

Bill No. 38 of 2025

TAX ADMINISTRATION BILL, 2025
(Published 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 harmonise, modernise, and consolidate the law relating to the administration of taxes which are in the Income Tax Act, and the Value Added Tax Act.

3. Part I of the Bill contains preliminary provisions, including the definitions of terms used in the Bill.

4. Part II of the Bill provides for registration of taxpayers and is divided into three divisions. The registration requirements apply generally for the purposes of all taxes.

5. Part III of the Bill provides for generic rules for record keeping. Records are to be kept in Botswana for easy access during audit or investigations.

6. Part IV of the Bill provides for the filing of tax returns. The obligations for filing will be in the respective legislation for which the tax return relates. The Bill provides for generic rules on approved forms as well as to provide for electronic filing which will be provided for in an overarching set of regulations. The Bill also provides for advanced returns, for example, where a taxpayer is leaving Botswana permanently or as a result of the death of a taxpayer.

7. Part V of the Bill provides for tax assessments, which includes self-assessments, estimated assessments (when a taxpayer has failed to file a tax return), advanced assessments and amended assessments. The Bill further provides for registered tax agents to assist taxpayers with preparing their self-assessments. The Bill provides for self-amending of self-assessments only to increase a tax liability. In any other case, a self-assessment taxpayer must apply to the Commissioner General for an amendment to be made to a self-assessment.

8. Part VI of the Bill provides for three types of decisions by the Commissioner General, namely; tax decisions, appealable decision, and decisions that are challenged under the normal principles for judicial review of administrative decisions, for example on distress proceedings or seizure of goods, where taxpayer can get an injunction. The Bill further makes a legal requirement for the Commissioner General to give reasons for any decision and further that the time limit for challenging a decision does not commence until the Commissioner General provides the taxpayer with reasons for the decision.

9. Part VII of the Bill provides for objections and appeals. The Bill provides that the objection and appeal procedures applies to tax decisions. The Bill further provides for payment of a third of the disputed tax when lodging an objection to a tax assessment. Under this Part, the Commissioner General is obliged to make an objection decision together with findings of facts and reasons of the decision and further that, where an objection decision is not made within six months, a taxpayer can elect to treat the Commissioner General as having made a decision to disallow the objection and the taxpayer can proceed to appeal the decision to the Tax Tribunal.

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10. Part VIII of the Bill provides for collection and recovery of tax and is divided into three divisions namely; payment of tax, late payment interest, and recovery of unpaid tax. On late payment interest, the Bill seeks to compensate the Government for being out of funds as a result of the late payment of tax, and the interest is imposed at market rates on a simple interest basis. Late payment interest is in addition to late payment penalty, which is a punishment on a taxpayer for the wrongdoing associated with late payment of tax.

11. Part IX of the Bill provides for the making of refunds to taxpayers. The Bill streamlines the process for the making of refunds to taxpayers who have excess refundable tax credits for a tax period. This ensures that refunds of excess tax credits are made on a timely basis. A separate process is provided for refunds of overpaid tax arising in other circumstances. Part IX also provides for the release of tax liabilities in the case of hardship and the write-off of bad tax debts in the financial accounts of the Revenue Service.

12. Part X of the Bill provides for information collection which relates to investigation powers and enforcement, and includes powers for access to premises and records. Under this Part, in relation to access to premises and records, the Bill provides for power to seize data storage devices in order to capture numerous types of devices and not only computers. Further, the Bill allows for joint audits on customs duties and inland taxes. The Bill provides tax clearance certificates and for duration for which the certificate remains in force but the certificate can be revoked where the taxpayer is not substantially compliant with tax laws or defaults in tax payment arrangements.

13. Part XI of the Bill provides for rulings consistent with international norms namely; private and public rulings. The Bill provides for a mechanism for taxpayers to discover the Commissioner General's position in an area of uncertainty before preparing self-assessments. The Bill provides that the rulings are binding on the Commissioner General but are not on the taxpayer. Under this Part, public rulings are to be published in the Gazette and can have retrospective application only if the ruling is for the benefit of taxpayers and can be withdrawn retrospectively only if it is for the benefit of taxpayers.

14. Part XII of the Bill provides for communications, forms and notices. The Bill seeks to establish a special regime for notices as well as rules on when documents are treated as filed and these include rules concerning the service of notices and rectification of mistakes in forms. All documents to be filed should be in the approved form otherwise the document is not regarded as properly filed. The Bill provides for a mechanism for identifying the approved form and also allows the Commissioner General a discretion to accept a form even though it is not fully in the approved form. The Bill also provides for an electronic tax system as a means of communicating regarding for filing documents or making payments. The Commissioner General has discretion to extend the period for filing and paying tax for taxpayers generally.

15. Part XIII of the Bill provides for administration of the tax laws and covers the Tax Tribunal and registration of tax agents. The Bill establishes a Tax Tribunal which will be an independent administrative body replacing the Board of Adjudicators. The Tribunal seeks to strengthen the Board of Adjudicators, albeit with a new name to align with international best practice but the Tribunal is not equated to a court of law.

Under the Bill, the Tax Tribunal shall be a permanent body with a secretariat and shall be chaired by a lawyer with significant experience in tax and commercial matters. The Bill provides for the appointment of members having specialist knowledge or qualifications in taxation and commercial matters, the members will be appointed on a full-time basis. The Bill provides for a cooling off period of two years for tax officers who resign or retire before being eligible for appointment as a member of the Tribunal in order to manage conflict of interest.

16. The Tribunal shall be a full merits review body and shall hear appeals against appealable decisions which are objection decisions and decisions concerning tax agent registration. The Tax Tribunal will also have jurisdiction to hear appeals against customs decisions. The Tribunal will have similar powers to a judicial body such as summoning person for appearance, taking evidence on oath or affirmation as well as require production of documents. The Bill provides that decisions of the Tribunal are appealable to the High Court however, with time limits on the period for filing the notice of appeal. This is to ensure that tax disputes are resolved timeously as long drawn out tax disputes have a negative effect on the fiscus.

17. With regards to registration of tax agents, the Bill seeks to implement a quality assurance measure for self-assessment by providing that only registered tax agents can provide tax agent services such as preparation of tax returns, notices of objections, advice on applicable tax laws as well as representing a taxpayer in dealings with the Revenue Services. The Bill provides for an exception for legal practitioners but this does not include the preparation of tax returns, and legal practitioners must be registered as tax agents if they wish to prepare tax returns.

18. Part XIV of the Bill provides for administrative penalties and tax offences. The Bill provides that penalties are imposed administratively by the Commissioner General while offences will be prosecuted by the Directorate of Public Prosecution. The Bill further provides that a person cannot be both liable for a penalty and prosecuted for an offence for the same act or omission, and the Commissioner General shall determine whether to impose a penalty or refer the case to the Directorate of Public Prosecution for prosecution.

19. Part XV of the Bill provides for miscellaneous provisions such as transitional arrangements and regulations.

NDABAN. GAOLATHE,
Minister of Finance.

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 SCHEDULE

A BILL
 — entitled —

An Act to harmonise, modernise, and consolidate the rules and procedures for the administration of the tax laws and matters connected thereto.

Date of Assent:

Date of Commencement:

ENACTED by the Parliament of Botswana.

Part I — *Preliminary*

1. This Act may be cited as the Tax Administration 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
- “advance assessment” means an advance assessment made by the Commissioner General under section 21;
- “agency tax” means a tax, duty, fee, levy, or charge listed in Schedule 1;
- “amended assessment” means an amended assessment made by the Commissioner General under section 22 or by a self-assessment taxpayer under section 23;
- “appealable decision” means —
- (a) a decision made, or treated as having been made, by the Commissioner General on an application for an amendment to a self-assessment under section 24;
 - (b) an objection decision;
 - (c) a decision by the Commissioner General under section 92, 93 or 96; or
 - (d) a decision that is treated as an appealable decision under any other legislation that is under the administration of the Commissioner General;
- “approved form” means —
- (a) for a tax return, application, notice, statement, or other document to be lodged with the Commissioner General, the form specified by the Commissioner General for the particular tax return, application, notice, statement, or other document; or

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- (b) for an application, notice, or other document to be lodged with the Tax Tribunal, the form specified by the Chairperson of the Tax Tribunal for the particular application, notice, or other document;
- Cap. 52:01 “assessed loss” has the meaning assigned to the term under the Income Tax Act;
- “associate” has the meaning assigned to the term in section 4;
- “authorised officer”, in relation to the exercise of a power under this Act, means a tax officer specifically authorised, in writing, by the Commissioner General to exercise the power;
- “Botswana competent authority”, in relation to a tax treaty or mutual administrative assistance agreement, means the person designated under the treaty or agreement as the competent authority for Botswana or his or her authorised representative for the purposes of the treaty or agreement;
- Cap. 56:09 “collective investment undertaking” has the meaning under section 6 of the Collective Investment Undertakings Act;
- Cap. 53:03 “Commissioner General” means the Commissioner General of the Revenue Service appointed under section 22 (1) of the Botswana Unified Revenue Service Act;
- “company” includes —
- (a) any association or body corporate or unincorporated, whether created for profit or non-profit purposes, but, subject to paragraph (c), not including a partnership or trust;
 - (b) a statutory corporation; or
 - (c) a collective investment undertaking;
- “controlling member”, in relation to a company, means any member of the company who beneficially holds, either alone or together with an associate or associates —
- (a) 40 percent or more of the voting rights attaching to membership interests in the company;
 - (b) 40 percent or more of the rights to dividends, profits, or other distributions attaching to membership interests in the company; or
 - (c) 40 percent or more of the rights to capital attaching to membership interests in the company;
- Cap. 50:01 “customs legislation” means the Customs Act, the Excise Duty Act, and any other written law relating to customs or excise duty;
- Cap. 50:02 “customs officer” means a customs officer under customs legislation;
- “dividend” includes an entitlement to income in a collective investment undertaking that is a trust;

“electronic billing system” means a billing system approved by the Revenue Service used for —

- (a) the issuance of an electronic invoice; and
- (b) recording and transmitting sales and related data;

“electronic invoice” means an invoice issued through an electronic billing system;

“estimated assessment” means an estimated assessment made by the Commissioner General under section 20;

“income tax” means any tax charged under the Income Tax Act;

“international agreement” means an agreement between the Government and any foreign government;

“invoice” has the meaning assigned to the term in the Value Added Tax Act; Cap. 50:03

“late filing penalty” means a penalty imposed under section 101;

“late payment interest” means late payment interest imposed under section 41;

“late payment penalty” means a penalty imposed under section 102;

“legal practitioner” has the same meaning assigned to the term in the Legal Practitioners Act; Cap. 61:01

“local authority” includes a council established under the Local Government Act; Cap. 40:01

“member”, in relation to a company, means a person who has a membership interest in the company, including -

- (a) a shareholder;
- (b) a guarantor in a company limited by guarantee; or
- (c) a holder of an interest in a collective investment undertaking;

“membership interest”, in relation to a company, means an ownership interest in the company, including -

- (a) a share;
- (b) an interest of a guarantor in a company limited by guarantee in the profits of the company; or
- (c) an interest in a collective investment undertaking;

“mutual administrative assistance agreement” means a tax information exchange agreement or other international agreement for mutual administrative assistance in relation to taxation matters;

“objection decision” means a decision made by the Commissioner General under section 28 (1) or treated as having been made by the Commissioner General under section 28 (6);

“penalty” means a penalty imposed under a tax law;

“penalty assessment” means an assessment made by the Commissioner General under section 110;

“person” includes a partnership, trust, estate, company, or international organisation;

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“record” includes —

- (a) a book of account, document, paper, register, bank statement, receipt, invoice, voucher, contract or agreement, or customs entry whether kept in physical or electronic format; or
- (b) any information or data stored or accessible on a computer or mobile electronic device;

“representative”, in relation to a person, means —

- (a) for an individual under a legal disability, a guardian or other legal representative of the individual responsible for the receipt, control, or disposition of the income or assets of the individual;
- (b) for a partnership, every partner in a partnership,
- (c) for a trust or collective investment undertaking, every trustee of the trust or undertaking;
- (d) for a company that is an incorporated body, the chief executive officer, company secretary, every director and controlling member of the company, judicial manager and liquidator;
- (e) for an unincorporated body, an individual responsible for accounting for the receipt or payment of moneys or funds on behalf of the body, or who has control of the assets of the body;
- (f) for a person outside Botswana, any individual in Botswana controlling the person’s affairs in Botswana, including a manager of the business of the person in Botswana;
- (g) for a taxpayer referred to in section 47, the receiver in relation to the taxpayer under that section;
- (h) for the Government or a local authority, an individual responsible for accounting for the receipt or payment of moneys or funds on behalf of the Government or local authority, or who has control of the assets of the Government or local authority;
- (i) for a foreign government, political subdivision of a foreign government, or a public international organisation, an individual responsible for accounting for the receipt or payment of moneys or funds in Botswana on behalf of the government, political subdivision, or organisation, or who has control of the assets in Botswana of the government, political subdivision, or organisation; or
- (j) for any person, including a person referred to in this definition, an individual —
 - (i) that the Commissioner General has, by notice in writing, appointed as a representative of the person for the purposes of the tax laws, or

- (ii) who is treated as a representative of the person under a tax law;
- “Revenue Service” means the Botswana Unified Revenue Service established under section 3 of the Botswana Unified Revenue Service Act;
- “secondary liability” means a liability of a taxpayer that another person is personally liable for under section 13 (5), 46 (10), 47 (4), 49 (1), 50 (1), or 51 (10) and includes a liability treated as a secondary liability under another tax law;
- “self-assessment” means an assessment treated under section 19 as having been made by a self-assessment taxpayer;
- “self-assessment return” means —
 - (a) an income tax return to which section 123 of the Income Tax Act applies;
 - (b) a VAT return under section 66 of the Value Added Tax Act; or
 - (c) an advance return that is treated as a self-assessment return under section 17 (4);
- “self-assessment taxpayer” means a taxpayer lodging a self-assessment return;
- “tax” means a tax imposed under a tax law and includes penalty, late payment interest, withholding tax, and instalments of income tax payable under section 127 of the Income Tax Act;
- “tax assessment” means a self-assessment, estimated assessment, advance assessment, amended assessment, penalty assessment, or any other assessment made under a tax law;
- “tax avoidance provision” means a provision in a tax law that empowers the Commissioner General to make an adjustment to a tax liability of a taxpayer to counter any transaction or arrangement for the avoidance, reduction, or deferral of the tax liability;
- “tax decision” means —
 - (a) a tax assessment, other than a self-assessment or an amended assessment made by a self-assessment taxpayer under section 23;
 - (b) a determination of the amount of a secondary liability or the amount of a liability for tax recovery costs; or
 - (c) any other decision of the Commissioner General made under a tax law on any matter that is left to the discretion, consent, approval, or determination of the Commissioner General, but not including —
 - (i) any decision of the Commissioner General forming part of the process of making, or leading up to the making of, a tax assessment, and such decision shall be treated as part of the tax assessment,

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- (ii) an appealable decision, or
- (iii) a decision made by the Commissioner General under section 44, 45, 46, 48, 51, 52, 58, or 59;

“tax law” means -

- (a) this Act;
- (b) the Income Tax Act;
- (c) the Value Added Tax Act;
- (d) the Capital Transfer Tax Act;
- (e) the Transfer Duty Act; or
- (f) any other written law, other than customs legislation, under which a tax, duty, or levy is imposed if the Commissioner General has responsibility for the administration of the tax, duty, or levy;

“tax officer” means the Commissioner General and any officer of the Revenue Service appointed under the Botswana Unified Revenue Service Act to perform duties under a tax law;

“tax period”, in relation to tax, means the period for which the tax is reported or paid to the Commissioner General and —

- (a) for withholding tax, the period to which the withholding relates; or
- (b) for an instalment of income tax under section 127 of the Income Tax Act, the period to which the instalment relates;

“tax recovery costs” means —

- (a) the costs of recovering unpaid tax referred to under section 34 (3);
- (b) the costs of action under section 44 for the seizure of goods; or
- (c) the costs of distress proceedings under section 45;

“tax return” means –

- (a) a return lodged under Part VII of the Income Tax Act;
- (b) a VAT return under section 66 of the Value Added Tax Act;
- (c) an advance return under section 17;
- (d) a tax remittance return under section 138 (2) of the Income Tax Act; or
- (e) an annual return of deductions and remittances under section 139 (1) of the Income Tax Act;

“tax treaty” means an international agreement relating to the avoidance of double taxation and the prevention of fiscal evasion;

“Tax Tribunal” means the Tax Tribunal established under section 83;

“taxpayer” means a person registered under section 7 or a person required to apply for registration under section 6 but who has failed to do so;

Cap. 53:02

Cap. 53:01

“taxpayer identification number” or “TIN” means a taxpayer identification number issued to a taxpayer under section 10;

“trust” has the same meaning assigned to the term in the Trust Property Control Act;

“trustee” has the same meaning assigned to the term in the Trust Property Control Act;

“unpaid tax” means tax that has not been paid by the due date or, if the Commissioner General has extended the due date under section 36, by the extended due date;

“VAT” means value added tax charged under the Value Added Tax Act;

“withholding income” means income from which tax is required to be withheld or deducted under the Income Tax Act;

“withholding tax” means tax withheld or deducted from withholding income under the Income Tax Act; and

“withholding tax agent” means a person liable to withhold or deduct tax under the Income Tax Act from a payment made by the person.

Cap. 31:05

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

3. A reference in Part VIII, and sections 13 and 102 to —

- (a) “tax” includes an agency tax;
- (b) “unpaid tax” includes an amount of an agency tax that is not paid on or before the due date;
- (c) “taxpayer” includes a person liable for an agency tax; and
- (d) “tax law” includes the law under which an agency tax is imposed.

Application of Act to agency taxes

4. (1) Subject to subsection (2), two persons are associates if —

- (a) the relationship between the two persons is such that one person may reasonably be expected to act in accordance with directions, requests, suggestions, or wishes of the other person; or
- (b) both persons may reasonably be expected to act in accordance with the directions, requests, suggestions, or wishes of a third person.

Associates

(2) Two persons are not associates solely by reason of the fact that one person is an employee or client of the other, or both persons are employees or clients of a third person.

(3) Without limiting the generality of subsection (1), the following are treated as associates —

- (a) an individual and a relative of the individual, except when the Commissioner General is satisfied that neither person may reasonably be expected to act in accordance with the directions, requests, suggestions, or wishes of the other;
- (b) a partner in a partnership and the partnership when the partner, either alone or together with an associate or associates under another application of this section, controls 40 percent or more of the rights to income or capital of the partnership;

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- (c) a trust and a person who benefits under the trust or who may benefit under the trust through the exercise of a power of appointment or otherwise;
- (d) a controlling member of a company and the company; or
- (e) two companies where a person is a controlling member of both companies.

(4) The interest of an associate of a person that is attributed to the person under subsection (3) (b), (d) or (e) is the associate's actual interest and does not include the interest of another person attributed to the associate under another application of subsection (3) (b), (d), or (e).

(5) In this section —

“relative”, in relation to an individual, means —

- (a) the spouse of the individual; or
 - (b) any ancestor, lineal descendant, brother, sister, uncle, aunt, nephew, niece, stepfather, stepmother, stepchild, or adopted child of the individual, or his or her spouse; and
- “spouse” includes a partner in a universal partnership.

Act binds State

5. This Act binds the State.

Part II — *Taxpayers*

Division I
Registration

Application for registration as a taxpayer

6. (1) Subject to subsection (2), a person shall apply to the Commissioner General for registration as a taxpayer, unless the person is already registered, where —

- (a) the person commences an activity that may result in the person being liable for tax under a tax law; or
- (b) the person becomes a withholding tax agent.

(2) Subsection (1) shall not apply to a non-resident if the only tax that non-resident is liable for is income tax collected by withholding as a final tax under the Income Tax Act.

(3) A person may apply to the Commissioner General for registration as a taxpayer if the person proposes to commence an activity that would require the person to apply for a licence under any written law.

(4) An application for registration as a taxpayer under this section shall be —

- (a) lodged in the approved form;
- (b) accompanied by any documentary evidence or information as may be prescribed; and
- (c) for an application under subsection (1), lodged within 21 days of commencing the activity referred to in subsection (1) (a) or becoming a withholding tax agent referred to in subsection (1) (b), or within such further period as the Commissioner General may allow.

(5) Subject to section 7 (4), the obligation of a person to apply for registration under subsection (1) shall be in addition to an obligation or option of the person to apply for registration for the purposes of a particular tax under another tax law.

7. (1) The Commissioner General shall register a person who has applied for registration under section 6 as a taxpayer if satisfied that the person —

Registration of
taxpayers

- (a) is required to apply for registration; or
- (b) proposes to commence an activity that would require the person to apply for a licence under the Trade Act.

(2) The Commissioner General shall issue a person registered as a taxpayer under subsection (1) with a registration certificate.

(3) If the Commissioner General makes a decision not to register a person who has applied for registration under section 6, the Commissioner General shall serve the person with written notice of the decision within 14 days of the person lodging the application for registration.

(4) Where the Commissioner General has registered a person as a taxpayer under subsection (1), the Commissioner General shall use the information provided for the registration for the purposes of any other registration of that person required or permitted under a tax law for the purposes of a particular tax without the person being required to lodge any additional registration forms.

(5) Notwithstanding subsection (4), the Commissioner General may request a person to provide any further information necessary to complete an additional registration of the person.

(6) The Commissioner General may register a person who has failed to apply for registration as required under section 6 and shall issue the person with a registration certificate.

(7) The registration of a person under this section shall take effect from the date specified on the person's registration certificate.

8. (1) A taxpayer shall notify the Commissioner General, in writing, of a change in any of the following within 28 days of the change occurring —

Notification
of changes

- (a) the taxpayer's name, physical or postal address, telephone contact details, constitution, or principal activity or activities;
- (b) the taxpayer's Internet web address or any social media account used for the purposes of the taxpayer's business;
- (c) the taxpayer's account details with a bank or any financial institution;
- (d) the taxpayer's electronic address used for communication with the Commissioner General;
- (e) the details of the taxpayer's representative; or
- (f) such other details as may be prescribed.

(2) The notification of changes under subsection (1) by a taxpayer shall be treated as satisfying any obligation to notify the same changes in relation to a registration of the taxpayer for the purposes of a particular tax under another tax law.

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Cancellation of registration

9. (1) A person registered as a taxpayer who ceases to be required to be registered for the purposes of any tax law shall apply to the Commissioner General for cancellation of the person's registration.

(2) Where an individual has died, a company has been liquidated, or a person has otherwise ceased to exist, the application under subsection (1) shall be made by the person's representative.

(3) An application for cancellation of registration shall be lodged —

(a) in the approved form; and

(b) within 28 days of the person ceasing to be required to be registered for the purposes of any tax law or within such further time as the Commissioner General may allow.

(4) If a person has applied under subsection (1) for cancellation of the person's registration, the Commissioner General may conduct a final audit of the person's tax affairs within three months of receipt of the application for cancellation of registration.

(5) The Commissioner General shall, by notice in writing, cancel the registration of a person who has applied under subsection (1) or (2) if satisfied that the person is no longer required to be registered for the purposes of such tax law.

(6) If a person has failed to apply for cancellation of the person's registration as required under subsection (1) or (2), the Commissioner General shall, by notice in writing to the person or the person's representative, cancel the registration of the person if satisfied that the person is no longer required to be registered for the purposes of such tax law, including where the person is an individual who has died, a company that has been liquidated, or any other person that has ceased to exist.

(7) The cancellation of a person's registration under subsection (6) shall include cancellation of any registration of the person for the purposes of a particular tax under another tax law.

(8) Subject to subsection (9), the cancellation of a person's registration shall take effect from the date specified in the notice of cancellation served on the person by the Commissioner General.

(9) If the Commissioner General conducts a final audit in accordance with subsection (4), the date on which cancellation of a person's registration takes effect shall not be before completion of the final audit.

(10) Where the cancellation of the registration of a person involves cancellation of the person's registration for the purposes of a particular tax under another tax law, the person shall comply with any requirements relating to cancellation of that registration as specified under that other tax law.

Division II
Taxpayer Identification Numbers

10. (1) The Commissioner General shall issue a TIN to a person registered as a taxpayer under section 7. Issue of TIN

(2) A TIN shall be issued to a taxpayer for the purposes of all tax laws and a taxpayer shall have only one TIN at any time.

(3) The Commissioner General shall issue a TIN to a taxpayer by serving the taxpayer with written notice of the TIN.

11. (1) A taxpayer who has been issued with a TIN shall state the TIN on any tax return, notice, or other document lodged or used for the purposes of a tax law, or as otherwise required under a tax law, including supplying the TIN to a withholding tax agent in respect of payments made by the withholding tax agent of the taxpayer. Use of TIN

(2) A TIN is personal to the taxpayer to whom it has been issued and, subject to subsection (3), shall not be used by another person.

(3) The TIN of a taxpayer may be used by the representative or registered tax agent of the taxpayer where —

(a) the taxpayer has given written permission to the representative or registered tax agent of the taxpayer to use the TIN; and

(b) the representative or registered tax agent of the taxpayer uses the TIN only in respect of the tax affairs of the taxpayer.

(4) A taxpayer shall supply the taxpayer's TIN on a renewal of a licence only if the taxpayer's TIN has changed since the original application of the licence.

12. (1) The Commissioner General shall, by notice in writing, cancel the TIN of a taxpayer where satisfied that — Cancellation of TIN

(a) the taxpayer's registration has been cancelled under section 9;

(b) a TIN has been issued to the taxpayer under an identity that is not the taxpayer's true identity; or

(c) the taxpayer had been previously issued with a TIN that is still in force.

(2) A taxpayer's TIN shall be cancelled from the date set out in the notice of cancellation served on the taxpayer under subsection (1).

(3) The Commissioner General may, at any time, by notice in writing, cancel the TIN issued to a taxpayer and issue the taxpayer with a new TIN.

Division III
Representatives of Taxpayers

13.(1) Every representative of a taxpayer shall be responsible for performing any obligation imposed by a tax law on the taxpayer, including the lodging of tax returns and payment of tax. Obligations of representatives

(2) Where there are two or more representatives of a taxpayer, each representative shall be jointly and severally liable for any obligation referred to in this section.

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(3) Any act done by a representative of a taxpayer on behalf of the taxpayer in accordance with subsection (1) shall be treated as having been done by the taxpayer.

(4) Except as otherwise provided under a tax law and subject to subsection (5), any tax that, by virtue of subsection (1), is payable by a representative of a taxpayer shall be recoverable from the representative only to the extent of the moneys or assets of the taxpayer that are in the possession, or under the control, of the representative.

(5) Subject to subsection (6), a representative of a taxpayer shall be personally liable for the payment of any tax due by the representative in that capacity if, while the amount remains unpaid, the representative of the taxpayer —

- (a) alienates, charges, or disposes of any moneys received or accrued in respect of which the tax is payable; or
- (b) disposes of, or parts with any funds, moneys, or assets belonging to the taxpayer that are in the possession of the representative of the taxpayer or that come to the representative after the tax is payable, if such tax could legally have been paid from or out of such moneys or funds, or the funds arising from the liquidation of such assets.

(6) A representative of a taxpayer shall not be personally liable for tax under subsection (5) if —

- (a) the moneys, including the moneys arising from the disposal of an asset, were paid by the representative on behalf of a taxpayer and the amount paid has a legal priority over the tax payable by the taxpayer; or
- (b) at the time the moneys were paid or asset disposed of, the representative had no knowledge, and could not reasonably be expected to have known, of the taxpayer's tax liability.

(7) Nothing in this section relieves a taxpayer from performing any obligation imposed on the taxpayer under a tax law that the representative of the taxpayer has failed to perform.

Part III — *Record-keeping*

Record-keeping

14. (1) A taxpayer shall, for the purposes of a tax law, maintain such records as may be required under the tax law and the records shall be —

- (a) maintained in the English or Setswana language;
- (b) maintained in Botswana;
- (c) maintained in Pula unless the taxpayer is permitted to maintain records in a foreign currency under a tax law;
- (d) maintained in a manner so as to enable the taxpayer's tax liability under the tax law to be readily ascertained; and
- (e) subject to subsection (2), retained for eight years after the end of the tax period to which they relate or such lesser period as may be required under the tax law requiring the keeping of the records.

(2) Subject to subsection (3), where, at the end of the period referred to in subsection (1) (e), the taxpayer has records that —

- (a) relate to a tax assessment for which the amendment period specified under section 22 has not ended, the taxpayer shall retain the records until the end of the amendment period;
- (b) relate to an assessed loss for a tax period that has not been fully offset, the taxpayer shall retain the records until the end of the tax period in which the loss has been fully offset or the carry forward period for the loss expires; or
- (c) are necessary for a tax audit by the Commissioner General, or a proceeding before the Tax Tribunal or a Court, and such audit or proceeding commenced before the end of the period referred to in subsection (1) (e), the taxpayer shall retain the records until the audit and all proceedings have been completed.

(3) The maximum additional record keeping period under subsection (2) (a) or (c) shall not exceed five years.

(4) Where records referred to subsection (1) are not in the English or Setswana language, the Commissioner General may, by notice in writing, require the taxpayer to provide, at the taxpayer's expense, a translation of the records into the English or Setswana language by a translator approved by the Commissioner General by the date specified in the notice.

(5) A taxpayer who fails to comply with a notice under subsection (4) shall be prohibited from using the records that are the subject of the notice under subsection (4).

(6) The Commissioner General may specify by a notice published in the *Gazette* that taxpayers or a class of taxpayers shall keep records in electronic format and the format or formats in which the records shall be kept.

15. A taxpayer who supplies goods, renders services or receives payment in respect of goods supplied or services rendered shall issue an electronic invoice using an electronic billing system.

Use of electronic
billing system

Part IV — *Tax Returns*

16.(1) A taxpayer required to lodge a tax return for a tax period under a tax law shall lodge the return in the approved form and in the prescribed manner.

Lodging of
tax returns

(2) If a taxpayer has failed to lodge a tax return for any tax period by the due date, the Commissioner General may, by notice in writing, require the taxpayer to lodge the return by the date specified in the notice.

(3) If the Commissioner General is not satisfied with a tax return lodged by a taxpayer, the Commissioner General may, by notice in writing, require the taxpayer or the taxpayer's representative to lodge by the due date set out in the notice —

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- (a) for a self-assessment return, any further information as specified in the notice; or
- (b) for any other return, any further information as specified in the notice, or a further or more detailed return.

(4) A notice served on a taxpayer under subsection (2) or (3) shall not change the date for payment of any tax due, referred to in this section as the “original due date”, for the tax period to which the tax return relates as specified under the tax law under which the return is required to be lodged and late payment interest and late payment penalty remain payable from the original due date.

(5) The Commissioner General shall not be bound by a tax return or information provided by, or on behalf of, a taxpayer and the Commissioner General may determine the taxpayer’s tax liability based on any information available to the Commissioner General.

(6) The Minister may make regulations for the signing and certification of tax returns by taxpayers, representatives, and registered tax agents.

Advance returns

17. (1) This section shall apply where, during a tax period —

- (a) a taxpayer dies;
- (b) a taxpayer has become an insolvent, gone into liquidation, or otherwise ceased to exist;
- (c) a taxpayer is about to leave Botswana permanently;
- (d) a taxpayer has ceased, or is otherwise about to cease, carrying on business in Botswana; or
- (e) the Commissioner General has reason to believe that a taxpayer will not lodge a tax return for the period by the due date.

(2) Where this section applies to a taxpayer for a tax period, the Commissioner General may, by notice in writing and at any time during the tax period, require the taxpayer or the taxpayer’s representative to lodge a tax return, referred to in this section as an “advance return”, for the tax period by the date specified in the notice being a date that may be before the date that the return for the tax period would otherwise be due.

(3) Where a taxpayer is subject to more than one tax, a notice under subsection (2) may apply to each tax.

(4) An advance return that is an income tax return or that is a VAT return shall be a self-assessment return and the tax payable by the taxpayer under the return shall be due on the date that the return is due to be lodged as specified in the notice under subsection (2) served on the taxpayer.

(5) If a taxpayer lodges an advance return to which subsection (4) does not apply —

- (a) the Commissioner shall make an assessment of the tax payable by the taxpayer and serve the taxpayer with notice of the assessment specifying the due date for payment; and

(b) the taxpayer shall pay the tax due by the due date specified in the notice of assessment.

(6) A self-assessment referred to in subsection (4) or an assessment referred to in subsection (5) may be amended under section 22 so that the taxpayer is assessed in respect of the whole of the tax period to which the advance return relates.

(7) Nothing in this section shall relieve a taxpayer who has lodged an advance return from the requirement to lodge a tax return for the whole of the tax period to which the advance return relates unless the Commissioner General has notified the taxpayer, in writing, that such a return is not required to be lodged.

(8) For a taxpayer to whom subsection (4) applies, a tax return lodged by the taxpayer for the whole of a tax period as required under subsection (7) shall not be a self-assessment return but rather provides the Commissioner General with information for the making of an amended assessment referred to in subsection (6).

18. (1) A taxpayer may apply, in writing, to the Commissioner General for an extension of time to lodge a tax return under a tax law.

Extension
of time to
lodge a tax
return

(2) An application under subsection (1) shall be made at least seven days before the due date for lodging the tax return.

(3) If a taxpayer has made an application for an extension of time in accordance with subsections (1) and (2), the Commissioner General may, where good cause is shown by the taxpayer, extend the period within which the taxpayer is to lodge the tax return to which the application relates.

(4) An extension of time under this section shall not exceed 28 days provided that the Commissioner General may, in exceptional circumstances, grant an extension beyond 28 days.

(5) The Commissioner-General shall serve an applicant under subsection (1) with notice, in writing, of the decision on the application within seven days after the application was lodged with the Commissioner General.

(6) For the purposes of section 41, an extension of time granted under subsection (3) shall not change the date for payment of any tax due, referred to in this section as the “original due date”, for the tax period to which the tax return relates as specified under the tax law under which the tax return is required to be lodged and late payment interest remains payable from the original due date.

(7) The Commissioner General may, on the Commissioner General’s own motion, grant any taxpayer, or a class of taxpayers, an extension of time to lodge a tax return and the extended due date shall apply for all purposes of this Act, including the payment of late payment interest.

PART V — *Tax Assessments*

Self-assessment **19.** (1) A self-assessment taxpayer who has lodged a self-assessment return in the approved form for a tax period shall be treated, for all purposes of this Act, as having made an assessment of the amount of tax payable, including a nil amount, for the tax period to which the return relates being that amount set out in the return.

(2) Where a self-assessment taxpayer has lodged a return to which section 123(1) of the Income Tax Act applies in the approved form for a tax year and the taxpayer has an assessed loss for the year, the taxpayer shall be treated, for all purposes of this Act, as having made an assessment of the amount of the loss being that amount set out in the return.

(3) Where a registered person who has furnished a tax return for a tax period in the approved form has an excess input tax credit for the period, the person shall be treated as having made an assessment of the excess input tax credit for the period, being that amount as set out in the return.

(4) A tax return duly completed and lodged electronically by a taxpayer in the approved form shall be a self-assessment return notwithstanding that either or both of the following applies —

- (a) the form included pre-filled information provided by the Commissioner General; or
- (b) the tax payable is calculated electronically as information is inserted into the form online.

Estimated assessment **20.** (1) Subject to subsection (2), where a taxpayer has failed to lodge a tax return as required under a tax law for a tax period by the due date, the Commissioner General may, based on the information available and to the best of his or her judgement, make a determination, referred to in this section as an “estimated assessment”, of, as the case may be —

- (a) the tax, including a nil amount, payable by the taxpayer for the period;
- (b) the assessed loss of the taxpayer for the period; or
- (c) the excess input tax credit of the taxpayer for the period.

(2) The Commissioner General —

- (a) shall make an estimated assessment only in relation to a tax collected by assessment;
- (b) may make an estimated assessment at any time; and
- (c) shall serve a taxpayer assessed under subsection (1) with notice, in writing, of the estimated assessment specifying the matters as may be prescribed.

(3) The service of a notice of an estimated assessment under this section shall not change the due date, referred to in this section as the “original due date”, for payment of the tax payable for the tax period to which the assessment relates as determined under the tax law imposing the tax, and late payment penalty and late payment interest shall remain payable based on the original due date.

(4) Nothing in this section shall relieve a taxpayer from being required to lodge the tax return for the tax period to which an estimated assessment served under this section relates.

(5) A tax return lodged by a taxpayer for a tax period after an estimated assessment has been served on the taxpayer for the period shall not be a self-assessment return but, shall provide the Commissioner General with the information necessary for the making of an amended assessment under section 22.

21. (1) Subject to subsection (2), the Commissioner General may, based on the information available and to the best of his or her judgement, make a determination, referred to in this section as an “advance assessment”, of the tax payable by a taxpayer for a tax period in the circumstances specified under section 17, 51 or 52.

Advance
assessment

(2) The Commissioner General —

- (a) may make an advance assessment before the date on which the taxpayer’s tax return for the period is due;
- (b) shall make an advance assessment only in relation to a tax collected by assessment and only if the taxpayer has not lodged a self-assessment return for the tax period to which the assessment relates;
- (c) shall make an advance assessment in accordance with the tax law in force at the date the advance assessment was made; and
- (d) shall serve a taxpayer assessed under subsection (1) with notice, in writing, of the advance assessment specifying the matters as may be prescribed.

(3) An advance assessment may be amended under section 22 so that the taxpayer is assessed in respect of the whole of the tax period to which the advance assessment relates.

(4) Nothing in this section shall relieve a taxpayer from the requirement to lodge the tax return for the tax period to which an advance assessment served under this section relates, unless the Commissioner General has notified the taxpayer, in writing, that such a return is not required to be lodged.

(5) A tax return lodged by a taxpayer for a tax period after an advance assessment has been served on the taxpayer for the period shall not be a self-assessment return but, shall provide the Commissioner General with the information necessary for the making of an amended assessment under section 22.

22. (1) Subject to this section, the Commissioner General may amend a tax assessment, referred to in this section as the “original assessment”, by making such alterations or additions, based on the information available and to the best of his or her judgement, to the original assessment of a taxpayer for a tax period as are necessary to ensure that —

Amended
assessment

- (a) in the case of an assessed loss, the taxpayer shall be assessed in respect of the correct amount of the loss;

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- (b) in the case of an excess input tax credit of a registered person for a tax period, the registered person shall be assessed in respect of the correct amount of the excess credit for the period; or
 - (c) in any other case, the taxpayer shall be assessed in respect of the correct amount of tax payable including a nil amount for the tax period to which the original assessment relates.
- (2) Subject to subsection (3), the Commissioner General may amend a tax assessment under subsection (1) —
 - (a) in the case of fraud or wilful neglect committed by, or on behalf of, the taxpayer, at any time; or
 - (b) in any other case and subject to a tax law providing otherwise, within eight years of —
 - (i) for a self-assessment, the date that the self-assessment taxpayer lodged the self-assessment return to which the self-assessment relates, or
 - (ii) for any other tax assessment, the date the Commissioner General served notice of the tax assessment on the taxpayer.
- (3) Subject to subsection (4), where the Commissioner General has served a notice of an amended assessment on a taxpayer under subsection (1), the Commissioner General may further amend the original assessment to which the amended assessment relates within the later of —
 - (a) the period specified in subsection (2) (b); or
 - (b) one year after the Commissioner General served notice of the amended assessment on the taxpayer.
- (4) Where subsection (3) (b) applies, the Commissioner General shall amend only the alterations or additions made in the amended assessment to the original assessment.
- (5) The Commissioner General shall serve a taxpayer with notice, in writing, of an amended assessment under subsection (1) or (3) specifying matters as may be prescribed.
- (6) If a taxpayer's assessed tax liability is reduced under an amended assessment giving rise to a refund due to the taxpayer, the Commissioner General shall apply the amount of the refund in accordance with section 54 (5) (a), (b), and (c).
- (7) The service of a notice of an amended assessment under this section shall not change the due date, referred to in this section as the "original due date" for payment of the tax payable for the tax period to which the amended assessment relates as determined under the tax law imposing the tax, and late payment penalty and late payment interest shall remain payable based on the original due date.
- (8) Nothing under sections 23 and 24 shall prevent the Commissioner General from amending a self-assessment on the Commissioner General's own motion in accordance with this section.

23. (1) A self-assessment taxpayer may amend a self-assessment, referred to in this section as the “original self-assessment”, for a tax period to increase the taxpayer’s tax liability under the original self-assessment by lodging an amended self-assessment return for the tax period.

Self-amendment of
self-assessments

(2) An amended self-assessment return shall be lodged —

(a) in the approved form; and

(b) within two years of the date that the self-assessment taxpayer lodged the original self-assessment return to which the amended self-assessment return relates.

(3) A self-assessment taxpayer who has lodged an amended self-assessment return in accordance with this section shall be treated, for all purposes of this Act, as having made an amended self-assessment of the tax payable under the original self-assessment.

(4) The lodging of an amended self-assessment return under subsection (1) shall not change the due date, referred to in this section as the “original due date”, for payment of the tax liability for the tax period to which the amended self-assessment return relates as determined under the tax law imposing the tax, and late payment penalty and late payment interest shall remain payable based on the original due date.

24. (1) Except where section 23 applies, a taxpayer who has lodged a self-assessment return may apply to the Commissioner General, in writing, for the Commissioner General to approve an amendment to be made to the self-assessment.

Application for an
amendment to a
self-assessment

(2) An application under subsection (1) shall —

(a) state the amendments that the taxpayer believes are required to correct the self-assessment and the reasons for the amendments;

(b) be lodged with the Commissioner General within two years of the date that the taxpayer lodged the self-assessment return to which the self-assessment relates; and

(c) satisfy such other conditions as may be prescribed.

(3) Where an application has been made under subsection (1), the Commissioner General may make a decision to amend the self-assessment or disallow the application.

(4) Where the Commissioner General makes a decision to amend the self-assessment, the Commissioner General shall —

(a) make the amended assessment under section 22 (1); and

(b) serve notice of the amended assessment on the taxpayer in accordance with section 22 (5).

(5) If the Commissioner General makes a decision to disallow an application under subsection (1), the Commissioner General shall serve the taxpayer with written notice of the decision.

(6) If the taxpayer has not been served with notice of a decision on an application under subsection (1) within 60 days after the application was lodged with the Commissioner General, the taxpayer may elect, by notice in writing, to treat the Commissioner General as having made a decision to disallow the application.

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(7) If the taxpayer has lodged a notice of election under subsection (6), the period under section 87 (2) (b) for the taxpayer to lodge a notice of appeal against the decision with the Tax Tribunal shall commence on the date that the taxpayer lodged the notice of election under subsection (6) with the Commissioner General.

Part VI — *Decisions by Commissioner General*

Statement of findings and reasons

25. (1) Where the Commissioner General has disallowed an application made by a person under a tax law, the notice of the decision shall include a statement of the Commissioner General's findings and reasons for disallowing the application.

(2) If the Commissioner General has failed to provide a person with a statement of findings and reasons as required under subsection (1), the person may, by notice in writing to the Commissioner General within seven days of being served with the notice of the decision, request the Commissioner General to provide a statement of findings and reasons.

(3) If a person has lodged a notice of request with the Commissioner General in accordance with subsection (2), the time for challenging the decision to which the request relates shall not commence until the date that the Commissioner General serves the person with the statement of findings and reasons.

Finality of tax and appealable decisions

26. (1) Except in proceedings under Part VII —

(a) a tax decision shall be final and conclusive, and may not be disputed in the Tax Tribunal or a Court, or in any other proceedings on any ground whatsoever;

(b) the production of a notice of a tax assessment or a certified copy of the notice of a tax assessment shall be receivable in any proceedings as conclusive evidence of the due making of the assessment and that the amount and particulars of the assessment are correct; and

(c) in the case of a self-assessment, the production of the original self-assessment return or amended self-assessment return, or a certified copy of the return, shall be conclusive evidence of the contents of the return.

(2) Where the Commissioner General serves a notice of a tax assessment on a taxpayer electronically, the reference in subsection (1) (b) to a copy of the notice of assessment includes a document certified by the Commissioner General identifying the assessment and specifying the details of the electronic transmission of the assessment.

(3) Where a taxpayer has lodged a self-assessment return or an amended self-assessment return electronically, the reference in subsection (1) (c) to a copy of the return includes a document certified by the Commissioner General identifying the return and specifying the details of the electronic transmission of the return.

(4) An appealable decision shall be final and conclusive and can be disputed only by lodging a notice of appeal against the decision with the Tax Tribunal under section 87.

Part VII — *Objections and Appeals*

27. (1) A person, referred to in this Part as the “appellant”, who is dissatisfied with a tax decision may lodge a notice of objection, in the approved form, to the decision with the Commissioner General within 60 days after service of the notice of the decision.

Notice of
objection to a
tax decision

(2) An appellant’s right to object to an amended assessment shall be limited to the alterations or additions made in the amended assessment to the original assessment and the objection shall not affect any existing payment plan.

(3) A notice of objection to a tax decision shall be treated as validly lodged only where both subsections (4) and (5) are satisfied in relation to the objection.

(4) A notice of objection shall state —

- (a) the grounds of the appellant’s objection to the tax decision;
- (b) the amendments that the appellant considers are required to correct the decision; and
- (c) the reasons for making those amendments.

(5) Where a notice of objection relates to a tax assessment, the appellant shall —

- (a) lodge the tax return for the tax period covered by the tax assessment;
- (b) pay, or make an arrangement satisfactory to the Commissioner General for payment of, the tax due under the tax assessment that is not disputed by the appellant in the notice of objection; and
- (c) pay one third of the tax due under the tax assessment that is disputed in the notice of objection or, with the agreement of the Commissioner General, provide security in accordance with section 39 for the amount of the disputed tax and any penalty that may become payable.

(6) Where the Commissioner General considers that a notice of objection has not been validly lodged, the Commissioner General shall immediately serve written notice on the appellant stating —

- (a) the reasons why the notice of objection has not been validly lodged; and
- (b) that the notice of objection will lapse unless the appellant complies with subsection (3) by the later of —
 - (i) 28 days from the date of service of the notice of the tax decision to which the objection relates, or
 - (ii) 14 days from the date of service of the notice under this subsection.

(7) The Commissioner General shall serve written notice on the appellant if a notice of objection has lapsed.

(8) Notwithstanding subsection (6), an appellant may apply, in writing, to the Commissioner General for an extension of time to lodge a notice of objection to a tax decision.

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Making an
objection
decision

(9) The Commissioner General may grant an application under subsection (8) if satisfied that —

- (a) owing to absence from Botswana, sickness, or other reasonable cause, the appellant was prevented from lodging a notice of objection to a tax decision within the time specified under subsection (1); and
- (b) there was no unreasonable delay by the appellant in lodging the notice of objection.

(10) The Commissioner General shall serve an applicant under subsection (8) with notice, in writing, of the decision on the application.

28. (1) The Commissioner General shall consider a valid notice of objection lodged under section 27 and shall make a decision to allow the objection in whole or in part, or disallow the objection.

(2) The Commissioner General shall serve an appellant with notice, in writing, of the objection decision and shall take all steps necessary to give effect to the decision, including, in the case of an objection to a tax assessment, the making of an amended assessment.

(3) A notice of an objection decision shall include a statement of the Commissioner General's findings on the material facts and the reasons for the decision.

(4) If the Commissioner General has failed to provide an appellant with a statement of findings and reasons as required under subsection (3), the appellant may, by notice in writing to the Commissioner General within seven days of being served with the notice of the objection decision, request the Commissioner General to provide a statement of findings and reasons.

(5) If an appellant has lodged a notice of request with the Commissioner General under subsection (4) —

- (a) the Commissioner General shall provide the appellant with a statement of findings and reasons within seven days after the appellant lodges the notice of request; and
- (b) the period under section 87 (2) (b) for the appellant to lodge a notice of appeal against the objection decision with the Tax Tribunal shall not commence until the date that the appellant has received the statement of findings and reasons.

(6) If an appellant has not been served with notice of an objection decision within six months of the date that the notice of objection was lodged, the appellant may elect, by notice in writing to the Commissioner General, to treat the Commissioner General as having made a decision to disallow the objection.

(7) Where an appellant has made an election under subsection (6) to treat the Commissioner General as having made a decision to disallow an objection, the period under section 87 (2) (b) for the appellant to lodge a notice of appeal against the decision with the Tax Tribunal shall commence on the date that the appellant lodged the notice of election under subsection (6) with the Commissioner General.

29. An appellant dissatisfied with an objection decision may lodge a notice of appeal against the decision with the Tax Tribunal in accordance with section 87.

Appeal to Tax
Tribunal

30. (1) A party to proceedings before the Tax Tribunal may appeal the decision of the Tax Tribunal to the High Court within 45 days after being served with notice of the decision of the Tax Tribunal or within such further time as the High Court may allow.

Appeal to High
Court

(2) In proceedings under this section in relation to a tax or appealable decision, the burden shall be on the person challenging the decision to prove that the tax or appealable decision, as the case may be, is incorrect.

(3) An appeal under this section to the High Court may be made only if —

(a) the appeal involves one of the following —

- (i) only a question of law,
- (ii) a mixed question of law and fact, or
- (iii) only a question of fact and the amount of tax in dispute exceeds the prescribed amount; and

(b) the appellant has paid to the Commissioner General an additional one third of the disputed tax due under the tax assessment except where the appellant has provided security for the full amount of the disputed tax under section 27 (5) (c).

(4) Where an appeal relates to an appealable decision concerning a tax assessment, the High Court may make —

- (a) an order to confirm, reduce, increase, or set aside the tax assessment to which the appealable decision relates;
- (b) an order to remit the tax assessment to the Commissioner General for reconsideration in accordance with directions of the High Court; or
- (c) such other order within the power of the High Court.

(5) Where an appeal relates to any other appealable decision, the High Court may make an order to affirm, vary, or set aside the decision or make such other order within the power of the High Court.

(6) Each party to proceedings before the High Court under this section shall bear his or her own costs.

(7) Notwithstanding subsection (6), the High Court may make such order as to costs as it seems fit if of the opinion that —

- (a) the decision of the Commissioner General on the objection was arbitrary and unreasonable; or
- (b) the grounds of appeal of the person challenging the tax or appealable decision are frivolous or vexatious.

31. (1) An appellant to a tax decision shall not produce any evidence, whether oral or in writing, or a witness, before the Tax Tribunal that was not produced in proceedings before the Commissioner General in relation to the notice of objection, except where —

Production
of additional
evidence

(a) the Tax Tribunal is satisfied that —

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- (i) the Commissioner General refused to accept evidence that ought to have been accepted,
 - (ii) the appellant was prevented, by reasonable cause, from producing the evidence or witness in proceedings before the Commissioner General in relation to the objection, or
 - (iii) the Commissioner General made the objection decision without giving the appellant an opportunity to adduce evidence or present witnesses relevant to the objection; or
- (b) an objection decision is treated as having been made by the Commissioner General under section 28 (6).
- (2) Where the Tax Tribunal allows an appellant to produce new evidence or a new witness, the Tax Tribunal shall —
- (a) record, in writing, the reasons for admitting the new evidence or witness and serve the Commissioner General with a copy of the reasons; and
 - (b) provide the Commissioner General with an opportunity to —
 - (i) examine the new evidence or cross examine the new witness, and
 - (ii) produce any new evidence, whether oral or in writing, or a new witness, in rebuttal of the new evidence or witness produced by the appellant.
- (3) Nothing in this section shall affect the powers of the Tax Tribunal to direct the production of any document or the examination of any witness to enable the Tax Tribunal to dispose of the appeal.

Implementation
of decision

32. (1) The Commissioner General shall take such action, including amending any tax assessment, as is necessary to give effect to —

- (a) a decision of the Tax Tribunal;
- (b) a decision of the High Court; or
- (c) a decision of the Court of Appeal.

(2) The decision of the Tax Tribunal shall become final if no notice of appeal is lodged with the Registrar of the High Court within the time specified under section 30 (1) or such further time as the High Court may allow.

(3) The decision of the High Court shall become final if no notice of appeal is lodged with the Registrar of the Court of Appeal.

(4) The time limit under section 22 (2) (b) for amending a tax assessment shall not apply to an amendment to give effect to a decision of the Tax Tribunal, a High Court or the Court of Appeal.

General
provisions
relating to
objections
and appeals

33. (1) In any proceedings under this section in relation to a tax or appealable decision, the onus of proving the incorrectness of the tax or appealable decision shall be on the person challenging the decision.

(2) Each party to the proceedings before the Tax Tribunal shall bear his or her own costs.

(3) Notwithstanding subsection (2), the Tax Tribunal may make such order as to costs as it sees fit if it is of the opinion that —

- (a) the decision of the Commissioner General on the objection was arbitrary and unreasonable; or
 - (b) the grounds of appeal of the person challenging the tax or appealable decision are frivolous or vexatious.
- (4) Subject to section 96 (8), the lodging of a notice of objection with the Commissioner General against a tax decision or a notice of appeal with the Tax Tribunal against an appealable decision shall not affect the operation of the decision or prevent the Commissioner General from taking action to implement the decision.

Part VIII — *Collection and Recovery of Tax*

Division I
Payment of Tax

34. (1) Tax that is due and payable by a taxpayer under a tax law is a debt due to the State and shall be payable to the Commissioner General in the prescribed manner and at the prescribed place.

Tax as a
debt to the
State

(2) A taxpayer required to pay tax electronically by the Commissioner General under section 78 (3) shall continue do so unless authorised by the Commissioner General, by notice in writing, to use another method of payment.

(3) If a taxpayer fails to pay tax by the due date or within such further time as the Commissioner General may allow under section 36, the taxpayer shall be liable for any costs reasonably incurred by the Commissioner General in taking action to recover the unpaid tax.

35. (1) The Commissioner General may serve a person liable for a secondary liability or tax recovery costs with notice of the amount of the liability payable by the person and the due date for payment.

Secondary
liabilities
and tax
recovery
costs

(2) An amount of a secondary liability paid by a person is credited against the primary tax liability to which the secondary liability relates.

(3) A reference in Parts VII, VIII, IX, and X, and sections 13, 53 (1) (b), 54 (5) (b), and 102 to —

- (a) “tax”, includes a secondary liability and tax recovery costs;
- (b) “unpaid tax”, includes an amount specified in paragraph (a) that is not paid by the due date; and
- (c) “taxpayer”, includes a person liable for an amount specified in paragraph (a).

(4) A person who has paid an amount of a secondary liability out of his or her own funds in relation to a primary tax liability of a taxpayer may —

- (a) recover the amount paid from the taxpayer as a debt in any court of competent jurisdiction; or
- (b) deduct the amount paid from any moneys the person owes to, or holds for, the taxpayer.

B.1042

Extension of
time to pay
tax

36. (1) A taxpayer may apply, in writing, to the Commissioner General for an extension of time to pay any tax due under a tax law and the application shall be made by the original date on which the tax was due for payment.

(2) If an application has been made in accordance with subsection (1), the Commissioner General may, where good cause is shown by the taxpayer —

- (a) grant the taxpayer an extension of time for payment of the tax due; or
- (b) require the taxpayer to pay any tax due in such instalments as the Commissioner General may determine.

(3) The Commissioner General shall serve the taxpayer with a written notice of the decision under subsection (2) and, if the Commissioner General permits the taxpayer to pay the tax due in instalments, the taxpayer shall enter into a payment arrangement with the Commissioner General.

(4) Where a taxpayer is permitted to pay tax by instalments and the taxpayer defaults in payment of any instalment, the whole balance of the tax outstanding, at the time of the default, shall become immediately payable unless the Commissioner General enters into another instalment payment arrangement with the taxpayer.

(5) A taxpayer granted an extension of time or permission to pay tax due by instalments under subsection (2) shall still be liable for late payment interest arising from the original date the tax was due for payment.

Priority of tax

37. (1) This section shall apply to withholding tax and VAT.

(2) A person owing, holding, receiving, or withholding an amount to which this section applies shall hold the amount in trust for the Government and the amount shall not be subject to attachment in respect of any debt or liability of the person.

(3) Notwithstanding any other enactment, withholding tax withheld by a withholding agent —

- (a) is a first charge on the payment from which the tax is withheld; and
- (b) is withheld prior to any other deduction that the withholding agent may be required to make from the payment under an order of any court or any law.

(4) In the event of the liquidation or bankruptcy of a person owing, holding, receiving, or withholding an amount to which this section applies, the amount —

- (a) shall not form part of the person's estate in liquidation or bankruptcy; and
- (b) shall be paid to the Commissioner General before any distribution of property is made.

- 38.** (1) This section shall apply to —
- (a) a withholding tax agent who has withheld tax from a payment of withholding income and paid the withheld tax to the Commissioner General;
 - (b) a representative who has paid an amount to the Commissioner General pursuant to section 13;
 - (c) a person who has paid an amount to the Commissioner General pursuant to a section 46 notice;
 - (d) a receiver who has paid an amount to the Commissioner General pursuant to section 47; or
 - (e) a financial institution that has complied with an interim asset preservation notice or an asset preservation order under section 51.
- (2) A person to whom this section applies shall be indemnified against any claim by the taxpayer relating to the amount paid by the person to the Commissioner General or to compliance with an interim asset preservation notice or an asset preservation order under section 51.
- 39.** (1) Where the Commissioner General considers it reasonable to do so for the purposes of protecting the revenue, the Commissioner General may, by notice in writing, require a taxpayer to provide security for the payment of tax that is or will become payable by the taxpayer under a tax law.
- (2) The Commissioner General may require security to be provided —
 - (a) by a cash deposit that is to be held by the Commissioner General in a separate trust account;
 - (b) by a bond;
 - (c) by an unconditional bank guarantee;
 - (d) by way of a mortgage over the taxpayer's property but subject to any pre-existing mortgage over the property; or
 - (e) in any other form as the Commissioner General may determine.
 - (3) A notice requiring payment of security under subsection (1) shall specify —
 - (a) the reasons why the taxpayer is being required to provide security;
 - (b) the amount of the security required;
 - (c) the manner in which the security is to be provided; and
 - (d) the due date for providing the security.
 - (4) If a taxpayer fails to comply with a notice under subsection (1), the Commissioner General may recover the amount of the security under Division III of this Part on the basis that the unpaid security is unpaid tax.
 - (5) Where security under subsection (1) is in cash and the Commissioner General is satisfied that the security is no longer required, the Commissioner General shall apply the amount of the security as specified under section 54 (5) (a), (b), and (c).
- 40.** (1) Where a taxpayer is liable for tax, and penalty and late payment interest in relation to the tax liability and the taxpayer makes a payment that is less than the total amount of tax, penalty, and interest due, the amount paid shall be applied in the following order —

Indemnity

Security

Order of payment

B.1044

- (a) first in payment of the tax liability;
- (b) then in payment of the late payment interest liability; and
- (c) then any balance remaining shall be applied in payment of the penalty liability.

(2) Where a taxpayer has more than one tax liability at the time a payment is made, the payment shall be applied against the tax liabilities as may be prescribed.

Division II
Late Payment Interest

Late payment
interest

41. (1) A taxpayer who fails to pay tax by the due date for payment shall be liable for late payment interest at the prescribed rate on the amount unpaid, calculated for the period commencing from the date the payment was due to the date the payment is made.

(2) Interest payable under this section shall be calculated on a simple interest basis.

(3) Late payment interest payable in respect of withholding tax or a secondary liability shall be borne personally by person liable for the withholding tax or secondary liability and shall not be recoverable from any other person.

(4) Any interest paid by a taxpayer under subsection (1) shall be applied in accordance with section 54 (5) (a), (b), and (c) to the extent that the principal amount to which the interest relates is subsequently found not to have been payable.

(5) The Commissioner General shall serve a taxpayer liable for late payment interest with notice of the amount of late payment interest payable by the taxpayer and the due date for payment.

(6) A notice of the amount of late payment interest payable by a taxpayer may be included in any other notice, including a notice of a tax assessment, served by the Commissioner General on the taxpayer.

(7) When —

(a) the Commissioner General notifies a taxpayer in writing of the taxpayer's outstanding tax liability under a tax law including in a tax assessment; and

(b) the taxpayer pays the balance notified in full within the time specified in the notification including late payment interest payable up to the date of the notification, late payment interest shall not accrue for the period between the date of notification and the date of payment.

(8) Any interest payable under this section shall be in addition to any late payment penalty imposed under section 102.

(9) In this section, "tax" shall not include late payment interest.

Division III
Recovery of Unpaid Tax

42.(1) Where a taxpayer fails to pay tax by the due date, the Commissioner General may file, with the clerk or registrar of a court of competent jurisdiction, a statement certified by the Commissioner General specifying the amount of the unpaid tax of the taxpayer.

Judgment debt
procedure for
recovery of
unpaid tax

(2) The statement under subsection (1) shall have the effect of a civil judgment lawfully given in court in favour of the Commissioner General for a liquid debt in the amount specified in the statement.

(3) If the Commissioner General has filed a statement under subsection (1), the court shall notify the taxpayer, in writing, that a writ of execution will be issued after 14 days from service of the notice unless the taxpayer produces proof of payment of the tax before the end of the 14-day period.

(4) If, after the end of the 14-day period specified in subsection (3), the taxpayer has not produced proof of payment to the satisfaction of the court, the court shall issue a writ of execution in respect of the debt against the taxpayer.

(5) The Commissioner General may, without prejudice to re-instituting proceedings under subsection (1), by notice in writing addressed to the clerk or registrar of the court, withdraw the statement referred to in subsection (1) and such statement shall thereupon cease to have effect.

(6) Nothing in this section shall preclude the Commissioner General from proceeding under any section in this Division for the recovery of unpaid tax.

43. For the purposes of section 85(a) of the Insolvency Act, the balance of the free residue of the estate of an insolvent person shall be applied in paying any tax payable by the insolvent under a tax law.

Insolvency of
taxpayer
Cap. 42:02

44.(1) The Commissioner General may enter any premises or place and seize any goods in respect of which the Commissioner General has reasonable grounds to believe that the VAT that is, or will become, payable in respect of a supply or import of the goods has not been, or will not be, paid.

Seizure and
forfeiture of
goods

(2) The Commissioner General may seize any vehicle used in the removal or carriage of goods liable to be seized under subsection (1) unless it is shown that the vehicle was used without the consent or knowledge of the owner of the vehicle or any other person lawfully in possession or charge of the vehicle.

(3) A vehicle seized under subsection (2) shall be immediately forfeited to the Commissioner General and, at the direction of the Commissioner General, the vehicle may be sold by public auction or may be dealt with in such other manner as the Commissioner General may direct.

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(4) The Commissioner General may be accompanied by a police officer when exercising his or her powers under this section.

(5) Goods that have been seized under this section shall be stored in a place approved by the Commissioner General for the storage of seized goods.

(6) If goods have been seized under subsection (1), the Commissioner General shall, as soon as practicable after the seizure, serve on the owner of the goods or the person who had custody or control of the goods immediately before seizure, a notice in writing —

(a) identifying the goods;

(b) stating that the goods have been seized under this section and the reason for seizure;

(c) setting out the terms for release of the goods; and

(d) stating that the goods will be forfeited if not claimed within the detention period specified in the notice.

(7) For the purposes of subsection (6) (d), the detention period shall be —

(a) for perishable goods, such period as the Commissioner General considers reasonable having regard to the condition of the goods; or

(b) for any other goods, a period of not less than 10 days after the seizure of the goods.

(8) The Commissioner General shall not be required to serve a notice under subsection (6) if, after making reasonable enquiries, the Commissioner General does not have sufficient information to identify the person on whom the notice may be served.

(9) Where subsection (8) applies, the Commissioner General may serve a notice under subsection (6) on any person subsequently claiming the goods, provided the person has given the Commissioner General sufficient information to enable such a notice to be served.

(10) A person on whom a notice under subsection (6) has been served shall claim goods that have been seized under subsection (1) by paying, or making an arrangement to the satisfaction of the Commissioner General for payment of the VAT payable or that may become payable in respect of the supply or import of the goods.

(11) The Commissioner General shall authorise the delivery of goods seized under subsection (1) to a person who has claimed the goods in accordance with subsection (10).

(12) Seized goods that have not been claimed within the detention period specified in subsection (7) shall be treated as forfeited to the Commissioner General at the end of the detention period and the Commissioner General may sell the goods by public auction or in such other manner as the Commissioner General may direct.

(13) The Commissioner General shall apply the proceeds of sale in the following order —

(a) first towards the cost of taking, keeping, and selling the forfeited goods as determined by the Commissioner General;

- (b) then in payment of the VAT, penalty, and late payment interest that is, or will become, payable in respect of the supply or import of the goods; and
- (c) then any remainder of the proceeds shall be retained by the Commissioner General.

(14) Nothing in this section shall preclude the Commissioner General from proceeding under this Division with respect to any balance owed if the proceeds of disposal are not sufficient to meet the amounts referred to in subsection (13) (a) and (b).

(15) The Commissioner General, an authorised officer, or a police officer shall not be liable for any damage resulting from an exercise of power under this section provided the Commissioner General, authorised officer, or police officer has acted in accordance with the terms of the section and has used reasonable force.

(16) The powers in this section shall be exercised by the Commissioner General or by an officer designated by the Minister in an Order published in the *Gazette*.

45. (1) The Commissioner General may recover unpaid tax owing by a taxpayer by distress proceedings against the movable property of the taxpayer by serving a notice, referred to in this section as a “distress notice”, in writing, on the taxpayer specifying —

- (a) the name of the taxpayer;
- (b) the location of the property; and
- (c) the unpaid tax liability to which the distress proceedings relate.

(2) Subject to section 37, subsection (1) shall not apply to movable property if there is a prior secured interest over that property and the prior secured interest has priority, in law or equity, over the tax liability notified under subsection (1).

(3) For the purposes of executing distress proceedings, the Commissioner General may —

- (a) at any time, enter any house or premises described in the distress notice; and
- (b) be accompanied by a police officer while the distress proceedings are being executed.

(4) The property distrained shall be detained for the period specified under section 44 (7) either at the premises where the distress was executed or at such other place as the Commissioner General may consider appropriate, at the cost of the taxpayer.

(5) If the taxpayer does not pay the tax due, together with the costs of the distress, or make an arrangement to the satisfaction of the Commissioner General for payment of the tax within the detention period specified in subsection (4), the Commissioner General may sell the property distrained by public auction or in such other manner as the Commissioner General may direct.

(6) The Commissioner General shall apply the proceeds of a disposal under subsection (5) as follows —

Distress
proceedings

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- (a) first towards the cost of taking, keeping, and selling the property distrained;
- (b) then towards the unpaid tax liability of the taxpayer as specified in the distress notice;
- (c) then towards the payment of any other unpaid tax liability of the taxpayer; or
- (d) then any remainder of the proceeds shall be paid to the taxpayer.

(7) Nothing in this section shall preclude the Commissioner General from proceeding under this Division with respect to any balance owed if the proceeds of the distress are not sufficient to meet the amounts referred to in subsection (6) (a), (b), and (c).

(8) The powers in this section shall be exercised by the Commissioner General or by an officer designated by the Minister in an Order published in the *Gazette*.

(9) The Commissioner General, an authorised officer, or a police officer shall not be liable for any damage resulting from an exercise of power under this section provided the Commissioner General, authorised officer, or police officer has acted in accordance with the terms of the section and has used reasonable force.

(10) In this section, “movable property” includes money.

46. (1) This section shall apply where —

- (a) a taxpayer is, or will become liable to pay tax;
- (b) either —
 - (i) the taxpayer has not paid the tax by the due date for payment, or
 - (ii) the Commissioner General has reasonable grounds to believe that the taxpayer will not pay the tax by the due date for payment; and

(c) there are reasonable grounds for believing that the taxpayer’s current or future tax liability can be recovered from a payer referred to in subsection (11).

(2) Subject to subsection (3), where this section applies in relation to a taxpayer, the Commissioner General may serve a notice, referred to in this section as a “garnishee notice”, in writing, on a payer in respect of the taxpayer’s tax liability requiring the payer to pay the amount specified in the notice to the Commissioner General by the date or dates for payment set out in the notice.

(3) A garnishee notice shall not —

- (a) specify an amount payable that exceeds the amount of the unpaid tax or the amount of tax that the Commissioner General believes will not be paid by the taxpayer by the due date;
- (b) specify a date for payment that is before the date that the money becomes due to the taxpayer or held by the payer on the taxpayer’s behalf; or
- (c) preclude the payer from paying an amount that has priority, in law or equity, over the tax liability notified in the garnishee notice.

Recovery
of tax from
third parties

(4) The Commissioner General shall, by notice in writing to the payer, revoke or amend a garnishee notice if the tax liability has been paid in whole or part or if an arrangement has been made to the satisfaction of the Commissioner General for payment of the tax liability.

(5) The Commissioner General shall credit an amount paid by a payee under this section against the tax liability of the taxpayer.

(6) If a payer is unable to comply with a garnishee notice, the payer shall, before the date for payment specified in the notice, notify the Commissioner General, in writing, setting out the reasons for the inability to comply.

(7) A payer who has lodged a notice with the Commissioner General under subsection (6) shall not alienate, transfer, or dispose of any moneys to which the garnishee notice applies before being served with a notice of decision under subsection (8) or the period in subsection (8) has expired without a notice being served.

(8) Where a payer has lodged a notice with the Commissioner General under subsection (6), the Commissioner General may, within ten days and by notice in writing, make a decision to -

- (a) accept the notification and cancel or amend the garnishee notice; or
- (b) reject the notification.

(9) The Commissioner General shall serve the taxpayer with a copy of a garnishee notice served on a payer under subsection (2) or an amended garnishee notice served on a payer under subsection (8).

(10) A payer who, without reasonable cause, fails to comply with a garnishee notice shall be personally liable for any part of the amount specified in the notice that is unpaid and any late payment interest payable in respect of the unpaid amount.

(11) In this section, "payer", in respect of a taxpayer, means a person who —

- (a) owes or may subsequently owe money to the taxpayer;
- (b) holds or may subsequently hold money, for or on account of, the taxpayer;
- (c) holds or may subsequently hold money on account of some other person for payment to the taxpayer; or
- (d) has authority from some other person to pay money to the taxpayer.

47. (1) A person shall notify the Commissioner General, in writing, of his or her —

- (a) appointment as receiver in relation to a taxpayer, within 14 days of the date of appointment; or
- (b) taking possession of mortgaged property in Botswana of a taxpayer within 14 days of the date of taking possession of the property.

(2) The Commissioner General shall notify the receiver, in writing, of the amount of any tax that is or will become payable by the taxpayer whose property is in the possession, or under the control, of the receiver and such notice shall be served on the receiver within one month after the Commissioner General received the notice under subsection (1).

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(3) A receiver shall not, without leave of the Commissioner General, part with any property held in the capacity as receiver until the following conditions are satisfied —

(a) the receiver has furnished all outstanding tax returns of the taxpayer, including an advance return if required by the Commissioner General under section 17; and

(b) the receiver has been served with a notice under subsection (2) or the one-month period specified in subsection (2) has expired without such a notice being served on the receiver.

(4) Subject to subsections (5) and (6), a receiver shall —

(a) set aside, out of the proceeds of sale of any property of the taxpayer, the amount specified by the Commissioner General in a notice served on the receiver under subsection (2), or such other amount as is subsequently specified in a notice of assessment served on the receiver by the Commissioner General; and

(b) be personally liable for the amount required to be set aside and any late payment interest payable in respect of the unpaid amount.

(5) Subject to subsection (6), if the proceeds of sale of any property of a taxpayer are less than the amount notified by the Commissioner General under this section, the receiver shall set aside the entire proceed of sale to meet the amount notified by the Commissioner General under this section.

(6) Subject to section 37, nothing in subsection (3) shall prevent a receiver from paying the following in priority to the amount notified under subsection (2) —

(a) a debt that has priority, in law or equity, over the tax referred to in the notice served under subsection (2); and

(b) the expenses properly incurred by the receiver in the capacity as such, including the receiver's remuneration.

(7) Where two or more persons are receivers in respect of a taxpayer, the receivers shall be jointly and severally liable for the obligations and liabilities arising under this section.

(8) A person shall cease to be a receiver in relation to a taxpayer —

(a) in the case of a mortgagee-in-possession, on the date that the person ceases to have control over the mortgaged property; or

(b) in any other case, on the date that the person ceases to hold the position of receiver.

(9) In this section —

(a) "receiver" means a person who is —

(i) a liquidator of a company,

(ii) a receiver appointed out of court or by a court,

(iii) a trustee for an un-rehabilitated insolvent,

(iv) a mortgagee in possession,

(v) an executor of a deceased estate, or

(vi) conducting a business on behalf of, or is otherwise responsible for, the property of a person legally incapacitated; and

(b) “taxpayer” includes a deceased taxpayer.

(10) A person who contravenes subsection (1) shall be liable for a fixed monetary penalty of P10 000.

48. (1) This section applies if a taxpayer —

- (a) fails, more than once, to —
 - (i) pay withholding tax or VAT by the due date,
 - (ii) lodge a tax return referred to in paragraph (b) or (d) of the definition of “tax return” under section 2, or
 - (iii) maintain or provide VAT documentation as required under the Value Added Tax Act;
- (b) improperly claims a VAT refund; or
- (c) fails to comply with the requirements of the electronic billing system provided for under section 15.

Temporary
closure of
business
premises

(2) Where this section applies, the Commissioner General may notify the taxpayer, in writing, of the intention to close down part or the whole of the taxpayer’s business premises for a temporary period not exceeding 14 days, unless within a period of seven days from the date of service of the notice —

- (a) the Commissioner General is satisfied that the taxpayer has put into place sufficient measures to ensure that the taxpayer shall —
 - (i) maintain and provide VAT documentation as required under the Value Added Tax Act,
 - (ii) properly claim VAT refunds, or
 - (iii) comply with the requirements of the electronic billing system;
- (b) the taxpayer pays the withholding tax or VAT due, and any penalty and late payment interest payable in respect of the unpaid tax; or
- (c) the taxpayer lodges all outstanding tax returns referred to in paragraph (b) or (d) of the definition of “tax return” under section 2.

(3) If a taxpayer fails to comply with a notice under subsection (2), the Commissioner General may issue a notice, referred to in this section as a “closure notice”, to close down part or the whole of the business premises of the taxpayer for a period not exceeding 14 days.

(4) The Commissioner General may, at any time, enter any premises described in a closure notice and use reasonable force for the purposes of executing the notice and may be accompanied by a police officer while the notice is being executed.

(5) Where a closure notice has been issued under subsection (3), the Commissioner General shall seal the premises and affix in a conspicuous place on the front of the business premises closed down, a notice in the following words “CLOSED TEMPORARILY FOR NOT COMPLYING WITH TAXATION OBLIGATIONS”.

(6) The Commissioner General shall immediately arrange for the reopening of the business premises closed under subsection (5) and for the removal of the notice referred to in subsection (5) if, during the period of closure —

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- (a) the Commissioner General is satisfied of the matters referred to in subsection (2) (a); or
- (b) the taxpayer complies with the requirements specified in subsection (2) (b) and (c).

(7) The powers in this section shall be exercised by the Commissioner General or by an officer designated by the Minister in an Order published in the *Gazette*.

(8) The Commissioner General, an authorised officer, or a police officer shall not be liable for any damage resulting from an exercise of power under this section:

Provided the Commissioner General, authorised officer, or police officer acted in good faith and in accordance with the provisions of the section.

(9) In this section, “VAT documentation” includes tax invoices, tax debit notes, and tax credit notes.

Liability
for tax
payable by a
company

49. (1) Subject to subsection (2), where an arrangement has been entered into with the purpose or the effect, of rendering a company unable to satisfy a current or future tax liability under a tax law, every person who was a director or controlling member of the company when the arrangement was entered into is jointly and severally liable for the tax liability of the company.

(2) A director of a company shall not be liable under this section for the tax liability of the company if the Commissioner General is satisfied that the director derived no financial or other benefit from the arrangement and the —

- (a) director has, on becoming aware of the arrangement, formally recorded with the company his or her dissent and notified the Commissioner General in writing of the arrangement; or
- (b) Commissioner General is satisfied that —
 - (i) the director was not involved in the executive management of the company, and
 - (ii) at no time did the director have any knowledge, and could not reasonably have been expected to know, of the arrangement.

(3) Subject to section 22 (2), to give effect to this section after a company has been liquidated or otherwise ceased to exist, the Commissioner General may make or amend an assessment of the tax liability of the company as if the company had not been liquidated or ceased to exist and serve notice of the assessment on any person to whom subsection (1) applies.

(4) In this section —

(a) “arrangement” includes any contract, agreement, plan, or understanding whether express or implied and whether or not enforceable in legal proceedings; and

(b) “director” means —

- (i) for an incorporated body, an individual who is a director of the body under the Companies Act, or

(ii) for any other company, an individual who is involved in the management of the company.

50. (1) Subject to subsection (2), where a person, referred to in this section as the “transferor”, has an unpaid tax liability and transfers all or some of his or her assets to an associate with the purpose, or purposes that include the purpose, or the effect, of rendering the transferor unable to satisfy his or her tax liability, the associate shall be personally liable for the unpaid tax liability of the transferor to the extent of the transferred assets.

Transferred tax liabilities

(2) Subsection (1) shall not preclude the Commissioner General from recovering the whole or part of the tax liability from the transferor.

51. (1) This section shall apply if the Commissioner General has reasonable cause to believe that —

Preservation of assets

(a) a taxpayer will not pay the full amount of tax owing when due; and
 (b) the taxpayer has taken, or will take, steps to frustrate the recovery of the tax, including the dissipation of the taxpayer’s assets.

(2) When this section applies in relation to a taxpayer, the Commissioner General may, at any time, serve a notice, referred to in this section as an “interim asset preservation notice” on —

(a) a financial institution requiring the financial institution to —
 (i) block the taxpayer from gaining access to the taxpayer’s accounts,
 (ii) freeze access to any cash, valuables, precious metals, or other assets of the taxpayer in a safe deposit box held by the financial institution, and
 (iii) provide information relating to the accounts or contents of the safe deposit box; or
 (b) any other person holding, controlling, or managing assets belonging to the taxpayer prohibiting the person from transferring, withdrawing, disposing, or otherwise dealing with the assets.

(3) An interim asset preservation notice served on a person under subsection (2) shall specify the name, address, and TIN of the taxpayer to which the notice relates.

(4) Where an interim asset preservation notice has been served on a person under subsection (2), the Commissioner General shall immediately make an assessment or assessments, including an advance assessment, of the tax payable by the taxpayer for the current tax period and, if necessary, any prior tax period, and serve notice of the assessment or assessments on the taxpayer.

(5) The Commissioner General shall, within 72 hours of serving an interim asset preservation notice on a person under subsection (2), apply to a court of competent jurisdiction on an urgent basis for an order to confirm the interim asset preservation notice and, if confirmed by the court, the order shall be known as an asset preservation order.

(6) An interim asset preservation notice shall lapse at the end of the 72 hour period referred to in subsection (5) if the Commissioner General fails to file an application under that subsection.

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(7) If an application has been filed by the Commissioner General under subsection (5), the court may make a decision to —

- (a) issue an asset preservation order on such terms as the court decides; or
- (b) reject the application.

(8) A person served with an interim asset preservation notice or an asset preservation order shall comply with the notice or order from the date of service until the date that the notice or order expires according to its terms or, in the case of an interim asset preservation notice, lapses under subsection (6).

(9) A person that complies with an interim asset preservation notice or an asset preservation order shall be indemnified in respect of any actions taken in connection with the notice or order, against all proceedings, civil or criminal, and all process, judicial or extrajudicial, notwithstanding any provisions to the contrary in any written law, contract, or agreement.

(10) A person that, without reasonable cause, fails to comply with an interim asset preservation notice or an asset preservation order shall be personally liable for the amount specified in the notice or order.

(11) A person served with an interim asset preservation notice or the taxpayer to whom the notice relates can challenge the notice only by opposing the confirmation of the notice as an asset preservation order in court proceedings under subsection (5).

(12) The powers in this section shall be exercised by the Commissioner General or by an officer designated by the Minister in an Order published in the *Gazette*.

Restraint of
person from
departure

52. (1) Where an individual or company in which an individual is a controlling member has an unpaid tax liability and the Commissioner General has reasonable grounds to believe that the individual may leave Botswana without the tax being paid, the Commissioner General may issue a notice, referred to in this section as a “departure prohibition notice”, to the Director responsible for Immigration requiring the Chief Immigration Officer to prohibit the individual from leaving Botswana.

(2) The Commissioner General shall serve a copy of a departure prohibition notice personally on the individual named in the notice or, if personal service is not possible, the Commissioner General shall serve the notice in accordance with section 77 (1) (b).

(3) Notwithstanding subsection (2), the non-receipt of a copy of the notice by the individual named in the notice shall not invalidate the notice.

(4) On receipt of a departure prohibition notice in relation to an individual, the Director of Immigration shall take such measures as may be necessary to comply with the notice for a period of 14 days, including the seizure and retention of the person’s passport, certificate of identification, or any other document authorising the person to leave Botswana.

(5) The Commissioner General may apply to the High Court for an order to extend the period referred to in subsection (4).

(6) If the unpaid tax of the individual or of a company in which the individual is a controlling member is paid or a satisfactory arrangement for payment of the tax is made, the Commissioner General shall notify the Director responsible for Immigration, in writing, that the departure prohibition notice is withdrawn.

(7) No proceedings, criminal or civil, may be instituted or maintained against the Government or a tax officer, customs officer, immigration officer, police officer, or other officer for any thing lawfully done under this section.

(8) The powers in this section shall be exercised by the Commissioner General or by an officer designated by the Minister in an Order published in the *Gazette*.

Part IX — *Refunds and Remission of Tax*

53. (1) If the refundable tax credits allowed to a taxpayer for a tax period exceed the tax liability of the taxpayer for the period to which the credits relate, the Commissioner General shall apply the excess in the following order —

- (a) first, in payment of any unpaid tax of the taxpayer under the tax law to which the credits relate;
- (b) second, in payment of any unpaid tax of the taxpayer under any other tax law; and
- (c) subject to subsections (2) and (3), then refund the remainder, if any, to the taxpayer within 60 days after the taxpayer has lodged the tax return to which the refund relates.

(2) An amount referred to in paragraph (1) (c) may be carried forward for the payment of any future tax liability of the taxpayer under any tax law with the written agreement of the taxpayer.

(3) The Commissioner General may withhold payment of the refund until the taxpayer has lodged all outstanding tax returns if, at the time that an amount is to be refunded to a taxpayer under subsection (1) (c), the taxpayer has failed to lodge a tax return for a tax period.

(4) In this section —

- (a) “refundable tax credit” means a tax credit allowed —
 - (i) under section 9 (3) of the Income Tax Act where the credit relates to tax withheld under section 129, 130 or 131 of the Income Tax Act or under section 133 of the Income Tax Act in relation to payments made to a resident,
 - (ii) for tax paid in instalments under section 127 of the Income Tax Act, or
 - (iii) under section 46; and
- (b) “unpaid tax” includes any customs or excise duty imposed under customs legislation that has not been paid by the due date.

Application of
tax credits

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Refund of
overpaid tax

(5) If a refund payable to a taxpayer under subsection (1) (c) has not been paid by the Commissioner General within six months after the time specified in subsection (1) (c) and subsections (2) and (3) do not apply, the Commissioner General shall be liable to pay interest to the taxpayer at the prescribed rate from the end of the six month period to the date that the refund is paid.

54. (1) If a taxpayer has overpaid tax under a tax law, the taxpayer may apply, in writing, to the Commissioner General for a refund of the overpaid tax.

(2) This section shall apply only where a refund of overpaid tax does not require the Commissioner General to make an amended assessment.

(3) An application for a refund under subsection (1) shall be —

(a) lodged in the approved form;

(b) accompanied by documentary evidence of the overpayment of tax; and

(c) lodged within two years after the date on which the tax was paid.

(4) The Commissioner General shall serve the taxpayer with notice, in writing, of the decision on the application for a refund within 60 days of the application being lodged with the Commissioner General.

(5) If a taxpayer has made an application for a refund in accordance with subsections (1) and (3) and the Commissioner General is satisfied that the taxpayer is entitled to a refund, the Commissioner General shall apply the amount of the refund in the following order —

(a) first in payment of any unpaid tax of the taxpayer under the tax law;

(b) second, in payment of any unpaid tax of the taxpayer under any other tax law; and

(c) subject to subsections (6) and (7), then refund the remainder, if any, to the taxpayer within 28 days after the taxpayer was served with the notice under subsection (4).

(6) An amount referred to in subsection (5) (c) may be carried forward for the payment of any future tax liability of the taxpayer under any tax law with the written agreement of the taxpayer.

(7) The Commissioner General may withhold payment of the refund until the taxpayer has lodged all outstanding tax returns if, at the time that an amount is to be refunded to a taxpayer under subsection (5) (c), the taxpayer has failed to lodge a tax return for a tax period.

(8) If a refund payable to a taxpayer under subsection (5) (c) has not been paid by the Commissioner General within six months after the time specified in subsection (5) (c), and (6) and (7) do not apply, the Commissioner General shall be liable to pay interest to the taxpayer at the prescribed rate from the end of the six month period to the date that the refund is paid.

(9) This section shall not apply when section 53 applies.

(10) In this section, “unpaid tax” includes any customs or excise duty imposed under customs legislation that has not been paid by the due date.

55. (1) Where the Commissioner General has erroneously paid a refund to a taxpayer under a tax law, the taxpayer shall be liable —

Recovery of an erroneously paid refund

- (a) to repay the amount of the erroneous refund; and
- (b) for a refund erroneously paid due to an error, deliberate or otherwise, by the taxpayer in claiming the refund, to pay late payment interest on the amount referred to in paragraph (a) calculated for the period commencing on the date that the refund was erroneously paid to the taxpayer and ending on the date that the refund was repaid by the taxpayer.

(2) An amount payable by a taxpayer under subsection (1) shall be paid to the Commissioner General by the date specified in a notice of demand served on the taxpayer by the Commissioner General.

(3) An amount owing by a taxpayer under a notice of demand served on the taxpayer under subsection (2) that is not paid by the due date shall be treated as unpaid tax for the purposes of Divisions II and III of Part VIII, and sections 13, 53 (1) (b), 54 (5) (b), and 102.

56. (1) Subject to subsection (2), the Commissioner General, in consultation with the accounting officer under the Public Finance Management Act, may release a taxpayer or the representative of a deceased taxpayer, in whole or part, from the payment of any tax liability under a tax law by the taxpayer or the representative of a deceased taxpayer where satisfied that —

Release of tax liability in the case of hardship
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- (a) the payment of the full amount of tax owing by the taxpayer will cause serious hardship to the taxpayer, or it is otherwise just and equitable to do so; or
- (b) owing to the death of the taxpayer, the payment of the full amount of tax owing by the deceased taxpayer will cause serious hardship to the dependents of the deceased taxpayer, or it is otherwise just and equitable to do so.

(2) If the amount of the tax liability to which subsection (1) applies exceeds the prescribed amount, the tax liability can be released only by the decision of the Minister where satisfied of the matters specified in subsection (1) (a) or (b).

(3) If a decision of the Minister or Commissioner General under this section to release a taxpayer or the representative of a deceased taxpayer from the payment of a tax liability was based on fraudulent or misleading information, the released tax liability shall be reinstated.

(4) The accounting officer under the Public Finance Management Act shall —

- (a) maintain a record of the amount of each tax liability released under this section together with the reasons for the release; and
 - (b) notify the Accountant General of the record of tax liabilities released on a quarterly basis.
- (5) The Minister shall prescribe —
- (a) the consultation process required under subsection (1); and
 - (b) the treatment of irrecoverable tax debts that are not within the scope of subsection (1).

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(6) In this section, “tax” does not include withholding tax and VAT.

Part X — Information Collection and Enforcement

Confirmation of
information

57. (1) The Commissioner General may serve a notice on a person requiring the person to confirm the correctness of any information specified in the notice by the date specified in the notice.

(2) A person who is served with a notice under subsection (1) may, by notice in writing to the Commissioner General -

- (a) confirm the correctness of the information in whole or part;
- (b) correct or clarify the information in whole or part; or
- (c) deny the correctness of the information in whole or part.

(3) The response of a person under subsection (2) to a notice served under subsection (1) shall be treated for all purposes under the tax laws as information provided to the Commissioner General by the person.

(4) If a person served with a notice under subsection (1) fails to respond to the notice within the time specified in the notice or such further time as the Commissioner General may allow, the person shall be treated as having confirmed the correctness of the information specified in the notice and the information shall be treated, for all purposes of the tax laws, as information provided to the Commissioner General by the person.

(5) Where subsection (4) applies, the person may correct the information within two years from the date of the notice and the corrected information shall be treated for all purposes under the tax laws as information provided to the Commissioner General by the person.

Examination of
premises and
records

58. (1) For the purposes of administering any tax law, the Commissioner General —

- (a) shall have, at all times and without notice, full and free access to any premises, place, property, records, or electronic information storage facility;
- (b) may make an extract or copy of any information or record to which access is obtained under paragraph (a) and may require any person to provide an explanation of the information or any entry contained in the record;
- (c) may seize any record that, in the opinion of the Commissioner General, affords evidence that may be material in determining the tax liability of any taxpayer;
- (d) may retain any records seized under paragraph (c) for as long as they may be required for determining a taxpayer’s tax liability or for any proceeding under a tax law;
- (e) may, if a hard copy or copy on a data storage media of information stored on a data storage device is not provided, seize and retain the data storage device for as long as is reasonably necessary to copy the information required;

- (f) may stop and board any vehicle, including a vehicle that the Commissioner General has reasonable cause to believe is importing or has imported goods into Botswana, search the vehicle, and question any person connected with the vehicle with respect to any matter dealt with under any tax law; and
- (g) may seize any currency that the Commissioner General has reasonable grounds for believing represents unreported income, the consideration for unreported taxable supplies, or the proceeds of the commission of an offence under any law.

(2) Subject to subsection (3), a tax officer shall, prior to entering any premises and, upon request, at any time after entry, produce to the owner or lawful occupier of the premises the Commissioner General's written authorisation permitting the officer to exercise powers under subsection (1).

(3) A tax officer who fails to comply with subsection (2) shall not be entitled to enter or remain on the premises to which access under subsection (1) is sought.

(4) The owner or lawful occupier of the premises or place to which an exercise of power under subsection (1) relates shall provide all reasonable facilities and assistance to the Commissioner General for the effective exercise of the power, including —

- (a) answering questions relating to the investigation to which the exercise of power relates either orally or in writing;
- (b) providing access to information stored on, or in, an electronic information storage facility, including the entering of a password or other basis of authentication for access to the facility; or
- (c) providing access to decryption information necessary to decrypt electronic data to which access is sought under this section.

(5) A person whose records or data storage device have been seized under subsection (1) may examine them and make copies or extracts, at the person's expense, during regular office hours and on such terms and conditions as the Commissioner General may specify.

(6) The Commissioner General may be accompanied by a police officer for the purposes of exercising powers under this section and the police officer shall provide such assistance as the Commissioner General may require.

(7) The Commissioner General shall provide the owner or lawful occupier of premises with a signed receipt for all records or data storage devices removed and retained under this section and, in the case of records, shall return them to the owner within 14 days of the conclusion of the investigation and all related proceedings.

- (8) The Commissioner General shall —
- (a) provide the owner or lawful occupier of premises with a signed receipt for any currency seized under subsection (1)(g);
 - (b) store the currency in a secure location; and

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(c) if he or she has reasonable grounds for believing that the currency represents the proceeds of the commission of an offence under any law, hand over the currency to the agency responsible for investigating such offence.

(9) Subsection (8) (c) shall not apply if —

(a) the owner of the currency satisfies the Commissioner General that the sources of the currency are legitimate, and the Commissioner General shall apply the currency in payment of any unpaid tax liability of the owner and return the balance of the currency, if any, to the owner; or

(b) no one claims the currency seized under subsection (1) (g) within 28 days of the seizure, and the currency shall be forfeited to the State.

(10) The Commissioner General, an authorised officer, police officer, and any accompanying officer who exercises powers under this section shall not be liable for any damage to any premises, article, or thing suffered in the course of the exercise of power, provided that any force used was reasonably necessary to gain access to the premises, article, or thing.

(11) This section shall have effect notwithstanding —

(a) any law relating to privilege or the public interest with respect to access to premises or places, or the production of any property or records; or

(b) any contractual duty of confidentiality.

(12) The powers in this section shall be exercised only by the Commissioner General or an authorised officer.

(13) In this section and section 59, as the case may be, —

(a) “currency” means any notes or coins used as legal tender in Botswana or in a foreign country;

(b) “data storage device” means a computer, mobile electronic device, portable information storage media, or any other electronic device for the storage of information; and

(c) “electronic information storage facility” means a data storage device or any other facility, including an electronic facility, for the electronic storage of information.

Notice to obtain
information or
evidence

59. (1) The Commissioner General may, for the purposes of administering any tax law, by notice in writing, require any person, whether or not liable for tax under a tax law, to —

(a) lodge, within the time specified in the notice, any information that may be required by the notice concerning the tax affairs of that person or any other person;

(b) attend at the time and place designated in the notice for the purpose of being examined on oath or affirmation by the Commissioner General or an authorised officer, concerning the tax affairs of that person or any other person; or

(c) produce, within the time and at the place specified in the notice, any records or data storage device in the control of the person concerning the tax affairs of that person or any other person.

(2) Where a notice served on a person under subsection (1) requires the production of any records or data storage device, it is sufficient if the records or device are described in the notice with reasonable certainty.

(3) A notice served on a person under subsection (1) may require the person to provide records in electronic format and the person served with the notice shall provide the records in the particular electronic format as may be specified by the Commissioner General in the notice.

(4) A taxpayer shall not be required to receive or do anything referred to in subsection (1) electronically if the Commissioner General is satisfied that the taxpayer does not have the capacity to receive or make communications electronically.

(5) A notice issued under subsection (1) shall be served personally upon the person to whom it is directed or left at the person's last known usual place of business or abode and the certificate of service signed by the person serving the notice shall be evidence of the facts stated in the certificate.

(6) Where a person is required to attend and give information under subsection (1) in relation to the tax affairs of another person, the first mentioned person may claim such attendance expenses as may be prescribed.

(7) This section shall have effect notwithstanding —

(a) any law relating to privilege or the public interest with respect to access to premises or places, or the production of any property or records; or

(b) any contractual duty of confidentiality.

(8) The powers in this section shall be exercised only by the Commissioner General or an authorised officer.

60. (1) The Commissioner General may undertake an audit or investigation of a taxpayer's tax affairs.

Audit and
investigation of
taxpayer's tax
affairs

(2) The Commissioner General may audit a taxpayer or investigate the taxpayer's tax affairs for the purpose of a tax law having regard to —

(a) the taxpayer's history of compliance or non-compliance with the tax law or any other tax law;

(b) the tax status of the taxpayer;

(c) the class of business conducted by the taxpayer; or

(d) any other matter that the Commissioner General considers relevant to ensuring the collection of tax due.

(3) The fact that a taxpayer has been audited or investigated in relation to a tax period does not preclude the taxpayer from being audited or investigated again in relation to the next and following tax periods if there are reasonable grounds for the audits or investigations, particularly having regard to the matters referred to in subsection (2).

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(4) For the purposes of an investigation or audit of a taxpayer's affairs, the Commissioner General may, by notice in writing, require the taxpayer to provide the Commissioner General with records in electronic format and the taxpayer shall provide the records in the particular electronic format specified by the Commissioner General in the notice.

(5) A taxpayer shall not be required to receive or do anything referred to in subsection (1) electronically if the Commissioner General is satisfied that the taxpayer does not have the capacity to receive or make communications electronically.

(6) An audit or investigation of a taxpayer's tax affairs may be conducted for the purposes of more than one tax law.

(7) In this section, "tax law" includes customs legislation.

Implementation
of mutual
administrative
assistance
agreements

61. (1) If a tax treaty or mutual administrative assistance agreement having legal effect in Botswana provides for exchange of information, or reciprocal assistance in the recovery of tax or service of process, the Commissioner General shall meet Botswana's obligations under the treaty or agreement on the basis that a reference in this Act or any other law —

- (a) to "tax" includes a foreign tax to which the exchange of information or reciprocal assistance relates;
- (b) to "unpaid tax" includes an amount specified in paragraph (a) that has not been paid by the due date;
- (c) to "taxpayer" includes a person liable for an amount specified in paragraph (a); and
- (d) to "tax law" includes the law under which a foreign tax specified in paragraph (a) is imposed.

(2) If the person holding the office of the Botswana competent authority under a tax treaty or mutual administrative assistance agreement, or the delegate of such person, is not the Commissioner General or another tax officer, the person shall have all the powers of the Commissioner General under this Act for the purposes of meeting the person's obligations under the treaty or agreement.

Tax clearance
certificates

62. (1) A person required to provide a tax clearance certificate in such a manner as may be prescribed may apply in the prescribed manner to the Commissioner General for a tax clearance certificate.

(2) Subject to subsection (3), the Commissioner General shall issue a tax clearance certificate to an applicant under subsection (1) within 14 days of the application being lodged with the Commissioner General if the Commissioner General is satisfied that -

- (a) the applicant has no outstanding tax liability or tax returns; or
- (b) if there is an outstanding tax liability, the applicant has entered into a satisfactory arrangement with the Commissioner General for the payment of the tax.

(3) If a person applying for a tax clearance certificate under this section was not a taxpayer for any preceding tax year, the Commissioner General shall issue a tax clearance certificate to the person within seven days of the person lodging the application stating that the person was not registered under this Act for any preceding tax year.

(4) If the Commissioner General makes a decision not to issue a person with a tax clearance certificate, the Commissioner General shall provide the person with notice, in writing, of the decision within 14 days of the person lodging an application under subsection (1).

(5) Subject to subsection (6), a tax clearance certificate issued by the Commissioner General under subsection (2) or (3) shall be valid for a period of 12 months from the date of issue and thereafter a taxpayer shall apply for another valid tax clearance certificate.

(6) The Commissioner General shall revoke a tax clearance certificate issued to a person if, after issue of the certificate and before expiry, the person has -

- (a) failed to be substantially compliant under the tax laws;
- (b) failed to comply with an arrangement referred to in subsection (2) (b); or
- (c) misused the certificate.

(7) In this section, “tax liability” includes a liability for the customs or excise duty under customs legislation.

Part XI - Rulings

Division I Public Rulings

63. (1) The Commissioner General may issue a public ruling setting out the Commissioner General’s interpretation on the application of a tax law and such ruling shall apply in the circumstances specified in the ruling and shall not be treated as a decision of the Commissioner General for the purposes of this Act or any other law.

Public rulings

- (2) A public ruling issued in accordance with section 64 shall -
- (a) be binding on the Commissioner General until withdrawn; and
 - (b) not be binding on a taxpayer.

64. (1) A public ruling shall be issued when a notice of the ruling is published in the *Gazette*.

Issuing a public ruling

(2) A public ruling issued under section 63 shall state that it is a public ruling and shall have a number and subject heading by which it can be identified.

(3) Subject to subsection (4), a public ruling shall apply from the date specified in the ruling or, if no date is specified, from the date of publication in the *Gazette*.

(4) A public ruling shall not apply before the date of publication in the *Gazette*.

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Withdrawal of
a public ruling

65. (1) An existing public ruling shall be withdrawn, in whole or part, when notice of the withdrawal is published in the *Gazette*.

(2) An existing public ruling is withdrawn, in whole or part, when —

(a) legislation is passed that is not consistent with the existing public ruling;

(b) a later public ruling is issued in accordance with section 64 (1) that is not consistent with the existing public ruling; or

(c) a later decision of the Tax Tribunal or a Court is handed down that is not consistent with the existing public ruling.

(3) The withdrawal of a public ruling, in whole or part, shall have effect from —

(a) where subsection (1) applies and subject to subsection (4), the date specified in the notice of withdrawal or, if no date is specified, the date that the notice of withdrawal of the ruling is published in the *Gazette*;

(b) where subsection (2) (a) applies, the date of commencement of the legislation;

(c) where subsection (2) (b) applies, the application date of the later public ruling as determined under section 64; or

(d) where subsection (2) (c) applies, the date that the decision of the Tax Tribunal or Court was handed down.

(4) A public ruling shall not be withdrawn under subsection (1) before the date of publication of the notice of withdrawal.

(5) A public ruling that has been withdrawn, or the part of a public ruling that has been withdrawn, shall continue to apply for the period from the date of commencement of the ruling under section 64 to the date of withdrawal under this section.

Division II *Private Rulings*

Private rulings

66. (1) The Commissioner General may, upon application by a taxpayer in the approved form and in accordance with this Division, issue to the taxpayer a private ruling setting out the Commissioner General's opinion on the interpretation of a tax law to a transaction entered into, or proposed to be entered into, by the taxpayer.

(2) An application under subsection (1) shall —

(a) include full details of the transaction to which the application relates together with all documents relevant to the transaction;

(b) specify precisely the question on which the ruling is required;

(c) give a full statement setting out the opinion of the taxpayer as to the application of the relevant tax law to the transaction; and

(d) be accompanied by the prescribed fee.

(3) A private ruling is binding on the Commissioner General if —

(a) the taxpayer has made a full and true disclosure of all aspects of the transaction relevant to the making of the private ruling; and

(b) the transaction has proceeded in all material respects as described in the taxpayer's application for the private ruling.

(4) A private ruling shall not be binding on a taxpayer.

(5) Where a private ruling is inconsistent with a public ruling that is in force at the time that the private ruling is made, the private ruling has priority to the extent of the inconsistency.

(6) A private ruling issued under subsection (1) shall apply to the question raised in the ruling application and shall not be a decision of the Commissioner General for the other purposes of this Act or any other law.

67. (1) The Commissioner General shall issue a private ruling by serving written notice of the ruling on the applicant within 60 days of receipt of the application for the issuing of the ruling except when section 68 applies.

Issuing
a private
ruling

(2) The Commissioner General may issue a private ruling on the basis of assumptions about a future event or any other matter as the Commissioner General considers appropriate.

(3) A private ruling shall be signed by the Commissioner General, state that it is a private ruling, have a number and heading for identification, set out the question ruled on, and identify —

- (a) the taxpayer;
- (b) the tax law relevant to the ruling;
- (c) the tax period for which the ruling is effective;
- (d) the transaction to which the ruling relates; and
- (e) any assumptions on which the ruling is based.

(4) A private ruling shall be issued when the applicant is served with written notice of the ruling and the ruling shall remain in force for the period specified in the ruling unless withdrawn earlier under section 69.

(5) The Commissioner General shall publish a notice of a private ruling in the *Gazette* except that the identity of the applicant to whom the ruling relates shall not be revealed in the publication.

(6) Subject to section 69 (6), any person may rely upon a ruling published under subsection (5) as a statement binding on the Commissioner General with respect to the application of the relevant tax law to the facts set out in the ruling and for the tax period covered by the ruling.

68. (1) The Commissioner General may decide not to issue a private ruling if —

Decision
not to issue
a private
ruling

- (a) the Commissioner General has already decided the question that is the subject of the ruling application in —
 - (i) a notice of a tax assessment served on the applicant, or
 - (ii) a public ruling issued under section 64 that is in force;
- (b) the application relates to a question that is the subject of a tax audit in relation to the applicant or a notice of objection lodged by the applicant;
- (c) the application is frivolous or vexatious;

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Withdrawal
of a private
ruling

- (d) the transaction to which the application relates has not been carried out and there are reasonable grounds to believe that the transaction will not be carried out;
- (e) the applicant has not provided the Commissioner General with sufficient information to make the private ruling requested;
- (f) the correctness of the ruling depends on the making of assumptions about a future event or some other matter;
- (g) the making of the ruling involves the application of a tax avoidance provision; or
- (h) in the opinion of the Commissioner General, it would be unreasonable to comply with the application, having regard to the resources needed to comply and any other matters the Commissioner General considers relevant.

(2) The Commissioner General shall serve the applicant with a written notice of a decision not to issue a private ruling within 21 days of receipt of the application for the issuing of a private ruling.

69. (1) The Commissioner General may, for reasonable cause, withdraw an existing private ruling, in whole or part, by written notice served on the applicant.

(2) An existing private ruling is withdrawn, in whole or part, when —

- (a) legislation is passed that is not consistent with the existing private ruling;
- (b) the Commissioner General issues a later public ruling that is not consistent with the existing private ruling; or
- (c) a later decision of the Tax Tribunal or a Court is handed down that is not consistent with the existing private ruling.

(3) The withdrawal of a private ruling, in whole or part, shall have effect —

- (a) where subsection (1) applies and subject to subsection (4), from the date specified in the notice of withdrawal;
- (b) where subsection (2) (a) applies, from the commencement date of the inconsistent legislation;
- (c) where subsection (2) (b) applies, from the application date of the later public ruling as determined under section 64; or
- (d) where subsection (2) (c) applies, from the date that the decision of the Tax Tribunal or Court was handed down.

(4) A private ruling shall not be withdrawn under subsection (1) before the date of service of the notice of withdrawal.

(5) A private ruling that has been withdrawn, or the part of a private ruling that has been withdrawn, shall continue to apply for the tax periods specified in the ruling occurring prior to the date of withdrawal of the ruling.

(6) Where a private ruling published under section 67 (5) has been withdrawn in accordance with this section, the Commissioner General shall immediately publish a notice of withdrawal in the *Gazette* stating that the ruling ceases to be binding with effect from the date determined under subsection (3).

*Division III
Other Advice*

70. No guidelines, publication, or other advice whether oral or in writing, provided by the Revenue Service shall be binding on the Commissioner General except a public ruling binding under Division I and a private ruling binding under Division II.

Other advice
provided by
the Revenue
Service

Part XII — Communications, Forms and Notices

71. The Commissioner General shall refuse to recognise any communication or document that is not in an official language.

Official
languages

72. (1) The Commissioner General shall make approved forms and other documents required for the purposes of the tax laws available to the public at offices of the Revenue Service, or by mail or such other means as the Commissioner General may determine and including making them available for downloading from the Revenue Service's website.

Forms and
notices,
authentication
of documents

(2) A notice or other document issued, served, or given by the Commissioner General under a tax law shall be authenticated if the name or title of the Commissioner General, or authorised officer, is printed, stamped, or written on the document, or the electronic signature of the Commissioner General or authorised officer is attached to the document and proved in accordance with the Electronic Records (Evidence) Act.

Cap. 11:06

73. (1) A document is lodged by a person as required under a tax law where the document —

Lodging
documents in
the approved
form

- (a) is in the approved form;
- (b) contains the information as required by the form; and
- (c) includes any attached documents as required by the form.

(2) Subject to subsection (3), the Commissioner General or Chairperson of the Tax Tribunal, as the case may be, shall immediately notify a person, in writing, if a document required to be lodged by the person in the approved form does not satisfy subsection (1).

(3) The Commissioner General or Chairperson of the Tax Tribunal, as the case may be, may accept a document that is not lodged in the approved form if the document contains substantially the information required by the approved form for that particular document.

74. A person required to lodge a document under a tax law shall lodge the document in the prescribed manner.

Manner of lodging
documents

75. (1) If the due date under a tax law for any of the following falls on a Saturday, Sunday, or public holiday, the due date is the next following business day —

Due date
for lodging
a document
or payment
of tax

- (a) the lodging of a tax return, application, notice, statement, or other document;
- (b) the payment of tax; or
- (c) the taking of any other action under the tax law.

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(2) Subject to subsection (3), a person may apply, in writing, to the Commissioner General for an extension of time to lodge a document required under a tax law.

(3) Subsection (2) shall apply only in relation to a document for which there is no specific provision for an application for an extension of time under this Act or the tax law requiring the lodging of the document.

(4) The Commissioner General may, where he or she is satisfied that there is reasonable cause, grant an application under subsection (2) and the notice served on the applicant under subsection (5) shall state the extended due date for lodging the document.

(5) The Commissioner General shall serve an applicant under subsection (2) with notice of the decision on the application, in writing, within 14 days of lodgement of the application.

Documents
duly lodged

76. (1) Every tax return, statement, form, or other document purporting to be lodged under a tax law by, or on behalf of, a person shall, for all purposes of the tax law, be treated as having been lodged by the person or with the person's authority, unless the contrary is proved.

(2) A person signing a tax return, statement, form, or other document referred to in subsection (1) shall be treated as having full knowledge of the contents of the tax return, statement, form, or other document.

Service of
notices

77. (1) Except where a tax law provides for a different method of service, a notice or other document required or authorised by a tax law to be served on a person for the purposes of the tax law shall be treated as sufficiently served if —

- (a) personally served on the person;
- (b) left at the person's last known place of abode, office, or business in Botswana as stated in any communication by the person with the Commissioner General;
- (c) sent by registered post to the person's last known place of abode, office, or business referred to in paragraph (b), or to the person's usual or last known address in Botswana; or
- (d) transmitted electronically to the person in accordance with section 78 to the last known electronic contact information as stated in any communication by the person with the Commissioner General.

(2) A person who has complied, in whole or part, with a notice served on the person shall not challenge the service of the notice.

(3) In this section, "person" includes the person's representative and registered tax agent.

Use of
information
technology
and
electronic
transactions
Cap. 43:12

78. (1) Subject to the Electronic Communications and Transactions Act and the Electronic Evidence (Records) Act, the use of information technology, and electronic transactions and communications shall be allowed for the purposes of compliance with tax laws.

(2) Notwithstanding the generality of subsection (1), the Commissioner General may authorise the following to be done electronically through a computer system or mobile electronic device —

- (a) the lodging of an application for registration;
- (b) the lodging of a tax return or other document;
- (c) the payment of tax;
- (d) the payment of a refund of tax;
- (e) the service of any document by the Commissioner General; and
- (f) the doing of any other act or thing that is required or permitted to be done under a tax law.

(3) Subject to subsection (4), the Commissioner General may direct that a person or class of persons shall do anything referred to in subsection (2) electronically.

(4) A taxpayer shall not be required to receive or do anything referred to in subsection (2) electronically if the Commissioner General is satisfied that the taxpayer does not have the capacity to receive or make communications or payments electronically.

(5) A person who furnishes a tax return and pays tax electronically under this section shall continue to furnish tax returns and pay tax in that manner unless otherwise authorised by the Commissioner General to use any other method of furnishing returns and paying tax.

(6) A taxpayer who fails to file a tax return or pay tax electronically as required under subsection (5) shall be liable to pay a manual processing fee as may be prescribed unless the taxpayer provides the Commissioner General with adequate reasons for the failure.

(7) A manual processing fee owing under subsection (6) that is not paid by the due date shall be treated as unpaid tax for the purposes of Division III of Part VIII and sections 13, 53 (1) (b), and 54 (5) (b).

79. If a notice of a tax or appealable decision, or any other document, purporting to be made, issued, or executed under any tax law by the Commissioner General is, in substance and effect, in conformity with the tax law under which it has been made, issued, or executed and the person assessed, or intended to be assessed or affected by the tax or appealable decision, or document, is designated in the notice according to common understanding, the validity of the notice shall not be –

- (a) quashed or treated as void or voidable for want of form; or
- (b) affected by reason of any mistake, defect, or omission therein.

80. Where a notice of a tax assessment or other document served by the Commissioner General under a tax law contains an error or omission that is apparent from the record and the error or omission does not involve a dispute as to the interpretation of the law or facts of the case, the Commissioner General may, for the purposes of rectifying the error or omission, amend the notice of assessment or other document any time before the expiry of two years from the date of service of the notice of the tax assessment or other document.

Validity
of tax and
appealable
decisions

Rectification of
mistakes

Part XIII — *Administration of the Tax Laws*

Division I

Botswana Unified Revenue Service

Powers and
duties of
Commissioner
General

81. (1) The Commissioner General shall, in accordance with the Botswana Unified Revenue Service Act, be responsible for the administration of the tax laws.

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

(3) The Commissioner responsible for Domestic Taxes shall, under the control of the Commissioner General, perform such official duties as he or she is required to perform by the Commissioner General, and shall, on any occasion when the Commissioner General is unable to perform any of his or her functions under subsection (2), act in his or her own name, and while so acting shall perform the duties imposed on, and may exercise the powers conferred upon, the Commissioner General under the tax laws.

(4) Subject to subsection (3), the Commissioner General may delegate to any officer of the Revenue Service any powers, functions or duties conferred or imposed upon the Commissioner General by the tax laws, other than the power of delegation conferred by this section.

(5) In subsection (4), the expression “officer of the Revenue Service” shall include any person whose services, under agreement with the Government, are provided by any other government or international agency to assist with the administration of this Act.

(6) Except as especially provided by this Act, any decision made or communication issued or signed by any person to whom the Commissioner General has delegated any power, function or duty under subsection (4) may be amended or withdrawn by the Commissioner General or that person within one year from the date on which such decision was made or communication issued or signed, but shall, for the purposes of this Act, be treated as having been made, issued or signed by the Commissioner General unless it has been so withdrawn.

Secrecy

82. (1) A tax officer shall keep confidential all documents and information that are, or have been, in the officer’s possession or knowledge in connection with the performance of duties under any tax law.

(2) Nothing in this section shall prevent a tax officer from disclosing any document or information to —

- (a) another tax officer for the purposes of a tax law;
- (b) a customs officer for the purposes of carrying out any duty, power, or function under customs legislation;
- (c) the Minister or any person in the service of the Ministry for the purposes of official duties;

- (d) the Tax Tribunal or a Court for the purposes of any proceedings under a tax law;
 - (e) the Governor of the Bank of Botswana or any person authorised by the Governor for the performance of official duties;
 - (f) the Attorney-General or any person authorised by the Attorney-General for the performance of official duties;
 - (g) the Auditor-General or any person authorised by the Auditor-General for the performance of official duties under the Public Audit Act; Cap. 54:02
 - (h) the Accountant-General or any person authorised by the Accountant-General for the performance of official duties under any fiscal law;
 - (i) the competent authority of a foreign country with which Botswana has entered into a tax treaty or mutual administrative assistance agreement providing for the exchange of information, to the extent permitted under the agreement;
 - (j) the Director of the Directorate on Corruption and Economic Crime, or his or her authorised representative, for the purposes of an investigation into corruption or an economic crime;
 - (k) the Director of Public Prosecutions, or authorised representative of the Director, or the Commissioner of Police or authorised representative of the Commissioner, for the purposes of an investigation into, or prosecution of an offence under any tax law, an offence relating to corruption, or an economic crime;
 - (l) a law enforcement agency, not described above, where the Minister issues written authorisation to make disclosure necessary for the enforcement of the laws under the agency's authority;
 - (m) a person engaged as a consultant or contractor to the Revenue Service who is approved by the Commissioner General to receive confidential documents or information;
 - (n) any person in the service of the Government in a revenue or statistical information department for the performance of the person's official duties and provided the disclosure does not identify any specific person;
 - (o) the Financial Intelligence Agency to the extent required under the Financial Intelligence Act; Cap. 08:07
 - (p) a person in the service of the Government not covered by the foregoing paragraphs where such disclosure is necessary for the performance of the person's official duties; or
 - (q) any other person with the written consent of the person to whom the document or information relates.
- (3) Where a person has requested the Commissioner General to disclose any information or documents in accordance with subsection (2), the Commissioner General may —
- (a) require the person to lodge the Commissioner General with further information concerning the request for disclosure of the information or documents; or

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(b) refuse to disclose the requested information or documents where the Commissioner General determines that the requested disclosure is not permitted under subsection (2).

(4) A tax officer shall be permitted to disclose a document or information under subsection (2) only to the minimum extent necessary to achieve the object for which the disclosure is permitted.

(5) Notwithstanding subsection (2) and subject to subsection (6), any information obtained by the Botswana competent authority from the competent authority of a country with which Botswana has entered into a tax treaty or mutual administrative assistance agreement may be disclosed only to the extent permitted under the treaty or agreement.

(6) The limitation on disclosure in subsection (5) shall not apply to the extent that the information —

(a) is already in the possession of the Botswana competent authority or the Commissioner General; or

(b) has been obtained by the Botswana competent authority or the Commissioner General from the taxpayer or from any other person in Botswana.

(7) Subsection (1) shall apply to a person receiving a document or information under subsection (2) as if the person were a tax officer.

(8) Every tax officer and every person to whom confidential information is disclosed under subsection (2) (*m*) shall make an oath or affirmation of secrecy in such manner and form as may be prescribed.

(9) This section applies in addition to the secrecy obligation under section 32 of the Botswana Unified Revenue Service Act.

(10) In this section, “tax officer” includes —

(a) a person employed or engaged by the Revenue Service in any capacity;

(b) a former officer, employee, or contractor of the Revenue Service; or

(c) a police officer when performing duties under this Act.

Division II
Tax Tribunal

Establishment
of Tax Tribunal

83. There is hereby established a Tax Tribunal to hear appeals against appealable decisions.

Appointment
of members
of Tax
Tribunal

84. (1) The Tax Tribunal shall consist of the following members appointed by the Minister —

(a) the Chairperson of the Tax Tribunal;

(b) three members; and

(c) two alternate members to the members referred to in paragraph (b) who may be required by the Chairperson to act for a member who is temporarily unable to perform the duties of office.

(2) An individual may be appointed as the Chairperson of the Tax Tribunal if the individual has at least five years’ experience in taxation, commercial, or financial practice and has worked as —

- (a) a magistrate in a court of law for a period of not less than eight years; or
 - (b) a legal practitioner for a period of not less than eight years.
- (3) Subject to subsections (4) and (5), an individual may be appointed as a member of the Tax Tribunal referred to in subsection (1)(b) and (c) if the individual satisfies one of the following —
- (a) the individual is legal practitioner with at least five years' experience in taxation, customs, or commercial matters;
 - (b) the individual is a member of the Botswana Institute of Chartered Accountants with at least five years' experience in taxation or customs matters;
 - (c) subject to subsection (5) (b), the individual was previously engaged as a tax or customs officer with at least five years' experience at a senior level within the Revenue Service; or
 - (d) the individual has at least five years' experience in taxation, customs, commercial, or financial practice.
- (4) At least one member of the Tax Tribunal shall have knowledge, experience, or skills in the field of customs law or practice.
- (5) The following individuals shall not be appointed as a member of the Tax Tribunal —
- (a) a currently serving member of the Judiciary;
 - (b) a currently serving tax or customs officer or an individual who has ceased to be a tax or customs officer for less than three years;
 - (c) an individual who has —
 - (i) been liable for a penalty under section 99 (1) (a), 103 (3) (a), or 104 (2) (a) where the false or misleading statement has been made deliberately or recklessly, or section 105, or a similar penalty under a tax law or customs legislation,
 - (ii) been convicted of an offence under a tax law or customs legislation,
 - (iii) entered into a compounding agreement under a tax law, or
 - (iv) been convicted of the offence of bribery or any offence involving dishonesty; or
 - (d) an individual who is an undischarged bankrupt.
- (6) The Chairperson shall be appointed on a full-time basis and any other member may be appointed on a full-time or part-time basis.
- (7) Subject to subsection (8), a member shall be appointed for a term of four years and shall be eligible for re-appointment for one further term of four years.
- (8) The Minister shall, where there is a vacancy on the Tax Tribunal, appoint a person to fill the vacancy for a new term of four years.
- (9) The Minister shall, by notice in writing, terminate the appointment of any member of the Tax Tribunal who —
- (a) is appointed as a member of the judiciary;
 - (b) becomes employed or engaged as a tax or customs officer;
 - (c) becomes liable for a penalty referred to in subsection (5) (c) (i);

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- (d) is convicted of an offence under a tax law or customs legislation;
- (e) enters into a compounding agreement with the Commissioner General under section 126;
- (f) is convicted of the offence of bribery;
- (g) becomes an undischarged bankrupt;
- (h) resigns by notice in writing to the Minister;
- (i) is unable to perform the duties of office; or
- (j) engages in proven misconduct, including failing to disclose a conflict of interest as required under section 88(9).

(10) A member appointed to the Tax Tribunal shall not be liable to any action or other proceeding for damages for, or in respect of, any act done or omitted to be done by the member in good faith in the exercise or performance, or purported exercise or performance, of a power, function, or duty conferred on him or her under this Division.

Powers
of Tax
Tribunal

85. For the purposes of hearing an appeal against an appealable decision, the Tax Tribunal shall have the power to —

- (a) summon to attend at a hearing before the Tax Tribunal any person who is, or might reasonably be, able to give evidence relevant to the issues raised by the appeal;
- (b) examine on oath or affirmation any person summoned or required to give evidence;
- (c) require any person to produce any records that are in his or her custody, or under his or her control, that are reasonably necessary for the purposes of hearing an appeal against an appealable decision;
- (d) postpone the hearing of an appeal against an appealable decision, owing to sickness, accident, or other reasonable cause, the appellant has been prevented from attending on the date fixed for the hearing;
- (e) dismiss any matter arising in a hearing before the Tax Tribunal;
- (f) at any time, dismiss an appeal against an appealable decision if the application is frivolous or vexatious; and
- (g) request the parties to resolve the dispute by mediation, conciliation, or other alternative dispute resolution procedure.

Secretary
of Tax
Tribunal

86. (1) The Minister shall appoint an officer from the Ministry to be the Secretary for the Tax Tribunal and the Secretary shall have no voting rights.

(2) The Secretary of the Tax Tribunal shall be responsible for managing the administrative affairs of the Tax Tribunal.

(3) The duties of the Secretary shall be —

- (a) to receive appeal papers from appellants on behalf of the Tax Tribunal;
- (b) to convene meetings of the Tax Tribunal;
- (c) to act as the custodian of records of hearings and other meetings of the Tax Tribunal; and
- (d) to perform all administrative functions of the Tax Tribunal and such other duties as may be assigned by the Chairperson.

87. (1) A person, referred to in this section as the “appellant”, who is dissatisfied with an appealable decision may lodge a notice of appeal against the decision with the Tax Tribunal. Notice of appeal

(2) A notice of appeal under subsection (1) shall be —

- (a) lodged in the approved form;
- (b) lodged with the Tax Tribunal within 60 days after the date that the appellant was served with notice of the appealable decision or within such further time as the Tax Tribunal may allow; and
- (c) accompanied by the prescribed fee.

(3) An appellant under subsection (1) shall —

- (a) serve the Commissioner General with a copy of the notice of appeal within 21 days of lodging the notice with the Tax Tribunal;
- (b) lodge a memorandum with the Tax Tribunal containing the information and documents as prescribed within 21 days of lodging the notice of appeal with the Tax Tribunal or within such further time as the Tax Tribunal may allow; and
- (c) serve the Commissioner General with a copy of the memorandum within seven days after lodging the memorandum with the Tax Tribunal under paragraph (b).

(4) The Commissioner General shall, within 21 days of being served with a memorandum under subsection (3) by an appellant or within such further time as the Tax Tribunal may allow —

- (a) lodge a reply to the memorandum with the Tax Tribunal; and
- (b) serve a copy of the reply on the appellant within seven days after lodging the reply with the Tax Tribunal.

88. (1) An appeal to the Tax Tribunal shall be heard by the Chairperson and two other members of the Tax Tribunal as determined by the Chairperson. Hearings
of Tax
Tribunal

(2) If the Chairperson is unable to hear a particular appeal because of illness, absence from Botswana, a conflict of interest, or other reason, the Chairperson shall designate another member of the Tax Tribunal to be the Chairperson for the purposes of the particular appeal.

(3) A reference in this Division to the Chairperson in relation to a particular appeal shall include a member designated as Chairperson under subsection (2) in relation to the appeal.

(4) In hearing an appeal against an appealable decision, the Tax Tribunal may exercise all the powers of the Commissioner General under the tax law relating to the making of the appealable decision.

(5) The Tax Tribunal shall regulate its own procedure and -

- (a) the Tax Tribunal shall not be bound by the rules and procedures of courts of law;
- (b) may inform itself on any matter in such manner as it deems appropriate, including having regard to documentation or facts that have not been pleaded or presented by the parties to the appeal; and
- (c) the Chairperson may make rules for the conduct of hearings generally, or for a particular hearing, before the Tax Tribunal.

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(6) The Chairperson shall, by notice in writing, advise the appellant and the Commissioner General of the date of the hearing and the place where it will be held at least 28 days before the date fixed for a hearing before the Tax Tribunal.

(7) At every hearing by the Tax Tribunal, the appellant and the Commissioner General shall be entitled to appear in person or by representation.

(8) The hearings of the Tax Tribunal shall be open to the public unless the Tax Tribunal determines that the hearing be held in camera.

(9) A member of the Tax Tribunal who has a material, pecuniary, or other interest in relation to an appeal to the Tax Tribunal that could conflict with the proper performance of the member's functions shall disclose the interest —

- (a) in the case of the Chairperson, to the Minister who shall record the interest, and the Chairperson shall not take part in the hearing of the appeal; or
- (b) for any other member, to the Chairperson who shall record the interest, and such member shall not take part in the hearing of the appeal.

Decision of
Tax Tribunal

89. (1) The Tax Tribunal shall hear and determine an appeal against an appealable decision and make a decision on the appeal as set out in this section.

(2) Subject to subsection (3), where a notice of appeal concerns an objection decision in relation to a tax assessment, the Tax Tribunal may make an order to —

- (a) confirm, reduce, or set aside the tax assessment; or
- (b) remit the tax assessment to the Commissioner General for reconsideration in accordance with the directions of the Tax Tribunal.

(3) The Tax Tribunal shall remit the tax assessment to the Commissioner General in accordance with subsection (2) (b) if, in considering an appeal against an objection decision in relation to a tax assessment, the Tax Tribunal is of the view that the amount of tax assessed should be increased.

(4) Where a notice of appeal concerns any appealable decision other than an objection decision to which subsection (2) applies, the Tax Tribunal may make an order to affirm, vary, or set aside the decision.

(5) The Tax Tribunal shall —

- (a) make a written decision on the appeal as soon as practicable after the hearing has been completed; and
- (b) cause a copy of its decision to be served on each party to the proceeding within seven days of making the decision.

(6) The written decision of the Tax Tribunal shall include the Tax Tribunal's reasons for the decision and its findings on material questions of fact and reference to the evidence or other material on which those findings were based.

(7) Subject to subsection (8), all decisions of the Tax Tribunal shall be public records.

(8) The Tax Tribunal shall ensure that trade secrets or other confidential information are not disclosed in releasing information or allowing access to information under subsection (7).

(9) A decision of the Tax Tribunal shall have the same binding force as a judgment of a court of law.

(10) A decision of the Tax Tribunal shall be final, except where an appeal has been lodged with the High Court in accordance with section 30.

90. (1) The Tax Tribunal shall keep complete and accurate books of account.

Finances and reporting

(2) The books of account and other financial documents of the Tax Tribunal shall be audited by the Auditor-General or by an auditor designated by the Auditor-General.

(3) The Chairperson shall prepare an annual report of the affairs of the Tax Tribunal for each financial year.

(4) The Chairperson shall submit the annual report prepared under subsection (3) for a financial year to the Minister within three months after the end of the year.

(5) The Minister shall cause a copy of the annual report of the Tax Tribunal to be laid before Parliament within two months after the Minister receives the report.

Division III *Registration of Tax Agents*

91. (1) An individual, partnership, or company wanting to provide tax agent services shall apply to the Commissioner General for registration as a tax agent.

Application for tax agent registration

(2) An application under subsection (1) shall be in the approved form and accompanied by the prescribed fee.

(3) In this Division, “tax agent services” means —

- (a) the preparation of tax returns on behalf of any taxpayer;
- (b) the preparation of notices of objection on behalf of any taxpayer;
- (c) the provision of advice to any taxpayer on the application of the tax laws;
- (d) representing any taxpayer in his or her dealings with the Revenue Service in relation to the tax laws; or
- (e) the transaction of any other tax-related business on behalf of any taxpayer with the Revenue Service.

92. (1) If an applicant under section 91 is an individual, the Commissioner General shall register the applicant if satisfied that the applicant is a fit and proper person to provide tax agent services.

Registration of tax agents

(2) If an applicant under section 91 is a partnership, the Commissioner General shall register the applicant if satisfied that —

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- (a) every partner in, or employee of, the partnership nominated by the partnership to provide tax agent services is a fit and proper person to provide such services; and
 - (b) every partner in the partnership is of good standing, integrity, and character.
- (3) If an applicant under section 91 is a company, the Commissioner General shall register the applicant if satisfied that —
- (a) every employee of the company nominated by the company to provide tax agent services is a fit and proper person to provide such services; and
 - (b) every director or other executive officer of the company, manager responsible for the financial affairs of the company, and controlling member is of good standing, integrity, and character.
- (4) The Minister shall prescribe —
- (a) the criteria for determining when a person is fit and proper to provide tax agent services;
 - (b) the criteria for determining when a person is of good standing, integrity, and character; and
 - (c) the nomination by partnerships and companies of partners and employees to provide tax agent services.
- (5) The registration of a person as a tax agent shall be valid for a period of three years commencing on the date of registration as specified in the notice of registration served on the applicant and may be renewed under section 93.
- (6) The Commissioner General shall provide an applicant under section 91 with notice, in writing, of the decision on the application within 28 days of the application being lodged with the Commissioner General or within such further time as may be prescribed.
- (7) The registration of a person as a tax agent means that the person is a fit and proper person to provide tax agent services based on minimum standards as set out in the Regulations, and is not a warranty of competency of the person by the Commissioner General.
- 93.** (1) A tax agent may apply to the Commissioner General for the renewal of the tax agent's registration.
- (2) An application under subsection (1) shall be —
 - (a) in the approved form and accompanied by the prescribed fee; and
 - (b) lodged with the Commissioner General within such time as may be prescribed.
 - (3) The Commissioner General shall renew the registration of a tax agent who has applied under subsection (1) if the tax agent continues to satisfy the conditions for registration under section 92.
 - (4) The renewal of the registration of a tax agent shall be valid for the period specified under section 92 (5) commencing on the date of the renewal as specified in the notice of renewal.

Renewal of
registration

(5) The Commissioner General shall provide an applicant under subsection (1) with notice, in writing, of the decision on the application within 28 days of the renewal application being lodged with the Commissioner General or within such further time as may be prescribed.

94. (1) Where a registered tax agent —

- (a) lodges a tax return or other document, with the Commissioner General on behalf of a taxpayer, the taxpayer shall be treated as having lodged the tax return or other document; or
- (b) otherwise communicates with the Commissioner General on behalf of a taxpayer, the taxpayer shall be treated as having made the communication.

Communications
by registered
tax agent with
Commissioner
General

(2) Notwithstanding subsection (1), where a tax return or other document has been lodged, or a communication made, by a registered tax agent with the Commissioner General that is false or misleading in a material particular and it is proven that the fault was that of the registered tax agent, the tax return or other document, or communication, shall be treated as having been lodged or made only by the registered tax agent.

(3) Subject to subsection (4), if a tax return or other document has been lodged, or a communication made, by a registered tax agent with the Commissioner General on instruction of the taxpayer that is false or misleading in a material particular both the taxpayer and registered tax agent shall be treated as having lodged the return or other document, or made the communication.

(4) Subsection (3) shall not apply to a registered tax agent if the agent satisfies the Commissioner General that the registered tax agent did not know, and could not reasonably be expected to know, that the return, other document, or the communication, was false or misleading in a material particular.

95. (1) Subject to subsection (2), no person other than a registered tax agent can demand or receive any fee for providing tax agent services.

Limitation on
providing tax
agent services

(2) Subsection (1) shall not apply to —

- (a) a legal practitioner providing tax agent services in the course of undertaking legal work, other than services specified in paragraph (a) of the definition of “tax agent services” under section 91 (3); or
- (b) an employee of a taxpayer or registered tax agent acting in the ordinary course of employment.

96. (1) A registered tax agent shall notify the Commissioner General, in writing, within seven days of ceasing to satisfy the conditions for registration under section 92.

Cancellation
of tax agent
registration

(2) If a notification under subsection (1) is made by a registered tax agent that is a partnership or company that no longer satisfies section 92 (2) (a) or (3) (a), as the case may be, the registration of the tax agent shall be cancelled after 28 days of the notification under subsection (1) if, by that time, the partnership or company cannot satisfy section 92 (2) (a) or (3) (a), as the case may be.

(3) A registered tax agent shall notify the Commissioner General, in writing, if the tax agent no longer wants to be a registered tax agent.

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(4) The Commissioner General shall cancel the registration of a tax agent if —

- (a) a tax return prepared and lodged, or any other statement or omission made, by the tax agent is false in any material particular, unless the tax agent establishes that this was not due to any deliberate or negligent conduct of the tax agent;
- (b) subject to subsection (2), the tax agent ceases to satisfy the conditions for registration under section 92;
- (c) the tax agent has ceased to carry on business as a tax agent including, in the case of a company or partnership, where the company or partnership ceases to exist; or
- (d) the tax agent has notified the Commissioner General under subsection (3).

(5) The Commissioner General shall serve notice, in writing, to a registered tax agent of a decision to cancel the registration of the tax agent and the notice shall include the reasons for the decision.

(6) Subject to subsection (7), the cancellation of the registration of a tax agent shall take effect on the earlier of —

- (a) the date the tax agent ceases to carry on business as a tax agent; or
- (b) the date specified in the notice of the cancellation.

(7) A tax agent served with notice of the cancellation of the tax agent's registration under subsection (4) (a) or (b) who lodges a notice of appeal against the decision with the Tax Tribunal may apply, in writing, to the Tax Tribunal for a stay of implementation of the cancellation of the tax agent's registration pending determination of the appeal.

(8) If a tax agent has made an application under subsection (7), the Tax Tribunal may, after taking account of the interests of persons affected by the cancellation decision, make an order to stay the implementation of the decision for the period specified in the order.

(9) Notwithstanding anything in any tax law, if the Commissioner General is of the opinion that a registered tax agent has committed professional misconduct, the Commissioner General shall report the misconduct to the Botswana Institute of Chartered Accountants, the Law Society of Botswana, or other relevant professional body, as the case may be, for investigation.

Part XIV — Administrative Penalties and Tax Offences

Division I

Application of Part XIV

General provisions relating to administrative penalties and tax offences

97. (1) A person shall not be subject to both the imposition of a penalty and prosecution of an offence under a tax law for the same act or omission.

(2) Where a person has committed an act or omission for which the person may be liable, under a tax law, to both the imposition of penalty and the prosecution of an offence, the Commissioner General may decide whether to serve a notice of a penalty assessment or whether the person is prosecuted for the offence.

(3) Where a penalty has been paid by a person under a tax law and, in respect of the same act or omission, the person is prosecuted for an offence under a tax law, the Commissioner General shall apply the penalty in accordance with section 54 (5) (a), (b), and (c).

(4) Nothing in subsection (3) precludes a person from being prosecuted for an offence for an act or omission where a penalty imposed on the person for the act or omission has not been paid by the person.

(5) A compounding agreement entered into under section 126 shall apply only to an offence under a tax law and not to a penalty imposed under a tax law.

Division II
Administrative Penalties

98. (1) Subject to subsection (3), a person who, without reasonable cause, fails to apply for registration as required under this Act shall be liable for a penalty equal to 100 percent of the tax payable by the person for the period —

Penalties
relating to
registration
and TINs

- (a) commencing on the date that the person was required to apply for registration; and
- (b) ending on the later of —
 - (i) the date that the person lodges the application for registration, or
 - (ii) the date that the person is registered on the Commissioner General's own motion.

(2) If no tax is payable by a person to whom subsection (1) applies, the person shall be liable for a fixed monetary penalty of P10 000 for each month or part of a month in the period specified in subsection (1), as the case may be.

(3) A person shall be liable for a fixed monetary penalty of P5 000 if the person fails —

- (a) to notify a change in circumstances as required under section 8; or
- (b) to use a TIN as required under section 11 (1).

(4) Except where section 11(3) applies, a person shall be liable for a fixed monetary penalty of P10 000 if the person —

- (a) provides his or her TIN for use by another person; or
- (b) uses the TIN of another person.

B.1082

(5) A person who, without reasonable cause, fails to apply for cancellation of registration as required under this Act shall be liable for a fixed monetary penalty of P10 000 for each month or part of a month for the period —

(a) commencing on the date that the person was required to apply for cancellation of registration; and

(b) ending on the earlier of —

(i) the date that the person files the application for cancellation, or

(ii) the person's registration is cancelled on the Commissioner General's own motion.

(6) A person shall be liable for a fixed monetary penalty of P10 000 if the person continues to use a TIN after it has been cancelled under section 12.

Penalty for
failing to
maintain
records

99. (1) Subject to this section, a taxpayer who, without reasonable cause, fails to maintain or retain records as required under a tax law shall be liable —

(a) for a failure that was made deliberately or recklessly, for a penalty equal to 75 percent of the amount of tax payable by the taxpayer under the tax law for the tax period to which the failure relates; or

(b) in any other case, for a penalty equal to 20 percent of the amount of tax payable by the taxpayer under the tax law for the tax period to which the failure relates.

(2) The taxpayer shall be liable for a fixed monetary penalty of P10 000 for a company and P5 000 for any other taxpayer if no tax is payable by the taxpayer for the tax period to which the failure referred to in subsection (1) relates.

(3) If the amount of a penalty that a taxpayer is liable for under subsection (1) is less than the fixed monetary penalty under subsection (2), the taxpayer shall be liable for the fixed monetary penalty.

(4) A person who fails to keep records as required under section 122 of the Income Tax Act shall be liable for a fixed monetary penalty not exceeding P500 000.

(5) A taxpayer who fails to comply with a notice served on the taxpayer under section 14 (4) shall be liable for a fixed monetary penalty of P50 000.

(6) In addition to the fixed monetary penalty imposed under subsection (5), the records that are the subject of the section 14 (4) notice shall not be accepted as evidence in challenging a tax assessment for the tax period to which the records relate.

(7) A taxpayer who, without reasonable cause, fails to comply with a notice under section 14 (6) shall be liable for a fixed monetary penalty of P50 000.

100. (1) In accordance with section 15, a taxpayer who fails to use an electronic billing system without reasonable cause shall be liable for a fixed monetary penalty of P10 000 for each month or part of a month for the period commencing on the date that the person was required to use the electronic billing system.

Penalty
for failure
to use
electronic
billing
solution

(2) A taxpayer who fails to issue an electronic invoice for the sale of goods and services, shall be liable to a penalty not exceeding P10 000.

101. (1) Subject to subsection (2), a person who fails to lodge a tax return or other document by the due date, or within such further time as the Commissioner General may allow under section 18 or 75, shall be liable for a late filing penalty —

Late filing
penalty

(a) for an income tax return, the greater of —

- (i) a fixed monetary amount of P100 for each day or part of a day that the tax return remains outstanding provided that such amount shall not exceed P20 000, or
- (ii) an amount equal to 10 percent of the unpaid tax for each month or part month that the tax return remains outstanding;

(b) for a VAT return, the greater of —

- (i) a fixed monetary amount of P50 for each day or part of a day that the tax return remains outstanding provided that such amount shall not exceed P5 000, or
- (ii) an amount equal to 10 percent of the unpaid tax for each month or part month that the tax return remains outstanding; or

(c) for any other document, a fixed monetary amount of P50 for each day or part of a day that the document remains outstanding provided that such amount shall not exceed P5 000.

(2) The fixed monetary penalty imposed under subsection (1) shall not exceed the amount of tax payable under the return.

102. (1) Subject to subsection (2) and section 107, a taxpayer who fails to pay any tax by the due date or, within such further time as the Commissioner General may allow under section 36, shall be liable for a late payment penalty that is the greater of —

Late payment
penalty

(a) a fixed monetary penalty of P50 for each day or part of a day that the tax remains unpaid; or

(b) an amount equal to 10 percent of the tax payable for each month or part of a month that the tax remains unpaid.

(2) The fixed monetary penalty imposed under subsection (1) shall not exceed the amount of tax payable.

(3) A fixed monetary penalty paid by a taxpayer under this section shall be applied in accordance with section 54 (5) (a), (b), and (c) to the extent that the tax to which the penalty relates is found not to have been payable.

(4) A penalty imposed under this section shall be in addition to late payment interest payable under section 41.

(5) A penalty payable by a person in respect of the late payment of a secondary liability or withholding tax shall be borne personally by that person and shall not be recoverable from any other person.

B.1084

Tax shortfall
penalty

(6) In this section, “tax” shall not include a fixed monetary penalty or late payment interest.

103. (1) This section shall apply to a person who makes a statement to a tax officer that is false or misleading or omits from a statement made to a tax officer any matter or thing without which the statement is false or misleading.

(2) Where a person –

(a) makes a statement to a tax officer that is false or misleading or omits from a statement made to a tax officer a matter or thing without which the statement is false or misleading; and

(b) the tax officer uses the statement to calculate the tax liability of the taxpayer and the calculation results in a tax liability that is less than it would have been, had the statement not been false or misleading,

the difference between the tax payable by the taxpayer and the tax that would have been payable by the taxpayer, had the statement not been false or misleading shall be referred to as “tax shortfall”.

(3) Subject to subsections (4) and (5), a person to whom this section applies shall be liable for a tax shortfall penalty equal to –

(a) for a statement or omission made deliberately or recklessly, 75 percent of the tax shortfall; or

(b) in any other case, 20 percent of the tax shortfall.

(4) The rate of tax shortfall penalty imposed under subsection (3) on a person shall be increased by –

(a) 10 percentage points if this is the second application of this section to the person; or

(b) 25 percentage points if this is the third or a subsequent application of this section to the person.

(5) The amount of tax shortfall penalty imposed under subsection (3) on a person shall be reduced by one half if the person voluntarily discloses to the Commissioner General the statement or omission to which the section applies prior to the earlier of –

(a) the Commissioner General informing the person to whom the statement relates of the discovery of the tax shortfall; or

(b) the commencement of an audit of the tax affairs of the person to whom the statement relates.

(6) An audit or investigation under this section shall start at the earlier of –

(a) the end of the first interview a tax officer has with the taxpayer or the taxpayer’s representative or tax agent; and

(b) the time when a tax officer inspects the records of the taxpayer, and the taxpayer is aware of the audit or inspection.

(7) A tax shortfall penalty shall not be payable under subsection (3) where –

(a) the person who made the statement did not know and could not reasonably be expected to know that the statement was false or misleading in a material particular;

- (b) subject to subsection (8), the tax shortfall arose as a result of a self-assessment taxpayer taking a reasonably arguable position on the application of a tax law to the taxpayer's circumstances in making a self-assessment; or
- (c) the failure was due to a clerical or similar error, other than a repeated clerical or similar error.

(8) A position taken by a taxpayer in making a self-assessment that is contrary to a public ruling in force under section 64, a private ruling issued to the taxpayer under section 66 (1), or a private ruling published under section 67 (5) shall not be regarded as a reasonably arguable position for the purposes of subsection (7) (b) unless the ruling is held to be incorrect.

(9) Nothing in subsection (7) shall prevent the imposition of late payment interest in respect of a tax shortfall where the tax is not paid by the due date for payment.

(10) For the purposes of this section, a statement made to a tax officer includes a statement made, in writing or orally, in any of the following circumstances —

- (a) in an application, certificate, declaration, notification, tax return, objection, customs entry, or other document lodged under a tax law;
- (b) in information lodged under a tax law;
- (c) in a document provided to a tax officer otherwise than pursuant to a tax law;
- (d) in an answer to a question asked of a person by a tax officer; or
- (e) in a statement to another person with the knowledge or reasonable expectation that the statement would be passed on to a tax officer.

104. (1) This section shall apply to the person who makes a statement to a tax officer that is false or misleading in a material particular or omits from a statement made to a tax officer any matter or thing without which the statement is false or misleading in a material particular, but which does not result in a tax shortfall.

False or misleading statement penalty

(2) Subject to subsection (3), a person to whom this section applies shall be liable for a fixed monetary penalty —

- (a) of P20 000 where the false or misleading statement was made deliberately or recklessly; or
- (b) of P10 000 for any other false or misleading statement.

(3) No penalty shall apply under subsection (2) in the circumstances specified under section 103 (7).

(4) Section 103 (10) shall apply in determining whether a person has made a statement to a tax officer.

105. (1) If the Commissioner General has applied a tax avoidance provision in assessing a taxpayer, the taxpayer shall be liable for a tax avoidance penalty equal to 200 percent of the amount of the tax that would have been avoided but for the application of the tax avoidance provision.

Tax avoidance and evasion penalty

B.1086

Penalty relating to instalments of income tax

- (2) A taxpayer shall be liable for a tax evasion penalty if –
 - (a) the taxpayer evades, attempts to evade, or does any act with intent to evade tax; or
 - (b) the taxpayer defaults in the performance of any duty imposed on the taxpayer under a tax law with intent to evade tax.
- (3) The amount of a tax evasion penalty payable for contravening subsection (2) shall be equal to 300 percent of the evaded tax.

106. (1) A taxpayer liable to pay instalments of income tax under section 127 (3) of the Income Tax Act shall be liable for a penalty if the actual tax payable by the taxpayer for a tax year, excluding a gain included in gross income under section 102 of the Income Tax Act, exceeds the total amount of instalments paid by the taxpayer for the year by more than 25 percent of the actual tax payable by the taxpayer for the year.

(2) The penalty payable by a taxpayer under subsection (1) shall be 10 percent of the difference between actual tax liability of the taxpayer and total instalments paid multiplied by 120 percent.

Penalties relating to withholding tax

107. (1) A withholding tax agent shall be liable for a fixed monetary penalty if the withholding tax agent –

- (a) fails to withhold tax from withholding income paid by the withholding tax agent;
- (b) withholds tax from a payment of withholding income but fails to remit the withheld tax to the Commissioner General by the due date;
- (c) fails to deliver to the recipient of withholding income by the due date a certificate of tax withheld by the withholding tax agent from withholding income; or
- (d) fails to notify the Commissioner General of the entering into of a contract as required under section 131 (5) of the Income Tax Act.

(2) The amount of the fixed monetary penalty under subsection (1) shall –

- (a) for a penalty under subsection (1) (a) or (b), an amount equal to the greater of –
 - (i) a fixed monetary penalty of P500 for each day of default; or
 - (ii) 10 percent of the withholding tax payable by the withholding tax agent for the period of default; or
- (b) for a penalty under subsection (1) (c) or (d), a fixed monetary penalty of P100 for each day of default.

(3) A penalty imposed under this section is in addition to late payment interest payable by a withholding tax agent under section 41 in respect of the late payment of withholding tax.

(4) A penalty payable by a withholding tax agent in respect of any unpaid withholding tax shall be borne personally by the withholding tax agent and shall not be recoverable from any other person

(5) The fixed monetary penalty imposed under subsection (2) shall not exceed the amount of tax payable.

108. (1) A person who fails to apply for registration as required by section 12 of the Value Added Tax Act shall be liable for a penalty equal to 100 percent of the amount of output tax payable by the person for the period —

VAT penalties

- (a) commencing on the date that the person was required to apply for VAT registration; and
- (b) ending on the later —
 - (i) the date that the person lodges the application for VAT registration, or
 - (ii) the date that the person is registered for VAT on the Commissioner General's own motion.

(2) A registered person shall be liable for a fixed monetary penalty of P10 000 if the person fails to notify a change in circumstances as required under section 18 (7) of the Value Added Tax Act.

(3) A registered person shall be liable for a fixed monetary penalty of P10 000 if the person fails to notify the Commissioner General as required by section 18 (1) of the Value Added Tax Act.

(4) A registered person who fails to provide a tax invoice, tax credit note, or tax debit note as required under section 60 or 61 of the Value Added Tax Act shall be liable for a fixed monetary penalty of P10 000.

(5) A person who issues a tax invoice, tax credit note, or tax debit note otherwise than as provided for under section 60 or 61 of the Value Added Tax Act shall be liable for a fixed monetary penalty of P10 000.

109. A person, other than a tax officer, who, without reasonable excuse, fails to comply with an obligation under a tax law shall be liable for a fixed monetary penalty of P1000.

General penalty

110. (1) Where the same act or omission is subject to more than one penalty under a tax law, the Commissioner General may determine which penalty is payable.

General provisions relating to administrative penalties

(2) A person shall be liable for penalty only if the Commissioner General —

- (a) makes a determination, referred to in this section as a “penalty assessment”, of the amount of penalty imposed under this Division; and
 - (b) serves notice of the penalty assessment on the person subject to the penalty stating the amount of penalty payable, the due date for payment, and any other matters as required under the Regulations.
- (3) A penalty payable by a person shall be due for payment on the date specified in the notice of assessment served under subsection (2) (b).

(4) Subsections (2) and (3) shall apply to a penalty imposed under any other tax law.

(5) A person liable to pay penalty under a tax law may apply, in writing, to the Commissioner General for waiver of the penalty payable.

(6) The Commissioner General may, upon application under subsection (5) or the Commissioner General's own motion, waive, in whole or in part, any penalty payable by a person other than a penalty payable under section 103.

B.1088

- (7) The Commissioner General shall —
- (a) maintain a record of each penalty waiver together with the reasons for the waiver; and
 - (b) notify the Accountant General of the record of penalty waivers on a quarterly basis.

Division III
Tax Offences

Failure to apply for registration

111. A person who deliberately or recklessly fails to apply for registration as required under a tax law commits an offence and shall be liable for a fine not exceeding P10 000 or imprisonment for a term not exceeding two years, or to both.

Fraudulent use of electronic billing system

112. A person who —

- (a) uses an electronic billing system in any manner that misleads the Commissioner General;
- (b) issues an electronic invoice that is false or incorrect in any material particular; or
- (c) tampers with or causes the electronic billing system to work improperly,

commits an offence and shall be liable to a fine not exceeding P100 000 or imprisonment for a term not exceeding two years, or to both.

Failure to maintain records

113. A taxpayer who, without reasonable cause, fails to maintain or retain records as required under a tax law commits an offence and shall be liable —

- (a) where the failure was deliberate or reckless, for a fine not exceeding P10 000 or imprisonment for a term not exceeding two years, or to both; or
- (b) for any other failure, for a fine not exceeding P5 000 or imprisonment for a term not exceeding one year, or to both.

Failure to lodge tax return

114. (1) A taxpayer who fails to lodge a tax return by the due date as required under a tax law, or within such further time as the Commissioner General may allow under section 18, commits an offence and is liable for a fine not exceeding P5 000 or imprisonment for a term not exceeding one year, or to both.

(2) Where a taxpayer convicted of an offence under subsection (1) has not lodged the return by the time of the conviction, the Court shall order the taxpayer to lodge the tax return by the date specified in the Court order.

Offences relating to recovery of unpaid tax

115. A person who without reasonable cause —

- (a) rescues or attempts to rescue goods seized under section 44 or property distrained under section 45;
- (b) before, at, or after the execution of any seizure or distress proceedings, staves, breaks, or destroys the goods or property subject to the seizure or distress proceedings or destroys documents relating to such property to prevent —

- (i) the securing of the property, or
 - (ii) the discovery of proof of an offence;
 - (c) fails to comply with a notice served on the person under section 46;
 - (d) enters premises that are the subject of a closure notice issued under section 48 without the permission of the Commissioner General;
 - (e) fails to comply with an interim asset preservation notice or an asset preservation order served on the person under section 51; or
 - (f) departs or attempts to depart Botswana in contravention of a departure prohibition notice issued under section 52,
- commits an offence and is liable for a fine not exceeding P10 000 or imprisonment for a term not exceeding two years, or to both.

116. A person who without reasonable cause —

- (a) fails to provide an explanation or answer a question as required under section 58 (1) (b) or (f), or to provide facilities and assistance as required by section 58 (4); or
 - (b) fails to comply with a notice under section 59 or 60 (4),
- commits an offence and is liable for a fine not exceeding P10 000 or imprisonment for a term not exceeding two years, or to both.

117. (1) A person who deliberately and fraudulently uses a false TIN on a tax return or other document prescribed or used for the purposes of a tax law commits an offence and shall be liable for a fine not exceeding P10 000 or imprisonment for a term not exceeding two years, or to both.

(2) A person who uses the TIN of another person shall be treated as having used a false TIN, except where section 11 (3) applies.

118. (1) A person who makes a statement that is false or misleading in a material particular to a tax officer or omits from a statement made to a tax officer any matter or thing without which the statement is false or misleading in a material particular commits an offence and shall be liable —

- (a) where the false or misleading statement was made deliberately or recklessly, for a fine not exceeding P10 000 or imprisonment for a term not exceeding two years, or to both; or
- (b) for the making of any other false or misleading statement, for a fine not exceeding P5 000 or imprisonment for a term not exceeding one year, or to both.

(2) No offence shall be considered as having been committed under subsection (1) in the circumstances specified under section 103 (7).

(3) Section 103 (10) shall apply in determining whether a person has made a statement to a tax officer.

119. A person who obstructs a tax officer in the performance of duties under a tax law commits an offence and shall be liable for a fine not exceeding P10 000 or imprisonment for a term not exceeding two years, or to both.

Offences relating to investigation powers

Offences relating to TINs

False or misleading statements

Obstructing tax officers

B.1090

Offences by
tax officers
and other
persons

120. (1) A tax officer who —

- (a) directly or indirectly asks for, or takes in connection with any of the officer's duties, any payment or reward, whether financial or otherwise, or promise or security for any such payment or reward, not being a payment or reward that the officer was lawfully entitled to receive;
- (b) enters into or acquiesces in any arrangement under which the Government is or may be defrauded of revenue, or that is contrary to a provision of a tax law or to the proper execution of the officer's duties; or
- (c) contravenes section 82 (1),

commits an offence.

(2) A person who —

- (a) directly or indirectly offers or gives to a tax officer any payment or reward, whether financial or otherwise, or any promise or security for any payment or reward, not being a payment or reward that the officer was lawfully entitled to receive;
- (b) proposes or enters into any arrangement with a tax officer under which the Government is or may be defrauded of revenue, or that is contrary to a provision of a tax law or to the proper execution of the officer's duties;
- (c) impersonates a tax officer; or
- (d) contravenes section 82 (7),

commits an offence.

(3) The prosecution of a tax officer for an offence under this section does not preclude any disciplinary action being taken against the officer.

(4) A reference in this section to a "payment or reward" includes a payment or reward for the benefit of a tax officer or another person.

(5) A person who commits an offence under this section shall be liable for a fine not exceeding P25 000 or imprisonment for a term not exceeding five years, or to both.

(6) In this section, "tax officer" includes —

- (a) the Minister or a former Minister responsible for finance;
- (b) an officer or employee, or former officer or employee, of the Ministry responsible for finance;
- (c) a person employed or engaged by the Revenue Service in any capacity; or
- (d) a former tax officer, employee, or contractor of the Revenue Service.

121. (1) A person who —

- (a) uses threatening or insulting language to a member of the Tax Tribunal whilst sitting, or to a member at any other time or place in relation to a hearing before the Tax Tribunal;
- (b) without reasonable cause, interrupts a hearing of the Tax Tribunal;
- (c) creates a disturbance or participates in creating a disturbance at the place where the Tax Tribunal is sitting; or
- (d) does any other act or thing that would, if the Tax Tribunal were a Court, constitute contempt of the Court,

Offences
relating to
Tax Tribunal

commits an offence.

- (2) A person who without reasonable cause -
- (a) refuses or fails to comply with a summons to appear before the Tax Tribunal;
 - (b) refuses or fails to take an oath or affirmation before the Tax Tribunal;
 - (c) refuses or fails to answer any question asked of the person during a hearing of the Tax Tribunal; or
 - (d) refuses or fails to produce any records to the Tax Tribunal that the person was required to produce by a summons served on the person,

commits an offence.

(3) A person who gives false or misleading evidence to the Tax Tribunal commits an offence.

(4) A member of the Tax Tribunal who fails to disclose a conflict of interest as required under section 88 (9) commits an offence.

(5) A person who commits an offence under this section shall be liable for a fine not exceeding P10 000 or imprisonment for a term not exceeding two years, or to both.

122. (1) A person who contravenes section 95 commits an offence and shall be liable for a fine not exceeding P5 000 or imprisonment for a term not exceeding one year, or to both.

Offences relating to tax agents

(2) A registered tax agent who fails to notify the Commissioner General as required under section 96 (1) commits an offence and shall be liable for a fine not exceeding P5 000 or imprisonment for a term not exceeding one year, or to both.

(3) A person whose registration as a tax agent has not been renewed under section 93 or been cancelled under section 96 (4) and who continues to hold out that he or she is a registered tax agent commits an offence and shall be liable for a fine not exceeding P5 000 or imprisonment for a term not exceeding one year, or to both.

123. A person who aids, abets, assists, incites, or induces another person to commit an offence, referred to in this section as the “principal offence”, under a tax law commits an offence and shall be liable for the same sanction as the principal offender.

Aiding and abetting a tax offence

124. (1) Where an entity has committed an offence under a tax law, the offence shall be treated as having been committed by any individual who, at the time the offence was committed, was —

Offences by entities

- (a) the chief executive officer, general manager, company secretary, a director, or any other similar officer of the entity; or
 - (b) acting or purporting to act in that capacity.
- (2) Subsection (1) shall not apply to a person where —
- (a) the offence was committed without that person’s consent or knowledge; and
 - (b) having regard to the nature of the person’s functions and all the circumstances, the person has exercised reasonable diligence to prevent the commission of the offence.

B.1092

Additional
sanctions
for
offences

(3) In this section —

(a) “director” means —

- (i) for a body corporate or statutory corporation, an individual appointed as a director of the body or corporation, and
- (ii) for any other entity, an individual who is involved in the management of the entity; and

(b) “entity” means a company, partnership, or trust.

125. (1) If a person is convicted of an offence under section 113 or 118 for deliberately or recklessly failing to maintain or retain records or deliberately or recklessly making a false or misleading statement, as the case may be, and the Court is satisfied that the person has a tax shortfall in relation to the offence, the Court may, in addition to the sanction imposed under this Act, order the convicted person to pay to the Commissioner General an amount not exceeding —

- (a) where the person has previously been convicted of the same offence, 200 percent of the tax shortfall; or
- (b) in any other case, 100 percent of the tax shortfall.

(2) A person convicted of an offence referred to in subsection (1) has a tax shortfall if the tax liability of the person, or another person, based on the records actually kept or false statement made is less than the tax liability that would have arisen if correct records had been maintained or the false statement had not been made, and the difference is the amount of the tax shortfall.

Compounding
of offences

126. (1) A person, referred to in this section as the “offender”, who has committed an offence under a tax law, other than an offence under section 120, at any time prior to the commencement of prosecution of the offence, may request the Commissioner General, in writing, to compound the offence.

(2) Subject to subsection (3), where a person has made a request under subsection (1), the Commissioner General may enter into a compounding agreement with the offender to compound the offence if the offender —

- (a) admits, in writing, to having committed the offence; and
- (b) agrees to pay an amount not exceeding the maximum fine specified for the offence.

(3) If the maximum fine for the offence to which a request to compound relates exceeds P5 000 the offence may be compounded by the Commissioner General only with the approval of the Minister.

(4) A compounding agreement shall —

- (a) be in writing and shall specify —
 - (i) the offence committed,
 - (ii) the sum of money to be paid by the offender, and
 - (iii) the due date for the payment;
- (b) be signed by the Commissioner General and the offender, and witnessed by any tax officer other than the Commissioner General;

- (c) have a copy of the request to compound and the written admission attached;
- (d) be served on the offender; and
- (e) be final and not subject to appeal.

(5) Where the Commissioner General compounds an offence under this section, the offender shall not be liable for prosecution or an administrative penalty in respect of the act or omission that constituted the offence; but shall be liable for late payment interest if the act or omission that is the subject of the compounding agreement resulted in the late payment of tax by the offender.

(6) An amount owing under a compounding agreement shall be payable to the Commissioner General by the due date set out in the agreement.

- (7) A reference in Part VIII, and sections 13 and 102 to —
 - (a) “tax” includes an amount payable under a compounding agreement;
 - (b) “taxpayer” includes an offender liable for an amount payable under a compounding agreement; and
 - (c) “unpaid tax” includes an amount specified in paragraph (a) that is not paid by the due date.

Part XVI — *Miscellaneous*

127. (1) The Minister may make regulations for —

- (a) matters prescribed to be made under this Act;
- (b) for the administration of the Tax Tribunal;
- (c) the proper and efficient administration of this Act;
- (d) the use of the electronic billing system;
- (e) the imposition by the Commissioner General of administrative penalties not exceeding P500 000; and
- (f) the imposition by a court of fines not exceeding P500 000, imprisonment for a period not exceeding two years, or both.

(2) Without limiting the general effect of subsection (1), regulations made under that subsection may contain provisions of a saving or transitional nature consequent upon the making of this Act.

(3) Transitional regulations made within twelve months after the commencement of this Act may provide that they take effect from the date on which this Act comes into force but only if the regulations are for the benefit of taxpayers.

128. (1) Subject to this section, this Act shall apply to any act or omission occurring, or any tax or appealable decision made, before this Act came into force.

(2) Any tax liability that arose in any tax law before this Act came into force may be recovered under this Act, but without prejudice to any action already taken for the recovery of the tax under such tax law.

(3) Any appeal or prosecution commenced before this Act came into force shall be continued and disposed of as if this Act had not come into force.

Regulations

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(4) Where the period for any application, appeal, or prosecution had expired before this Act came into force, nothing in this Act shall be construed as enabling the application, appeal, or prosecution to be made under this Act by reason only of the fact that a longer period is specified in this Act.

SCHEDULE
AGENCY TAXES

(section 2 – definition of “agency tax”)

The following taxes, duties, fees, levies, and charges shall be agency taxes —

- (1) Alcohol levy imposed under the Control of Goods, Prices and Other Charges (Intoxicating Liquor) (Levy) Regulations;
- (2) Fuel levy imposed under the Control of Goods Prices and Other Charges (Petroleum Products) (Levy) Regulations;
- (3) Any other tax, duty, fee, levy, or charge that the Commissioner General has authority to collect on behalf of a Government department, body, or authority under a memorandum of understanding between the Commissioner General and the Government department, body, or authority.