the nominal value of the membership interest before the reconstruction, reorganisation, or amalgamation;

- (e) the amount of any loan, payment for an asset or services, value of any asset or services provided, or any debt obligation released, by a company to, or in favour of, a member or an associate of a member, to the extent that the transaction is not on commercial terms or is otherwise, in substance, a distribution of profits of the company; or
 - (f) any payment made by the Botswana Meat Commission to suppliers of livestock pursuant to the Botswana Meat Commission Act;
- “electronic billing system” has the meaning assigned to it under the Tax Administration Act;
- “electronic invoice” has the meaning assigned to it under the Tax Administration Act;
- “employee” has the same meaning assigned to it in the Public Service Act, and it includes a worker, as defined in the Employment Act, and any person holding or acting in any appointment or office, whether public or private; Cap. 26:01
Cap. 46:01
- “employer” has the same meaning assigned to it in the Employment Act, and includes a person who remunerates a person holding or acting in any appointment or office, whether public or private;
- “employment” means the relationship of master and servant, and it includes the holding or acting in any appointment or office, whether public or private;
- “entertainer” includes —
- (a) a cabaret, motion picture, radio, television, or theatre artiste;
 - (b) a musician; or
 - (c) a sports person;
- “entertainment fee” means any amount payable as consideration for personal activities exercised by an entertainer;
- “entity” means a company, partnership, or trust;
- “fair market value” has the meaning assigned to it under section 4;
- “farming business” means the business of —
- (a) cultivating land to produce crops; or
 - (b) maintaining livestock for the purpose of sale or sale of their bodily produce;
- “finance lease” means a lease where the lease payment includes an implicit or explicit credit charge;
- “financial reporting standards” —
- (a) means International Financial Reporting Standards as defined under the Companies Act; Cap. 42:01
 - (b) means generally accepted accounting principles issued by the Botswana Accountancy Oversight Authority under the Financial Reporting Act; and Cap. 46:10

(c) in relation to a taxpayer, means the standards referred to in paragraph (a) or (b) used by the taxpayer in the taxpayer's financial accounts;

“foreign asset” means —

- (a) immovable property located outside Botswana;
- (b) membership interest in, or debentures issued by an entity that is a non-resident; or
- (c) an option or right to acquire an asset referred to in paragraph (a) or (b);

“foreign income” is any income that is not Botswana source income;

“immovable property” means land, whether covered by water or not, and includes —

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

“income tax” means income tax imposed under section 9;

“insurance premium” includes a premium relating to reinsurance and any other amount payable in respect of the placement of insurance outside Botswana;

“interest” means —

- (a) an amount, whether described as interest, discount, premium, or otherwise, whether periodical or a lump sum, as consideration for the use of money or being given time to pay;
- (b) an amount, however described, that is functionally equivalent to an amount referred to in paragraph (a), including notional interest amounts under derivative instruments or hedging agreements relating to borrowings, and the financing cost under Islamic financing arrangements;
- (c) an amount —
 - (i) payable under a finance lease that is treated as interest under section 49, or
 - (ii) treated as interest as a result of a transfer pricing adjustment under Regulations made under section 117; or
- (d) a commitment, guarantee, service, or similar fee payable in respect of a debt, or other instrument or agreement giving rise to an amount that is interest under paragraph (a), (b) or (c);

“international financial services centre company” means a company that is an international financial services centre company under section 91;

“international traffic” means any operation of an aircraft, boat, vehicle or train except as between two places in Botswana;

- “Islamic financing arrangements” means transactions or arrangements for the provision of financial services entered into in accordance with Islamic law, principles, and rules;
- “livestock” does not include mules, donkeys or working animals;
- “member”, in relation to an entity, means a person who has a membership interest in the entity;
- “membership interest”, in relation to an entity, means —
- (a) a share in a company, an interest of a guarantor in the profits of a company limited by guarantee or an interest in a collective investment undertaking;
 - (b) an interest in a partnership;
 - (c) an interest or unit in a trust; or
 - (d) any other ownership interest in an entity;
- “mutual association” means —
- (a) a co-operative society under the Co-operative Societies Act; or
 - (b) a body, association or society that is organised and operated exclusively for the benefit of members, other than a burial society;
- “natural resource amount” means —
- (a) an amount, including a premium or like amount, as consideration for the right to take minerals, petroleum, or a living or non-living resource from land or water; or
 - (b) an amount calculated in whole or part by reference to the quantity or value of minerals, petroleum, or a living or non-living resource taken from land or water;
- “net book value”, in relation to a depreciable asset or business intangible, means the cost of the asset or intangible reduced by depreciation deductions allowed in respect of the asset or intangible or that would have been allowed but for section 40 (3);
- “non-approved fund” means a benefit fund that is not an approved benefit fund or a retirement fund that is not an approved retirement fund;
- “non-cash benefit” means any benefit that is not in cash;
- “non-profit organisation” has the meaning assigned to it under section 5;
- “non-resident” means any person who is not a resident of Botswana;
- “performance”, in relation to an entertainer or group of entertainers, includes a sporting event;
- “permanent establishment” has the meaning assigned to it under section 6;
- “person” means an individual, entity, the Government of Botswana, a district or town council, a foreign government, a political subdivision of a foreign government or a public international organisation;

“public international organisation” means an organisation the members of which are sovereign powers or governments of sovereign powers;

“quarter” means a period of three months ending on 30th September, 31st December, 31st March or 30th June of every year;

“received”, in relation to a person, includes —

- (a) applied on behalf of the person either at the instruction of the person or under any law;
- (b) reinvested, accumulated, or capitalised for the benefit of the person;
- (c) credited to an account or carried to a reserve or a fund for the benefit of the person; or
- (d) made available to the person;

“relative”, in relation to an individual, has the same meaning assigned to it under the Tax Administration Act;

“rent” means —

- (a) any consideration for the use or occupation of, or the right to use or occupy any land or building, including any premium, or like amount, but not including a natural resource amount;
- (b) the fair market value of any improvement to land or a building made under an agreement for the use or occupation or the right to use or occupy the land or building, or by virtue of the cessation of such right; or
- (c) an amount in lieu of undertaking an improvement referred to in paragraph (b);

“resident of Botswana” has the meaning assigned to it under section 7;

“resident employee” means an employee who is a resident of Botswana;

“royalty” means any amount, whether periodic or lump sum, payable for the use or the right to use —

- (a) any copyright of literary, artistic, or scientific work, including cinematograph films, and films or tapes for radio, television, or internet broadcasting;
- (b) any patent, trademark, design or model, plan, or secret formula or process, or other like property or right;
- (c) any industrial, commercial, or scientific equipment;
- (d) any information concerning industrial, commercial or scientific experience; or
- (e) any software;

“spouse” has the same meaning assigned to it under the Tax Administration Act;

“stock” means —

- (a) anything produced, manufactured, purchased, or otherwise acquired for the purposes of manufacture, production, sale, or exchange to derive taxable business income;
 - (b) any raw materials or consumables used in a manufacturing or production process referred to in paragraph (a); or
 - (c) any livestock of a farming business conducted to derive taxable business income;
- “tax year” means a period of 12 months beginning on 1st July and ending on 30th June;
- “taxable business income” means business income included in gross income;
- “taxable employment income” means employment income included in gross income;
- “taxable income” has the meaning assigned to it under section 13;
- “taxable investment income” means investment income included in gross income;
- “taxpayer” means a person liable for tax under this Act and includes a person who has a loss for a tax year under section 26 (3) or (4);
- “technical fee” means any amount payable for —
- (a) an administrative, managerial, technical, or consulting service or any similar service, whether or not such service is of a professional nature, but not including employment income; or
 - (b) the development or customisation of software;
- “trust” includes —
- (a) a trust, non-profit trust, a foundation or any other arrangement through which the ownership in property of one person is by virtue of a trust instrument made over or bequeathed —
 - (i) to another person, the trustee, in whole or in part, to be administered or disposed of according to the provisions of the trust instrument for the benefit of the person or class of persons designated in the trust instrument or for the achievement of the object stated in the trust instrument, or
 - (ii) to the beneficiaries designated in the trust instrument, which property is placed under the control of another person, the trustee, to be administered or disposed of according to the provisions of the trust instrument for the benefit of the person or class of persons designated in the trust instrument or for the achievement of the object stated in the trust instrument;
 - (b) the estate of a deceased person; and

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Cap. 31:05

(c) an arrangement entered into, outside Botswana that has legal characteristics substantially similar to those of a trust settled or created in Botswana;

“trustee” means any person, including the founder or settlor of a trust who acts as trustee by virtue of an authorisation under section 7 of the Trust Property Control Act, and includes any person whose appointment as trustee is already in force at the commencement of the Trust Property Control Act and includes —

(a) the executor of the estate of a deceased person; and

(b) a person who owes a fiduciary duty under an arrangement treated as a trust under paragraph (c) of the definition of “trust”;

“withholding agent” means a person liable to withhold tax under Division II of Part VII of the Act, from a payment made by the person and includes an employee required to self-withhold tax under section 130, from employment income received by the employee;

“withholding income” means income from which tax is required to be withheld under Division II of Part VII of the Act; and

“withholding tax” means tax withheld from withholding income under Division II of Part VII of the Act.

(2) A reference to a period of days shall be a reference to a consecutive period of days unless the Act provides otherwise.

Act binding on State

3. This Act binds the State.

Fair market value

4. (1) Subject to section 117, a fair market value of an asset, service, or benefit at a particular time is the ordinary open market value of the asset, service, or benefit at that time.

(2) Where the determination of the fair market value of an asset, service, or benefit is not possible at a particular time under subsection (1), the fair market value is the consideration a similar asset, service, or benefit would ordinarily fetch in the open market at that time, adjusted to take account of the differences between the similar asset, service, or benefit and the actual asset, service, or benefit.

(3) For the purposes of subsection (2), an asset, service, or benefit is similar to another asset, service, or benefit, if it is the same as, or closely resembles the other asset, service, or benefit having regard to the character, quality, quantity, functionality, material, risk, and reputation.

(4) Where the fair market value of an asset, service, or benefit cannot be determined under subsections (1) and (2), the fair market value shall be the amount determined by the Commissioner General, provided it is consistent with generally accepted principles of valuation.

Non-profit organisation

5. (1) A company or irrevocable trust is a non-profit organisation, if the following conditions are met —

(a) the company or trust is established —

- (i) to provide relief to those suffering from poverty, distress, or the effects of a natural disaster, or
 - (ii) for the advancement of education, religion, or sport;
 - (b) no part of the income or other funds, or assets, of the company or trust are used, or are available for use for the private benefit of a member of the company or beneficiary of the trust;
 - (c) the Commissioner General is satisfied that not less than 80 per cent of the income of the company or trust will be utilised annually for the purpose for which the company or irrevocable trust was established; and
 - (d) the Commissioner General has approved, in accordance with the procedure as may be prescribed, that the company or trust is a non-profit organisation and the approval is currently in force.
- (2) An application to the Commissioner General by a company or irrevocable trust for approval as a non-profit organisation shall be in such form as may be prescribed.
- (3) The approval of a company or trust as a non-profit organisation shall take effect from the date specified in the notice of approval and remains in force until the —
- (a) company or trust ceases to satisfy the conditions in subsection (1); or
 - (b) approval lapses as set out in the approval notice.
- (4) Subject to subsection (5), a company or trust shall within 28 days inform the Commissioner General, by notice in writing, if it no longer satisfies the conditions for approval as a non-profit organisation in subsection (1).
- (5) Notwithstanding subsection (1) (c), on written application by a non-profit organisation, the Commissioner General may allow, by notice in writing, the non-profit organisation to accumulate income for a specified period where the Commissioner General is satisfied that the accumulation is necessary for achieving the purpose for which the non-profit organisation was established.
- 6.** (1) A permanent establishment is a fixed place of business through which a business of a person is wholly or partly conducted.
- (2) The following shall be treated as a permanent establishment —
- (a) a place of management, branch, office, factory, warehouse, or workshop, but not an office that has representation of a person's business as its sole activity;
 - (b) a mine site, oil or gas well, quarry, or place of exploration for, or exploitation of, natural resources;
 - (c) an installation or structure used for the exploration for, or exploitation of, natural resources, but only if the installation or structure is used or available for use for a period of more than 183 days; or

Permanent
establishment

(d) the furnishing of services, including consultancy services, by a person, including through employees or other personnel engaged by the person for such purpose, but only if activities of that nature continue or a period or periods aggregating more than 183 days in any 12-month period.

(3) Subject to subsection (4), a building site, construction, assembly, or installation project, or supervisory activities connected with such site or project is a permanent establishment if the site, project, or activities continue for more than 183 days.

(4) When a person operates a building site, or conducts a project or activity referred to in subsection (3), any connected activity conducted by an associate will be added to the period of time during which the first-mentioned person has operated the building site or conducted the activities for the purpose of determining whether the 183 days period is exceeded.

(5) Notwithstanding subsection (2), where a person referred to as the “agent”, acts on behalf of another person referred to as the “principal”, the agent is a permanent establishment of the principal, if the agent —

- (a) regularly negotiates contracts on behalf of the principal, whether the contracts are concluded in the name of the principal or the agent; or
- (b) maintains a stock of goods from which the agent regularly delivers goods on behalf of the principal.

Resident of
Botswana

7. (1) The following persons are residents of Botswana —

- (a) a resident individual, resident company, resident partnership and resident trust; and
- (b) the Government of Botswana or a local authority in Botswana.

(2) Subject to subsections (4) and (5), a resident individual is an individual who —

- (a) has his or her permanent home in Botswana;
- (b) is physically present in Botswana for a period of, or periods amounting in aggregate to 183 days in any 12-month period commencing or ending during a tax year; or
- (c) is an employee or official of the Government posted outside Botswana.

(3) For the purposes of subsection (2) (b), an individual shall be treated as physically present in Botswana during any period that he or she is temporarily absent for business, recreation, or similar purposes, and presence in Botswana for any part of a day shall be counted as a whole day.

(4) An individual who is a resident individual under subsection (2) in relation to a tax year, in this section referred to as the “current tax year”, but who was not a resident individual for the preceding tax year shall be treated as a resident individual in the current tax year only for the period commencing on the day on which the individual was first present in Botswana.

(5) An individual who is a resident individual under subsection (2) for the current tax year, but who is not a resident individual for the following tax year, shall be treated as a resident individual in the current tax year only for the period ending on the last day on which the individual was present in Botswana.

(6) A temporary resident is an individual who is a resident individual solely for the purposes of engaging in employment in Botswana for a period of not more than three years, but not including a Botswana citizen or permanent resident of Botswana.

(7) A resident company is a company that —

- (a) has its registered office, or place of incorporation or other formation, in Botswana;
- (b) is managed and controlled in Botswana; or
- (c) is a collective investment undertaking that is a resident of Botswana under the Collective Investment Undertakings Act.

(8) A resident partnership is a partnership that is —

- (a) formed in Botswana; or
- (b) managed and controlled in Botswana.

(9) A resident trust is a trust that —

- (a) is established or settled in Botswana;
- (b) is the estate of a deceased resident individual; or
- (c) is administered in Botswana.

(10) A person who is a resident of Botswana for a part of a tax year shall be treated as a resident for the whole of the year, except when subsections (4) and (5) apply.

8. (1) Subject to subsection (3), employment income derived by an employee shall be Botswana source income —

Botswana
source income

- (a) to the extent that it is derived in respect of employment exercised in Botswana, wherever paid;
- (b) if it is paid to the employee by, or on behalf of, the Government of Botswana, wherever the employment is exercised; or
- (c) for an amount included in employment income under section 18, if the employment giving rise to benefits under the employee share scheme is exercised in Botswana.

(2) For the purposes of subsection (1) (a), services performed by a resident employee outside Botswana for his or her employer or an associate of his or her employer during a temporary absence from Botswana shall be treated as part of the employee's employment in Botswana.

(3) Employment income derived by a resident employee shall be Botswana source income if —

- (a) the income is derived from employment as a driver of a vehicle or train, or an officer or a member of the crew of an aircraft, boat, train, or vehicle; and
- (b) the aircraft, boat, train, or vehicle is operated by a resident of Botswana in international traffic.

(4) Subject to subsection (5), business income derived by a resident of Botswana shall be Botswana source income except to the extent that it is attributable to a business conducted by the resident through a permanent establishment outside Botswana.

(5) Business income derived by a resident of Botswana shall be Botswana source income if the income is derived from the operation of an aircraft, boat, train, or vehicle, in international traffic.

(6) Business income derived by a non-resident shall be Botswana source income to the extent that it is attributable to —

- (a) a business conducted by the non-resident through a permanent establishment in Botswana;
- (b) any sale in Botswana by the non-resident of goods or merchandise of the same or similar kind as those sold by the non-resident through a permanent establishment in Botswana; or
- (c) any other business activity conducted by the non-resident in Botswana similar to that conducted by the non-resident through a permanent establishment in Botswana.

(7) Notwithstanding the provisions of this section, income derived by a person shall be Botswana source income if it is —

- (a) a dividend or director's fee paid by a resident company;
- (b) rental income from the lease of Botswana immovable property;
- (c) a gain arising from the disposal by a resident of Botswana of an asset other than a foreign asset;
- (d) a gain arising from the disposal by a non-resident of a Botswana asset;
- (e) an insurance premium relating to the insurance of a risk in Botswana;
- (f) a natural resource amount when it relates to the taking of minerals, petroleum, or other living or non-living resource from Botswana;
- (g) an entertainment fee derived from a performance taking place in Botswana; or
- (h) interest, a royalty, technical fee, pension, or annuity that is —
 - (i) paid to the person by a resident of Botswana, other than as an expenditure of a business conducted by the resident through a permanent establishment outside Botswana, or
 - (ii) paid to the person by a non-resident as an expenditure of a business conducted by the non-resident through a permanent establishment in Botswana.

PART II — *Charge to Tax*

Imposition of
income tax

9. (1) Subject to this Act, income tax shall be imposed for each tax year at the rate specified in Schedule 1, on a person who has taxable income for the year.

(2) The income tax payable by a person for a tax year shall be calculated by applying the income tax rate specified in Schedule 1, to the taxable income of the person for the year.

(3) An income tax credit allowed to a person for a tax year shall be offset against the person's income tax liability for the year as calculated under subsection (2).

(4) Where a person is allowed more than one income tax credit for a tax year, the tax credits shall be applied in the following order —

- (a) a foreign tax credit allowed to a person under section 96 for the year; and
- (b) any refundable income tax credit allowed to a person for the year.

(5) In this section —

- (a) “income tax credit” means a tax credit allowed to a person under this Act, for offset against the person's income tax liability; and
- (b) “refundable income tax credit” means an income tax credit allowed under sections 64 (5), 127 (11) and 141.

10. (1) A non-resident tax is imposed at a rate specified in Schedule 1 on a non-resident —

Imposition of
non-resident
tax

- (a) who has derived interest, a dividend, royalty, technical fee, natural resource amount, director's fee, or insurance premium, that is Botswana source income;
- (b) who is an entertainer, or a group of non-resident entertainers, who have derived an entertainment fee from the participation by the entertainer or group, in a performance taking place in Botswana; or
- (c) with a permanent establishment in Botswana that has a repatriated profit for a tax year, as determined under section 99.

(2) Where an entertainment fee for a performance by a non-resident entertainer or member of a group is derived by a person other than a non-resident entertainer or non-resident member of a group, subsection (1) shall apply to the entertainment fee derived by that other person.

(3) The non-resident tax payable by a non-resident —

- (a) under subsection (1) (a) or (b), shall be calculated by applying the rate of tax specified in Schedule 1 to the gross amount of the interest, dividend, royalty, technical fee, natural resource amount, director's fee, insurance premium, or entertainment fee; or
- (b) under subsection (1) (c) for a tax year, shall be calculated by applying the rate of tax specified in Schedule 1 to the repatriated profit of the permanent establishment of the non-resident, for the tax year as calculated under section 99.

(4) Subsection (1) (a) shall not apply to —

- (a) exempt income; or
- (b) an amount that is attributable to a business conducted by a non-resident through a permanent establishment in Botswana and, in that case, the amount is taxable under section 9.

Imposition of international transport income tax

(5) For the purposes of this section, the repatriated profit of a Botswana permanent establishment of a non-resident, shall be treated as derived by a non-resident on the date that the income tax is payable by the non-resident for the tax year, to which the repatriated profit relates.

(6) The tax payable under subsection (1) (a) or (b) is discharged, if the amount of the tax has been withheld from the payment of the income in accordance with section 132.

(7) For the purposes of this section, “group”, in relation to an entertainer, includes a sporting team.

11. (1) Subject to this Act, international transport income tax is imposed at the rate specified in the Schedule 1 on a non-resident operating an aircraft, boat, train or vehicle, in international traffic.

(2) The international transport income tax payable by a non-resident under subsection (1), shall be calculated by applying the rate specified in the Schedule 1 to the gross amount derived by the non-resident for the carriage of passengers, livestock, mail, merchandise, or goods embarked or loaded in Botswana and destined for a place outside Botswana.

(3) This section shall not apply to the following —

(a) an amount that is exempt income; or

(b) an amount derived in respect of the following —

(i) a passenger who is in Botswana as a result of being in transit between two places outside Botswana, or

(ii) the transshipment of livestock, mail, merchandise or goods.

General provisions relating to taxes imposed under this Part

12. The following applies to tax imposed under sections 10 and 11 —

(a) tax that is a final tax, on the income in respect of which it is imposed; and

(b) in computing the taxable amount under those sections, a deduction shall not be allowed for any expenditure incurred by the person in deriving the income.

PART III — *Basic Principles of Income Tax*

Division I — *Taxable Income*

Calculation of taxable income

13. The taxable income of a taxpayer for a tax year, shall be the gross income of the taxpayer for the year, reduced by the total amount of deductions allowed to the taxpayer for the year.

Division II — *Gross Income*

Calculation of gross income

14. (1) Subject to this Act, the gross income of a taxpayer for a tax year shall be the total of the following —

(a) employment income, business income, and investment income, derived by the taxpayer during the year;

- (b) any unexplained and unidentified deposits made during the year into a bank account, if the deposit can be traced to the taxpayer; and
 - (c) an amount under this Act included in the gross income of the taxpayer, for the year.
- (2) The gross income of a resident of Botswana, other than a temporary resident, shall include income derived from all sources within and outside Botswana.
- (3) The gross income of a non-resident or a temporary resident shall include only Botswana source income.
- (4) The following amounts shall not be included in gross income —
- (a) exempt income;
 - (b) any amount subject to tax under section 10 or 11; and
 - (c) any amount subject to final withholding tax under section 140.

15. (1) For purposes of this Act, the “business income” of a taxpayer means the following amounts —

Business
income

- (a) the gross amount derived by the taxpayer from the conduct of a business, including the consideration for the disposal of stock and the gross fees, from the provision of services;
- (b) an amount derived by the taxpayer under any contract of insurance or indemnity against loss of profits of a business or by way of compensation or damage for loss of profits of a business;
- (c) an amount derived by a taxpayer by way of a subsidy or grant for, or in relation to, the conduct of a business;
- (d) the net foreign currency exchange gain of the taxpayer, calculated under Division VII of this Part;
- (e) the amount of a debt obligation of the taxpayer released or waived by a creditor;
- (f) a gain derived by the taxpayer from disposal of a business asset held by the taxpayer on a revenue account, other than stock to which paragraph (a) applies; and
- (g) any other amount included in the business income of the taxpayer, under this Act.

(2) Where a taxpayer conducts more than one business, the business income derived by the taxpayer shall be treated as being derived from a single business, unless otherwise as provided under this Act.

(3) Subject to this Act, the amount of the gain on disposal of a business asset included in business income under subsection (1) (f), shall be the amount by which the consideration for the disposal of the asset exceeds the cost of the asset at the time of disposal.

16. (1) For purposes of this Act and subject to sections 18 and 19, the “employment income of an employee”, means the following amounts —

Employment
income

- (a) an amount derived by the employee by way of wages, salary, leave pay, payment in lieu of leave, overtime pay, fee, stipend, commission, bonus, or gratuity;

- (b) an amount derived by the employee in commutation of moneys due under any contract of employment or service, or any amount received in commutation of a pension;
 - (c) a travelling, entertainment, or other allowance derived by the employee, other than an allowance to be expended solely in the performance of the employee's duties of employment;
 - (d) the amount of any expenditure incurred by the employee that is reimbursed by the employer, other than expenditure incurred by the employee on behalf of the employer, solely in the performance of the employee's duties of employment;
 - (e) the value of a non-cash benefit provided to the employee, in such manner as may be prescribed;
 - (f) a pension, annuity or supplement to a pension or annuity derived by the employee in respect of employment, including past employment;
 - (g) subject to this section, an amount derived by an employee on termination of employment, whether paid voluntarily, under an agreement, or as a result of legal proceedings, including compensation for redundancy or loss of employment, severance pay, or a golden handshake payment;
 - (h) the amount of contributions made for the benefit of the employee to an approved retirement fund that the employee has elected to withdraw from the fund in accordance with the rules of the fund and such regulations as may be prescribed;
 - (i) subject to subsection (3), a lump sum amount derived by the employee where there is a retrospective salary adjustment, or after reinstatement in employment following dismissal or suspension from duty with reduced pay or without pay;
 - (j) an amount derived by the employee under any contract of insurance or indemnity against loss of employment income; and
 - (k) any other amount included in the employment income of the employee under this Act.
- (2) The Minister may prescribe reasonable limits on the excluded amounts, under subsection (1) (c) or (d).
- (3) Where an amount referred to in subsection (1) (i) relates to a period of more than one tax year, the amount shall be included on a proportional basis in the employment income of the employee for the tax years in which the amount was derived or would have been paid up to a maximum of eight years or as may be prescribed.
- (4) Any time limits prescribed in the Tax Administration Act, on the making or amending of assessments, shall not apply for the purposes of the Commissioner General giving effect to subsection (3).
- (5) The employment income of an employee shall not include the following –
- (a) any reimbursement or discharge by an employer of the medical expenses of the employee, including medical insurance premiums;

- (b) the cost incurred by an employer on providing the employee, and the spouse and dependent children of the employee, with passage to and from the employee's place of origin or recruitment to the employee's place of employment at the commencement and termination of the employee's employment;
 - (c) an approved service gratuity or severance pay derived by an employee during a tax year, whether the gratuity or pay is derived during the course of the employee's employment or on termination of employment, when the whole of the gratuity or severance pay has been directly invested on the employee's behalf in an approved retirement fund;
 - (d) a contribution made by an employer to an approved benefit fund, approved retirement fund, or non-approved fund for the benefit of the employee; or
 - (e) a stipend given to an employee as a training expense or allowance.
- (6) Subsection (5) (c) and section 17 shall not apply to the following payments by an employer unless the Commissioner General is satisfied that the payment is a bona fide arm's length payment for an employer —
- (a) who is an individual, a payment made to an employee who is a relative of the employer;
 - (b) that is a partnership, a payment made to an employee who is a relative of a partner in a partnership; or
 - (c) that is a company, a payment made to an employee who is a member of the company, or who is a relative of a member of a company.
- (7) An employee shall be treated as having derived an amount of employment income irrespective of whether it is provided by —
- (a) the employer of the employee;
 - (b) an associate of the employer; or
 - (c) a third party under an arrangement with the employer or an associate of the employer of the employee.
- (8) An amount is derived by an employee even though it is paid or provided to —
- (a) an associate of the employee by the employer of the employee;
 - (b) an associate of the employer, on behalf of the employee; or
 - (c) a third party under an arrangement with the employer or an associate of the employer of the employee.
- 17.** (1) This section shall apply to —
- (a) an approved service gratuity or severance pay derived by an employee to which section 16 (5) (c) does not apply;
 - (b) severance pay derived by an employee on termination of employment;
 - (c) a gratuity derived by an employee on termination of a contract of employment; or

Gratuities,
severance
pay and
retrenchment

B.870

Employee
share scheme
benefits

- (d) an amount derived by an employee under a retrenchment package when the employee's contract of employment is terminated by the employer, for the purpose of reducing the size of the employer's workforce.
 - (2) When an employee has derived an amount to which this section applies, the amount shall be taxed as follows —
 - (a) the non-taxable component of the amount derived shall not be included in the employment income of the employee; and
 - (b) the balance of the amount shall be treated as employment income derived by the employee on whichever of the following basis gives rise to the lower tax liability for the employee in respect of the amount —
 - (i) on the date that the amount was received by the employee, or
 - (ii) in equal successive annual instalments over the lesser of the term of the contract or three years, the last of which is treated as having been derived on the date that the amount was received by the employee.
 - (3) The non-taxable component of an amount in this section shall be 50 per cent of the amount derived.
- 18.** (1) The value of a right or option to acquire shares granted to an employee under an employee share scheme, shall not be included in gross income.
- (2) Subject to subsection (3), if an employee is allotted shares —
 - (a) under an employee share scheme; or
 - (b) as a result of the exercise of an option or right to acquire the shares,the fair market value of the shares at the date of allotment reduced by the employee's contribution for the shares, shall be included in the employment income of the employee for the tax year in which the shares were allotted to the employee.
 - (3) Where shares allotted to an employee under an employee share scheme are subject to a restriction on the transfer of the shares —
 - (a) the amount referred to in subsection (2), shall be included in the employment income of the employee on the earlier of the date, the employee —
 - (i) is able to transfer the shares, or
 - (ii) disposes of the shares; and
 - (b) the amount included in the employment income of the employee, shall be the fair market value of the shares at the time applicable under paragraph (a), reduced by the employee's contribution for the shares.
 - (4) Where subsection (2) or (3) applies under this Act, the cost of shares to the employee shall be the sum of the employee's contribution for the shares and the amount included in the employment income, under this section.

(5) A gain derived on the disposal by an employee of a right or option to acquire shares under an employee share scheme, shall be included in the employment income, in the tax year, in which the disposal occurs.

(6) In this section —

(a) “employee’s contribution”, in relation to shares allotted to an employee under an employee share scheme, means the sum of the consideration, if any, given by the employee —

- (i) for the shares, and
- (ii) for the grant of any right or option to acquire the shares; and

(b) “employee share scheme” means an agreement or arrangement under which a company that is an employer may allot shares in the company to —

- (i) an employee of the company or an employee of a company, that is an associate of the first-mentioned company, or
- (ii) a trust and, under a trust deed, a trustee may transfer the shares to an employee of the company or an employee of a company that is an associate of the first-mentioned company.

19. (1) A pension derived by an individual from an approved retirement fund shall be subject to tax as follows —

Payments
by approved
retirement
fund

(a) the non-taxable amount of the pension or annuity, shall be exempt income; and

(b) the balance shall be included in the gross income of the individual.

(2) Subject to subsection (3), a lump sum amount derived by an individual from an approved retirement fund that is a provident fund, shall be included in the gross income of the individual.

(3) An individual who derives a lump sum amount from an approved retirement fund that is a provident fund may —

- (a) retain up to the non-taxable amount as exempt income; and
- (b) transfer the balance to an approved retirement fund in return for the payment of a pension or annuity.

(4) In this section, the “non-taxable amount” of a pension or lump sum amount shall be 50 per cent of such pension or lump sum amount.

20. (1) For the purposes of this Act and subject to subsection (2), the investment income of a taxpayer means the following amounts —

Investment
income

- (a) a dividend, interest, royalty, rent, pension, annuity, or supplement to a pension or annuity derived by the taxpayer;
- (b) any other amount derived by the taxpayer from the provision, use, or exploitation of property; and
- (c) any other amount included in the investment income of the taxpayer under this Act.

(2) The investment income of a taxpayer shall not include an amount that is business or employment income of the taxpayer.

21. (1) Where a taxpayer has purchased an annuity, the amount of the annuity included in the investment income of the taxpayer shall be reduced by the capital component of the annuity.

Purchased
annuities

(2) Subject to subsection (3), the capital component of an annuity shall be calculated according to the following formula —

$$(A - B) / C$$

where —

- A is the undeducted purchase price of the annuity;
- B is the residual capital value of the annuity; and
- C is the relevant number in relation to the annuity.

(3) Where an annuity is derived by more than one person, the capital component of the annuity for a person deriving the annuity is calculated, according to the following formula —

$$A \times B / C$$

where —

- A is the amount set out under subsection (2);
- B is the amount of the annuity derived by the person; and
- C is the total amount of the annuity derived by all persons entitled to the annuity.

(4) In this section —

- (a) “life expectancy factor”, in relation to an annuity, means the number of whole years of the life expectancy of a person, as set out under prescribed life tables, at the time the first payment of the annuity occurs;
- (b) “relevant number”, in relation to an annuity, means —
 - (i) for an annuity payable for a number of years, the number of years the annuity is payable,
 - (ii) for an annuity payable during the lifetime of a person, the life expectancy factor of the person, or
 - (iii) for any other annuity, the number of years that the annuity is reasonably expected to be payable;
- (c) “residual capital value”, in relation to an annuity, means the capital amount payable on termination of the annuity; and
- (d) “undeducted purchase price”, in relation to an annuity, means the purchase price of the annuity, that shall not be allowed as a deduction under the Act.

Tenant’s
fixtures

22. (1) A taxpayer to whom a right has accrued in a tax year to have improvements effected to the taxpayer’s land or building to which paragraph (b) of the definition of “rent” in section 2 refers may, by notice in writing to the Commissioner General, elect that the fair market value of such improvements shall be included in the taxpayer’s gross income for the tax year in which the land or building reverts to the taxpayer.

(2) A taxpayer shall furnish a notice under subsection (1) to the Commissioner General by the due date for furnishing the taxpayer’s return for the tax year in which the improvements were effected to the taxpayer’s land or building.

23. Where a taxpayer has been allowed a deduction for any expenditure incurred, or bad debt written off, in the calculation of the taxable income of the taxpayer for a tax year and, subsequently, the taxpayer has received, in cash or in kind, any amount as a recovery or reimbursement of, or an indemnity for the expenditure or debt, the amount received shall be —

Recovered
deductions

- (a) included in the gross income of the taxpayer in the tax year in which it is received; and
- (b) treated as income of the same character as the income to which the deduction related.

Division III — *Exempt Income*

24. (1) An amount shall be exempt income for purposes of this Act if —

Exempt
income

- (a) the amount is listed in Schedule 2; or
- (b) the amount is treated as exempt income under the Act.

(2) The treatment of an amount as an exempt income under subsection (1), shall be limited to the person who has derived the amount, referred to as the “recipient”, and shall not extend to any person receiving a payment from the recipient that has been wholly or partly made out of exempt income.

(3) The Minister shall by way of Notice in the *Gazette*, publish the names of any recipient under an agreement with Government for the provision of technical assistance, within 30 days after the agreement has come into effect.

25. (1) A provision in another law or agreement providing that an amount is exempt income or subject to a reduced rate of tax shall not have legal effect unless also provided under this Act.

Tax
exemptions
and
concessions in
other laws and
agreements

(2) A provision in another law or agreement providing for concessional treatment of any expenditure for tax purposes, shall not have legal effect, unless also provided for under this Act.

Division IV — *Allowable Deductions*

26. (1) Subject to this Act, a taxpayer shall be allowed a deduction for a tax year for any expenditure to the extent necessarily incurred by the taxpayer during the year in deriving amounts included in gross income.

General
principles of
deductibility

(2) Where a taxpayer derives more than one class of income during a tax year, any deductions allowed to the taxpayer under this Act for the year, shall be deducted against the class of income to which the deductions relate.

(3) Where the total amount of deductions allowed to a taxpayer other than the deduction allowed under section 37 for a tax year in deriving taxable business income exceeds the total amount of taxable business income derived by the taxpayer for the year, the excess shall not be deducted against any other class of income but shall be carried forward as an assessed business loss under section 37.

(4) Where the total amount of deductions allowed to a taxpayer for a tax year in deriving taxable investment income exceeds the total amount of taxable investment income derived by the taxpayer for the year, the excess shall not be deducted against any other class of income and shall not be carried forward as a loss to the following tax year.

(5) In this section, “class of income” means taxable business income, taxable investment income, and taxable employment income.

Special rules
on deductions

27. (1) Subject to this Act, a taxpayer shall be allowed a deduction for a tax year, for the following amounts —

- (a) the cost of stock disposed of by the taxpayer during the tax year, as determined under section 51;
- (b) the total amount by which the depreciable assets and business intangibles of a person have declined in value during the tax year from use in deriving amounts included in gross income as determined under section 39;
- (c) a loss on disposal of a business asset held on revenue account other than trading stock by the taxpayer during the tax year;
- (d) expenditure incurred by a company during a tax year for purposes of having the company shares listed under the Botswana Stock Exchange, and for maintaining the listing annually;
- (e) fees incurred by the taxpayer during a tax year on tax agent services provided to the taxpayer by a registered tax agent;
- (f) the cost of acquisition of an approved device and approved software for use under the electronic billing system;
- (g) an annual allowance calculated in accordance with subsection (4) for expenditure incurred by the taxpayer pursuant to an obligation to effect improvements on land or buildings under an agreement whereby another person has granted the taxpayer the right of use or occupation of the land or buildings and the land or buildings are used or occupied by the taxpayer in deriving amounts included in the taxpayer’s gross income; and
- (h) any other amount allowed as a deduction to the taxpayer under this Act for the tax year.

(2) For purposes of subsection (1) (c), a loss on disposal of a business asset is the amount by which the cost of the asset at the time of disposal exceeds the consideration for the disposal.

(3) The allowance referred to in subsection (1) (g) shall be —

- (a) successive annual deductions equal to the amount of expenditure incurred divided by the number of years of use or occupation or one twenty- fifth of that amount, whichever is the greater;

- (b) calculated from the date on which improvements are completed; and
- (c) allowed as a deduction from the tax year in which the improvements are completed.
- (4) For the purposes of subsections (1) (g) and (3) —
 - (a) any grant of land or buildings for a fixed period, including a fixed period State grant, shall be treated as an agreement whereby the right of use or occupation of the land or buildings is granted by one person to another person; and
 - (b) where a person is entitled to the use or occupation of land and buildings for an indefinite period, the person is treated as 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.
- (5) In this section —
 - (a) “registered tax agent” has the same meaning assigned to it under the Tax Administration Act; and
 - (b) “tax agent services” has the same meaning assigned to it under the Tax Administration Act.

28. (1) Subject to subsections (2) and (3), an employer shall be allowed a deduction for the amount of a contribution paid by the employer in a tax year to an approved retirement fund for the benefit of an employee, other than by way of deduction from the salary or wages of the employee or which is otherwise recovered from the employee.

Contribution
to approved
retirement
fund

(2) The amount of the deduction allowed under subsection (1) in respect of an employee for a tax year, shall not exceed 20 per cent of the employment income paid by the employer to the employee for the year.

(3) Where an employer has made a lump sum contribution to an approved retirement fund for the benefit of an employee, the Commissioner General may determine that the contribution shall be deducted in a number of successive equal annual deductions commencing in the tax year, in which the contribution was made.

(4) Subject to subsections (5) and (6), a resident individual shall be allowed a deduction for the amount of a contribution paid by the resident individual in a tax year to an approved retirement fund for the benefit of the resident individual, but only where the contribution is paid out of Botswana source income derived by that individual.

(5) The amount of the deduction allowed under subsection (4) by a resident individual, shall not exceed 15 per cent of the taxable income of the resident individual for the year.

- (6) Subsection (4) shall not apply to —
 - (a) a Minister or Member of Parliament who is entitled to a pension or gratuity that is exempt under paragraph 13 of Part II of Schedule 2; or

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- (b) an employee who is entitled on termination of his or her contract, to a gratuity which is exempt under paragraph 16 of Part II of Schedule 2.
- 29.** (1) An employer shall be allowed a deduction for the amount of a contribution paid by the employer in a tax year to an approved benefit fund for the benefit of an employee, other than by way of deduction from the salary or wages of the employee or which is otherwise recovered from the employee.
- (2) Subject to subsection (3), the amount of the deduction allowed under subsection (1) in respect of an employee for a tax year, shall not exceed 20 per cent of the employment income paid by the employer to the employee for the year.
- (3) Where an employer is allowed a deduction under subsection (1) and section 28 (1) in respect of an employee in a tax year —
- (a) the total deduction shall not exceed 20 per cent of the employment income paid by the employer to the employee for the year; and
- (b) the deduction under section 28 (1), shall be allowed first.
- 30.** (1) An employer shall be allowed a deduction for a tax year for the amount of an annuity paid during the year to —
- (a) a former employee who retired from the employment of the employer due to age or infirmity; or
- (b) a dependent of a former employee who is deceased.
- (2) The amount of deduction allowed under subsection (1) in respect of a former employee or dependent of a deceased employee for a tax year, shall not exceed such amount, as may be prescribed.
- 31.**(1) A taxpayer carrying on business in Botswana may deduct 200 per cent of the amount of the expenditure incurred by the taxpayer on training approved by the Commissioner General, on application to the Commissioner General, in such form as may be prescribed.
- (2) This section shall not apply to a taxpayer who is entitled to a reimbursement of training expenditure under the Botswana Qualifications Authority Act.
- 32.** (1) A taxpayer, other than a bank, shall be allowed a deduction for a tax year for a bad debt where the following conditions are satisfied —
- (a) the amount of the debt —
- (i) was previously included in the gross income of the taxpayer, or
- (ii) is money lent by the taxpayer, other than a bank, in the normal course of carrying on a business of money lending to derive taxable business income;
- (b) the debt or part of the debt is written off in the taxpayer's financial accounts for the tax year in accordance with financial reporting standards; or
- (c) there are reasonable grounds for believing that the debt is irrecoverable.

Contribution to approved benefit fund

Annuity paid to former employee or dependent

Approved training expenditure

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Bad or doubtful debts

(2) The amount of the deduction allowed to a taxpayer under this section for a tax year, shall not exceed the amount of the debt written off in the taxpayer's financial accounts for that year.

(3) A bank shall be allowed a deduction for a tax year for the provision for bad or doubtful debts in its financial accounts, in such manner as may be prescribed.

33. (1) A taxpayer shall be allowed a deduction of 100 per cent of the scientific research expenditure incurred during a tax year, to the extent that the expenditure is incurred for the purpose of deriving taxable business income.

Scientific
research
expenditure

(2) In this section —

(a) “scientific research” means experimental activities whose outcomes cannot be known or determined in advance on the basis of current knowledge, information, or experience, but can be determined by undertaking a systematic process of research based on principles of established science;

(b) “scientific research expenditure”, in relation to a taxpayer conducting business, means —

(i) expenditure incurred by the taxpayer in undertaking scientific research for purposes of developing the taxpayer's business, or

(ii) a contribution made by the taxpayer to a scientific research institution that is used by the institution in undertaking scientific research for the purposes of developing the taxpayer's business,

but does not include expenditure incurred —

(i) to acquire a depreciable asset other than a depreciable asset that, by its nature, can be used for purpose of undertaking scientific research,

(ii) for the acquisition of immovable property, or

(iii) for the purpose of ascertaining the existence, location, extent, or quality of a natural deposit; and

(c) “scientific research institution” means an association, institute, college or university that undertakes scientific research.

34. (1) Subject to subsections (3) and (4), a taxpayer shall be allowed a deduction for a tax year for a donation made during the year to —

Donations

(a) a non-profit organisation;

(b) the Government, in respect of the provision of health facilities or an approved health institution; or

(c) any other beneficiary, as may be prescribed.

(2) Subject to subsections (3) and (4), a taxpayer shall be allowed a deduction for a tax year for a donation made during the year to the Government, in response to an emergency call issued by the Government —

(a) to prevent or provide relief in relation to man-made or natural disasters, an epidemic, or pandemic; or

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(b) for any other similar cause.

(3) A taxpayer shall be allowed a deduction under this section for a tax year if the total amount of donations referred to in subsection (1) or (2) made by the taxpayer for the year, is P1 000 or more.

(4) The amount of the deduction that a taxpayer is allowed under subsection (1) for a tax year, shall not exceed 20 per cent of the taxpayer's taxable income for the year, before allowance of the deduction under this section.

Entertainment
expenditure

35. (1) Subject to subsection (2), a taxpayer shall be allowed a deduction of 50 per cent of the expenditure on entertainment incurred by the taxpayer during a tax year, in deriving taxable business income.

(2) Notwithstanding subsection (1), a taxpayer shall be allowed a deduction of 100 per cent of the expenditure on entertainment incurred by the taxpayer during a tax year, in deriving taxable business income where the expenditure is incurred in providing —

- (a) a benefit to an employee, the value of which is either included in the taxable employment income of the employee or is exempt income; or
- (b) entertainment in the ordinary course of the taxpayer's core business, if that business activity involves providing entertainment to customers.

(3) In this section "entertainment" means the provision of accommodation food, drink, or recreation, other than food or drink to the extent to which it is provided in respect of travel for employment or business.

Limitation
on interest
deduction

36. (1) Subject to this Act, a taxpayer shall be allowed a deduction for interest expense for a tax year to the extent necessarily incurred by the taxpayer during the year, in deriving gross income.

(2) The total amounts of interest expense of a taxpayer allowed as a deduction for a tax year, shall not exceed the total of the following amount —

- (a) the total interest income derived by the taxpayer for the year; and
- (b) 30 per cent of the taxpayer's tax EBITDA for the year.

(3) The interest for which a deduction is denied under this section may be carried forward and treated as incurred during the next following tax year, and the interest so denied may be carried forward for a maximum of five tax years.

(4) Where a taxpayer has interest carried forward under this section for more than one tax year, the interest of the earliest year shall be deducted first.

(5) Subsection (2) shall not apply to the following —

- (a) a variable rate loan stock company;
- (b) a taxpayer with a total annual gross income not exceeding P10 000 000;
- (c) a taxpayer subject to section 53;
- (d) a taxpayer whose main business is banking or insurance;

- (e) a licensee to which section 90 applies; or
- (f) an International Financial Service Centre Company.
- (6) In this section,
 - (a) “tax EBITDA”, in relation to a taxpayer for a tax year, means the taxable income or assessed loss of the taxpayer for the year calculated before the application of subsection (2) and adjusted as follows —
 - (i) where the taxpayer has taxable income for the tax year, the following amounts are added to the taxable income —
 - (aa) the deduction under subsection (1) for interest expense incurred for the year before the application of subsection (2);
 - (bb) the deduction allowed to the taxpayer under section 39 for the depreciation of the taxpayer’s depreciable assets or business intangibles for the year; and
 - (cc) any initial allowance under section 42 for the year, or
 - (ii) where the taxpayer has an assessed loss for the tax year, the amount of the loss is reduced by the amounts specified in paragraph (a); and
 - (b) “variable rate loan stock company” means a limited company incorporated in Botswana under the Companies Act, and such company’s constitution states that —
 - (i) the objects of the company are restricted to investment in immovable property, and the development, refurbishment and maintenance thereof, and
 - (ii) shares and debentures together comprise linked units.

37. (1) Where a taxpayer has an assessed business loss for a tax year under section 26 (3), the taxpayer shall carry the amount of the loss to the following tax year and the loss shall be a deduction against the taxpayer’s taxable business income for that following year.

Assessed
loss carried
forward

(2) Where an assessed business loss of a taxpayer is not wholly deducted under subsection (1), the undeducted amount shall be —

- (a) carried forward by the taxpayer to the following tax year and applied as a deduction in that year as specified in subsection (1); and
- (b) any amount not deducted under paragraph (a) shall be carried forward by the taxpayer to the following tax year, and applied as a deduction in that year, as specified in subsection (1), and so on, until the assessed business loss is fully deducted:

Provided that an assessed business loss shall not be carried forward for more than five tax years after the end of the tax year in which the assessed loss was incurred.

(3) Subsections (1) and (2) shall apply in relation to a tax year, even if the taxpayer has temporarily discontinued conducting the taxpayer’s business during that year.

(4) Subject to subsection (5), the amount of an assessed business loss carried forward under this section by a taxpayer shall be extinguished or reduced by the amount of any benefit to the taxpayer from a concession granted by, or a compromise made with the taxpayer's creditor, whereby the taxpayer's liability to the creditor has been reduced:

Provided that such liability was incurred in the derivation of taxable business income.

(5) Subsection (4) shall not apply in relation to a debt to which section 15 (1) (e) applies.

(6) Where a taxpayer has an assessed business loss carried forward under this section for more than one tax year, the assessed business loss of the earliest year shall be deducted first.

Deductions
not allowable

38. (1) Subject to the provisions of this Act, deductions shall not be allowed for the following —

- (a) domestic or private expenditures;
- (b) an amount that is not expenditure to the extent incurred for the purpose of deriving gross income;
- (c) a dividend or other distribution of profits, or capital withdrawn;
- (d) expenditure of a capital nature;
- (e) income tax or capital gains tax paid or payable in Botswana, or tax of a similar nature charged in a country or territory outside Botswana, and any additional tax, penalty, or late payment interest in respect of such a tax liability;
- (f) a contribution made to a benefit, superannuation, pension, provident or similar fund that is not an approved fund;
- (g) an amount carried to a reserve fund, a provision for expected expenditures or losses or an amount capitalised in any way;
- (h) expenditure to the extent recoverable or recovered under a contract of insurance, guarantee, surety, or indemnity;
- (i) a fine or penalty imposed for the violation of any law, or a rule or regulation made under a law;
- (j) a bribe, kickback or other inducement paid or provided by a taxpayer to a public official, including a foreign public official, intended to influence the public official to act or to fail to act so as to obtain an improper benefit or advantage for the taxpayer or an associate of the tax payer; or
- (k) a contribution by an employer to a non-approved fund.

(2) Expenditure of a taxpayer who purchases goods or services from a supplier who is required to use the electronic billing system shall not be allowed as a deduction, unless the expenses are supported by an electronic invoice.

(3) Where a withholding agent is allowed a deduction for a payment from which the withholding agent is required to withhold tax under Division II of Part VII, and the withholding tax is not paid to the Commissioner General by the due date, or extended due date, for payment, the deduction is not allowed until the tax has been paid to the Commissioner General.

- (4) In this section, “public official” includes —
- (a) a member or officer of the executive, judiciary or legislature of the Government or foreign government; or
 - (b) an employee of the Government, a public authority, foreign government, political subdivision of a foreign government, a statutory corporation or other body wholly owned by the Government or a foreign government, or an international organisation.

Division V — *Recognition of Cost of Depreciable Assets
and Business Intangibles*

39. (1) Subject to this section, a taxpayer shall be allowed a deduction for a tax year for the amount by which the taxpayer’s depreciable assets and business intangibles have declined in value during the year, through use in deriving amounts included in gross income.

Principles of depreciation of depreciable assets and business intangibles

(2) Depreciable assets shall be classified into four classes as set out in Part I, paragraph 1 of Schedule 3, with depreciation rates applicable for each class as specified in the clause, unless the Act provides otherwise.

(3) Subject to subsection (4), a taxpayer shall determine the amount of the depreciation deduction allowed under subsection (1), for all classes of asset on an individual asset basis using the straight-line method under section 40.

(4) A taxpayer may elect to determine the amount of the depreciation deduction allowed under subsection (1) for classes 1, 2, and 3 assets on pooling basis using the diminishing value method under section 41.

(5) An election made under subsection (4) shall —

- (a) apply to classes 1, 2, and 3 depreciable assets of the taxpayer;
- (b) be as may be prescribed; and
- (c) be irrevocable.

(6) Class 4 assets and business intangibles shall be depreciated only on an individual asset basis using the straight-line method under section 40.

(7) For the purposes of this section, the cost of a depreciable asset which is a motor vehicle, shall not exceed the depreciation cost limit in Schedule 3.

(8) Where the actual cost of a motor vehicle exceeds the depreciation cost limit in Schedule 3, the taxpayer shall be treated as having acquired two assets which are —

- (a) a depreciable asset being a motor vehicle with a cost equal to the depreciation cost limit in Schedule 3; and
- (b) a private asset with a cost equal to the difference between the actual cost of the motor vehicle and the cost of the asset referred to in paragraph (a).

(9) Where a taxpayer disposes of a motor vehicle to which subsection (8) applies, the tax payer shall be treated as having disposed of both assets referred to in subsection (8), and consideration for the disposal shall be apportioned between the two assets based on the ratio of the cost of each asset to the actual cost of the motor vehicle.

Straight-line
depreciation
method

- (10) In this section, “motor vehicle” does not include —
- (a) a vehicle designed to carry loads of more than half a tonne or more than nine passengers;
 - (b) a vehicle used in a transportation business; or
 - (c) a vehicle used in a vehicle hire business.

40. (1) The provisions of this section shall apply where, for the purposes of section 39 (1), a taxpayer calculates the depreciation deduction for depreciable assets on an individual asset basis under the straight-line method.

(2) Subject to subsections (3) and (4), the depreciation deduction allowed to a taxpayer for a tax year in respect of a depreciable asset or business intangible under the straight-line method shall be calculated by applying the rate as set out in Schedule 3 against the cost of the asset.

(3) Where a taxpayer uses a depreciable asset or business intangible in a tax year partly to derive an amount included in a gross income and partly for another use, the amount allowed as a deduction under subsection (2) shall be the proportion of the amount calculated under that subsection relating to the derivation of the gross income.

(4) Where a depreciable asset or business intangible is not used by a taxpayer in deriving an amount included in a gross income for the whole of the tax year, the amount allowed as a deduction under subsection (2), shall be the proportion of the amount calculated under that subsection relating to the derivation of the amount included in the gross income.

(5) Subject to subsection (3), the total deductions allowed to a taxpayer under this section and section 39, in respect of a depreciable asset or business intangible for the current tax year and all previous tax years shall not exceed the cost of the asset.

Diminishing
value
depreciation
method

41. (1) The provisions of this section shall apply where, for the purposes of section 39 (1), a taxpayer calculates the depreciation deduction for depreciable assets on a pooling basis under the diminishing value method with Class 1, 2, and 3 assets treated as separate depreciation pools.

(2) A taxpayer shall calculate the depreciation deduction allowed to such taxpayer for a tax year for a depreciation pool by applying the depreciation rate applicable to the pool as set out in Schedule 3 against the net book value of the pool at the end of the year.

(3) The net book value of a depreciation pool at the end of a tax year is the net book value of the pool at the end of the previous tax year, after allowing for the deduction under this section for that year —

- (a) increased by —
 - (i) 50 per cent of the cost of depreciable assets added to the pool during the tax year, and
 - (ii) 50 per cent of the cost of depreciable assets added to the pool during the previous tax year; and
- (b) decreased by the consideration for the disposal of depreciable assets in the pool during the tax year.

(4) Where a depreciable asset to which this section applies is acquired by a taxpayer for use partly to derive an amount included in the gross income and partly for another use —

- (a) the cost of the asset to be included in the asset's depreciation pool is the proportion of the cost that relates to the use of the asset to derive an amount included in the gross income; and
- (b) where the asset is subsequently disposed of, the net book value of the pool is reduced by the proportion referred to in paragraph (a) of the consideration for the disposal of the asset.

(5) Where the net book value of a depreciation pool of a taxpayer at the end of a tax year after taking account of the depreciation deduction calculated under subsection (2) for the year is less than the amount specified in Part 1 paragraph 2 of Schedule 3, —

- (a) a deduction shall be allowed for the year for the undepreciated amount of the net book value of the pool; and
- (b) the net book value of the pool at the end of the year shall be zero.

(6) Where the net book value of a depreciation pool of a taxpayer at the end of a tax year is a negative amount, that amount is included in the gross income of the taxpayer for the year, and the net book value of the pool at the end of the year is zero.

(7) Where all the depreciable assets in a depreciation pool are disposed of by the end of a tax year —

- (a) a deduction shall be allowed for the amount of the net book value, if any, of the pool at the end of the year; and
- (b) the net book value of the pool at the end of the tax year shall be zero.

42. (1) A taxpayer shall be allowed a deduction, referred to as an “initial allowance”, for a tax year for an amount equal to 25 per cent of the expenditure incurred by the taxpayer on —

Initial allowance

- (a) the erection or purchase of a new industrial building to be used to derive taxable business income; or
- (b) any capital improvements to an industrial building used to derive taxable business income.

(2) The deduction under subsection (1) shall be allowed —

- (a) for the erection or purchase of a new industrial building, in the tax year in which the building is first used to derive taxable business income; or
- (b) for an improvement to an industrial building, in the tax year in which the improvements are completed.

(3) In this section —

- (a) “industrial building” means a building —
 - (i) that contains and is used solely or principally for the purpose of operating machinery,
 - (ii) that is located on the same premises as any building to which subparagraph (i) applies, and in respect of which depreciation is caused by reason of the operation of machinery installed in that other building,

- (iii) in respect of which 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,
- (iv) that is used in the conduct of scientific research, including scientific experimentation, into new or improved methods of manufacture,
- (v) erected and used as a hotel, and includes any structure or work of a permanent nature directly related or attached to such a building, or
- (vi) a building used in the conduct of any other prescribed industrial operations; and

(b) “scientific research” has the same meaning assigned to it in section 33.

Disposal of depreciable asset or business intangible

43. (1) Where a taxpayer disposes of a depreciable asset or business intangible to which section 40 applies during a tax year —

- (a) the taxpayer shall not be allowed a depreciation deduction for the tax year for the asset or intangible; and
- (b) any gain on disposal of the asset shall be included in the gross income of the taxpayer for the tax year and any loss on disposal shall be allowed as a deduction for the tax year.

(2) Subject to subsection (3) —

- (a) a taxpayer derives gain on disposal of a depreciable asset or business intangible where the consideration for the disposal exceeds the net book value of the asset or business intangible at the time of the disposal and the amount of the gain shall be the amount of the excess; and
- (b) a taxpayer incurs a loss on disposal of a depreciable asset or business intangible where the net book value of the asset or intangible at the time of disposal exceeds the consideration for the disposal and the amount of the loss shall be the amount of the excess.

(3) Where a depreciable asset or business intangible under this section has been used by a taxpayer partly in deriving gross income and partly for another use, the amount of gain on disposal included in gross income or loss on disposal allowed as a deduction shall be the proportional part of the gain or loss that relates to the use of the asset in the derivation of gross income.

(4) A gain or loss on disposal of a depreciable asset or business intangible by a taxpayer takes the character of the income in respect of which the depreciable asset or business intangible was used to derive.

Repairs and improvements

44. (1) Subject to subsections (2) and (3), a taxpayer shall be allowed a deduction for a tax year for expenditure incurred on a repair or improvement made to a depreciable asset during the year.

- (2) Where the asset to which subsection (1) applies is depreciated under Section 40 —
- (a) the amount of the deduction allowed under subsection (1) is limited to 20 per cent of the net book value of the asset at the end of the tax year; and
 - (b) the amount of any excess under paragraph (a) is added to the net book value of the asset as at the end of the tax year
- (3) Where the asset to which subsection (1) applies is in a depreciation pool depreciated under Section 41 —
- (a) the total deduction allowed under subsection (1) for all assets in the depreciation pool is limited to 20 per cent of the net book value of the pool at the end of the tax year; and
 - (b) the amount of any excess under paragraph (a) is added to the net book value of the depreciation pool as at the end of the tax year.
- (4) This section shall not apply to an improvement to an industrial building under section 42.

Division VI — *Tax Accounting*

45. (1) Where the accounting period of a company is a period of 12 months ending on a date other than 30th June, the company shall calculate taxable income by reference to the company's accounting period.

Substituted
accounting
period

(2) Where the accounting period of a company changes, the company shall use the new accounting period to calculate the taxable income of the company under subsection (1), with the prior written approval of the Commissioner General and subject to such conditions that the Commissioner General may specify in the notice of approval.

(3) The Commissioner General may, by notice in writing, revoke an approval under subsection (2), if the company fails to comply with any of the conditions specified in the notice of the approval.

(4) Where the Commissioner General has granted approval under subsection (2) and the period between the end of the last full accounting period prior to the change and the commencement of the new accounting period after the change referred to as the "transitional period", is six months or less, the period of the last full accounting period prior to the change shall be extended to cover the transitional period.

(5) Where the Commissioner General has granted approval under subsection (2) and the transitional period exceeds six months, the transitional period shall be treated as a separate accounting period referred to as a "transitional accounting period".

(6) Where subsection (4) or (5) applies, the Commissioner General may specify, by notice in writing to the company, the instalments of income tax payable by the company, under section 127 during the transitional period.

(7) Where the accounting period of a company does not correspond with the tax year, the law applicable for the company's accounting period shall be the law applicable for the tax year that ends during the company's accounting period.

(8) A reference in this Act to "tax year", other than in subsection (7), includes an accounting period and a transitional accounting period of a company used to calculate taxable income in accordance with this section.

Method of
income tax
accounting

46. (1) An employer and employee shall account for employment income incurred by the employer and derived by the employee on a cash basis.

(2) Subject to subsections (1) and (4), the following persons shall account for gross income and expenditures on an accrual basis —

- (a) a company;
- (b) a partnership for the purposes of section 63; and
- (c) a person registered for VAT.

(3) Subject to subsection (4), a taxpayer to whom subsections (1) and (2) do not apply, may account for gross income and expenditures on a cash or accrual basis:

Provided that the same basis is used for determining both gross income and expenditures.

(4) The Commissioner General may specify that any class of taxpayer shall account for income tax on a cash or accrual basis.

Cash-basis
income tax
accounting

47. A taxpayer accounting for income tax on a cash basis shall derive an amount when it is received by the taxpayer and shall incur an expenditure when it is paid by the taxpayer.

Accrual-basis
income tax
accounting

48. (1) A taxpayer accounting for income tax on an accrual basis, shall derive an amount when it is receivable by the taxpayer and shall incur an expenditure when it is payable by the taxpayer.

(2) Subject to this Act, an amount shall be receivable by a taxpayer at the time the taxpayer becomes entitled to receive it, even if the time for discharge of the liability is postponed or the amount is payable by instalments.

(3) Where a taxpayer accounting for income tax has been allowed a deduction for expenditure incurred by the taxpayer and the taxpayer has not paid the liability or part of the liability to which the deduction relates within one year after the expenditure was incurred, the unpaid amount of the liability shall —

- (a) be included in the gross income of the taxpayer for the first tax year following the end of the one year period; and
- (b) have the same character as the income to which the deduction relates.

(4) Where the amount of an unpaid liability is included in gross income of a taxpayer under subsection (3) and the taxpayer subsequently pays the liability or a part of the liability, the taxpayer shall be allowed a deduction for the amount paid in the tax year in which the payment is made.

49. (1) Where a taxpayer has entered into a finance lease in relation to an asset, this Act shall apply to the taxpayer on the basis that —

Finance lease

- (a) the lessee is the owner of the asset;
 - (b) the lessee acquired the asset at the commencement of the lease, except when the lessee was the owner of the asset; and
 - (c) the lessor has made a blended loan to the lessee at the commencement of the lease and each lease payment is in part repayment of the principal loan and in part payment of interest under that loan.
- (2) The cost of a leased asset treated as owned by the lessee under subsection (1) (a) shall be —
- (a) if the lessor and lessee are not associates and an amount is stated as the cost or value of the asset in the lease agreement, that amount; or
 - (b) in any other case, the fair market value of the asset at the commencement of the lease.
- (3) The amount of the loan referred to in subsection (1) (c), shall be the amount determined under subsection (2) as the cost of the leased asset.

(4) The interest part of each payment made under the loan, shall be calculated by reference to the interest rate implicit in the lease agreement.

(5) For purposes of this section, “blended loan” means a loan under which payments by the borrower represent in part a payment of interest and in part a repayment of the principal amount when the interest part is calculated on the principal loan outstanding at the time of each payment.

50. (1) A taxpayer shall account for the income and expenditures under a long-term contract for a tax year under the percentage of completion method, in accordance with financial reporting standards.

Long-term contracts

(2) The percentage of a long-term contract completed by a taxpayer during a tax year is determined by comparing the total expenditure incurred by the taxpayer during the year allocated to the contract with the total estimated contract expenditure, including any variations or fluctuations.

(3) Where, in the tax year in which a long-term contract is completed by a taxpayer, the taxpayer —

- (a) has a final year loss in relation to the contract, that the taxpayer is permitted to carry forward under section 37; and
- (b) is unable able to carry the loss forward under section 37 because the taxpayer has ceased to carry on business in Botswana at the end of the contract,

the taxpayer may carry the loss back to the preceding tax year and the loss shall be allowed as a deduction in that year.

(4) Where a taxpayer is not able to wholly deduct a loss carried back under subsection (3), the amount not deducted may be carried back to the next preceding tax year and applied as specified in subsection (3) in that year.

(5) A final year loss under this section shall not be carried back for more than two tax years.

(6) A taxpayer shall have a final year loss under a long-term contract where both the following conditions are satisfied —

- (a) the taxable income estimated to be made under the contract for the purposes of the percentage of completion method, exceeds the actual taxable income, if any, under the contract; and
- (b) the amount of the excess under paragraph (a) exceeds the difference between the gross income and deductible expenditures computed under subsection (1), for the tax year in which the contract was completed.

(7) The amount of the excess under subsection (6) (b) shall be the amount of the final year loss.

(8) For purposes of this section, “long-term contract” means a contract for manufacture, installation, or construction, or, in relation to each, the performance of related services, that is not completed within the tax year in which work under the contract commenced, other than a contract estimated to be completed within 12 months, after the date on which work under the contract commenced.

Tax accounting
for stock

51. (1) The amount that a taxpayer shall be allowed as a deduction for a tax year for the cost of stock disposed of by the taxpayer during the year shall be calculated according to the following formula —

$$(A + B) - C$$

where —

- A is the taxpayer’s opening value of stock for the year;
- B is the cost of stock acquired by the taxpayer during the year; and
- C is the taxpayer’s closing value of stock for the year.

(2) The following shall be the opening value of a taxpayer’s stock for a tax year —

- (a) the closing value of the taxpayer’s stock for the previous tax year; or
- (b) if the taxpayer commenced business during the year, the cost of stock acquired, if any, by the taxpayer prior to the commencement of the business.

(3) A taxpayer’s closing value of stock for a tax year shall be the lower of the cost or fair market value of the taxpayer’s stock at the end of the year.

(4) A taxpayer who is accounting for income tax on a cash basis shall calculate the cost of stock that they have manufactured or produced under the direct-cost method or absorption-cost method.

(5) A taxpayer who is accounting for income tax on an accrual basis shall calculate the cost of stock manufactured or produced under the absorption-cost method.

(6) Where particular items of stock are not readily identifiable, a taxpayer may account for that stock under the first-in-first out or weighted average method.

(7) In this section, “absorption-cost method”, “direct-cost method”, “first-in-first-out method”, and “weighted average method” have their meanings assigned to them under Financial Reporting Standards.

52. (1) The gross income of a VAT-registered person shall not include —

(a) any output tax received or receivable by the person on a taxable supply made by the person; or

(b) any VAT refunded by the Commissioner General to the person.

(2) A VAT-registered person shall not be allowed a deduction for input tax paid or payable by the person on a taxable supply made to, or taxable import made by, the person to the extent that the person is allowed a credit for the input tax under the Value Added Tax Act.

(3) The cost of an asset acquired by a VAT-registered person shall not include any input tax paid or payable in respect of an amount included in the cost of the asset under Part V to the extent that the person is allowed a credit for the input tax under the Value Added Tax Act.

(4) In this section —

(a) “VAT-registered person” means a person registered for value added tax under the Value Added Tax Act; and

(b) the terms “input tax”, “output tax”, “taxable import”, and “taxable supply” have the same meanings assigned to them under the Value Added Tax Act.

53. (1) The taxable income for a tax year of a taxpayer who is an individual conducting a small business shall be calculated in accordance with this Act, subject to the following —

(a) the individual may account for gross income and expenditures on a cash basis;

(b) the rate of depreciation applicable to the depreciable assets and business intangibles of the individual in terms of section 39, shall be 100 per cent; and

(c) section 51 shall not apply to an individual conducting a small business and a deduction shall be allowed for the cost of stock acquired by the individual during the year.

(2) The following shall apply to an individual conducting a small business —

(a) the period for retention of records under section 14 of the Tax Administration Act shall be three years; and

(b) the period for the Commissioner General to make an amendment to a tax assessment under section 21 of the Tax Administration Act or for the individual to apply for an amendment to a self-assessment under section 22 of the Tax Administration Act, shall be three years.

(3) The business of an individual shall be a small business if the following conditions are satisfied —

(a) the business is conducted wholly in Botswana;

(b) the individual is not a registered person under the Value Added Tax Act; and

Income tax
and VAT

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Simplified
income tax for
small business

B.890

Change in
income tax
accounting
method

(c) the annual gross income of the individual does not exceed the VAT registration threshold specified in Schedule V of the Value Added Tax Act.

54. (1) Where the circumstances of a taxpayer change resulting in the taxpayer's method of accounting under this Act changing, the taxpayer shall notify the Commissioner General, in writing, within 21 days of the change occurring.

(2) Except where subsection (1) applies, a taxpayer may change the method of accounting under this Act with the approval of the Commissioner General.

(3) A taxpayer may apply to the Commissioner General, in the prescribed form, for a change in the taxpayer's method of accounting under this Act, and the Commissioner General may, by notice in writing, approve the application if satisfied that the change is necessary to properly calculate the taxable income of the taxpayer.

(4) An approval of a taxpayer to change the method of accounting under this Act may be subject to such conditions as specified by the Commissioner General in the notice of approval.

(5) Where a taxpayer's method of accounting changes under this section, the taxpayer shall make adjustments in the tax year of change, to items of income, deduction, and credit, and to any other items affected by the change, so that no item is omitted and no item is taken into account more than once.

Division VII — Foreign Currency Exchange Gains and Losses

Foreign
currency
exchange gain
or loss

55. (1) A foreign currency exchange gain is a gain derived by a taxpayer due to currency exchange rate fluctuations in respect of a foreign currency transaction.

(2) A foreign currency exchange loss is a loss incurred by a taxpayer due to currency exchange rate fluctuations in respect of a foreign currency transaction.

(3) The amount of foreign currency exchange gain derived or a foreign currency exchange loss incurred, by a taxpayer in respect of a foreign currency transaction, shall be adjusted to take account of the position under a hedging contract entered into by the taxpayer, or an associate of the taxpayer, in relation to the transaction.

(4) A taxpayer shall derive a foreign currency exchange gain or incur a foreign currency exchange loss when the gain or loss is realised.

(5) In this section —

(a) "foreign currency transaction" means any of the following transactions entered into in the conduct of a business to derive taxable business income —

- (i) a dealing in a foreign currency,
- (ii) the issuing or obtaining of a debt obligation denominated in foreign currency, or

- (iii) any other dealing denominated in a foreign currency; and
 (b) “hedging contract” means a contract entered into by a taxpayer or an associate for purpose of eliminating or reducing the risk of adverse financial consequences that might occur for the taxpayer

under another contract, due to currency exchange rate fluctuations.

56. (1) For purposes of section 15 (1) (d), the net foreign currency exchange gain of a resident of Botswana for a tax year shall be calculated according to the following formula –

Net foreign
currency
exchange gain
or loss

$A - B$

where –

- A is the total of foreign currency exchange gains derived by the resident during the tax year; and
 B is the total of foreign currency exchange losses incurred by the resident during the tax year.

(2) For purposes of section 15 (1) (d), the net foreign currency exchange gain of a non-resident for a tax year shall be calculated according to the following formula –

$A - B$

where –

- A is the total of foreign currency exchange gains derived by the non-resident in conducting business, through a permanent establishment in Botswana during the tax year; and
 B is the total of foreign currency exchange losses incurred by the non-resident in conducting business, through a permanent establishment in Botswana during the tax year.

(3) A foreign currency exchange loss of a taxpayer shall be taken into account in calculating component “B” of the formula in subsection (1) or (2) for a tax year only if such taxpayer has substantiated the amount of the loss to the satisfaction of the Commissioner General.

(4) Where component “B” of the formula in subsection (1) or (2) exceeds component “A” for a tax year, the amount of the excess shall be the net foreign currency exchange loss of the taxpayer for the year.

(5) Where a taxpayer has a net foreign currency exchange loss for a tax year, the loss shall be –

- (a) for a bank, allowed as a deduction for the tax year; or
 (b) for any other taxpayer, carried forward and treated as a foreign currency exchange loss incurred by the taxpayer in the following tax year for the purposes of calculating the net foreign currency exchange gain or loss of the taxpayer for that year.

Division VIII — *Rules Relating to Income and Deductions*

57. (1) For purposes of this Act, if two or more persons jointly own an asset, other than by way of a partnership, any income or expenditure relating to the property shall be apportioned among such persons according to the persons’ interests in the property.

Income of
joint owners

B.892

(2) Where the interests of the owners of jointly owned property cannot be ascertained, the owners of the property shall be treated as having an equal interest in the property.

Non-cash
benefits

58. (1) In determining whether a non-cash benefit derived by a taxpayer is income included in the gross income of the taxpayer, and the amount of the income so included, any restriction on the transfer of the benefit and the fact that the benefit is not convertible to cash, shall be disregarded.

(2) Subject to subsection (3), where a taxpayer derives a non-cash benefit, the amount of the non-cash benefit included in the gross income of a taxpayer shall be the fair market value of the benefit at the time that the benefit is derived, ignoring any restriction on transfer.

(3) The valuation rules under section 16 (1) (e) shall apply to a non-cash benefit included in employment income.

Cessation
of source of
income

59. (1) Where —

(a) an amount is derived by a taxpayer in a tax year from a business, activity, investment or other source that had ceased before the amount is derived; and

(b) the amount under paragraph (a) had been derived before the business, activity, investment or other source ceased it would have been included in the gross income of the taxpayer,

this Act shall apply to the amount on the basis that the business, activity, investment, or other source had not ceased at the time the income was derived.

(2) Expenditure incurred by a taxpayer to derive an amount to which subsection (1) applies, shall be deductible to the extent allowed in accordance with this Act.

Apportionment

60. (1) This section shall apply where an expenditure relates to more than one class of income or to a class of income and any other purpose.

(2) Where this section applies, the expenditure shall be apportioned between the classes of income on any reasonable basis taking into account the relative nature and size of the activities or purposes to which the expenditure relates.

Currency
translation

61. (1) Subject to subsection (4), an amount taken into account under this Act shall be expressed in Botswana Pula.

(2) Subject to subsections (3) and (4), if an amount is in a currency other than Botswana Pula, the amount shall be translated to Botswana Pula at the Bank of Botswana exchange rate applying between the foreign currency and Botswana Pula, on the date the amount is taken into account for the purposes of this Act.

(3) With the prior written permission of the Commissioner General, amounts taken into account in calculating the business income and deductions relating to such income of a taxpayer for a tax year, may be translated to Botswana Pula at the Bank of Botswana average exchange rate for the tax year between the foreign currency and Botswana Pula.

(4) Subject to subsection (5), if a taxpayer predominantly derives income and incurs expenditure in a currency other than Botswana Pula referred to as the “functional currency”, the taxpayer may, with the written permission of the Commissioner General, take amounts into account under this Act in the functional currency.

(5) A taxpayer shall be granted permission to use a functional currency under subsection (4), only where the taxpayer keeps his or her financial accounts in the functional currency.

(6) Where a taxpayer who has permission to use a functional currency under subsection (4), derives an amount or incurs an expenditure that is not in the functional currency, the amount or expenditure shall be converted to the functional currency based on the translation rate used in the taxpayer’s financial accounts.

(7) Where a taxpayer has permission to use a functional currency for the purposes of this Act, the taxpayer shall calculate the tax payable under this Act in the functional currency and either —

- (a) convert the functional currency amount to Botswana Pula as specified in subsection (3); or
- (b) with the permission of the Commissioner General, pay the tax due in the functional currency.

(8) Where a taxpayer has permission to use a functional currency, a reference in this Act to “foreign currency” does not include the functional currency, but includes Botswana Pula.

Division IX — *Entities*

Subdivision I — *Partnerships*

62. (1) Subject to the provisions of this Act, this Subdivision specifies how income tax applies to amounts derived from and expenditures incurred in relation to, activities conducted by persons in partnership.

(2) The partners, and not the partnership, shall be liable to pay income tax in respect of the partnership’s activities as set out in this Subdivision.

63. (1) Subject to subsection (3), the partnership taxable income of a partnership for a tax year, shall be calculated according to the following formula —

A – B

where —

- A is the gross income of the partnership for that year calculated as if the partnership was a resident of Botswana; and
- B is the total amount of deductions allowed under this Act, for expenditures incurred by the partnership in deriving the gross income included in component “A”, other than the deduction allowed under section 37 for the carry forward of an assessed business loss.

Partnership
taxable
income and
partnership
loss

Principles for
taxation of
partnership
income

(2) Subject to subsection (3), a partnership has a partnership loss for a tax year, if component “B” exceeds component “A” in the formula in subsection (1) for the year, and the amount of the excess is the amount of the partnership loss.

(3) For the purposes of calculating the partnership taxable income or partnership loss under this section and notwithstanding section 13, the gross income of the partnership includes amounts subject to tax under section 10 or 11.

(4) For the purposes of calculating the partnership taxable income or partnership loss of a partnership for a tax year, any election, notice, return, or statement relating to the partnership’s activities shall be filed by the partnership and shall bind all the partners.

64. (1) Where a partnership has a partnership taxable income for a tax year, the gross income of a partner in the partnership for a tax year shall include —

- (a) the partner’s share of the partnership taxable income for the tax year for a partner, who is a resident of Botswana for the whole of the tax year;
- (b) the partner’s share of the partnership taxable income for the tax year, that is attributable to Botswana source income for a partner who is a non-resident for the whole of the tax year; or
- (c) the total of the following amounts for a partner who is a resident of Botswana for part of the tax year and a non-resident for the other part of the tax year —
 - (i) the partner’s share of the partnership taxable income for the part of the tax year that the partner was a resident of Botswana, and
 - (ii) the partner’s share of the partnership taxable income that is Botswana source income for the part of the tax year the partner was a non-resident.

(2) Where a partnership has a partnership loss for a tax year, a partner in such partnership, shall be allowed a deduction for a tax year as follows —

- (a) for a partner who is a resident of Botswana for the whole of the tax year, the partner’s share of the partnership loss for the tax year;
- (b) for a partner who is non-resident for the whole of the tax year, the partner’s share of the partnership loss for the tax year attributable to Botswana source income; or
- (c) for a partner who is a resident of Botswana for part of the tax year and a non-resident for the other part of the tax year, the total of the following amounts —
 - (i) the partner’s share of the partnership loss for the part of the tax year that the partner was a resident of Botswana, and
 - (ii) the partner’s share of the partnership loss that is attributable to Botswana source income for the part of the tax year such partner was non-resident.

(3) Botswana source income under subsections (1) (b) and (c) (ii), and (2) (b) and (c) (ii) shall not include income that has been subject to non-resident tax or international transport income tax.

(4) A deduction allowed to a partner under subsection (2) shall be deductible only against the taxable business income of the partner.

(5) Where the gross income of a partner that is a resident of Botswana under subsection (1) includes the partner's share of income to which section 10 or 11 applies, the partner shall be entitled to a refundable tax credit for the partner's share of the tax, paid under section 10 or 11 in relation to that income.

(6) Income derived or expenditure incurred by a partnership shall retain its character as to geographic source and type of income or expenditure of the partners, and shall be allocated to partners proportionally.

(7) Subject to subsection (8), a partner's share of partnership taxable income or a partnership loss, shall be equal to the partner's percentage interest in the income of the partnership, as set out in the partnership agreement.

(8) Where the allocation of income in the partnership agreement does not reflect the contribution of the partners to the partnership's operations or there is no written partnership agreement, a partner's share of partnership taxable income or a partnership loss, shall be equal to the partner's percentage interest in the capital of the partnership.

Subdivision II — *Trusts*

65. (1) Income derived by a trust shall be taxed either to the trustee, settlor or beneficiary of the trust, in accordance with this Subdivision.

Principles for
taxation of
trust income

(2) Section 66 shall apply to settlor and absolute beneficiary trusts as defined in that section, and sections 67 and 68 shall apply to other trusts.

(3) A trustee of a trust shall not be liable for income tax in relation to the income of the trust, except as provided for in this Subdivision.

(4) In this section, "settlor" has the same meaning assigned to it under section 66.

66. (1) For purposes of this Act —

- (a) a settlor trust is not treated as an entity separate from the settlor of the trust;
- (b) amounts derived and expenditures incurred, by the trustee of a settlor trust shall be treated as derived or incurred by the settlor; and
- (c) the assets of a settlor trust shall be treated as owned by the settlor and any dealing in the assets by the trustee is treated as a dealing by the settlor.

Settlor and
absolute
beneficiary
trusts

(2) For purposes of this Act —

- (a) an absolute beneficiary trust is not treated as an entity separate from the beneficiary of the trust;

- (b) amounts derived and expenditures incurred, by the trustee of an absolute beneficiary trust, shall be treated as derived or incurred by the beneficiary of the trust; and
- (c) the assets of an absolute beneficiary trust shall be treated as owned by the beneficiary, and any dealing in the assets by the trustee shall be treated as a dealing by the beneficiary.

(3) In this section —

- (a) “absolute beneficiary trust” means a trust that satisfies the following conditions —
 - (i) the trust has a single beneficiary,
 - (ii) if the beneficiary of the trust is a non-resident, the only income of the trust is Botswana source income and the only assets of the trust are Botswana assets, and
 - (iii) the beneficiary has an absolute entitlement to the assets of the trust as against the trustee;
- (b) “absolute entitlement”, in relation to the assets of a trust, means a vested interest in the assets of the trust with the beneficiary having the right to call for the assets to be transferred to the beneficiary or otherwise dealt with at the beneficiary’s direction;
- (c) “settlor”, in relation to a trust, means a person who —
 - (i) has transferred money or an asset or has provided a benefit to the trust,
 - (ii) has the power to alter the trust to acquire a beneficial entitlement in the whole or part of the income or capital of the trust, or has a reversionary interest in the income or capital of the trust, and
 - (iii) is a non-resident and the only income of the trust is Botswana source income and the only assets of the trust are Botswana assets; and

(d) “settlor trust” means a trust in relation to which there is a settlor.

Taxation of beneficiaries

67. (1) An amount derived by a trustee of a trust to which a beneficiary of the trust has a vested interest, shall be treated as derived by the beneficiary and any expenditures of the trustee to the extent incurred in deriving such an amount, shall be treated as incurred by the beneficiary.

(2) For purposes of subsection (1) —

- (a) an amount retains its character and geographic source in the hands of the beneficiary; and
- (b) an amount is treated as derived and expenditures are treated as incurred by the beneficiary at the time the amount was derived or expenditure incurred by the trustee.

(3) Where an amount in respect of which a resident beneficiary has a vested interest that has been subject to non-resident tax or international transport income tax —

- (a) section 12 (a) shall not apply to the amount; and

- (b) the resident beneficiary shall be entitled to a refundable tax credit for the non-resident tax or international transport income tax paid by the trustee, in respect of the amount to the extent that the amount is included in the gross income of the beneficiary.
- (4) The gross income of a resident beneficiary shall include a distribution received by the beneficiary from a non-resident trust, except to the extent that the distribution represents an amount derived by the trustee of the non-resident trust —
 - (a) to which subsection (1) applies;
 - (b) that has been taxed to the trustee under section 68; or
 - (c) that is exempt income if derived by the resident beneficiary.
- (5) For purposes of this section —
 - (a) “distribution”, in relation to a resident beneficiary, includes any benefit provided to the beneficiary that is, in substance, a distribution of income accumulated in the trust; and
 - (b) “resident beneficiary”, in relation to a trust, means a beneficiary of the trust, who is a resident of Botswana.

68. (1) A trustee shall be liable for income tax for a tax year in respect of the taxable income of the trust, at the rate specified in the Schedule 1.

(2) The trustee of a trust shall be personally liable for an income tax liability arising in respect of the taxable income of the trust that is not satisfied out of the assets of the trust and, if there is more than one trustee, the trustees are jointly and severally liable for the tax liability.

(3) An amount in respect of which a trustee has paid tax under subsection (1) shall not be taxed in the hands of the beneficiary.

(4) The amounts referred to in section 67(1), shall not be taken into consideration in calculating the taxable income of a trust for a tax year.

Taxation of trustees

Subdivision III — *Companies*

69. A company shall be liable for tax separate from members of such company.

Principles for taxation of companies

70. (1) Where there is a change in the beneficial owner of more than 50 per cent occurring in a company, any carry forward loss of the company for a tax year before the change referred to as the “loss year” shall not be allowed as a deduction in a tax year after the change referred to as the “income year”, unless the company satisfies the following conditions —

- (a) the company carried on the same business in the income year and in all tax years between the loss year and the income year that it carried on in the loss year; and
- (b) the company shall not engage in any new business or investment if the principal purpose of the company or the members of the company is to utilise the carry forward loss so as to reduce the tax payable on the amounts derived from the new business or investment until, the earlier of when the carry forward loss has been fully deducted or the carry forward loss period has expired.

Limitation on carry forward of losses by companies

(2) Where there is a change in the beneficial ownership of more than 50 per cent of the membership interest in a company, the company shall notify the Commissioner General, in writing, within 14 days of the change occurring.

(3) In this section, “carry forward loss” means —

- (a) an assessed business loss under section 26 (3) and carried forward under section 37;
- (b) a net foreign currency exchange loss carried forward under section 56;
- (c) a foreign loss carried forward under section 97; and
- (d) a loss carried forward under section 84.

Incorporation
rollover

71. (1) An incorporation rollover occurs where —

- (a) a resident individual, referred to as the “transferor”, disposes of a business asset to a resident company, referred to as the “transferee”, in exchange for shares in the transferee;
- (b) any liability attaching to the transferred asset does not exceed the cost of the asset;
- (c) the income and gains of the transferee are subject to income tax or capital gains tax in Botswana, and the transferee is not subject to a concessional tax regime; and
- (d) the transferor holds 100 per cent of the issued shares in the transferee.

(2) Where there is an incorporation roll-over in accordance with subsection (1) —

- (a) a gain or loss shall not be taken to arise for the transferor on disposal of the business asset;
- (b) the transferee shall be treated as having acquired the business asset for a cost equal to —
 - (i) the net book value of the asset to the transferor at the time of the disposal for a depreciable asset or business intangible, or
 - (ii) the transferor’s cost for the asset at the time of the disposal for any other business asset; and
- (c) the cost of the shares acquired by the transferor in exchange for the business asset shall be equal to the transferee’s cost of the asset referred to in paragraph (b) reduced by any liability attaching to the transferred asset assumed by the transferee.

Transfer of
assets between
wholly owned
companies

72. (1) This section shall apply where the following conditions are satisfied —

- (a) a resident company referred to as the “transferor”, disposes of a business asset to another resident company referred to as the “transferee”;
- (b) any liability attaching to the transferred asset does not exceed the cost of the asset;
- (c) the income and gains of the transferee are subject to income tax or capital gains tax in Botswana, and the transferee is not subject to a concessional tax regime; and

- (d) the transferor is a group company in relation to the transferee.
- (2) Where conditions set out in subsection (1) are satisfied, the transferor shall be treated as having disposed the asset to the transferee for a consideration equal to —
 - (a) the transferor's net book value for the asset or intangible at the time of the disposal for a depreciable asset or business intangible; or
 - (b) the transferor's cost for the asset at the time of the disposal for any other business asset.
- (3) A company is a group company in relation to another company, where —
 - (a) one company owns, directly or through one or more interposed entities, 100 per cent of the issued shares in the other company, or another company owns, directly or through one or more interposed entities, 100 per cent of the issued shares in both companies; and
 - (b) the period of ownership under paragraph (a) is at least 365 days prior to the date of the disposal of the asset or the whole of the period of incorporation, where that period is less than 365 days.

73. (1) Subsection (2) shall apply where —

- (a) a resident company referred to as the “transferor”, disposes of an asset to another resident company referred to as the “transferee”, as part of the restructure or merger of two or more resident companies, including a subsidiary company of such companies;
 - (b) the restructure or merger is carried out in such manner that the beneficial owners of the membership interests in the companies concerned in the restructure or merger remains unchanged;
 - (c) the income and gains of the transferee are subject to income tax or capital gains tax in Botswana, and the transferee is not subject to a concessional tax regime; and
 - (d) no member benefits at the expense of another.
- (2) Where the provisions of subsection (1) are satisfied, the transferor shall be treated as having disposed of the asset to the transferee for a consideration equal to, —
- (a) for a depreciable asset or business intangible, the transferor's net book value for the asset or intangible at the time of the disposal, for a depreciable asset or business intangible; or
 - (b) for any other asset, the transferor's cost for the asset at the time of the disposal.
- (3) Subsection (4) shall apply where —
- (a) a resident company, referred to as the “transferor” disposes of an asset to another resident company, referred to as the “transferee” as part of the reorganisation of the transferor, including a restructure or merger referred to in subsection (1); and
 - (b) the sole object of the reorganisation, restructure or merger is the offer of the shares of the transferee for listing on the Botswana Stock Exchange.

B.900

(4) Where the provisions of subsection (3), are satisfied and subject to subsection (5), the transferor shall be treated as having disposed of an asset for a consideration equal to —

(a) for a depreciable asset or business intangible, the transferor's net book value for the asset or intangible at the time of the disposal; or

(b) for any other asset, the transferor's cost for the asset at the time of the disposal.

(5) Subsection (4) shall apply where an application —

(a) for listing of the shares is made to the Botswana Stock Exchange within one month after the completion of the reorganisation, restructure or merger; and

(b) under paragraph (a) is successful before the expiration of 12 months from the date of application.

Mutual
associations

74. (1) A mutual association, shall be treated as conducting a business for purposes of this Act.

(2) Any agreement between a mutual association and members of the mutual association shall be taken into account, in determining the income tax liability of the association and the members.

(3) An amount paid by a mutual association to a member for goods or services supplied by the member to the association, shall be —

(a) included in the business income of the member; and

(b) allowed as a deduction to the association.

(4) An amount received by a mutual association, from a member as a customer shall be —

(a) included in the business income of the association; and

(b) allowed as a deduction to the member, if the member is subject to income tax, when incurred by the member to derive gross income.

(5) A rebate, bonus or similar amount paid by a mutual association to a member of the association shall be —

(a) allowed as a deduction to the association; and

(b) included in the gross income of the member to the extent that the amount is —

(i) additional payment for goods or services supplied by the member to the association, or

(ii) a reimbursement of an expenditure of the member allowed as a deduction.

Division X — *Special Industries*

Subdivision I — *Farming Operations*

Principles
for taxation
of farming
operations

75.(1) A taxpayer conducting a farming operation, shall be subject to tax in accordance with this Act.

(2) In this subdivision, “farming operation” means the keeping of livestock, and the undertaking of agricultural activities and pastoral farming, including the rearing of dairy cattle for milk and dairy products, stud farming, poultry farming, the rearing of sheep for wool or pelts, irrigated agriculture and horticulture.

(3) Where there is any inconsistency in the taxation of a taxpayer conducting a farming operation under this subdivision and other sections in this Act, this subdivision shall prevail.

(4) Where any person carrying on farming operations 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 current market price of such livestock or produce at the date of making the donation.

76. (1) Subject to subsection (2), the cost of an animal that a taxpayer conducting farming operations, holds as livestock acquired by the taxpayer through natural increase, shall be the prescribed standard value for the animal for the tax year in which the taxpayer acquired the animal.

Valuation
of livestock
acquired
by natural
increase

(2) A taxpayer conducting farming operations may elect, in writing to the Commissioner General, to treat the actual cost to the taxpayer of an animal referred to in subsection (1) as the cost of the animal.

(3) A taxpayer shall lodge an election under subsection (2) with the Commissioner General, 28 days before the due date for lodging the taxpayer’s income tax return for the tax year in which the taxpayer acquired the animal, or by such later date as the Commissioner General may allow by notice, in writing, to the taxpayer.

(4) Where subsection (1) applies to a person conducting farming operations, the person shall not be allowed a deduction for the actual cost of livestock acquired by natural increase.

77. Where farming operations are undertaken by a resident individual which involves the rearing of cattle, sheep or goats for slaughter or dryland farming, or both rearing of cattle, sheep or goats for slaughter and dryland farming, the income arising from such, shall not form part of that resident individual’s gross income if —

Subsistence
farming

- (a) the total number of cattle at all times during the tax year, does not exceed 300 cattle;
- (b) the total number of sheep or goats at all times during the tax year, does not exceed 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
- (c) in respect of dryland farming, the total extent of the land involved in such farming operations does not exceed 100 hectares at any time during the tax year.

78. (1) A taxpayer conducting farming operations shall be allowed a deduction for a tax year for any expenditure incurred by the taxpayer, during the tax year on —

Farming
expenditure

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- (a) the eradication of noxious plants;
- (b) the prevention of soil erosion;
- (c) the acquisition of dipping tanks;
- (d) the sinking of boreholes and wells, the provision of piping and pumping plants or the construction of —
 - (i) structural improvements for conservation of water including dams, tanks and reservoirs, or
 - (ii) irrigation channels and water furrows;
- (e) the erection of fences, yards and crushes;
- (f) the erection of buildings used in farming operations, other than buildings designed to provide residential accommodation;
- (g) the establishment of trees, plantations, orchards and vineyards;
- (h) the building of roads, bridges or airstrips used in connection with farming operations;
- (i) 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;
- (j) the making of firebreaks; and
- (k) any other work of a capital nature which, in the opinion of the Commissioner General, is reasonably associated with the classes of expenditure enumerated in paragraphs (a) to (j).

(2) Where a taxpayer disposes of an asset referred to in subsection (1), the consideration for the disposal shall be included in the gross income of the taxpayer in the tax year of disposal of the asset.

Ceasing
farming
operations

79. (1) Where a taxpayer ceases farming operations during a 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 the person's gross income for that year.

(2) Where a taxpayer referred to under subsection (1) donates livestock or produce after ceasing to carry on farming operations during any tax year, an amount equal to the fair market value of such livestock or produce at the date of making the donation, shall be the amount accrued for that livestock or produce.

Subdivision II — *Insurance*

Taxation of
long-term
insurance
business

80. (1) A company carrying on a life insurance business, referred to as a "life company", shall be allowed a deduction for a tax year for the following amounts —

- (a) the amount of the initial reserves established in the financial accounts of the company for new long-term policies issued during the year, but the amount of the deduction allowed must not exceed the amount required for the initial reserve under financial reporting standards; and

- (b) the amount of the annual additions made in the financial accounts of the company during the year to long-term policy reserves, but the amount of the deduction allowed shall not exceed the amount required for the annual addition to the reserve under financial reporting standards.
- (2) Where, during a tax year, a long-term insurance company cancels a long-term policy issued by the company, the amount of the deducted reserves in relation to the cancelled policy, shall be included in the gross income of the company for the year.
- (3) Where a long-term insurance company makes claim pay-outs under long-term policies, during a tax year —
- (a) if the total amount of deducted reserves in relation to those claim pay-outs exceeds the total amount of claim pay-outs made during the year, the excess shall be included in the gross income of the company for the year; or
- (b) if the total amount of claim pay-outs made during the year exceeds the total amount of deducted reserves in relation to those claim pay-outs, the company shall be allowed a deduction for the year for the excess.
- (4) In this section —
- (a) “long-term insurance business” has the meaning assigned to it under the Insurance Industry Act;
- (b) “long-term insurance company” means a company carrying on a long-term insurance business; and
- (c) “long-term policy” has the meaning given to it in Insurance Industry Act.

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81. (1) A company carrying on a general insurance business shall be allowed a deduction for a tax year, for the balance of the company’s provision for unexpired risks as at the end of the tax year, but the amount of the deduction shall not exceed the amount required under financial reporting standards.

Taxation
of general
insurance
business

(2) A company carrying on a general insurance business for a tax year, shall include in the gross income of the company for the tax year the amount allowed as a deduction to the company under subsection (1), in the prior tax year.

(3) A company carrying on a general insurance business shall be allowed a deduction for payments made into a Statutory Reserve Solvency Account and any payments made out of such fund to the company, shall be included in gross income.

(4) The Commissioner General may recognise the establishment of a claim equalisation account for tax purposes, with transfers into the account being deductible in ascertaining taxable income, and transfers out being included in gross income.

(5) In this section —

- (a) “general insurance business” has the meaning given to it under the Insurance Industry Act;

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- (b) “general insurance company” means a company carrying on a general insurance business; and
- (c) “Statutory Reserve Solvency Account” has the same meaning assigned to it under the Insurance Industry Act.

Subdivision III — *Extractive Industries*

Definitions in
subdivision

- 82.** In this Subdivision, unless the context otherwise requires —
- “development expenditure” means capital expenditure incurred by a licensee in undertaking development operations, other than expenditure incurred in acquiring a depreciable asset, and includes the following —
- (a) expenditure incurred by a licensee in acquiring —
 - (i) a resource right, or an interest in a resource right, other than a prospecting right referred to in paragraph (a) of the definition of “prospecting expenditure”, or
 - (ii) resource information other than information referred to in paragraph (b) of the definition of “prospecting expenditure”; or
 - (b) social infrastructure expenditure incurred by a licensee as required under a development right;

“development operations” means activities undertaken by a licensee under a development right;

“development right” means —

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- (a) a mining licence granted under the Mines and Minerals Act; or

Cap. 67:01

- (b) a development licence granted under the Petroleum (Exploration and Production) Act;

“farm-out agreement” means an agreement under which —

- (a) a licensee referred to as the “transferor”, has transferred part of the interest of the transferor in a resource right to another person referred to as the “transferee”; and
- (b) the consideration given by the transferee for the transferred interest wholly or partly includes the transferee agreeing to incur expenditure or undertaking work commitments of the transferor, in respect of the part of the interest retained by the transferor;

“licensee” means a person who has been issued with a resource right;

“mineral” has the meaning under the Mines and Minerals Act;

“mining project” means operations undertaken under a mining right;

“mining right” means a prospecting, retention or mining licence granted under the Mines and Minerals Act;

“petroleum” has the meaning under the Petroleum (Exploration and Production) Act;

“petroleum project” means operations undertaken under a petroleum right;

“petroleum right” means an exploration or development licence granted under the Petroleum (Exploration and Production) Act;

“prospecting expenditure” means expenditure incurred by a licensee in undertaking prospecting operations, other than expenditure incurred in acquiring a depreciable asset, and includes the following —

- (a) expenditure incurred by a licensee in acquiring —
 - (i) an interest in a prospecting right from the Government or under a farm-out agreement, or
 - (ii) prospecting information from the Government or under a farm-out agreement; or
- (b) social infrastructure expenditure incurred by a licensee as required under a prospecting right;

“prospecting information” means information relating to the search for minerals or petroleum under a prospecting right;

“prospecting operations” means activities undertaken by a licensee under a prospecting right;

“resource information” means information relating to a resource project;

“resource project” means a mining or petroleum project;

“resource right” means —

- (a) a prospecting, retention or mining licence issued or granted under the Mines and Minerals Act; or
- (b) an exploration or development licence issued or granted under the Petroleum (Exploration and Production) Act;

“social infrastructure expenditure” means expenditure that a licensee is required to incur under a resource right on the construction of a public school, hospital, road, or similar social infrastructure; and

“subcontractor” means a person supplying services or leasing equipment to a licensee in respect of a resource project undertaken by the licensee, other than a person supplying services as an employee.

83. (1) A licensee shall be subject to tax in accordance with this Division.

(2) Where there is any inconsistency in the taxation of a licensee under this Division and other sections under this Act, this Division shall prevail.

(3) The rate of income tax applicable to a licensee shall be as specified in Schedule 1.

(4) A licensee shall be allowed a deduction for a royalty paid under —

- (a) section 66 of the Mines and Minerals Act; or
- (b) section 73 of the Petroleum (Exploration and Production) Act;

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Ring fencing
of resource
projects

84. (1) A deduction allowed under this Act for an expenditure incurred by a licensee in undertaking a resource project during a tax year, shall be allowed against the gross income derived by the licensee from the resource project during the year.

(2) A licensee shall have a loss in relation to a resource project for a tax year if the total deductions of the licensee in respect of the resource project undertaken by the licensee during the year, exceed the total amount of gross income derived from such project for the year.

(3) For the purposes of subsection (2), where deductible expenditure is incurred partly to derive gross income from a resource project and partly for another purpose, including to derive gross income from another resource project, section 60 shall apply on the basis that the gross income derived by a licensee in undertaking a resource project is a separate class of income.

(4) Where a licensee has a loss in respect of a resource project for a tax year, the amount of the loss, shall be carried forward and allowed as a deduction against the gross income of the licensee derived from the resource project in the next following tax year of the licensee.

(5) A licensee shall carry forward the amount of a loss for a tax year that is not deducted under subsection (4) to the next following tax year, and the loss shall be deductible in that year in accordance with subsection (4) and for the next following tax years until the loss is fully deducted or the resource project ceases.

(6) Where a licensee has an excess carried forward under this section for a resource project for more than one tax year, the excess of the earliest tax year shall be allowed as a deduction first.

(7) Subsection (8) applies where the following conditions are satisfied —

- (a) a licensee has permanently ceased all operations under a resource project;
- (b) the licensee's right to undertake the resource project has expired or been terminated; and
- (c) the licensee has a loss carried forward under this section in relation to the resource project.

(8) Where the conditions under subsection (7) are satisfied, the licensee may elect, by notice in writing to the Commissioner General, to treat the loss or the total amount of losses carried forward under this section as a deduction in relation to a different resource project undertaken by the licensee.

(9) A licensee shall lodge a notice of an election under subsection (8) with the Commissioner General by the due date for the furnishing of the licensee's income tax return for the tax year in which the licensee has permanently ceased operations under the resource project or within such further time, as the Commissioner General may allow, by notice in writing.

(10) For the purposes of section 70, any activity undertaken under a development right shall be treated as the same business as an activity undertaken under a prospecting right:

Provided that such activity is undertaken under the same resource project.

(11) In this section, “resource project”, in relation to a development right of a licensee, includes the resource project for a prospecting right of the licensee:

Provided that the licence area covered by the development right falls wholly within the original licence area covered by the prospecting right.

85. (1) For purposes of section 39, prospecting expenditure incurred by a licensee shall be treated as a business intangible with a useful life of one year.

Prospecting
expenditure

(2) The depreciation rate for a depreciable asset that is acquired solely for use in prospecting operations, shall be 100 per cent.

86. (1) For the purposes of section 39, the development expenditure of a licensee shall be treated as a business intangible with a depreciation rate, equal to the lesser of the following —

Development
expenditure

(a) 100 per cent divided by the expected period of years of the development activities to which the expenditure relates; or

(b) 10 per cent.

(2) Subject to subsection (4), where a licensee —

(a) incurs development expenditure before the commencement of commercial production, section 39 shall apply as if the expenditure was incurred at the time of commencement of commercial production; and

(b) acquires or constructs a depreciable asset before the commencement of commercial production, section 39 shall apply to the asset as if it was acquired or constructed at the time of commencement of commercial production.

(3) The amount of the deduction allowed for development expenditure referred to in subsection (2) (a) or the depreciation deduction allowed for a depreciable asset referred to in subsection (2) (b), for the tax year in which the commencement of commercial production occurs shall be calculated according to the following formula —

$A \times B/C$

where —

A is the amount of the expenditure or the cost of the asset;

B is the number of days in the period beginning on the date of commencement of commercial production and ending on the last day of the tax year in which commercial production commenced; and

C is the number of days in the tax year in which commercial production commenced.

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Rehabilitation
expenditure

(4) Where a licensee disposes of an interest in a development right other than under a farm-out agreement, any gain arising on the disposal shall be reduced by any development expenditure incurred by the licensee, that has not been deducted or otherwise recouped by the licensee.

(5) In this section, “commencement of commercial production” means the first day of period of 30 consecutive days, during which the average level of production on the 25 highest production days in the 30-day period reaches a production level as determined by the Minister responsible for mines, petroleum and natural resources, to be commercial production.

87. (1) A contribution made by a licensee to a rehabilitation fund in accordance with an approved rehabilitation plan in relation to a resource project, shall be allowed as a deduction in the tax year in which the contribution was made.

(2) The determination of the required contributions to be made under the resource right, shall take account of the expected accumulation of the interest income derived on the balance of the rehabilitation fund.

(3) The deductions under subsection (1) for contributions made to a rehabilitation fund shall —

- (a) be allowed from the date that the contributions are required to be made under the terms of the resource right, but not earlier than 10 years before the expected end of the resource project; and
- (b) not exceed the amount of the required contribution under the resource right.

(4) An expenditure incurred by a licensee in carrying out work required by an approved rehabilitation plan in respect of the resource project of the licensee, shall be allowed as a deduction for the tax year in which the expenditure is incurred:

Provided that the work is not paid for, directly or indirectly, from money made available out of a rehabilitation fund.

(5) Where a licensee withdraws an amount from the rehabilitation fund for the purposes of rehabilitating a mine site or decommissioning an oil or gas well, the amount withdrawn and received by a licensee from the rehabilitation fund to meet expenditure incurred under an approved rehabilitation plan, shall be exempt income.

(6) An amount withdrawn from a rehabilitation fund and returned to the licensee, other than for purposes under subsection (4), shall be included in the gross income of the licensee for the tax year in which the amount was returned.

(7) Any surplus in a rehabilitation fund paid to a licensee at the time of completion of rehabilitation, shall be included in the gross income of the licensee for the tax year, in which rehabilitation is completed.

(8) In this section —

- (a) “approved rehabilitation plan” means a plan for the rehabilitation of a mine site or the decommissioning of an oil or gas well that is approved by the Minister responsible for mines, petroleum and natural gas, including rehabilitation obligations specified in a mining right; and
- (b) “rehabilitation fund” means a fund or account required to be established under a resource right to provide for the future payment of remedial work to the area of a resource project covered by the resource right and is managed jointly by the Minister responsible for mines, petroleum and natural gas, the Commissioner General and the licensee.

88. (1) This section shall apply where a licensee has entered into a farm-out agreement.

Farm-out
agreements

(2) Where the section applies, —

- (a) the value of any work undertaken by the transferee in relation to the part of the interest retained by the transferor shall not be included in —
 - (i) the consideration received by the transferor for the transferred interest, or
 - (ii) the business income of the transferor; and
- (b) the following shall apply to any amount in money received or receivable by the transferor for the transferred interest —
 - (i) section 23 shall apply to the amount in money on the basis that it is a recoupment by the transferor of any deductions allowed for expenditure incurred by the transferor in respect of the transferred interest, and
 - (ii) the amount in money exceeds the amount of deducted expenditure to which section 23 applies, the excess shall be treated as consideration received for the transferred interest.

89. (1) Where there is a change in the beneficial owner or owners of one per cent or more of the membership interests in a licensee, the licensee shall notify the Commissioner General, in writing, of the change within seven days of the change occurring.

Indirect
disposals of
resource rights

(2) Subject to subsection (3), if the person disposing of the membership interest in an entity to which a notice under subsection (1) relates is a non-resident, the licensee shall be liable, as agent for the non-resident, for any tax payable under this Act by the non-resident person in respect of the disposal.

(3) Subsection (2), shall not apply, where the disposal of the interest is by way of a trade in shares on a stock exchange.

(4) A licensee liable as agent for a non-resident under subsection (2), shall lodge a tax return and pay the tax due in respect of the disposal of the interest by the non-resident, within 21 days after the date of the disposal or within such further time as the Commissioner General may allow.

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Thin
capitalisation

(5) Any tax paid by a licensee on behalf of a non-resident under subsection (2), shall be credited against the tax liability of the non-resident under this Act.

(6) The membership interest in an entity referred to in subsection (2), shall be treated as a business asset for the purposes of this Act.

90. (1) Subject to subsection (2), if a foreign-controlled resident licensee has an average debt to average equity ratio in excess of 2:1 for a tax year, a deduction shall be disallowed for the interest paid by the licensee during that year, calculated according to the following formula —
 $A \times B/C$

Where —

A is the licensee's total amount of deductible interest for the year in the absence of this section;

B is the licensee's excess debt for the year; and

C is the licensee's average debt for the year.

(2) Subject to subsection (3), where the average debt to average equity ratio of a foreign-controlled licensee exceeds 2:1 for a tax year, subsection (1) shall not apply if the amount of the average debt of the licensee for the year does not exceed the arm's length debt amount.

(3) Subsection (2) shall apply only where the non-resident deriving the interest is entitled to the benefit of the Non-discrimination Article in a tax treaty and this section is not excluded from the application of the Non-discrimination Article in the treaty.

(4) This section shall apply to a non-resident licensee with a permanent establishment in Botswana on the basis of the following —

(a) the permanent establishment is treated as a foreign-controlled resident licensee; and

(b) the average debt to average equity ratio of the permanent establishment, shall be calculated by reference to —

(i) the debt obligations of the non-resident licensee attributable to the permanent establishment, and

(ii) the equity of the non-resident licensee attributable to the operations of the licensee conducted through the permanent establishment.

(5) For purposes of this section —

(a) "arm's length debt amount", in relation to a foreign-controlled licensee, means the amount of debt that a financial institution, that is not an associate of the licensee, shall be prepared to lend to the licensee in an arm's length transaction, having regard to all the circumstances of the licensee, as may be prescribed;

(b) "average debt", in relation to a foreign-controlled licensee for a tax year, means the amount calculated according to the following formula —

$A/12$

Where —

- A is the sum of the amount of debt of the licensee at the end of each calendar month in the tax year;
- (c) “average equity”, in relation to a foreign-controlled licensee for a tax year, means the amount calculated according to the following formula —
- $$A/12$$
- Where —
- A is the sum of the amount of equity of the licensee at the end of each calendar month, in the tax year;
- (d) “debt”, in relation to a foreign-controlled licensee, means the debt obligations of the licensee on which interest is payable as determined according to financial reporting standards;
- (e) “debt obligation” shall not include accounts payable that have been outstanding for less than 90 days;
- (f) “equity”, in relation to a foreign-controlled licensee, means the equity of the licensee as determined according to financial reporting standards and includes an obligation to make a repayment of money in respect of which no interest is payable or treated as having been paid as a result of a transfer pricing adjustment made under the Income Tax (Transfer Pricing) Regulations;
- (g) “excess debt”, in relation to a foreign controlled licensee for a tax year, means the amount by which the licensee’s average debt for the year exceeds the maximum average debt allowed for the year according to the 2:1 ratio; and
- (h) “foreign-controlled resident licensee” means a resident company that is a licensee in which more than 50 per cent of the membership interests in the company are held by a non-resident either alone or together with any associates.

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Subdivision IV — *International Financial Service Centre Companies*

91. (1) An international financial services centre company is a company that satisfies the following conditions —

- (a) the company is a resident or non-resident company;
- (b) the company has a substantial economic presence in Botswana, as may be prescribed;
- (c) the principal operation of the company is to provide approved financial operations to the company associates, and the company may, as subsidiary operations, provide approved financial services to —
- (i) other international financial services centre companies and their associates, or
 - (ii) specified collective investment undertakings and their associates; and

International
financial
services centre
companies

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Principles of
taxation of
international
financial
services centre
companies

Approved
financial
operations

(d) the company has been issued with an international financial service centre tax certificate currently in force, for the approved financial operations undertaken by the company.

(2) The procedures for issuing, renewing, and cancelling international financial service centre tax certificates shall be in such form and manner as may be prescribed.

(3) In this section, “specified collective investment undertaking” means a collective investment undertaking which is —

(a) managed by an international financial services company; or

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

92. (1) An international financial services centre company shall be subject to tax in accordance with this Act and subject to the following modifications —

(a) Division VII of Part III of this Act applies to the company on the basis that the company is allowed a deduction for a net foreign currency exchange loss for a tax year;

(b) where the company keeps its accounts in a functional currency other than Botswana Pula, section 61 applies on the basis that the company shall be permitted to take amounts into account under this Act in the functional currency;

(c) section 90 applies to the company on the basis that the reference in section 90 to a “foreign-controlled resident licensee” is a reference to an “international financial services centre company”; and

(d) section 117 applies to a transaction between an international financial services centre company and a concessional taxed person, regardless of whether or not they are associates.

(2) The rate of tax applicable to an international financial services centre company, shall be as specified in Schedule 1.

(3) In this section, “concessional taxed person” means a person entitled to the benefit of a concessional tax regime.

93. For the purpose of section 91 (1) (c), the following are approved financial operations —

(a) banking and financing operations;

(b) broking and trading of securities;

(c) providing investment advice;

(d) providing management and custodial functions in relation to collective investment schemes;

(e) insurance and related activities;

(f) registrars and transfer agency services;

(g) accounting services and financial administration;

(h) holding and administration of group companies;

(i) shared financial services;

- (j) business process outsourcing and call centres;
- (k) mutual funds;
- (l) exploitation of intellectual property;
- (m) development and supply of computer software for use in the provision of approved financial services; and
- (n) such other operations that the Minister may, from time to time, declare by Order to be approved financial operations.

Division XI — *Tax Concessions*

94. (1) The Minister may, by Order, to be known as a development approval order, grant additional tax relief for —

Development approval concessions and additional tax relief

- (a) any business which proposes to carry out a project which shall be beneficial to the economy or to the economic advancement of citizens; or
- (b) any business activity which shall be beneficial to the economy or to the economic advancement of the citizens.

(2) In granting additional tax relief under subsection (1), the Minister shall prescribe —

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

(3) Notwithstanding any other provision of this Act, the Minister may, in any development approval order under subsection (1), 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 III applies.

(4) 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 to the Minister, in such form as may be prescribed.

95. (1) Subject to subsection (2), a taxpayer shall be allowed a deduction for a tax year for an amount equal to 200 per cent of any expenditure necessarily incurred by the taxpayer 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.

Special concessions

(2) Subsection (1) shall not apply to any expenditure incurred by the taxpayer in respect of which the taxpayer is entitled to reimbursement under the Botswana Qualifications Authority Act.

(3) Notwithstanding anything contained in this Act, the Minister shall prescribe for concessions for any company that is a member of the Botswana Development Corporation Limited group of companies, which concessions shall cover the following —

- (a) interest on loans within the group;
- (b) interest on loans payable to persons outside the group; and
- (c) offsetting of losses incurred within the group.

(4) In this section “member of the Botswana Development Corporation Limited” in relation to 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).

Division XII — *International Aspects of Income Tax*

Foreign tax credit

96. (1) Where a resident taxpayer has derived taxable foreign income in respect of which the taxpayer has paid foreign income tax, the taxpayer shall be allowed a tax credit referred to as a “foreign tax credit”, of an amount equal to the lesser of —

- (a) the foreign income tax paid; and
- (b) the Botswana income tax payable in respect of the taxable foreign income.

(2) The Botswana income tax referred to in subsection (1) (b), shall be calculated by applying the rate of Botswana income tax applicable to the resident taxpayer for the year, against the net foreign income of the resident for the year.

(3) The foreign tax credit of a resident taxpayer for a tax year shall be calculated separately for taxable foreign business income and taxable foreign investment income.

(4) Where subsection (3) applies, deductions are apportioned for the purposes of paragraph (b) of the definition of “net foreign income” in subsection (7), in accordance with section 60, on the basis that taxable foreign business income of a resident taxpayer and taxable foreign investment income of the taxpayer are separate classes of income.

(5) A foreign tax credit shall be allowed under this section, where —

- (a) the resident taxpayer has paid the foreign income tax within two years after the end of the tax year in which the taxable foreign income was derived by the taxpayer or within such further time as the Commissioner General allows; and
- (b) the resident taxpayer has a receipt and any additional documentary evidence as required by the Commissioner General for the payment of the foreign income tax from the foreign tax authority.

(6) Where a foreign tax credit of a resident taxpayer for a tax year is not credited for the year, the excess credit shall be neither refunded nor carried forward to the following tax year.

(7) In this section and section 97 —

- (a) “foreign income tax” means any tax on income or gains, including withholding tax, imposed by the government of a foreign country or a political subdivision of a government of a foreign country, but does not include a penalty, additional tax, or interest payable in respect of such tax;
- (b) “net foreign income”, in relation to a resident taxpayer for a tax year, means the total taxable foreign income of the taxpayer for the year reduced by any deductions allowed to the person under this Act for the year that —
 - (i) relate exclusively to the derivation of the taxable foreign income, and
 - (ii) are apportioned to the derivation of the taxable foreign income in accordance with section 60 on the basis that taxable foreign income is a separate class of income;
- (c) “rate of Botswana income tax”, in relation to a resident taxpayer for a tax year, means the percentage that the income tax payable by the taxpayer for the year, before the allowance of any tax credit under this Act, is of the taxable income of the taxpayer for the year;
- (d) “taxable foreign business income” means taxable business income that is foreign income;
- (e) “taxable foreign income” means foreign income included in gross income; and
- (f) “taxable foreign investment income” means taxable investment income that is foreign income.

97. (1) Subject to subsection (2), an amount that a resident taxpayer is allowed as a deduction under this Act in deriving taxable foreign income, shall be deductible only against that income.

Foreign losses

(2) Subsection (1) shall apply separately to the taxable foreign business income and the taxable foreign investment income of a taxpayer, and section 60 shall apply on the basis that foreign taxable business income and foreign taxable investment income are separate classes of income.

(3) Where a resident taxpayer has a foreign business loss for a tax year, the amount of the loss shall be carried forward to the following tax year and allowed as a deduction in that year against the taxpayer’s foreign taxable business income for the following tax year.

(4) Where a resident taxpayer is not able to wholly deduct a foreign business loss under subsection (3) —

- (a) the amount not deducted shall be carried forward to the following tax year and applied as specified in subsection (3), in that year, and the following tax years until the loss is fully deducted; and

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Taxation of
recharged
technical fees
or royalties

(b) the resident taxpayer shall not carry a foreign business loss forward for more than five tax years, after the end of the tax year in which the loss was incurred.

(5) Where a resident taxpayer has a foreign business loss carried forward under this section for more than one tax year, the foreign business loss of the earliest tax year shall be deducted first.

(6) In this section, “foreign business loss”, in relation to a resident taxpayer for a tax year, means the amount by which the deductible expenditures incurred by the taxpayer in deriving taxable foreign business income exceeds the amount of that income for the tax year.

98. (1) This section shall apply where the following conditions are satisfied —

(a) a non-resident referred to as a “supplier”, supplies technical services, or leases out equipment, other than through a permanent establishment in Botswana;

(b) the services are supplied, or equipment is leased to, a person referred to as the “recipient”, who is —

(i) a resident of Botswana, other than in relation to a business conducted by the resident through a permanent establishment outside Botswana, or

(ii) a non-resident conducting business in Botswana through a permanent establishment in Botswana;

(c) the technical fee for the services or royalty for the leased equipment is paid to the supplier by a non-resident associate of the recipient; and

(d) the technical fee or royalty is recharged by the associate to the recipient.

(2) Where the conditions under subsection (1) are satisfied, this Act shall apply as if the non-resident associate is supplying the technical services, or leased equipment, to the recipient and the recharged amount is the technical fee for the services royalty for the leased equipment.

(3) In this section, “technical services” means services the remuneration for which is a technical fee.

Repatriated
profit of
permanent
establishment

99. (1) The repatriated profit of a permanent establishment of a non-resident company for a tax year, shall be calculated in accordance with the following formula —

$(A + (B - C)) - D$

where —

A is the total cost of assets, net of liabilities, of the permanent establishment at the commencement of the tax year;

B is the net profit of the permanent establishment for the tax year calculated in accordance with financial reporting standards;

C is the income tax payable on the taxable income of the permanent establishment for the tax year; and

D is the total cost of assets, net of liabilities, of the permanent establishment at the end of the tax year.

(2) In calculating the repatriated profit of a permanent establishment for a tax year, the total cost of assets of the permanent establishment at the commencement of a tax year, is the total cost of assets at the end of the previous tax year.

(3) The Minister may prescribe assets that qualify as permanent establishment assets, the cost of those assets and the amount of liabilities of the permanent establishment.

100. (1) The Minister may, on behalf of the Government, enter into a bilateral or multilateral agreement with the government of another country or territory, or governments of other countries or territories –

- (a) on the prevention, mitigation or elimination of double taxation or prevention of fiscal evasion under this Act or the income tax laws of that other country; or
- (b) providing for the exchange of information or reciprocal assistance in the recovery of tax or service of process.

(2) Any agreement entered into under subsection (1), shall be laid before the National Assembly as soon as possible after the agreement 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.

(3) The Minister may at any time by Order, which shall be laid before the National Assembly as soon as after it is issued, amend or cancel any agreement entered into under subsection (1) and laid before the National Assembly under subsection (2), 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) With the exception of subsection (5) and Part VI, where there is any conflict between the terms of an agreement under subsection (1) (a) having legal effect in Botswana and this Act, the agreement shall prevail over this Act only if, and for so long as the agreement has the legal effect in the other country or territory.

(5) Subject to subsection (6) –

- (a) where an agreement under subsection (1) (a) provides that Botswana source of income is exempt or excluded from tax; or
- (b) the application of the agreement results in a reduction in the rate of Botswana tax,

the benefit of that exemption, exclusion or reduction is not available to an entity that is a resident of the other contracting state to the agreement where when the beneficial owner or owners of 50 per cent or more of the membership interests in that entity is an individual or individuals who are not residents of that other contracting state, for the purposes of the agreement.

- (6) Subsection (5) shall not apply where —
 - (a) the resident of the other contracting state to the agreement is an entity in relation to which the principal class of shares or other interest in the entity is regularly traded on a stock exchange, in that contracting state;
 - (b) the resident of the other contracting state to the agreement is an entity carrying on an active business through personnel and premises in that contracting state and the Botswana source income derived by the entity, is attributable to that business; or
 - (c) the agreement under subsection (1) (a) includes an article headed “Entitlement to Benefits” or any other provision applying generally to prevent abuse of the agreement.
- (7) In this section —
 - (a) “active business” does not include —
 - (i) operating as a holding company,
 - (ii) providing overall supervision or administration of a group of companies,
 - (iii) providing group financing, including cash pooling, or operating a centralised payments facility, or
 - (iv) making or managing investments, unless this activity is carried on by a bank, insurance company or registered securities dealer in the ordinary course of its business; and
 - (b) “agreement” includes a tax treaty and a mutual administrative assistance agreement as defined in the Tax Administration Act.

PART IV — *Capital Gains Tax*

Capital gains
and losses

101. (1) The amount of a capital gain arising on the disposal of a CGT asset shall be the amount by which the consideration for the disposal of the asset exceeds the cost of the asset at the time of disposal.

(2) The amount of a capital loss arising on disposal of a CGT asset shall be the amount by which the cost of the asset at the time of disposal exceeds the consideration for the disposal.

(3) Where a partnership has derived a capital gain or incurred a capital loss on disposal of a CGT asset, each partner in the partnership shall be treated as having derived a capital gain equal to the partner’s share of the capital gain or incurred a capital loss equal to the partner’s share of the capital loss.

(4) Where the trustee of a trust has derived a capital gain or incurred a capital loss on disposal of a CGT asset, each beneficiary of the trust shall be treated as having derived a capital gain equal to the beneficiary’s share of the capital gain or incurred a capital loss equal to the beneficiary’s share of the capital loss.

(5) Where no beneficiary is entitled to a gain or loss on disposal of a CGT asset of the trust for a tax year, the gain or loss shall be taken into account in calculating the net aggregate gain or loss of the trust for the tax year under section 102.

(6) An amount to which section 109 (2) (a) (i), 111 (6) (a), or 114 (6) (a) applies shall be treated, for the purposes of this Act, as a capital gain derived on disposal of a CGT asset.

(7) For the purposes of calculating the capital gain on disposal of a CGT asset that is immovable property held for more than one year, the amounts included in the cost of the property under section 107 (2) (a) and (c) are subject to a cost of living adjustment.

(8) The cost of living adjustment for an amount under subsection (7) is calculated according to the following formula —

A/B

where —

A is the cost of living index on the date of disposal of the property;
and

B is the cost of living index for the date on which the amount referred to in section 107 (2) (a) and (c), as the case may be, was incurred.

(9) The cost of living index for a day is the national cost of living index for the month in which the day occurs.

102. (1) The net aggregate gain of a taxpayer for a tax year shall be calculated according to the following formula —

Net aggregate
gain

$A - B$

where —

A is the total amount of capital gains, other than exempt gains, on disposal of CGT assets by the taxpayer during the tax year; and

B is the sum of the total capital losses, other than exempt losses, on disposal of CGT assets by the taxpayer during the tax year.

(2) Where component “B” of the formula in subsection (1) exceeds component “A” for a taxpayer for a tax year, the amount of the excess is the net aggregate loss of the taxpayer for the year.

(3) Where a taxpayer has a net aggregate gain for a tax year —

(a) the net aggregate gain for an individual shall be subject to tax at the rate or rates specified in Schedule 1;

(b) the net aggregate gain for a trust shall be included in the gross income of the trust for the tax year, for the purposes of calculating the taxable income of the trust under section 68; or

(c) the net aggregate gain for a company shall be included in the gross income of the company for the tax year.

(4) Where a taxpayer has a net aggregate loss for a tax year, the taxpayer may carry the loss forward to the following tax year and apply it to reduce the taxpayer’s net aggregate gain for the following tax year.

(5) A net aggregate loss for a tax year may be carried forward for one tax year only.

(6) A capital gain or loss of a non-resident shall be taken into account in calculating the net aggregate gain or loss of the non-resident for a tax year only if the CGT asset disposed of is a Botswana asset.

B.920

(7) In this section, “exempt loss” means any loss made on the disposal of a CGT asset that, if instead had a gain been derived, the gain would have been an exempt gain.

Foreign capital gain

103. (1) Where a resident of Botswana has made a capital gain on the disposal of a CGT asset in respect of which foreign tax has been paid and the capital gain has been taken into account in calculating the net aggregate gain of the resident for the tax year in which the asset was disposed, the resident shall be allowed a tax credit of an amount equal to the lesser of –

- (a) the foreign tax paid by the resident in respect of the disposal of the asset; or
- (b) the Botswana capital gains tax payable in respect of the disposal of the asset.

(2) Where a foreign tax credit allowed under subsection (1) to a resident of Botswana exceeds the Botswana tax payable in respect of the disposal of the asset, the excess credit shall not be refunded or applied against the Botswana tax payable in respect of any other CGT asset of the resident.

Part V — *Rules Relating to Assets*

Jointly owned assets

104. (1) For purposes of this Act, if two or more persons jointly own an asset other than by way of a partnership or under a trust, any gain or loss made on disposal of the asset shall be apportioned among the owners, according to the owners’ respective interests in the asset.

(2) Where the interests of the owners of a jointly owned asset under subsection (1) cannot be determined, the owners of the asset shall be treated as having an equal interest in the asset.

Acquisition of asset

105. (1) Subject to this Part, a person acquires an asset when the legal title to the asset passes to the person and, in the case of the grant of a right to a person, the person acquires the right at the time the right is granted to the person.

(2) Where a person constructs or creates, or arranges for the construction or creation of, an asset that the person owns when the asset is constructed or created, the person acquires the asset when the construction or the work that resulted in the creation of the asset commences.

Disposal of asset

- 106.** (1) Subject to this Part, a person disposes of an asset when —
- (a) a person has sold, exchanged, distributed, or otherwise transferred legal title to the asset; or
 - (b) the asset is cancelled, redeemed, relinquished, destroyed, lost, expired, or surrendered.

(2) Where a person creates an asset, such as an option or right, in or for another person being an asset that did not previously exist, the first-mentioned person shall be treated as having made a disposal of the asset to the second-mentioned person at the time the asset is created.

(3) Where an asset is transferred by succession or under a will, the deceased shall be treated as having disposed of the asset at the time the asset is transferred.

(4) The vesting of an asset of a person, referred to as the “owner”, in a liquidator, trustee-in-bankruptcy, or receiver shall not be treated as a disposal of the asset by the owner and any acts done in relation to the asset by the liquidator, trustee-in-bankruptcy or receiver shall be treated as having been done by the owner.

(5) A disposal under this section shall include the disposal of a part of an asset.

107. (1) The cost of an asset shall be determined under this section, unless the Act provides otherwise.

Cost of asset

(2) The cost of an asset other than a business intangible of a taxpayer shall be the total of the following amounts –

- (a) the total consideration given by the taxpayer for the asset, including the fair market value of any consideration in kind determined at the time the asset is acquired and, if the asset is constructed, produced or developed, the cost of construction, production or development of the asset;
- (b) any incidental expenditure incurred by the person in acquiring or disposing of the asset; and
- (c) any expenditure incurred by the person to install, alter, renew, reconstruct, or improve the asset other than an amount allowed as a deduction under section 44.

(3) Subject to this section, the cost of a business intangible of a taxpayer shall be –

- (a) in relation to a business intangible referred to in paragraph (a), (b) or (c) of the definition of “business intangible” in section 2, the total expenditure incurred by the taxpayer in acquiring, creating, improving, and renewing the intangible, and any incidental expenditure incurred in acquiring or disposing of the intangible; or
 - (b) in relation to a business intangible referred to in paragraph (d), (e) or (f) of the definition of “business intangible” in section 2, the amount of the expenditure.
- (4) The cost of an asset of a taxpayer shall not include –
- (a) any expenditure allowed as a deduction under this Act other than a depreciation, deduction or initial allowance under Division V of Part III; or
 - (b) any grant, subsidy, rebate, commission, or other financial assistance received or receivable by a person in respect of the acquisition of the asset, except to the extent to which the amount is included in the gross income of the taxpayer.

(5) The cost of an asset acquired by way of gift in the circumstances specified in section 111 (3), shall be the fair market value of the asset at the time of the acquisition.

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Splitting or
merging of
assets

(6) The cost of an asset of a taxpayer shall not be reduced by an impairment write down in relation to the asset, made in the financial accounts of the taxpayer.

(7) The Minister may prescribe rules for determining the cost of an asset.

(8) In this section, “impairment write down”, in relation to a business asset of a taxpayer, means the write down of the value of the asset in the financial accounts of the taxpayer because the fair market value of the asset is less than the cost of the asset.

108. (1) Where a taxpayer disposes of a part of an asset, the cost allocated to the part of the asset disposed of shall be calculated according to the following formula —

$$A \times B / (B + C)$$

where —

A subject to subsection (3), is the cost of the asset;

B is the consideration for the part of the asset disposed of; and

C is the fair market value of the retained part of the asset at the time of the disposal.

(2) Where subsection (1) applies —

(a) the retained part of the asset shall be treated as a separate asset; and

(b) the cost of the retained part of the asset shall be the balance of component “A” of the formula in subsection (1), remaining after taking account of the amount allocated under subsection (1) to the disposed part of the asset.

(3) Where the asset to which subsection (1) applies is a depreciable asset or business intangible, the reference to the cost of the asset in component “A” of the formula in subsection (1), shall be a reference to the net book value of the asset or intangible at the time of disposal of part of the asset.

(4) The following shall apply where a taxpayer merges two or more assets (referred to as the “original assets”) into a single asset (referred to as the “merged asset”) —

(a) the original assets shall be treated as having been disposed of at the time of the merger of the assets;

(b) no gain or loss shall be recognised in respect of the disposal of the original assets referred to in paragraph (a);

(c) the taxpayer shall be treated as having acquired the merged asset at the time of the merger of the assets; and

(d) the cost of the merged asset shall be the total of the following amounts —

(i) the cost of the original assets at the time of the merger of the assets, and

(ii) the expenditure incurred by the person in merging the original assets into the merged asset.

(5) Where an original asset under subsection (4) is a depreciable asset or business intangible, the reference to “cost” in subsection (4) (d), is a reference to the net book value of the asset at the time of the merger of the assets.

109. (1) Where an asset is damaged, the cost of the asset shall be reduced by any amount received for the damage under —

Cost of asset
that has been
damaged

- (a) an insurance policy, indemnity, or other agreement;
- (b) a settlement agreement; or
- (c) a judicial decision.

(2) Where subsection (1) applies, and the amount received exceeds the cost of the asset —

- (a) the excess for —
 - (i) a CGT asset, shall be treated as a capital gain derived at the time that the amount is received, and
 - (ii) a business asset held on revenue account, shall be treated as business income derived at the time that the amount is received; and
- (b) the cost of the asset is reset at zero.

(3) Where the asset is a depreciable asset, any reference to the cost of the asset in this section shall be treated as reference to the net book value of the asset.

110. (1) Where a building or other improvement to land is a depreciable asset, the building or other improvement and the land on which it is located shall be treated as separate assets.

Cost of land
and building

(2) Where subsection (1) applies and the building or other improvement and the land on which it is located are acquired for a single consideration, the consideration shall be apportioned as between the cost of the asset that is the building or other improvement, and the cost of the land.

(3) The apportionment under subsection (2) shall be undertaken at the time of acquisition of the immovable property and in accordance with generally accepted valuation principles for land.

111. (1) The consideration for the disposal of an asset shall be determined under this section, unless the Act provides otherwise.

Consideration
for disposal of
asset

(2) The consideration for the disposal of an asset by a person shall be the total amount received or receivable by the person for the asset, including the fair market value of any consideration-in-kind determined at the time of disposal.

(3) Where an asset is disposed of by way of gift to an associate, the consideration for the disposal shall be the fair market value of the asset at the time of the disposal.

(4) When an asset has been lost or destroyed by a person, the consideration for the asset shall include any compensation, indemnity or damages received or receivable by the person as a result of the loss or destruction, including amounts received or receivable —

- (a) under an insurance policy, indemnity, or other agreement;

- (b) under a settlement agreement; or
- (c) as a consequence of a judicial decision.

(5) Where two or more assets are disposed of by a person in a single transaction and the consideration for each asset is not specified, the total consideration shall be apportioned among the assets disposed of in proportion to their respective fair market values determined at the time of the disposal.

(6) Where a deposit paid to the owner of an asset is wholly or partly forfeited to the owner of the asset because a prospective sale or other disposal of the asset has not proceeded, the owner of the asset shall be treated as having —

- (a) for a CGT asset, derived a capital gain equal to the amount of the forfeited deposit; or
- (b) for a business asset held on revenue account, derived business income equal to the amount of the forfeited deposit.

(7) Where a taxpayer is unable to provide documentary evidence of the consideration for the disposal of an asset, the consideration shall be the fair market value of the asset at the time of disposal.

Deemed
disposals

112. (1) The application by a person of a non-business asset to use as a business asset, shall, at the time that the asset is first used as a business asset, be treated as —

- (a) a disposal of the non-business asset by the person for a consideration equal to the fair market value of the asset at the time that the asset is first used as a business asset; and
- (b) an acquisition of a business asset by the person for a consideration equal to the amount specified in paragraph (a).

(2) The application by a person of a business asset to use as a non-business asset shall, at the time that the asset is first used as a non-business asset, be treated as —

- (a) a disposal of the business asset by the person for a consideration equal to the fair market value of the asset at the time that the asset is first used as a non-business asset; and
- (b) an acquisition of a non-business asset by the person for a consideration equal to the amount specified in paragraph (a).

(3) The transfer by a non-resident of an asset, other than a Botswana asset, to a Botswana permanent establishment of the non-resident shall be treated as —

- (a) a disposal of the asset by the non-resident for a consideration equal to the fair market value of the asset at the time of the transfer; and
- (b) a reacquisition of the asset at the time of the transfer for consideration equal to the amount specified in paragraph (a).

(4) The transfer by a non-resident of an asset, other than a Botswana asset, from a Botswana permanent establishment of the non-resident to another part of the business of the non-resident outside Botswana shall be treated as —

- (a) a disposal of the asset by the non-resident for a consideration equal to the fair market value of the asset at the time of the transfer; and
 - (b) a reacquisition of the asset at the time of the transfer for consideration equal to the amount specified in paragraph (a).
- (5) Where a resident of Botswana ceases to be a resident, the resident shall be treated —
- (a) as having disposed of the resident's assets, other than Botswana assets, for a consideration equal to the fair market value of the assets at the time of change in residence; and
 - (b) as having reacquired the assets at the time of the transfer for consideration equal to the amount specified in paragraph (a).
- (6) Where a non-resident becomes a resident of Botswana, the non-resident shall be treated —
- (a) as having disposed of the non-resident's assets, other than Botswana assets, for a consideration equal to the fair market value of the assets at the time of change in residence; and
 - (b) as having reacquired the assets at the time of the transfer for consideration equal to the amount specified in paragraph (a).
- 113.** (1) This section applies where a person, referred to as the “grantor”, grants an option to another person, referred to as the “grantee”, to acquire an asset.
- (2) Where this section applies, the following shall apply to the grantor on the grant of an option —
- (a) the grantor shall be treated as having made a disposal of the option to the grantee at the time that the option is granted;
 - (b) the cost for the grantor for the option shall be limited to any non-deductible incidental costs incurred by the grantor in granting the option; and
 - (c) the consideration for the option shall be the amount received by the grantor for the option.
- (3) Where this section applies, the following shall apply to the grantee on the grant of an option —
- (a) the grantee shall be treated as having acquired the option at the time that the option is granted; and
 - (b) the cost for the grantee for the option shall be the consideration given for the option and any non-deductible incidental costs incurred by the grantee in relation to the grant of the option.
- (4) Where the grantee exercises the option under this section —
- (a) the grantor's consideration for the asset transferred by the grantor on exercise of the option shall not include the consideration given for the option, but only where the grantor has been subject to tax on any income or capital gain made in respect of the grant of the option; and
 - (b) the cost for the grantee for the asset transferred on exercise of the option shall include the amount specified in subsection (3) (b).

Grant and
exercise of
options

B.926

Deferral of
recognition of
gain or loss

(5) Where an option expires without being exercised by the grantee, the grantee shall make a loss equal to the amount specified in subsection (3) (b).

114. (1) For purposes of this Act and subject to subsection (2), no gain or loss shall be taken to arise on the disposal of an asset —

- (a) between spouses as part of a divorce settlement or separation agreement;
- (b) by reason of the transfer of the asset on the death of a person to an executor or beneficiary;
- (c) by reason of the loss or destruction or compulsory acquisition of the asset, referred to as the “replaced asset”, if the consideration for the disposal is reinvested by the recipient for an asset of a like kind, referred to as a “replacement asset”, within one year of the disposal or within such further period as the Commissioner General shall allow; or
- (d) where the asset is a depreciable asset, referred to as the “replaced asset”, and the person acquires a depreciable similar asset to be wholly used to derive taxable business income, referred to as the “replacement asset”, within six months after the disposal or within such further period as the Commissioner General shall allow.

(2) Subsection (1) (a) or (b) shall not apply if the person acquiring the asset will not be subject to tax under the Act in respect of a subsequent disposal of the asset.

(3) Where subsection (1) (a) or (b) applies, the person acquiring the asset shall be treated as acquiring the asset for an amount equal to —

- (a) the net book value of the asset for the person disposing of the asset at the time of the disposal for a depreciable asset or business intangible; or
- (b) the cost of the asset for the person disposing of the asset at the time of the disposal for any other asset.

(4) Where subsection (1) (c) or (d) applies, and the cost of the replacement asset exceeds the consideration for the replaced asset, the cost of the replacement asset shall be —

- (a) for a depreciable asset or business intangible, the net book value of the replaced asset at the time of disposal increased by the amount of the excess; or
- (b) for any other asset, the cost of the replaced asset at the time of disposal increased by the amount of the excess.

(5) Where subsection (1) (c) or (d) applies, and the consideration for the replaced asset exceeds the cost of the replacement asset, the cost of the replacement asset shall be —

- (a) for a depreciable asset or business intangible, the net book value of the replaced asset at the time of disposal reduced by the amount of the excess, but not below zero; or
- (b) for any other asset, the cost of the replaced asset at the time of disposal reduced by the amount of the excess, but not below zero.

(6) Any part of the excess under subsection (5) that is not used to reduce the net book value or cost of the asset, as the case may be, shall be —

- (a) for a CGT asset, treated as a capital gain; or
- (b) for a business asset held on revenue account, included in the business income of the taxpayer.

115. Any person authorised by law to accept, register, or in any way approve the transfer of an asset shall not accept, register, or approve the transfer, unless satisfied that any tax payable under this Act in respect of the transfer has been paid, or that security has been provided to the satisfaction of the Commissioner General for the payment of the tax.

Registration
of transferred
assets

Part VI — *Countering Tax Avoidance*

116. (1) A person shall not split income with an associate for the purpose, or purposes that include the purpose of lowering the total tax payable on income by —

- (a) transferring income or the right to income, directly or indirectly, to the associate;
- (b) transferring or donating property, including money, directly or indirectly, to the associate with the result that the associate receives or enjoys the income from that property;
- (c) making a payment for services in excess of the fair market value of the services or when the recipient has no economic need for the services; or
- (d) any other means.

(2) Where a person has split income as specified under subsection (1), the Commissioner General may adjust the taxable income and tax credits of both persons to prevent any reduction in tax payable as a result of the splitting of income.

(3) In determining whether a person has split income as specified under subsection (1), the Commissioner General shall consider the value, if any, given by the associate for the transfer.

(4) This section shall not apply to a donation that the Commissioner General is satisfied has been made by a citizen of Botswana pursuant to, and in accordance with, customary law.

117. (1) For purposes of this section, where a person engages directly or indirectly in any transaction, operation or scheme, herein after referred to as a “transaction”, with an associate, the amount of each person’s taxable income derived from the transaction shall be consistent with the arm’s length principle.

(2) A transaction shall be consistent with the arm’s length principle, where the conditions of the transaction do not differ from the conditions applied between independent persons in comparable transactions carried out under comparable circumstances.

Income
splitting

Transfer
pricing

(3) Where a person fails to comply with subsection (1), the Commissioner General may make adjustments to the income, deductions, gains, losses and tax credits of the person, consistent with the arm's length principle.

(4) The determination of whether the conditions of a transaction are consistent with the arm's length principle under subsection (1), and the determination of any quantum of adjustments made under subsection (3), shall be as prescribed.

(5) A person who engages in a transaction to which subsection (1) applies shall keep the required documentation as may be prescribed.

(6) Notwithstanding the provisions of subsections (1) and (2), where a taxpayer engages directly or indirectly in a transaction with a non-resident associate for the acquisition of a new or used asset from the non-resident associate and the non-resident associate purchased that asset from an independent third party, the Commissioner General shall determine the purchase price of the asset to be nil for the purposes of computing the taxable income of the taxpayer, unless the taxpayer provides a tax invoice for the asset issued by the independent person to the non-resident associate for the acquisition of the asset.

(7) The Minister may prescribe —

- (a) the receipt or lodging of country-by-country reports; and
- (b) the entering into by the Commissioner General of advance pricing agreements.

Tax avoidance schemes

118. (1) This section shall apply where the Commissioner General is of the opinion that —

- (a) a scheme has been entered into or carried out;
- (b) a person has obtained a tax benefit in connection with the scheme; and
- (c) having regard to the substance of the scheme, it would be concluded that a person, or one of the persons, who entered into or carried out the scheme did so for the sole or principal purpose of enabling the person to obtain the tax benefit referred to in paragraph (b).

(2) Where this section applies and notwithstanding anything contained in this Act, the Commissioner General may determine the tax liability of a person who has obtained a tax benefit, and of any other person related to the scheme, as if the scheme had not been entered into or carried out, or in such manner as the Commissioner General considers appropriate for the prevention or reduction of the tax benefit.

(3) Where the Commissioner General makes a determination under subsection (2), the Commissioner General shall serve a notice of a tax assessment, including an amended assessment, on any taxpayer whose tax liability is adjusted as a result of the determination so as to give effect to the determination.

(4) Where a tax assessment under subsection (3) is an amended assessment, the notice of the amended assessment shall be served within the time limit specified in section 21 of the Tax Administration Act.

- (5) In this section —
- (a) “scheme” includes —
- (i) an agreement, arrangement, or promise, whether express or implied and whether or not enforceable by legal proceedings, or
 - (ii) any undertaking, plan, proposal, course of action or course of conduct, whether undertaken unilaterally or by two or more persons; and
- (b) “tax benefit” means —
- (i) a reduction in a liability of a person to pay tax,
 - (ii) a deferral of a liability of a person to pay tax, or
 - (iii) any other avoidance of the liability of a person to pay tax.

119. (1) Where a resident of Botswana has a 50 per cent or greater membership interest held, directly or indirectly, in a low tax entity during a tax year, the gross income of the resident shall include the amount, referred to as “attributed income”, calculated according to the following formula —

Use of low tax entities

$A \times B$

where —

A is the percentage interest of the resident in the low tax entity; and
 B is the total investment income derived by the low tax entity during the year, other than investment income in respect of which the low tax entity has been subject to income tax under section 9.

(2) Component “B” of the formula in subsection (1), shall be reduced by the amount of any foreign income tax or non-resident tax paid by the low tax entity in respect of the investment income.

(3) When determining the percentage interest of a person in an entity, —

- (a) the amount of the interest shall be the higher of the person’s percentage interest in —
- (i) the voting power in the entity,
 - (ii) the right to dividends or income entitlements payable by the entity, or
 - (iii) the right to capital in the entity; and

(b) account shall be taken of any direct or indirect interests in the entity held by any associates of the person.

(4) A company or partnership shall be a resident of a foreign country or territory for a tax year where the company or partnership —

- (a) is incorporated, created or formed in the foreign country or territory; or
- (b) is managed and controlled in the foreign country or territory at any time during the tax year.

(5) A trust shall be a resident of a foreign country or territory for a tax year where the trust —

- (a) is settled or established in the foreign country or territory; or

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(b) has its administration in a foreign country or territory at any time during the tax year.

(6) A dividend paid by a low tax entity to a resident of Botswana shall be exempt income to the extent that it is paid out of Botswana income.

(7) For the purposes of subsection (6), a dividend is treated as paid first out of attributed income.

(8) In this section —

(a) “effective corporate tax rate”, in relation to an entity for a tax year, means the tax rate calculated by the following formula —
$$A/B$$

where —

A is income tax paid or payable by the entity for the year in a foreign country or territory; and

B is the financial accounting profits of the entity for the year calculated according to financial reporting standards;

(b) “investment income” has the same meaning as in section 20 (1); and

(c) “low tax entity” means an entity resident in a foreign country or territory, or part of a foreign country or territory that —

(i) has an effective corporate tax rate below 15 per cent,

(ii) either does not tax foreign income of residents or taxes foreign income of residents only if the income is remitted into the country, or

(iii) has laws providing for the secrecy of financial or corporate information that facilitate the concealment of the identity of the beneficial owner of any income or asset of the entity.

Part VII — *Procedural Rules*

Division I — *General Procedural Rules*

Administration
and application
of Tax
Administration
Act

120. The Tax Administration Act shall apply for the purposes of the administration of this Act, subject to the application of this Part.

Representatives

121. For the purposes of the Tax Administration Act —

(a) the trustee of a trust shall be treated as a representative of each beneficiary of the trust; and

(b) each resident partner in a partnership shall be treated as a representative of each non-resident partner in the partnership.

Record-keeping

122. (1) A taxpayer shall keep such accounts, documents and records as are necessary, to enable the calculation of the income tax payable including a nil amount by, or assessed loss of, the taxpayer under this Act for a tax year.

(2) A taxpayer shall keep such accounts, documents and records as are necessary, to enable the calculation of the capital gains tax payable by, or the net aggregate loss of, the taxpayer for a tax year.

(3) A taxpayer shall maintain evidence that any income derived by the taxpayer is exempt income or any gain is an exempt gain.

(4) A taxpayer shall be disallowed a deduction where the taxpayer is unable, without reasonable excuse, to produce documentary evidence supporting a claim for the deduction for an expenditure incurred.

(5) An expenditure incurred by the taxpayer shall not be included in the cost of a business asset or an asset subject to capital gains tax if the taxpayer is unable to produce documentary evidence relating to the circumstances giving rise to the inclusion of the expenditure in the cost of the asset.

(6) Where a foreign business is 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 accounts and documents as the Commissioner General may request for a period of eight years.

(7) The Minister may prescribe the documents that a taxpayer is required to maintain for the purposes of the income tax or capital gains tax.

123. (1) A taxpayer liable for income tax shall lodge an income tax return for each tax year –

Income tax
return

(a) in the case of a company, within four months after the end of the accounting period; or

(b) in the case of any other person, within three months after the end of the tax year.

(2) A non-resident conducting business in Botswana through a permanent establishment shall include the repatriated profit of the permanent establishment for the income tax return year.

(3) For the purposes of subsection (1), a taxpayer that has a nil taxable income or an assessed loss for a tax year is treated as being liable to income tax for the tax year.

(4) A partnership shall lodge a partnership return of income for a tax year, within three months after the end of the tax year.

(5) A trust shall lodge a trust return of income for a tax year within three months after the end of the tax year.

(6) Where the Commissioner General has extended the time to lodge a tax return under section 17 of the Tax Administration Act for a company, the Commissioner General may, by notice in writing, require the company, within such time as may be specified in the notice, not being less than seven days from the date of service of the notice, to lodge a provisional tax return containing an estimate of the company's taxable income for the year.

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Income tax
return not
required

(7) A provisional tax return under subsection (6) shall not be a self-assessment return for the purposes of the Tax Administration Act.

(8) A taxpayer who has a net aggregate gain or net aggregate loss for a tax year shall report the gain or loss of the income tax return for the year.

(9) A non-profit organisation shall file a return of income and expenditures for a tax year, within three months after the end of the tax year.

124.(1) The following persons shall not be required to lodge an income tax return for a tax year, unless specifically requested by the Commissioner General, by notice in writing, to the person —

- (a) an individual whose gross income during the tax year consists solely of employment income paid by a single employer under section 129;
- (b) a non-resident whose only Botswana source income derived during the tax year is subject to non-resident tax which has been withheld as a final tax; or
- (c) a person specified in the Regulations as being not required to furnish an income tax return for the tax year.

(2) A notice of request for a person to lodge a return under subsection (1), shall be served on the person within two years after the end of the tax year to which the request relates.

(3) An individual to whom subsection (1) (a) applies for a tax year may choose to furnish an income tax return for the year if the amount withheld under section 129 from the individual's employment income for the year, exceeds the individual's income tax liability for the year.

(4) Where the income tax liability for a tax year of an individual to whom subsection (1) (a) applies exceeds the amount withheld from that individual's employment income for the year, or where there was no amount withheld from the individual's employment income for income tax liability for a tax year, the Commissioner General shall —

- (a) require, by notice in writing, the individual to lodge an income tax return for the tax year, within such time as may be specified in the notice, not being less than seven days from the date of service of the notice; and
- (b) where the individual has filed or failed to file the income tax return, within such time as specified in the notice in paragraph (a), serve the individual with a notice of a tax assessment for the income tax payable.

(5) The Commissioner General shall serve a notice of a tax assessment under subsection (4) (b) —

- (a) in the case of fraud or wilful neglect, at any time; or
- (b) in any other case, within two years after the end of the tax year to which the assessment relates.

125. (1) The income tax and capital gains tax payable by a taxpayer for a tax year shall be payable —

Payment of
income tax
and capital
gains tax

- (a) for a self-assessment taxpayer furnishing a self-assessment return, on the date that the self-assessment return for the year is due; or
 - (b) for any other taxpayer, within 28 days after the taxpayer has been served with the notice of assessment for the tax year.
- (2) The non-resident tax payable for a tax year by a non-resident conducting business in Botswana through a permanent establishment shall be due on the date that the income tax return of the non-resident for the year is due to be furnished with the Commissioner General.

126. (1) A non-resident liable for tax under section 11 shall file a tax return with the Commissioner General for each quarter by the last day of the month following the end of the quarter.

Collection of international transport income tax

(2) The tax payable by a non-resident in terms of section 11 for a quarter, shall be due on the due date for filing the tax return for the quarter.

(3) Where the tax payable by a non-resident operating an airline in international traffic for a quarter is not paid within three months of the due date, —

- (a) the Commissioner General may issue to the Civil Aviation Authority of Botswana, a certificate specifying the name of the non-resident and the amount of tax due; and
- (b) the Civil Aviation Authority of Botswana shall refuse clearance from any airport in Botswana to any aircraft owned or chartered by the non-resident, until the tax due has been paid.

127. (1) Subject to subsection (2), a taxpayer shall be liable to pay quarterly instalments of income tax for a tax year, in accordance with this section.

Instalments of income tax

(2) This section shall not apply to a taxpayer for a tax year where —

- (a) the taxpayer's estimated income tax liability for the year is less than P50 000; or
- (b) for an individual, the taxable income of the tax year is reasonably expected to be below the tax threshold specified in Schedule 1, Part I.

(3) A taxpayer liable for instalments of income tax for a tax year under this section shall pay four equal instalments on or before the 3rd, 6th, 9th and 12th months of the year.

(4) Subject to subsection (7), the amount of each instalment payable by a taxpayer for a tax year shall be 25 per cent of the taxpayer's estimated income tax liability for the year.

(5) The calculation of a taxpayer's estimated income liability for a tax year may be reduced by estimated withholding tax credits for the year.

(6) A taxpayer shall lodge an estimate of their income tax liability for a tax year with the Commissioner General by the due date of payment of the first instalment for the year.

(7) Where a taxpayer fails to lodge an estimate of their income tax liability as required under subsection (6), the taxpayer's estimated income tax liability for the year shall be such amount as determined by the Commissioner General.

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Advance
payment of
capital gains
tax

(8) Each instalment of income tax paid by a taxpayer for a tax year shall be allowed as a tax credit against the income tax liability of the taxpayer for the year and any excess credit shall be applied in accordance with section 52 of the Tax Administration Act.

128. (1) A taxpayer who makes a capital gain during a tax year shall make an advance payment of capital gains tax in relation to that gain, within 28 days after the disposal of the asset giving rise to the capital gain.

(2) The amount of the advance payment of capital gains tax shall be calculated according to the following formula —

$A \times r$

where —

A is the amount of the capital gain; and

r is capital gains tax rate under Schedule 1 for the tax year in which the disposal of the asset occurred.

(3) An advance payment of capital gains tax paid by a taxpayer for a tax year shall be allowed as a tax credit against the capital gains tax liability of the taxpayer for the year, and any excess credit shall be applied in accordance with section 52 the Tax Administration Act.

Division II — *Withholding Tax*

Withholding
of tax from
employment
income and
payments by
retirement
funds

129. (1) An employer shall withhold tax from a payment of employment income made to an employee, in such manner as may be prescribed.

(2) An approved retirement fund shall withhold tax from a payment made by the fund to a member, in such manner as may be prescribed.

(3) This section shall not apply to a director's fee subject to withholding tax under section 132 or 133.

Self-
withholding

130. (1) An employee employed by a public international organisation or working in an embassy, diplomatic mission or other consular establishment in Botswana, of a foreign government or employed by an entity exempt by law from tax withholding obligations, shall withhold tax from the employment income received from such entities as required under section 129.

(2) Subsection (1) shall apply only when the international organisation, foreign government or entity does not withhold tax as required under section 129.

Withholding
of tax from
payments
under
construction
contracts

131. (1) Subject to this section, a person who makes a payment to another person under a construction contract shall withhold tax from the gross amount of the payment, at the rate specified in Schedule 1.

(2) Subsection (1) shall not apply to contracts —

(a) with a value of less than the amount specified in Schedule 1 being executed by a construction company classified as falling under prescribed categories in the Public Procurement Act; or

(b) exclusively for design, engineering, surveying work and other related professional services.

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2021

(3) A person responsible for withholding tax under subsection (1) from payments made to a subcontractor may apply to the Commissioner General, in such form as may be prescribed, for a variation to be made to the amount of tax to be withheld under subsection (1), on payments made to the subcontractor.

(4) Where an application has been made under subsection (3), the Commissioner General may direct, by notice in writing, that the person responsible for withholding tax under subsection (1), on payments made to the applicant under subsection (3), withhold tax on the amount paid to the applicant reduced by the amount payable by the applicant to the subcontractor.

(5) A person who enters into a construction contract or a series of construction contracts relating to the same project, under which the person will make total payments in excess of the amount specified in Schedule 1, shall notify the Commissioner General, in writing, within 30 days from the date of entering into the contract of the following —

- (a) the nature of the contract;
- (b) the likely duration of the contract;
- (c) the name, address and TIN of the person to whom payments will be made under the contract; and
- (d) the amount estimated to be payable under the contract.

(6) Upon application by a person in receipt of payments under a contract to which withholding tax under this section applies, the Commissioner General may, if satisfied that the person has complied with his or her obligations under the Act, issue the person with a tax certificate for purposes of tax to be withheld.

(7) Where a tax certificate has been issued in terms of subsection (6), the certificate may provide for a variation of the amount of tax to be withheld, including a variation that tax should not be withheld on payments made to the person under the contract.

132. (1) A resident of Botswana or a permanent establishment in Botswana of a non-resident making a payment of interest, a dividend, royalty, technical fee, natural resource amount, director's fee, insurance premium or entertainment fee, subject to non-resident tax, shall withhold tax from the gross amount paid at the non-resident tax rate, specified in Schedule 1.

(2) For the purposes of subsection (1), a resident of Botswana or a permanent establishment in Botswana of a non-resident shall withhold tax under subsection (1), if a payment of interest, a dividend, royalty, technical fee, natural resource amount, director's fee, insurance premium or entertainment fee is made to an address outside Botswana.

(3) Subject to subsection (4), where the person, referred to as the "transferor", disposing of an asset giving rise to a capital gain is a non-resident without a permanent establishment in Botswana, the person acquiring the asset, referred to as the "transferee", shall withhold tax from the gross amount of the consideration for the asset at the rate specified in Schedule 1.

Withholding
of tax from
payments to
non-residents

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Withholding
of tax from
domestic
payments

(4) The transferor or transferee may apply to the Commissioner General, in such form as may be prescribed, for a variation in the rate of withholding tax under subsection (3), and the Commissioner General may, by notice in writing, vary the rate of withholding tax to such other rate, including a zero rate, as notified, in writing to the transferee.

133. (1) A resident company that pays a dividend or director's fee to a resident of Botswana or a permanent establishment in Botswana of a non-resident shall withhold tax from the gross amount of the dividend or director's fee paid at the rate specified in Schedule 1.

(2) A resident of Botswana or a permanent establishment in Botswana of a non-resident that pays interest to a resident of Botswana or a permanent establishment in Botswana of a non-resident shall withhold tax from the gross amount of the interest paid at the rate specified in Schedule 1.

(3) Subject to subsection (4), a person that pays rent for the use or occupation of immovable property in Botswana shall withhold tax from the gross amount of the rent paid, at the rate specified in Schedule 1.

(4) Subsection (3) shall not apply —

- (a) to rent paid by an individual that is not a deductible business expenditure of the individual;
- (b) to a payment made for accommodation in a hotel, motel, guesthouse or lodge; or
- (c) where the total rent payable by the person for the tax year, is less than the amount specified in Schedule 1.

(5) Subject to subsection (6), a person that pays commission or brokerage for, or in connection with, the procurement of any goods or services to a resident of Botswana or a permanent establishment in Botswana of a non-resident, shall withhold tax from the gross amount of the commission or brokerage paid at the rate specified in Schedule 1.

(6) Subsection (5) shall not apply where the total commissions paid by a person is less than the amount specified in Schedule 1.

(7) A payment of interest under subsection (2), shall not be subject to withholding tax where the interest is paid to a banking or financial institution receiving the interest in its ordinary course of business.

(8) Where a taxpayer makes an application, in writing, to the Commissioner General to vary the rate of withholding tax under subsection (3) or (5), the Commissioner General may —

- (a) where he or she is satisfied with the reasons given by the taxpayer for the variation, approve the application; and
- (b) issue the taxpayer with a notice of the variation.

No withholding
from exempt
income

134. A withholding agent shall not withhold tax from income that is exempted.

Time of
payment of
withholding
income

135. For the purposes of this Part, withholding income shall be treated as having been paid by a withholding agent to a person, if any of the following applies —

- (a) the withholding income is actually paid to the person;
- (b) the withholding income is applied on behalf of the person, either at the instruction of the person or under any law;
- (c) the withholding income is reinvested, accumulated or capitalised for the benefit of the person; or
- (d) the withholding income is credited to an account for the benefit of the person.

136. A withholding agent shall maintain records, for each tax year, showing —

Withholding
tax records

- (a) the amounts of withholding income paid by the agent during the year; and
- (b) the amounts of tax withheld from such payments.

137. A withholding agent who has withheld tax from withholding income under this Part shall, by the due date for payment of withholding tax under section 138, furnish to the person to whom payment was made, a withholding tax certificate, in such form as may be prescribed showing the amount of the payment made and the tax withheld from the payment.

Withholding
tax certificate

138. (1) Any tax that a withholding agent is required to withhold from withholding income, shall be paid to the Commissioner General within 14 days after the end of the month in which the withholding income was paid.

Payment of
withholding
tax

(2) A withholding agent required to pay withholding tax under subsection (1), shall upon payment of such tax, lodge a withholding tax remittance return in such form as may be prescribed.

(3) A withholding agent shall be personally liable to pay an amount of withholding tax to the Commissioner General, if the withholding agent —

- (a) fails to withhold tax as required under this Division; or
- (b) having withheld tax, fails to pay the tax to the Commissioner General, as required under subsection (1).

(4) Where a withholding agent pays an amount of tax to the Commissioner General that the withholding agent failed to withhold, the amount paid shall be treated as having been withheld under this Division.

(5) A withholding agent paying an amount of tax under subsection (4), shall be entitled to recover the tax paid from the recipient of the payment.

(6) The withholding of tax from a payment under this Part shall not relieve the recipient of payment from any obligations under the Act, including any obligation to lodge a return.

139. (1) A withholding agent shall, for each tax year, within 28 consecutive days after the end of the tax year, lodge with the Commissioner General an annual withholding tax return, in such form as may be prescribed showing —

Annual
withholding
tax return

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- (a) the total amount of tax deducted by the withholding agent during the tax year, from withholding income paid by the withholding agent; and
- (b) the total payments of withheld tax made to the Commissioner General during the year.
- (2) A withholding agent shall be liable to the Commissioner General for any difference between —
- (a) the total amount of tax withheld by the withholding agent from payments of withholding income; and
- (b) the total payments of tax withheld to the Commissioner General.
- 140.** The withholding of tax from the following payments shall be a final charge to tax —
- (a) payments to non-residents to which section 132 (1) applies;
- (b) dividends to which section 133 (1) applies; and
- (c) payment of interest to a resident individual from a banking institution or building society to which section 133 (2) applies.
- 141.** (1) For purposes of this Act, where tax has been withheld under this Division from income derived by a taxpayer, the amount of income included in the gross income of the taxpayer shall be the amount derived before the withholding of the tax.
- (2) Subject to subsection (3), a taxpayer shall be allowed a tax credit for withholding tax paid in respect of the withholding income of the taxpayer, and the credit shall be applied against the tax payable by the taxpayer on the withholding income.
- (3) Subsection (2) shall not apply where the tax withheld is a final tax on the withholding income under section 140.
- (4) Where the amount of the tax credit allowed under subsection (2) is less than the tax liability of the taxpayer for the tax year, the taxpayer shall pay the difference by the due date for filing the taxpayer's tax return for the year.
- (5) Where the amount of the tax credit allowed under subsection (2) exceeds the tax liability of the taxpayer for the tax year, the excess shall be applied in accordance with section 52 of the Tax Administration Act.

Withholding
tax as final tax

Credit for
withholding
tax

Part VIII — Miscellaneous Provisions

- 142.** (1) The Minister may make Regulations for the better carrying out of the purposes of this Act and, without limiting the generality of the foregoing, such Regulations may —
- (a) prescribe anything to be prescribed under this Act;
- (b) provide for the proper and efficient administration of this Act;
- (c) be of a saving or transitional nature consequent upon the commencement of this Act;
- (d) provide for the imposition by the Commissioner General of administrative penalties not exceeding P500 000;

Regulations

- (e) provide for the imposition by a court, of penalties equal to 200 per cent of the amount of tax, or fines not exceeding P500 000, or to an imprisonment term for a period not exceeding ten years, or to both a fine and imprisonment; and
 - (f) provide for the introduction of a Domestic Minimum Top-up Tax consistent with the terms of Pillar Two developed by the Base Erosion Profit Shifting Inclusive Framework within the Organisation for Economic Cooperation and Development.
- (2) Transitional regulations made within six months after the commencement of this Act, may provide that they take effect from the date on which this Act comes into operation.

143. The Income Tax Act (hereinafter referred as “the repealed Act”) is hereby repealed.

Repeal of Cap.
52:01

144. Notwithstanding the repeal effected under section 143 —

Transitional
and savings

- (a) the repealed Act shall continue to apply to tax years prior to the tax year in which this Act comes into operation;
- (b) a reference in this Act to a previous tax year shall include, where the context requires, a reference to a tax year under the repealed Act;
- (c) a taxpayer entitled to use a substituted tax year under the repealed Act shall continue to use the substituted tax year under this Act, until the Commissioner General, by notice in writing to the taxpayer, discontinues such use;
- (d) the amount of a deduction allowed under section 39 in respect of the cost of a depreciable asset or business intangible acquired by a person in a tax year before this Act came into operation and the cost was not deductible under the repealed Act, is calculated for a tax year after the commencement of this Act, on the assumption that section 39 has always applied to the depreciable asset;
- (e) where a depreciable asset or business intangible referred to in paragraph (d) is disposed of after the commencement of the Act, section 43 applies to the proportional part of any gain or loss on disposal that relates to the use of the asset or intangible to derive gross income after the commencement of the Act;
- (f) the following shall apply to a depreciable asset acquired before the commencement of the Act and in respect of which depreciation deductions were allowed under the repealed Act —
 - (i) the asset shall continue to be depreciated under section 39 in accordance with the rate determined under Schedule 3 until the cost of the asset has been fully depreciated, and taking account of section 40 (3), and
 - (ii) section 43 shall apply on the basis that the net book value of the asset takes account of depreciation deductions allowed under the repealed Act;

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- (g) the cost of a CGT asset acquired by any person before the commencement of the Act and which was not subject to the CGT under the repealed Act shall be the fair market value of the asset at the date of commencement;
- (h) the tax agreement made under section 54 of the repealed Act before the coming into operation of this Act shall continue to apply for the term of the agreement, and where there is conflict between the agreement and this Act, the agreement shall take precedence, and where the tax agreement provided for a renewal or extension, such renewal or extension shall not exceed a period of five years;
- (i) any subsidiary legislation made under the repealed Act, and in force immediately prior to the coming into operation of this Act shall, in so far as such subsidiary legislation is consistent with the provisions of this Act, continue in force as if made under this Act; and
- (j) any legal proceedings which, before coming into operation of this Act, were pending shall be continued or enforced in the same manner as they would have been continued or enforced before the coming into operation of this Act.

SCHEDULES

SCHEDULE 1
RATES OF TAX

(s 9(1), 10(1) and (3)(a), 11(1) and (2), 68 (1), 83 (3), 92 (2), 102 (3) (a), 127 (2) (c), 128 (2), 131 (1), (2) and (5), 132 (1) and (3), 133 (1), (2), (3), (4) (c), (5) and (6))

PART I
Rates of Tax

1. The rates of income tax for an individual are —

Resident Individuals

Taxable Income	Rate
0 – 48,000	0 per cent
48,001 – 84,000	0 + 5 per cent of excess 48,000
84,001 – 120,000	1,800 + 12.5 per cent of excess over P84,000
120,001 – 156,000	6,300 + 18.75 per cent of excess over P120,000
156,001 – 400,000	13,050 + 25 per cent of excess over P156,000
400,001 and above	74,050 + 27.5 per cent of excess over P400,000

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Taxable Income	Rate
0 – 84,000	5 per cent of every Pula
84,001 – 120,000	4, 200 + 12.5 per cent of excess over P84, 000
120,001 – 156,000	8, 700 + 18.75 per cent of excess over P120, 000
156,001 – 400,000	15, 450 + 25 per cent of excess over P156, 000
400,001 and above	76, 450 + 27.5 per cent of excess over P400, 000

2. The rates of income tax on the net aggregate gain of individuals are —

Net Aggregate Gain	Rate
0 – 36,000	0 per cent
36,001 – 84,000	0+ 5 per cent of excess over P36 000
84,001 – 120,000	2, 400 + 12.5 per cent of excess over P84 000
120,001 – 156,000	6, 900 + 18.75 per cent of excess over P120 000
156, 001 – 400,000	13, 650 + 25 per cent of excess over P156 000
400,001 and above	74, 650 + 27.5 per cent of excess over 400,000

3. The rate of income tax for companies is —

(a) for a mining company other than a diamond mining company in which the Government holds an equity interest, the higher of —

(i) the rate determined according to the following formula —

Annual tax rate = $70 - \left(\frac{1500}{X}\right)$
 where X is the profitability ratio calculated as the taxable income of the company as a per centage of gross income of the company for the tax year; or

(ii) the rate specified in sub-paragraph (d);

(b) for an IFSC company:

(i) 17.5 per cent on taxable income arising from approved financial operations,
 or

(ii) 24.5 per cent on all other taxable income;

(c) for a mutual association, 5 per cent;

(d) for any other company, 24.5 per cent.

4. A non-approved fund, 24.5 per cent.

5. The rates of income tax for a trustee are —

(a) during the first three years of the administration of a deceased estate, the rates specified in paragraph (1) for resident individuals; or

(b) for any other trust, 25 per cent.

6. The rates of non-resident withholding tax are —

Type of Income	Rate
(a) Dividends	10 per cent
(b) Interest	15 per cent
(c) Royalties	15 per cent
(d) Technical fees	15 per cent
(e) Insurance premium	5 per cent

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(f) Payments to entertainer	10 per cent
(g) Director's fees	15 per cent
(h) Natural resource amount	15 per cent
(i) Repatriated profit	10 per cent
(j) Capital gain	10 per cent

7. The rates of resident withholding tax are —

Type of Income	Rate
(a) Dividends paid to a resident or a Botswana permanent establishment of a non-resident;	10 per cent
(b) Interest paid to a resident or a Botswana permanent establishment of a non-resident;	10 per cent
(c) Director's fees;	10 per cent
(d) Payments made under a construction contract;	3 per cent
(e) Rent;	5 per cent
(f) Commission or brokerage;	10 per cent

8. The rate of international air transport income tax is 3 per cent.

PART II — Specified Amounts

The following amounts are specified for the purposes of Division II of Part VII —

1. The amount specified for the purposes of section 131(2) (a) is P2 000 000.
2. The amount specified for the purposes of section 131(5) is P50 000.
3. The amount specified for the purposes of section 133(4) (c) is P48 000.
4. The amount specified for the purposes of section 133(6) is P48 000.

SCHEDULE 2
EXEMPT INCOME AND GAINS

(s 24 (I))

PART I

Government, Foreign Government, and International Organisations

The following amounts shall be exempt income —

1. The income of Government when performing normal functions of the State.
2. The income of a local authority.
3. The income of the Bank of Botswana.
4. The income of an international organisation to the extent provided for under the Diplomatic Immunities and Privileges Act (Cap. 39:01).
5. The income of an international financial organisation to which Botswana is a member to the extent provided for under the International Financial Organizations Act.
6. The income of a special purpose vehicle formed by the Government for securitisation of public assets.
7. The income of the Botswana Meat Commission.
8. The income of any other body corporate wholly owned by the Government.
9. Income of any political party.

PART II — *Individuals*

The following amounts shall be exempt income —

1. The official emoluments and allowances of the President.
2. The official salaries and emoluments of —
 - (a) heads of diplomatic missions and consulates accredited in Botswana to the extent provided for under the Diplomatic Immunities and Privileges Act;
 - (b) members of the staff of diplomatic missions and consulates accredited in Botswana who are resident of Botswana solely for the purpose of carrying out duties as members of such missions or consulates to the extent provided for under the Diplomatic Immunities and Privileges Act; and

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- (c) an official of an international organisation in respect of which an order has been made under section 4 of the Diplomatic Immunities and Privileges Act to the extent provided for under that Act.
- 3. Allowances to the extent exempted from tax under —
 - (a) the National Assembly (Salaries and Allowances) Act (Cap. 02:06); and
 - (b) the *Ntlo ya Dikgosi* (Salaries and Allowances) Act (Cap. 02:08).
- 4. Allowances and gratuities to the extent exempted under the Judicial Services Act (Cap. 04:03).
- 5. A foreign service allowance derived by a public servant while serving outside Botswana in a diplomatic mission of Botswana;
- 6. A war pension or gratuity.
- 7. Government social welfare allowances.
- 8. Alimony or maintenance payments received from a spouse or former spouse.
- 9. A pension to the extent exempt under the Pensions Act (Cap. 27:01).
- 10. An amount received by way of a scholarship or bursary for the purposes of education and maintenance during such education.
- 11. A terminal, sitting, ward, subsistence, and meal allowance payable to a councillor of a local authority, or to a member of a land board or a subordinate land board.
- 12. The pension and benefits of a former President to the extent exempt under the Presidents (Pensions and Retirement Benefits) Act (Cap. 02:03).
- 13. The pension and gratuities payable to a Minister and Member of Parliament to the extent exempt under the Ministers and National Assembly Gratuities and Pensions Act, (Cap. 02:04).
- 14. Salaries, emoluments, obligations, securities, dividends or any other cash or non-cash benefits received by employees of an international financial organisation to which Botswana is a member to the extent exempt as provided for under the International Financial Organizations Act.
- 15. An amount accrued to a public servant, teacher or consultant to the Government as director of a company (other than a company that is his or her principal employer) but only if the amount is paid to the Government or the individual's employer and the individual does not benefit from the amount.

16. A gratuity exempt from tax under Retirement Funds Act (Cap. 27:03)
17. An amount withdrawn by deferred members for purposes of settling such deferred members loans under the Retirement Funds Act.

PART III — Retirement Savings and Insurance

The following amounts shall be exempt income —

1. The income of an approved benefit fund.
2. The income of an approved retirement fund.
3. The following commutation amounts —
 - (a) in the case of an employee permitted to commute a portion of his or her pension under any law in force in Botswana, an amount not exceeding 50 per cent of the pension entitlement of the employee at the time of retirement;
 - (b) in the case of any person other than a person subject to subparagraph (a), 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 50 per cent of his or her full entitlement at the date of his or her retirement; or
 - (c) in the case of any person other than a person referred to in subparagraphs (a) and (b) who is entitled *bona fide* to an annual pension or annuity of not more than P48 000 as an actuarially calculated sum representing the commutation of that pension or annuity.
3. Sickness or accident benefits paid to a person, or to his or her dependents or heirs, by an approved fund, a trade union, or under a policy of insurance covering sickness or accident.
4. The investment income as defined in a statutory life insurance fund.

PART IV — Dividends and Interest

The following amounts shall be exempt income —

1. A dividend distributed by a special purpose vehicle formed by the government for the securitisation of public assets.
2. A dividend paid by a resident company to a member that is a resident company to the extent to which the dividend is paid out of profits subject to income tax in Botswana:

Provided a resident company is treated as paying a dividend first out of profits subject to income tax in Botswana.

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3. A dividend paid by a mutual association to a member of the association.
4. Interest payable —
 - (a) on national development bonds to the extent exempted under the National Development Bank Act (Cap. 74:05);
 - (b) on bonds to the extent exempted under the Development Loan (Botswana Registered Bonds) Act (Cap. 56:04);
 - (c) to the government of a foreign country, or to any non-resident institution or company, to the extent that the Minister is satisfied that the exemption is in the public interest;
 - (d) on a subscription share issued by a building society that is a resident of Botswana; and
 - (e) to a rehabilitation fund to which section 87 applies.

PART V — Social Policy and Technical Assistance

The following amounts shall be exempt income —

1. The income of the Southern African Centre for Ivory Marketing.
2. The income of the Botswana Stock Exchange.
3. An amount derived by a non-resident individual or non-resident company under an agreement with the Government when the following conditions are satisfied:
 - (a) the agreement is for the provision of technical assistance to the Government;
 - (b) the exemption is provided for in the agreement at the time the agreement was entered into;
 - (c) the Minister has, by notice in writing to the Commissioner General, declared the amounts to be exempt from tax; and
 - (d) the name of the person benefitting from the exemption is published in accordance with section 24 (3) of the Act.
4. The income of a non-profit organisation:

Provided that, subject to sections 5 (1) (c) and 5 (5), in the case of business income, the income has been applied by the organisation exclusively for public purposes in the tax year in which the income is derived or within such further period as the Commissioner General may allow.

5. The income of the Motor Vehicle Insurance Fund.
6. The income of any professional institution established by statute.
7. The income of a burial association.

PART VI — *International*

The following amounts shall be exempt income —

1. An amount to the extent exempted from tax under a tax treaty.
2. Employment income to the extent derived by a non-resident individual aboard an aircraft, boat, or a road or rail vehicle, in the course of the operation of an international transport service in international traffic by a non-resident.
3. An amount derived by non-resident telecommunication company on settlement of international telephone traffic under International Telecommunication Regulations.
4. The income of a non-resident company operating an aircraft, boat, or railway in international traffic if the Minister is satisfied that an equivalent exemption from income tax is granted to residents of Botswana by the country in which the non-resident company is resident for income tax purposes.
5. Foreign employment income derived by a resident individual but only if the employment income is subject to income tax in the foreign country where the employment is exercised.
6. The income derived by a non-resident individual, other than an entertainer, from the rendering of services in Botswana as an employee where all of the following conditions are satisfied —
 - (a) the individual is in Botswana for a period of, or periods amounting in aggregate to, no more than 90 days in any 12 month period;
 - (b) the income is subject to tax in the individual's country of residence; and
 - (c) the individual is remunerated by a non-resident employer and the remuneration is not an expenditure of a permanent establishment of the employer in Botswana.

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PART VII — *Exempt Gains*

The following gains are exempt gains –

1. A gain made by an individual on the disposal of the principal private residence of the individual who has owned the residence for at least five years prior to the date of disposal:

Provided that the exemption shall not be allowed for any subsequent disposals for a period of five years from the end of the tax year on which the exemption was allowed.

2. A gain made by a taxpayer on the disposal of any shares, units, or debentures issued by a resident company that the taxpayer has held for a period of at least one year prior to the date of disposal, if –

- (a) the shares, units, or debentures are actually traded on the Botswana Stock Exchange; or
- (b) the company has released for trading 49 per cent or more of its equity shares on the Botswana Stock Exchange.

3. A gain made by a company on disposal of immovable property owned by the company the shares of which are wholly owned by one or more of the following funds, when such property is disposed of, within three months of the date of acquisition, by such funds of all the shares of that company –

- (a) an approved benefit fund;
- (b) an approved retirement fund;
- (c) the Motor Vehicle Insurance Fund; or
- (d) a statutory life insurance fund.

4. A gain made by a taxpayer on disposal of bonds and debentures issued by the Government of Botswana, Bank of Botswana, a statutory body, or special purpose vehicles formed by the Government of Botswana for the securitisation of public debt.

5. A gain made by a non-profit organisation on disposal of an asset:

Provided the gain has been applied by the organisation exclusively for public purposes in the tax year in which the gain is derived or within such further period as the Commissioner General may allow.

SCHEDULE 3

DEPRECIATION OF DEPRECIABLE ASSETS AND BUSINESS INTANGIBLES
(s 39(2), (7) and (8)(a), 40(2), 41 (2) and (5) and 144 (f)(i))PART I — *Depreciation Rates*

1. Subject to paragraph 2, the rates of depreciation applicable to depreciable assets are set out in the table —

Class of Asset	Depreciable Asset	Straight-line Rate	Diminishing Value Rate
1.	<p>(a) Motor vehicles;</p> <p>(b) Buses and minibuses with a seating capacity of less than 30 passengers;</p> <p>(c) Goods vehicles with a load capacity of less than 7 tonnes;</p> <p>(d) Computers and data handling equipment, and customised software;</p> <p>(e) Construction and earthmoving equipment</p>	25 per cent	40 per cent
2.	<p>(a) Buses with a seating capacity of 30 or more passengers;</p> <p>(b) Goods vehicles designed to carry or pull loads of 7 or more tonnes;</p> <p>(c) Specialised trucks;</p> <p>(d) Tractors;</p> <p>(e) Trailers and trailer-mounted containers;</p> <p>(f) Plant and machinery used in manufacturing or farming operations</p>	20 per cent	30 per cent

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3.	(a)	Ferries and similar water transportation equipment;	12.5 per cent	20 per cent
	(b)	Aircraft;		
	(c)	Office furniture, fixtures, and equipment;		
	(d)	Any other depreciable asset not included in any other category		
4.	(a)	Structural improvement “structural improvement” in relation to land, includes a building, road, driveway, car park, pipeline, bridge, tunnel, airport runway, canal, dock, wharf, retaining wall, fence, power lines, water or sewage pipes, septic tank, drainage, landscaping and dam.	2.5 per cent	—

2. The rate of depreciation for a depreciable asset that has a cost of less than P3000 is 100 per cent.
3. The rate of depreciation applicable to a business intangible are —
 - (a) for preliminary expenditure — 25 per cent;
 - (b) for a business intangible with a useful life of more than 10 years, other than a business intangible referred to in subparagraph (a) or (c) of this paragraph — 10 per cent;
 - (c) for a long-term lease — is 100 per cent divided by the term of the lease remaining at the date of acquisition; and
 - (d) for any other business intangible — 100 per cent divided by the useful life of the intangible.

PART II – MOTOR VEHICLE COST LIMIT

The motor vehicle cost limit for the purposes of section 39 (7) is P500 000.