



REPUBLIC OF BOTSWANA

GOVERNMENT GAZETTE EXTRAORDINARY

Vol. LXIII, No. 137

GABORONE

15th December, 2025

CONTENTS

Page

Supplement B — Tax Administration Bill, 2025 — Bill No. 38 of 2025.....	B.1009 – 1094
Value Added Tax Bill, 2025 — Bill No. 39 of 2025.....	B.1095 – 1170

The Botswana Government *Gazette* is printed by Department of Government Printing and Publishing Services, Private Bag 0081, GABORONE, Republic of Botswana. Annual subscription rates are P700.00 post free surface mail, SADC Countries airmail P1,500.00, Rest of Africa airmail P1,500.00, Europe and USA airmail P1,850.00. The price for this issue of the Extraordinary *Gazette* is P10.00.

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.

B.1010

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.

B.1012

ARRANGEMENT OF SECTIONS

SECTION

Part I — *Preliminary*

1. Short title and commencement
2. Interpretation
3. Application of Act to agency taxes
4. Associates
5. Act binds State

Part II — *Taxpayers*
Division I
Registration

6. Application for registration of person as a taxpayer
7. Registration of taxpayers
8. Notification of changes
9. Cancellation of registration

Division II
Taxpayer Identification Numbers

10. Issue of TIN
11. Use of TIN
12. Cancellation of TIN

Division III
Representatives of Taxpayers

13. Obligations of representatives

Part III — *Record-keeping*

14. Record-keeping
15. Use of electronic billing system

Part IV — *Tax Returns*

16. Lodging of tax returns
17. Advance returns
18. Extension of time to lodge a tax return

Part V — *Tax Assessments*

19. Self-assessment
20. Estimated assessment
21. Advance assessment
22. Amended assessment
23. Self-amendment of self-assessments
24. Application for an amendment to a self-assessment

Part VI — *Decisions by Commissioner General*

25. Statement of findings and reasons
26. Finality of tax and appealable decisions

Part VII — *Objections and Appeals*

27. Notice of objection to a tax decision
28. Making an objection decision
29. Appeal to Tax Tribunal
30. Appeal to High Court
31. Production of additional evidence
32. Implementation of decision
33. General provisions relating to objections and appeals

Part VIII — *Collection and Recovery of Tax*

Division I
Payment of Tax

34. Tax as a debt due to the State
35. Secondary liabilities and tax recovery costs
36. Extension of time to pay tax
37. Priority of tax
38. Indemnity
39. Security
40. Order of payment

Division II
Late Payment Interest

41. Late payment interest

B.1014

*Division III
Recovery of Unpaid Tax*

- 42. Judgment debt procedure for recovery of unpaid tax
- 43. Insolvency of taxpayer
- 44. Seizure and forfeiture of goods
- 45. Distress proceedings
- 46. Recovery of tax from third parties
- 47. Duties of receivers
- 48. Temporary closure of business premises
- 49. Liability for tax payable by a company
- 50. Transferred tax liabilities
- 51. Preservation of assets
- 52. Restraint of person from departure

Part IX — Refunds and Remission of Tax

- 53. Application of tax credits
- 54. Refund of overpaid tax
- 55. Recovery of an erroneously paid refund
- 56. Release of tax liability in case of hardship

Part X — Information Collection and Enforcement

- 57. Confirmation of information
- 58. Examination of premises and records
- 59. Notice to obtain information or evidence
- 60. Audit and investigation of taxpayer's tax affairs
- 61. Implementation of mutual administrative assistance agreements
- 62. Tax clearance certificates

Part XI — Rulings

*Division I
Public Rulings*

- 63. Public rulings
- 64. Issuing a public ruling
- 65. Withdrawal of a public ruling

*Division II
Private Rulings*

- 66. Private rulings
- 67. Issuing a private ruling
- 68. Decision not to issue a private ruling
- 69. Withdrawal of a private ruling

*Division III
Other Advice*

70. Other advice provided by the Revenue Service

Part XII — Communications, Forms, and Notices

- 71. Official languages
- 72. Forms and notices, authentication of documents
- 73. Lodging documents in the approved form
- 74. Manner of lodging documents
- 75. Due date for lodging documents or payment of tax
- 76. Documents duly lodged
- 77. Service of notices
- 78. Use of information technology and electronic transactions
- 79. Validity of tax and appealable decisions
- 80. Rectification of mistakes

*Part XIII
Administration of the Tax Laws*

*Division I
Botswana Unified Revenue Service*

- 81. Powers and duties of Commissioner General
- 82. Secrecy

*Division II
Tax Tribunal*

- 83. Establishment of Tax Tribunal
- 84. Appointment of members of Tax Tribunal
- 85. Powers of Tax Tribunal
- 86. Secretary of Tax Tribunal
- 87. Notice of appeal
- 88. Hearings of Tax Tribunal
- 89. Decision of Tax Tribunal
- 90. Finances and reporting

*Division III
Registration of Tax Agents*

- 91. Application for tax agent registration
- 92. Registration of tax agents
- 93. Renewal of registration
- 94. Communications by registered tax agent with Commissioner General

B.1016

- 95. Limitation on providing tax agent services
- 96. Cancellation of tax agent registration

Part XIV — *Administrative Penalties and Tax Offences*

Division I
Application of Part XIV

- 97. General provisions relating to administrative penalties and tax offences

Division II
Administrative Penalties

- 98. Penalties relating to registration and TINs
- 99. Penalty for failing to maintain records
- 100. Penalty for failure to use electronic billing solution
- 101. Late filing penalty
- 102. Late payment penalty
- 103. Tax shortfall penalty
- 104. False or misleading statement penalty
- 105. Tax avoidance and evasion penalty
- 106. Penalty relating to instalments of income tax
- 107. Penalties relating to withholding tax
- 108. VAT penalties
- 109. General penalty
- 110. General provisions relating to administrative penalties

Division III
Tax Offences

- 111. Failure to apply for registration
- 112. Fraudulent use of electronic billing system
- 113. Failure to maintain records
- 114. Failure to lodge tax return
- 115. Offences relating to recovery of unpaid tax
- 116. Offences relating to investigation powers
- 117. Offences relating to TINs
- 118. False or misleading statements
- 119. Obstructing tax officers
- 120. Offences by tax officers and other persons
- 121. Offences relating to Tax Tribunal
- 122. Offences relating to tax agents
- 123. Aiding and abetting a tax offence
- 124. Offences by entities
- 125. Additional sanctions for offences
- 126. Compounding of offences

Part XV — *Miscellaneous*

127. Regulations
 128. Transitional provisions
 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

B.1018

- (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;

B.1020

“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,

B.1022

- (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;

Cap. 53:02

Cap. 53:01

“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;

“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 —

Application of Act to agency taxes

- (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.

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

Associates

- (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.

(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;

B.1024

- (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.

B.1026

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.

B.1028

(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 —

B.1030

- (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;

B.1034

- (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.

B.1036

(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.

B.1038

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 —

B.1040

- (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.

B.1046

(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

B.1048

Recovery
of tax from
third parties

- (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.

(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).

B.1050

(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 —

B.1052

- (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.

B.1054

(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

B.1056

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
Cap. 54:01

- (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).

B.1058

(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

B.1060

(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).

B.1062

(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*.

B.1064

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;

B.1066

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.

B.1068

(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

B.1072

(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);

B.1074

- (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.

B.1076

(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 —

B.1078

- (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.

(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.

(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.

(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.

Communications
by registered
tax agent with
Commissioner
General

Limitation on
providing tax
agent services

Cancellation
of tax agent
registration

B.1080

(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.

Regulations

(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.

Transitional provisions

(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.

B.1094

(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.

Bill No. 39 of 2025

VALUE ADDED TAX BILL, 2025
(Published on 15th December, 2025)

MEMORANDUM

1. A draft of the above Bill, which is intended to be presented to the National Assembly, is set out below.

2. The object of the Bill is to repeal and re-enact, with amendments, the Value Added Tax Act (Cap. 50:03) in order to modernise and widen the scope of the Act, including application to digital services and products. The Bill further removes the administrative and penal provisions from the Act as these will be provided under the Tax Administration 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 the imposition of VAT at the standard rate of 14 per cent on taxable supplies, taxable imports, and reverse charged supplies. The Bill further provides for taxable supplies subject to a zero-rate of VAT and exempt supplies on which VAT is not chargeable, at either the standard rate or zero-rate.

5. Part III of the Bill provides for VAT registration. The Bill makes it compulsory for persons making taxable supplies with an annual value above the VAT registration threshold to apply for registration. Persons making taxable supplies below the threshold may voluntarily apply to register for VAT. The manner of registration, obligations of registered persons, application for cancellation of registration, if the person has ceased to make taxable supplies or where the value of taxable supplies made by the person is below the registration threshold are also provided for under this Part. The Bill further provides for rules relating to pricing of a taxable supply, advertising and display of prices of a taxable supply. The Bill provides that the prices shall be advertised or quoted as inclusive of the VAT, if any, chargeable on a taxable supply.

6. Part IV of the Bill provides for general rules relating to supplies. The Bill sets out the rules for determining when a supply of goods, supply of services, or a reverse charged supply occurs as the liability for VAT arises at the time of supply. The Bill further sets out the rules for determining the value and place of a supply of goods and services, for purposes of imposing VAT on the supply of goods and services.

7. Part V of the Bill provides for general rules relating to imports; namely the time of an import and the value of an import. The Bill provides that an import of goods occurs at the time the goods are cleared by customs for goods placed under customs control. For any other goods, it is at the time the goods are brought into Botswana. The Part further provides for the calculation of VAT payable on taxable imports.

9. Part VI of the Bill provides for the claiming of input tax credits by a registered person for purposes of computing the amount of VAT payable by the person for a tax period in which the supply or import occurred. A registered person is allowed a credit for the input tax in respect of a creditable acquisition that was made for the purpose

B.1096

of making a taxable supply. However, a registered person, is not allowed input tax credit for input tax payable in respect of certain creditable acquisitions mainly of recreational or consumption nature. The Bill further provides a special input tax credit rule applicable to a newly registered person for VAT-paid stock on hand at the time of registration.

10. Part VII of the Bill provides general rules for particular types of supplies. These rules relate to the making of the supply or the allowance of input tax credits in relation to the receipt of the supply. These supplies include self-supplies, supplies of second-hand goods, supplies paid for through the use of vouchers, supplies of short-term insurance, gambling supplies, and supplies of employee benefits, amongst others.

11. Part VIII of the Bill provides for the treatment of adjustments made to a supply after the time of the supply. An adjustment occurs where a registered person has accounted for VAT on a supply, but the nature of the supply changes or the consideration for the supply subsequently becomes a bad debt. An adjustment event may result in VAT being undercharged or being overcharged. Where the adjustment has resulted in VAT being undercharged, the amount of excess is treated as output tax of the supplier for the tax period in which the adjustment event occurred. Where an adjustment has resulted in VAT being overcharged, the supplier is allowed an input tax credit for the amount of the excess in the tax period in which the adjustment event occurred. A corresponding adjustment is made to the VAT position of the recipient of the supply if they are registered. Further, the Part provides for the recovery of the adjustment for bad debts.

12. Part IX of the Bill provides for the calculation of the VAT payable by a registered person and the tax period of a registered person. The Part further provides for the treatment of an excess input tax credit of a registered person for a tax period and for the interest payable on late refunds.

13. Part X of the Bill provides for general rules relating to the issue and maintenance of VAT documentation. A registered person is required to provide the recipient with a tax invoice for the taxable supply. For post-supply adjustments to a supply and bad debt adjustments, the registered person is required to issue a tax credit and a tax debit note, as the case may be.

14. Part XI of the Bill provides for VAT-specific procedural rules relating particularly to the filing of returns and payment of tax. The Bill further provides for the due date for payment of VAT by registered persons, Government entities and importers. The recovery of VAT on taxable imports and from recipient in case of misrepresentation by the recipient of the nature of the supply, and the refund of VAT on a taxable supply made to the President, Diplomats, public international organisations and other persons is also provided for under this Part.

15. Part XII of the Bill provides for special cases relating to business or entity structure. Where a taxable activity is carried on by a registered person in branches or divisions, the registered person is treated as carrying on a single taxable activity, unless a registered person applies to register one or more branches or divisions as separate registered persons. The Part further provides that where a registered person dies or the estate of a registered person has been sequestered, the transfer of the assets of the taxable activity of the registered person to the executor or trustee of the

person's estate is not to be treated as a supply, and the estate of the registered person, as represented by the executor or trustee of the estate, is treated as continuing to carry on the taxable activity of the registered person. Further, a person who is a trustee in more than one capacity is treated for the purposes of this Act as a separate person in relation to each of those capacities.

16. Part XIII of the Bill provides for general provisions such as transitional arrangements and regulations. The Bill extends the application of the Tax Administration Act to this Act. The Bill provides for a variation to be made to the consideration for a supply, where there has been a change in the VAT rate after the consideration has been agreed. Rules to counter VAT avoidance arrangements and the variation in the rate of VAT are also provided for under this Part. The Bill further empowers the Minister, on behalf of the Government, to enter into an agreement with the government of a foreign country or territory concerning VAT.

NDABAN. GAOLATHE,
Minister of Finance.

ARRANGEMENT OF SECTIONS

SECTION

PART I — *Preliminary*

1. Short title and commencement
2. Interpretation
3. Consideration
4. Fair market value
5. Taxable activity
6. Act binds State

PART II — *Imposition of VAT*

7. Imposition of VAT
8. Zero-rated supply
9. Exempt supply
10. Exempt import
11. Exemptions and concessions in other laws not effective

PART III — *VAT Registration*

12. Application for compulsory registration
13. Registration of remote services supplier
14. Application for voluntary registration
15. Registration
16. Display of certificate
17. VAT-inclusive pricing
18. Notification by registered person ceasing to make taxable supplies
19. Application for cancellation of registration when below registration threshold
20. Obligations of person on cancellation of registration
21. Deemed taxable supply on cancellation of registration

PART IV — *General Rules Relating to Supplies*

22. Mixed supplies
23. Time of supply
24. Value of supply
25. Supply of goods in Botswana
26. Supply of services in Botswana
27. Supply of remote services through electronic marketplace
28. Reverse charged supply

PART V — *General Rules Relating to Imports*

- 29. Time of import
- 30. Value of import

PART VI - Input Tax Credit

- 31. Allowance of input tax credit
- 32. Denial of input tax credit
- 33. Input tax credit for newly registered person

PART VII — *General Rules Relating to Particular Supplies*

- 34. Self-supplies
- 35. Supply of second-hand goods
- 36. Supplies of rights and options
- 37. Vouchers
- 38. Prepaid supplies of utility services
- 39. Lay-bye sales
- 40. Employee benefits
- 41. Short-term insurance
- 42. Treatment of grants, subsidies and rates by registered persons
- 43. Supplies by auctioneer or Deputy Sheriff
- 44. Sale of property of debtor
- 45. Supplies made by or to agents
- 46. Gambling supplies
- 47. VAT manufacturing warehouse
- 48. Forfeited deposits

PART VIII — *Post-Supply Adjustments*

- 49. Adjustment event resulting in VAT being under-charged
- 50. Adjustment event resulting in VAT being over-charged
- 51. Adjustment for remote services
- 52. Adjustment for bad debts
- 53. Adjustment for bad debt recovered

PART IX — *Calculation of VAT Payable by Registered Person*

- 54. Tax period
- 55. VAT payable by registered person for a tax period
- 56. Carry forward of excess input tax credit
- 57. Refund of excess input tax credit without carry forward
- 58. Interest payable on late refunds

PART X — VAT Documentation

- 59. Tax invoices
- 60. Tax credit notes and tax debit notes
- 61. Request for VAT documentation
- 62. Maintenance of VAT documentation
- 63. VAT documentation for supplies by agents
- 64. Registered person receiving supplies of remote services

PART XI — VAT Procedure

- 65. Tax returns
- 66. Due date for payment of VAT
- 67. Collection of VAT on taxable imports
- 68. Recovery of VAT from recipient of supply
- 69. Refund of VAT to President, diplomats, public international organisations and other persons
- 70. VAT representatives of foreign service providers

PART XII — Special Cases

- 71. Branches and divisions
- 72. Unincorporated bodies of persons
- 73. Death or insolvency of registered person; mortgagee in possession
- 74. Trustee

PART XIII — General Provisions

- 75. Administration of Act
- 76. Application of Tax Administration Act
- 77. Variation of consideration on change in VAT rate
- 78. Application of increased or reduced VAT rate
- 79. VAT avoidance schemes
- 80. Currency translation
- 81. International agreements
- 82. Prohibition of registration of certain goods
- 83. Arrangement to overcome difficulties or anomalies
- 84. Variation in VAT rate
- 85. Regulations
- 86. Amendment of Schedules 4 and 5
- 87. Repeal of Cap. 50:03
- 88. Savings and transitional provisions

SCHEDULES

A Bill
— entitled —

An Act to re-enact the Value Added Tax Act with amendments to provide for the imposition and collection of value added tax; and for 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 Value Added Tax Act, 2025, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Short title and commencement

2. (1) In this Act, unless the context otherwise requires —
“adjustment event”, in relation to a supply, means —

Interpretation

- (a) for the purposes of sections 49 and 50, any of the following —
- (i) the supply is cancelled,
 - (ii) the nature of the supply is fundamentally varied or altered,
 - (iii) the consideration for the supply is altered, whether due to an offer of a discount or for any other reason, or
 - (iv) for a supply of goods, the goods or some of the goods that are the subject of the supply are returned to the supplier;
- (b) for the purposes of section 52, where a registered person who made the supply treats the whole or part of consideration for the supply as a bad debt in the person’s financial accounts; or
- (c) for the purposes of section 53, where a registered person who made the supply recovers the whole or part of the consideration for the supply that was previously written off as a bad debt in the person’s financial accounts;

“approved form” has the meaning assigned to the term under the Tax Administration Act;

Act No.
of 2025

“associate” has the meaning assigned to the term under section 4 of the Tax Administration Act;

“auctioneer” means a person engaged in a taxable activity that includes the supply of goods by auction as an auctioneer for or on behalf of another person;

“capital goods” means any asset that has a useful life of more than one year and that is used in the course or furtherance of a taxable activity;

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

Cap. 53:03

“consideration” has the meaning assigned to the term in section 3;

B.1102

- Cap. 53:01 “creditable acquisition”, in relation to a registered person, means a —
- (a) taxable supply made to the person by another registered person;
 - (b) reverse charged supply made to the person;
 - (c) taxable import made by the person; or
 - (d) transfer duty paid by the registered person for the acquisition of immovable property under the Transfer Duty Act;
- “Customs” means a division of the Revenue Service responsible for the administration of the customs legislation, and includes premises or other areas designated for that purpose;
- “customs control” means measures applied by a customs officer to ensure compliance with customs legislation;
- Cap. 50:02 “customs legislation” means —
- Cap. 50:01
- (a) the Customs Act;
 - (b) the Excise Duty Act; or
 - (c) any other written law relating to customs or excise duty;
- “customs officer” means an employee of the Revenue Service who is appointed by the Commissioner General to perform any duty relating to customs legislation;
- Act No. 21 of 2024 “Deputy Sheriff” means a person appointed as a Deputy Sheriff under the Deputy Sheriffs Act;
- “digital currency” means a digital unit of value, other than money, that —
- (a) is fungible;
 - (b) can be provided as consideration for a supply;
 - (c) is generally available to members of the public without any substantial restrictions on its use as consideration;
 - (d) is not denominated in the currency of any country;
 - (e) does not have a value that depends on or is derived from the value of anything else; and
 - (f) does not give an entitlement to receive or to direct the supply of a particular thing, unless the entitlement is incidental to the holding of a digital unit of value or using digital unit of value as consideration;
- “duty”, in relation to an import of goods, means a duty or levy payable under any customs legislation in respect of the import of goods;
- “exempt import” means an import under section 10 and listed under Schedule 3;
- “exempt supply” means a supply under section 9 (1) and listed under Schedule 2;
- “export country” means any country other than Botswana, and includes any territory that is not situated in Botswana, but does not include any specific country or territory that the Minister, by Order published in the *Gazette*, designates as not being an export country;
- “exported from Botswana”, in relation to goods, means —
- (a) consigned or delivered to a recipient at an address in an export country as evidenced by documentary proof acceptable to the Commissioner General; or

(b) stores for consumption or use on a journey by a ferry, an aircraft, or cross-border bus or train that is an international transportation service under Schedule 1;

“fair market value” has the meaning assigned to the term in section 4;

“goods” means corporeal movable or immovable property including capital goods, but does not include —

(a) money or digital currency; or

(b) a product that is transmitted by means of a wire, cable, radio, optical, or other electromagnetic system or by means of a similar technical system;

“Government entity” means a —

(a) Government ministry, department, agency, institution, a company or other entity controlled by the Government; or

(b) local authority;

“hire-purchase agreement” means any agreement whereby goods are sold subject to the condition that ownership in the goods shall not pass merely by the transfer of the possession of the goods and the purchase price is to be paid in instalments, and includes a lease of movable property where the lease payments include an implicit or explicit credit charge;

“immovable property” means —

(a) land, whether covered by water or not, and includes any estate, right, interest or servitude on or over any land and anything attached to land or permanently fastened to anything attached to land;

(b) any unit as defined in section 2 (1) of the Sectional Titles Act; or

(c) any real right in any such property;

“import”, in relation to goods, means to bring the goods or cause the goods to be brought into Botswana from a foreign country or territory;

“importer”, in relation to an import of goods, includes any person who at the time of an import of the goods —

(a) owns the imported goods;

(b) carries the risk of the imported goods;

(c) represents that or acts as if he or she is the importer or owner of the imported goods;

(d) brings the goods into Botswana;

(e) is beneficially interested in any way whatsoever in the imported goods; or

(f) acts on behalf of any person referred to in paragraph (a), (b), (c), (d) or (e);

“inbound tourism product” means accommodation, meals, transportation, tours, and other tourist activities in Botswana;

“input tax”, in relation to a registered person, means —

(a) the VAT payable by the person in respect of a creditable acquisition made by the person, but does not include a penalty or late payment interest payable under the Tax Administration Act; and

(b) an amount that is treated for the purposes of this Act as input tax payable by the person;

B.1104

- “input tax credit” means the credit for input tax allowed under this Act;
- “invoice” means any document, including in electronic format, stating an obligation to make a payment and includes a tax invoice;
- “large unregistered person” means a person —
- (a) making supplies with a total annual value in excess of the amount specified in paragraph 1 of Schedule 5; and
 - (b) who is not a registered person or Government entity;
- “late payment interest” means the late payment interest that is payable under the Tax Administration Act;
- “late payment penalty” means the late payment penalty that is payable under the Tax Administration Act;
- Cap. 40:01 “local authority” includes a council established under the Local Government Act;
- “manufacture” means the application of any operation or process for the conversion by manual or mechanical means of materials by changing the composition, shape, size, nature or quality of such material, including the assembly of parts or components, into a new product or article, but does not include the installation of machinery or equipment for the purpose of construction, or the packing, dividing into lots, sorting, grading, or marking of any material, product, or article;
- Cap. 55:01 “money” means —
- (a) a coin or note that is legal tender in Botswana under the Bank of Botswana Act or is a legal tender in a foreign country or territory, except where the coin or note is a collector’s piece, an investment article, or an item of numismatic interest;
 - (b) a bill of exchange, bank draft, promissory note, postal order, or money order;
 - (c) a stamp, form, or card that has a money value and has been sold or issued by the State for the payment of any fiscal charge levied under any written law for the benefit of the Consolidated Fund; and
 - (d) an amount provided as payment by way of —
 - (i) a credit card or debit card, or
 - (ii) the crediting or debiting of an account operated by any person;
- “output tax”, in relation to a registered person, means —
- (a) the VAT receivable on a taxable supply made; or
 - (b) an amount that is treated as output tax for the purposes of this Act;
- “person” includes a natural person, partnership, trust, estate, Government entity, company or international organisation;
- Cap. 72:01 “Post” means the Botswana Postal Services established under section 3 of the Botswana Postal Services Act;
- “prepaid telecommunications product” means a phone card, prepaid card, recharge card or any other form of prepayment for telecommunications services, including in electronic format;
- “received”, in relation to a person, includes —
- (a) applied on behalf of the person either at the instruction of the person or under any written law; or
 - (b) otherwise made available to the person;

“recipient”, in relation to a supply, means the person to whom the supply is made;

“registered person” means a person who is —

- (a) registered under this Act; or
- (b) required to apply for registration but who has not done so within the time specified in section 12;

“remote services” means services that, at the time of the supply of the services, there is no necessary connection between the place where the services are physically performed by the supplier; and the location of the recipient of the services, but excludes an accredited degree or diploma programme;

“resident in Botswana” has the meaning assigned to the term under the Income Tax Act;

Cap. 52:01

“returnable container” means a container in which goods are supplied and in relation to which, at the time of delivery of the contents of the container —

- (a) ownership of the container is not transferred to the recipient of the supply of the contents of the container; and
- (b) a specifically identified amount is charged as a deposit by the supplier with the agreement of the supplier that on the return of the container the deposit shall be refunded or allowed as a credit to the recipient or any other person returning the container;

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

“reverse charged supply” has the meaning assigned to the term under section 28;

“services” means anything that is not goods, money, or digital currency;

“short-term insurance contract” means a contract for general insurance business listed in Schedule 1 of the Insurance Industry Act;

Cap. 46:01

“stock” has the meaning assigned to the term under the Income Tax Act;

“stores” has the meaning assigned to the term under the Customs Act;

“supplier”, in relation to a supply, means the person making the supply;

“supply” means a supply of goods, a supply of services, or a reverse charged supply;

“supply of goods” means —

- (a) a sale, exchange or other transfer of the right to dispose of goods as the owner; or
- (b) the hire or lease of goods under a hire-purchase agreement;

“supply of services” means anything done that is not a supply of goods, money, or digital currency, and includes —

- (a) a lease of, or right to use any goods under a rental agreement, freight contract, agreement for charter, whether with or without a driver, pilot, crew, or operator, or any other similar agreement other than a hire-purchase agreement;

B.1106

- (b) the transfer or provision of thermal or electrical energy, heat, gas, refrigeration, air conditioning, or water;
 - (c) the grant, assignment, cessation, or surrender of any right;
 - (d) making available any facility or advantage;
 - (e) refraining from undertaking any activity;
 - (f) tolerating any activity; and
 - (g) the transmission of a product by means of a wire, cable, radio, optical, or other electromagnetic system or by means of a similar technical system;
- “tax credit note” means a document provided by a registered person as required under section 60;
- “tax debit note” means a document provided by a registered person as required under section 60;
- “tax fraction”, in relation to a taxable supply, means the fraction calculated in accordance with the following formula —
- $$r/(100 + r)$$
- where “r” is the rate of VAT applicable to the supply under section 7(2);
- “tax invoice” means a document provided by a registered person as required under section 59;
- “tax period”, in relation to a registered person, means the person’s tax period as determined under section 54;
- “taxable activity” has the meaning assigned to the term in section 5;
- “taxable import” means an import of goods other than an exempt import;
- “taxable supply” means —
- (a) a supply of goods or services that is made in Botswana by a person in the course or furtherance of a taxable activity carried on by the person, other than an exempt supply; or
 - (b) anything treated as a taxable supply under this Act;
- “taxpayer identification number” or “TIN” means a taxpayer identification number issued to a taxpayer under section 10 of the Tax Administration Act;
- “telecommunications intermediary” means a person who acts as a distributor, representative, agent, or other intermediary in relation to the supply of a prepaid telecommunications product;
- “telecommunications services” means the emission, transmission or reception of information, including voice, sound, data, internet and electronic communication, text, video, animation, visual images moving images and pictures, signal or a combination thereof by means of magnetism, radio or other electronic waves, optical, electromagnetic system whether with or without the aid of tangible or intangible conduct but does not include content service and includes any service ancillary thereto such as the —
- (a) installation, maintenance, adjustment, repair, alteration, removal, relocation or replacement of telecommunications equipment related to a telecommunications system;

- (b) related transfer or assignment of the right to use capacity for such transmission, emission, or reception; and
- (c) provision of access to global or local information networks, but does not include the supply of the underlying writing, images, sounds, or information;

“telecommunications services supplier” means a person licensed in Botswana or elsewhere to make supplies of telecommunications services;

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

Cap. 31:05

“value added tax” or “VAT” means the value added tax imposed under this Act;

“VAT manufacturing warehouse” means a facility operated by a registered person that is certified by the Commissioner General under section 47, as a VAT manufacturing warehouse; and

“zero-rated supply” means a supply that by virtue of section 8 (1) is a zero-rated supply listed under Schedule 1.

(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. (1) Subject to this Act, the consideration for a supply shall be the total of —

Consideration

- (a) the amount in money or digital currency paid or payable by any person, directly or indirectly for the supply;
- (b) the fair market value of an amount in kind paid or payable by any person, directly or indirectly for the supply;
- (c) a deposit on a returnable container given in connection with the supply;
- (d) a service charge paid or payable in respect of the supply; and
- (e) any taxes, duties, levies, fees, and charges, other than VAT, paid or payable by the supplier on or by reason of the supply.

(2) The consideration for a supply calculated under subsection (1) shall be reduced by any price discount or rebate allowed and accounted for at the time of the supply.

(3) A discount, rebate or any other adjustment to the price of a supply allowed or made after the time of the supply shall be accounted for under the adjustment rule in section 50.

(4) The consideration for a supply —

- (a) shall not include a deposit other than a deposit on a returnable container, whether refundable or not, given in connection with a supply unless and until the supplier applies the deposit as consideration for the supply or such deposit is forfeited; and
- (b) of goods under a hire-purchase agreement to which section 22 (6) applies shall not include any amount payable in relation to a supply of credit under the agreement.

B.1108

Fair market value

4. (1) For the purposes of this Act, the fair market value of a supply shall be the consideration that the supply would ordinarily fetch in an open market transaction made in Botswana at the time of the supply between persons who are not associates.

(2) Where the fair market value of a supply, referred to in this section as the “actual supply”, cannot be determined under subsection (1), the fair market value for the supply shall be the consideration that a similar supply would ordinarily fetch in an open market transaction made in Botswana at the time of the actual supply between persons who are not associates, adjusted to take account of the differences between the similar supply and the actual supply.

(3) Where the fair market value of a supply cannot be determined under subsections (1) and (2), the fair market value shall be determined in accordance with any method approved by the Commissioner General that —

- (a) is consistent with generally accepted valuation principles; and
- (b) provides a sufficiently objective approximation of the consideration that could be obtained for the supply had the supply been freely offered and made between persons who are not associates.

(4) Where a provision of this Act requires the fair market value to be determined at a particular time for particular goods or services, the value of the goods or services shall be worked out by reference to the fair market value of a supply of those goods or services at that time, as determined under this Act.

(5) In this section, “similar supply”, in relation to an actual supply means a supply that is the same as or closely or substantially resembles the actual supply, taking into account the characteristics of the goods or services supplied in the actual supply.

Taxable activity

5. (1) Subject to this section, “taxable activity” means —

- (a) an activity that is carried on continuously or regularly, by a person, whether or not for a pecuniary profit, that involves or is intended to involve, in whole or in part, the supply of goods or services to any other person for consideration;
- (b) an activity of a Government entity that involves the supply of goods or services for consideration; or
- (c) the activity of an auctioneer or a Deputy Sheriff.

(2) Anything done in connection with the commencement, re-organisation or termination of a taxable activity shall be treated as carried on in the course or furtherance of that taxable activity.

(3) A taxable activity shall not include the following —

- (a) an employment within the meaning in the Income Tax Act;
- (b) an activity carried on by a natural person as a private recreational pursuit or as a hobby; or
- (c) any activity carried on by a person other than a natural person which would, if carried on by a natural person, be carried on as a private recreational pursuit or as a hobby.

(4) Subject to subsection (5), a supply is made for consideration if the supplier directly or indirectly receives any payment for the supply from the recipient or any other person, including any payment wholly or partly in money or kind.

(5) A supply made for consideration includes the following —

- (a) a supply made between associates for no consideration;
- (b) a supply of goods for use only as trade samples; and
- (c) a supply referred to in section 34(1).

6. This Act binds the State.

Act binds
State

PART II — *Imposition of VAT*

7. (1) Subject to this Act, there shall be levied and paid a tax to be known as the “value added tax” or “VAT” at the rate specified in subsection (2) on a —

Imposition of
VAT

- (a) taxable supply made by a registered person;
- (b) taxable import made by any person; and
- (c) reverse charged supply made to a registered person, Government entity, or a large unregistered person.

(2) The rate of VAT shall be, for —

- (a) a taxable supply that is a zero-rated supply, zero per cent; and
- (b) any other taxable supply, a taxable import, or a reverse charged supply, a rate of 14 per cent.

(3) The amount of VAT payable in respect of a taxable supply, taxable import, or reverse charged supply shall be calculated by applying the rate specified in subsection (2) to the value of the supply or import.

(4) The liability for VAT on a taxable supply, shall arise at the time of the supply and shall be accounted for to the Commissioner General by the registered person making the supply in accordance with section 66 (1).

(5) Notwithstanding anything contained in any written law or agreement, but subject to subsection (6), the VAT payable by a registered person in respect of a taxable supply shall be recoverable by the registered person from the recipient of the supply.

(6) Subsection (5) shall not apply to a taxable supply made by a person registered by the Commissioner General under section 15 (2) that was made by the person prior to the date that the person is registered by the Commissioner General.

(7) The liability for VAT on a taxable import shall arise at the time of the import and shall be payable by the importer in accordance with section 66 (3).

(8) The liability for VAT on a reverse charged supply shall arise at the time of the supply and shall be accounted for to the Commissioner General by the registered person, Government entity, or large unregistered person receiving the supply in accordance with section 66 (1) or section 66 (2), as the case may be.

B.1110

Zero-rated supply

8. (1) A supply specified in Schedule 1 shall be a zero-rated supply.

(2) Where a registered person has treated a supply as a zero-rated supply, the registered person shall obtain and retain such documentary proof acceptable to the Commissioner General substantiating the person's entitlement to treat the supply as a zero-rated supply.

(3) Notwithstanding any provision of this Act, the Minister may, by Order published in the *Gazette* —

(a) deny zero rating of goods exported from Botswana as specified in Schedule 1, if such action is necessary to protect the revenue or to offset restrictions placed on zero rating of comparable goods by an export country; or

(b) designate a non-export country.

Exempt supply

9. (1) Subject to subsection (2), a supply listed in Schedule 2 shall be an exempt supply.

(2) A supply that is both a zero-rated supply under Schedule 1 and an exempt supply under Schedule 2 shall be treated only as a zero-rated supply for the purposes of this Act.

Exempt import

10. An import of goods shall be an exempt import if the import —

(a) is specified in Schedule 3;

(b) would be a zero-rated supply under section 8 or an exempt supply under section 9 if it were a supply of goods in Botswana; or

(c) is prescribed as an exempt import.

Exemptions and concessions in other laws not effective

11. (1) A provision in any other law, whether enacted before or after this Act, specifying that —

(a) a supply or class of supply, or an import or class of import, is an exempt or zero-rated supply, an exempt import or subject to a reduced rate of VAT, has no legal effect unless also provided for in this Act; and

(b) a person or class of persons is exempted from paying VAT or is liable for a reduced rate of VAT, has no legal effect unless also provided for in this Act.

(2) In this section, "reduced rate of VAT" means a rate of VAT lower than the rate specified in section 7 (2) (b).

PART III — VAT Registration

Application for compulsory registration

12. (1) A person shall be liable to apply for compulsory registration —

(a) at the end of any 12-month or lesser period if, in that period, the total value of taxable supplies made by the person exceeds the registration threshold;

(b) at the beginning of any 12-month period, if there are reasonable grounds to expect that the total value of taxable supplies to be made by the person during that period will exceed the registration threshold; or

(c) if the person is —

(i) a Government entity making taxable supplies, at the time the Government entity commenced to make taxable supplies,

- (ii) a Government entity or large unregistered person for the purposes of accounting for a reverse charged supply, at the time the Government entity or large unregistered person commenced to receive reverse charged supplies,
- (iii) an auctioneer, at the time the person commenced to carry on a taxable activity as an auctioneer, or
- (iv) a Deputy Sheriff, at the time that the person commenced to carry on a taxable activity as a Deputy Sheriff.

(2) The registration threshold referred to in subsection (1) shall be the amount specified in paragraph 2 of Schedule 5.

(3) In determining whether a person is liable to apply for registration under subsection (1) (a) or (b), the Commissioner General may have regard to the value of taxable supplies made by an associate of the person.

(4) A person shall not become liable to apply for registration under subsection (1) (a) or (b), if the Commissioner General is satisfied that the value of taxable supplies made by the person exceeded the registration threshold solely as a consequence of –

- (a) any cessation or substantial and permanent reduction in the size or scale of any taxable activity carried on by the person; or
- (b) the replacement of capital goods used in the taxable activity carried on by the person.

(5) An application for compulsory registration by a person under this section shall be –

- (a) made in an approved form; and
- (b) lodged with the Commissioner General within 21 days of the date that the person became liable to apply for registration.

13. (1) A person who supplies remote services shall be liable to apply for registration –

- (a) at the end of any period of 12 months or lesser period if, in that period, the total value of taxable supplies made exceeds the registration threshold; or
- (b) at the beginning of any period of 12 months, if there are reasonable grounds to expect that the total value of taxable supplies to be made by the person during that period will exceed the registration threshold.

(2) The registration threshold referred to in subsection (1) shall be the amount specified in paragraph 3 of Schedule 5.

(3) The Minister may prescribe conditions for the registration of a supplier of remote services.

14. (1) Subject to subsection (2), a person making or who intends to make taxable supplies but who is not liable to apply for registration under section 12, may apply, in the approved form, to the Commissioner General for registration under this Act.

(2) An application for registration under subsection (1) shall be made where the annual value of taxable supplies made or to be made by the person exceeds the amount specified in paragraph 4 of Schedule 5.

Registration
of remote
service
supplier

Application
for voluntary
registration

B.1112

Registration

(3) Notwithstanding subsection (2), the following persons may apply to the Commissioner General for registration —

- (a) a person carrying on a manufacturing business;
- (b) a person carrying on a construction business; and
- (c) a licensee undertaking mining or petroleum operations.

15. (1) The Commissioner General shall register a person who has applied for compulsory registration under section 12, if the Commissioner General is satisfied that a person is required to apply for registration.

(2) Where the Commissioner General is satisfied that the person who is required to apply for compulsory registration has not done so within the time limit specified in section 12, the Commissioner General shall register the person on his or her own motion.

(3) The Commissioner General shall register a person who has applied for voluntary registration under section 14 if the Commissioner General is satisfied that —

- (a) the person is making or will make taxable supplies;
- (b) the person satisfies the requirements of section 14(2);
- (c) the person has a fixed place from which the person's taxable activity is carried on or the business is carried on through a website or social media account; and
- (d) there are reasonable grounds to believe that the person will keep proper records and lodge regular and reliable returns as required under this Act.

(4) The Commissioner General shall, within 21 days after receipt of an application under section 12 or 14, serve a notice in writing, on an applicant of the decision taken on the application.

(5) For purposes of this section, registration shall take effect —

- (a) for a person referred to in section 12 (1) (a), from the beginning of the second tax period immediately following the date that the person became liable to apply for registration or such later date as specified in the person's VAT registration certificate;
- (b) for a person referred to in section 12 (1) (b), from the beginning of the 12-month period;
- (c) for a Government entity referred to in section 12 (1) (c) (i), from the commencement of making taxable supplies;
- (d) for a Government entity or large unregistered person referred to in section 12 (1) (c) (ii), from the commencement of receiving reversed charged supplies;
- (e) for an auctioneer referred to in section 12 (1) (c) (iii), from the date of commencement of the taxable activity as an auctioneer;
- (f) for a Deputy Sheriff referred to in section 12 (1) (c)(iv), from the date of appointment as a Deputy Sheriff; or
- (g) for a person making an application under section 14, from the date specified on the person's VAT registration certificate.

(6) The Commissioner General shall issue a registered person with a VAT registration certificate in the prescribed form.

(7) A registered person shall notify the Commissioner General, in writing, of —

- (a) any change in the name, address, place of business, constitution, or nature of the principal taxable activity or activities of the person; and
- (b) any change of address from which, or name in which, a taxable activity is carried on by the registered person, within 21 days of the change occurring.

16. (1) A registered person shall display in a conspicuous place —

- (a) the original copy of the VAT registration certificate at the principal place at which the person carries on a taxable activity; and
- (b) a certified copy of the certificate obtained from the Commissioner General at every place at which the person carries on his or her taxable activity.

Display of
certificate

(2) A registered person shall specify their VAT registration details on any website or social media account through which the person carries on their taxable activity.

17. (1) Subject to subsection (2), any price advertised or quoted by a registered person in respect of a taxable supply shall include VAT.

VAT-inclusive
pricing

(2) A registered person may advertise or quote a price in respect of a taxable supply as exclusive of VAT where —

- (a) the advertisement or quotation states the amount of VAT charged on the supply, the price inclusive of VAT, and the price exclusive of VAT; and
- (b) the price inclusive of VAT and the price exclusive of VAT shall be advertised or quoted with equal prominence or impact.

(3) Subject to subsection (5), the price ticket on goods supplied by a registered person does not need to state that the price includes VAT if this is stated by way of a notice prominently displayed at all entrances to the premises, in which the registered person carries on a taxable activity and at all points in such premises where payments are effected.

(4) The Commissioner General may, in the case of any registered person or class of registered persons, approve any other method of displaying prices of goods or services by such persons.

(6) Where a person who is not registered for VAT bids for a tender —

- (a) the person shall quote in the tender, a price without VAT; and
- (b) and if, as a result of being awarded the tender, the person is required to apply for registration under section 12, the person shall recover VAT on taxable supplies made in relation to the tender.

18. (1) A registered person shall notify the Commissioner General if he or she has ceased to make taxable supplies.

Notification by
registered
person ceasing
to make taxable
supplies

(2) A notification by a registered person under subsection (1) shall —

- (a) be made in the approved form;
- (b) state the date upon which the person has ceased to make taxable supplies;
- (c) state whether or not the person intends to make taxable supplies within 12 months from the date in paragraph (b); and

B.1114

(d) be lodged with the Commissioner General within 21 days of the date the person ceased to make taxable supplies.

(3) Subject to subsection (4), the Commissioner General shall, by notice in writing, cancel the registration of a person who has ceased to make taxable supplies either on notification by the person or on the Commissioner General's own motion.

(4) The Commissioner General shall not cancel the registration of a registered person under subsection (3), where the Commissioner General has reasonable grounds to believe that the person shall recommence making taxable supplies at any time within 12 months from that date of cessation of making taxable supplies.

(5) Subject to subsection (6), the Commissioner General shall cancel a person's registration under subsection (3) with effect from the last day of the tax period during which the person ceased to make taxable supplies, or from such later date as the Commissioner General may specify in the notice of cancellation of registration.

(6) If the Commissioner General is satisfied that the person did not, from the date of registration, make taxable supplies, the Commissioner General may specify in the notice of cancellation that the person's registration is cancelled on the date on which the person was registered under this Act.

Application for
cancellation of
registration
when below
registration
threshold

19. (1) Subject to subsections (2) and (3), a registered person may apply, in the approved form, to the Commissioner General to have the person's registration cancelled when the annual value of the taxable supplies made by the person is below the registration threshold.

(2) An application by a registered person under subsection (1) may be made after the expiration of two years from the date the person's registration took effect, unless the Commissioner General permits the application to be made at an earlier time.

(3) Subsection (1) shall not apply to a person who was liable to apply for registration under section 12 (1) (c).

(4) An application under subsection (1) shall be compulsory where the annual value of the taxable supplies made by a registered person is below the amount specified in paragraph 2 of Schedule 5, unless the Commissioner General is satisfied that there are reasonable grounds to believe that this will only be a temporary occurrence.

(5) Where the Commissioner General is satisfied that a person who has applied for cancellation of registration under subsection (1) or (4) is not required to be registered, the Commissioner General shall, by notice in writing, cancel the registration of the person.

(6) The Commissioner General may, on his or her own motion and by notice in writing, cancel the registration of a person who is not required to be registered, if the Commissioner General is satisfied that the person has not —

(a) kept proper VAT records; or

(b) lodged regular and reliable tax returns.

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

20. (1) Where a person's registration is cancelled under section 18 or 19, the person shall —

- (a) immediately cease to represent themselves as a registered person, including on any documentation used by the person and on any website or social media account through which the person carries on their taxable activity; and
- (b) lodge a final tax return and pay all VAT due, including the VAT due under section 21, within 14 days after the date of cancellation of the person's registration.

(2) The obligations and liabilities of a person under this Act, including the lodging of tax returns and payment of VAT, in respect of anything done or omitted to be done by that person while being a registered person shall not be affected by cancellation of the person's registration.

(3) Where a person's registration is cancelled under section 18(6) with effect from the original date of registration, the —

- (a) cancellation shall not affect the person's liability to account to the Commissioner General for any VAT charged on supplies made by the person; and
- (b) Commissioner General shall recover from the person the amount of any input tax credit allowed to the person during the period in which the person was registered.

21. (1) A person whose registration is cancelled under section 18 or 19 shall be treated as having made a taxable supply of any goods on hand or services available for use at the time that the registration is cancelled, but only if the person was allowed an input tax credit in respect of the acquisition or import of the goods or of inputs that have been subsumed into the goods or acquisition of services.

(2) A taxable supply of goods or services under subsection (1) shall be treated as having been made by the person immediately before the cancellation of the person's registration for a consideration equal to the lesser of —

- (a) the consideration paid or payable by the person for the acquisition of the goods or services; or
- (b) the fair market value of the goods or services at the time of cancellation of the person's registration.

(3) Where the person deemed to have made a taxable supply under this section was not allowed an input tax credit for the full amount of the input tax paid in respect of an acquisition or import of the goods or of inputs subsumed into the goods or services, the amount calculated under subsection (2) (b) shall be reduced by the proportion of the input tax that was not allowed as a credit.

Obligations of person on cancellation of registration

Deemed taxable supply on cancellation of registration

PART IV — *General Rules Relating to Supplies*

Mixed
supplies

22. (1) A supply of goods that is incidental to a supply of services shall be treated as part of the supply of services.

(2) A supply of services that is incidental to a supply of goods shall be treated as part of the supply of goods.

(3) A supply of services that is incidental to an import of goods shall be treated as part of the import.

(4) Subsection (5) shall apply where a supply consists of the following —

(a) a supply that is charged with VAT at the standard rate;

(b) a zero-rated supply; or

(c) an exempt supply.

(5) Where subsection (4) applies and subject to subsection (6), each part of the supply shall be treated as a separate supply.

(6) The supply of goods under a hire-purchase agreement shall be treated as a supply of goods and a supply of credit under the agreement provided that the credit is specified as a separate charge and is disclosed to the recipient of the supply.

(7) A supply of goods made in exchange for goods or services shall be treated as a supply of goods.

(8) A supply of services made in exchange for a supply of goods or services shall be treated as a supply of services.

(9) The Minister may make regulations providing that a supply of goods and services is a supply of goods or a supply of services.

Time of
supply

23. (1) Subject to this Act, a supply shall occur on the earlier of the date on which —

(a) the invoice for the supply is issued by the supplier; or

(b) any payment, including a part payment, for the supply is received.

(2) A supply between associates or by way of a gift shall occur, for —

(a) goods, on the date the goods are delivered or otherwise made available to the recipient of the supply; or

(b) services, on the date the performance of the services is complete.

(3) Notwithstanding subsection (2), subsection (1) shall apply to a supply between associates to the extent that an invoice is issued or a payment received for the supply on or before the earlier of the —

(a) date on which the tax return is lodged for the tax period in which the supply would, but for subsection (2), have been made; or

(b) last day under section 65 for lodging the tax return for the tax period in which the supply would, but for subsection (2), have been made.

(4) A supply by means of any machine, meter, or any other device operated by a coin, note, or token shall occur on the date that any such coin, note, or token is taken from that machine, meter, or any other device by or on behalf of the supplier.

(5) A periodic supply shall be treated as a series of separate, successive supplies corresponding to the successive parts of the period of the lease or agreement under which the supply is made or as determined by any written law, as the case may be and each successive supply shall be treated as occurring on the earlier of the date on which the payment for that successive supply is due or received.

(6) In this section, “periodic supply” means —

(a) a supply of goods under a hire-purchase agreement; or

(b) a supply of services —

(i) by way of a lease of goods, other than a lease under paragraph (a), or

(ii) made progressively under an agreement or any written law that provides for periodic payments.

24. (1) Subject to this Act, the value of a supply shall be the consideration for the supply.

Value of supply

(2) The value of a supply shall be the fair market value of the supply determined at the time of the supply where the —

(a) supply is made by a person to an associate for a consideration that is less than the fair market value of the supply, including a supply made for no consideration; and

(b) recipient is not entitled to an input tax credit for the whole of the input tax payable in respect of the supply.

(3) Except as otherwise provided under this Act, the value of a supply made for no consideration shall be nil.

(4) If a taxable supply is made by a registered person without a separate amount being identified as VAT, the value of the supply shall be calculated according to the following formula —

$$A - (A \times B)$$

where —

A is the total amount charged for the supply;

and

B is the tax fraction.

(5) If subsection (4) applies to a taxable supply made by a registered person to another registered person, the input tax payable by the registered person receiving the supply is calculated based on the value of the supply determined under subsection (4).

25. A supply of goods occurs in Botswana if —

Supply of goods in Botswana

(a) for a supply of goods that involves transportation, the goods are in Botswana when the transportation commences; or

(b) for any other supply of goods, the goods are made available in Botswana by the supplier.

26. (1) A supply of services shall occur in Botswana if the place of business of the supplier from which the services are supplied is in Botswana.

Supply of services in Botswana

B.1118

(2) Notwithstanding subsection (1) and subject to section 27, a supply of services, other than a reverse charged supply, by a person who does not have a place of business in Botswana occurs in Botswana if the service —

- (a) is physically performed in Botswana by a person who is in Botswana at the time of the supply;
- (b) relates to immovable property in Botswana;
- (c) is a remote service supplied to a person who is resident in Botswana as determined under subsection (3);
- (d) is an inbound tourism product, agency, or booking services relating to a supply of an inbound tourism product;
- (e) is a telecommunication service that can be used only in Botswana; or
- (f) is a telecommunication service supplied to a person resident in Botswana as determined under subsection (5), except where paragraph (c) applies.

(3) For the purposes of subsection (2) (c) and subject to subsection (4), a recipient of a supply of remote services shall be treated as resident in Botswana if at least two of the following factors support the conclusion that the person is resident in Botswana —

- (a) the recipient's billing address;
- (b) the Internet Protocol address of the device used by the recipient or any other geo-location method;
- (c) the recipient's bank account details, including the account the recipient uses for payment or the billing address held by the bank;
- (d) the mobile country code of the International Mobile Subscriber Identity (IMSI) stored on the Subscriber Identity Module (SIM) used by the recipient;
- (e) the location of the recipient's fixed land line through which the service is supplied to the recipient; or
- (f) any other relevant information.

(4) Where there are two factors on the list in subsection (3) supporting that the recipient is resident in Botswana and two factors supporting residence in another country, the recipient's residence shall be based on the factors that, in the circumstances, are the most reliable indicators of the recipient's residence.

(5) For the purposes of subsection (2) (f), a recipient of a supply of telecommunications services shall be treated as resident in Botswana if the mobile country code of the International Mobile Subscriber Identity (IMSI) stored on the Subscriber Identity Module (SIM) used by the recipient is Botswana.

(6) Where a supplier has established that the recipient of a supply is resident in Botswana under subsection (3) or (5), the supplier shall treat the recipient as not being a registered person, unless the recipient has notified the supplier that the recipient is a registered person as required under section 64.

- 27.** (1) This section shall apply when —
- (a) a supply of remote services is made by a supplier, referred to in this section as the “underlying supplier”, through an electronic marketplace;
 - (b) the marketplace is operated by a person, referred to in this section as the “operator”, who does not have a place of business in Botswana, but who —
 - (i) authorises the charge to the recipient of the supply,
 - (ii) authorises the delivery of the supply to the recipient of the supply, or
 - (iii) sets the terms and conditions under which the supply is made; and
 - (c) the recipient of the supply is resident in Botswana as determined under section 26 (3) and is not a registered person, Government entity, or a large unregistered person.
- (2) Where the conditions in subsection (1) are satisfied and subject to subsection (3), section 26 (2) (c) applies on the basis that the operator of the electronic marketplace shall be treated as having made the supply of remote services in the course or furtherance of a taxable activity carried on by the operator.
- (3) Except as prescribed in the Regulations, this section shall not apply when the underlying supplier is registered for VAT under this Act.
- (4) In this section, “electronic marketplace” —
- (a) means a market place that is operated by electronic means through which the underlying supplier makes a supply of remote services through the operator of the market place to the recipient of the supply;
 - (b) includes a website, internet portal, gateway, store, distribution platform, or other similar marketplace or platform; and
 - (c) does not include a market place that solely processes payments.
- 28.** (1) A reverse charged supply shall be a supply of services where the supply —
- (a) is made by a person, whether or not registered, who does not conduct a taxable activity from a place of business in Botswana;
 - (b) is made to a registered person, Government entity, or a large unregistered person; and
 - (c) would have been a taxable supply if the supply had been made from a place of business in Botswana.
- (2) If a registered person or a large unregistered person conducts a taxable activity both in and outside Botswana, an internal provision of services from the part of the taxable activity conducted outside Botswana to the part of the taxable activity conducted in Botswana shall be treated as a reverse charged supply to the registered person or large unregistered person, as the case may be.
- (3) Subsection (2) shall not apply if a supply of the services would be an exempt supply.

Supply of
remote services
through
electronic
marketplace

Reverse
charged
supply

B.1120

(4) The time of a reverse charged supply under subsection (2), shall be the time that the services are provided and the value of the supply shall be the fair market value of the services at the time of the supply.

PART V — General Rules Relating to Imports

Time of
import

29. (1) An import of goods occurs —

- (a) for goods placed under customs control, at the time the goods are cleared under the customs legislation; or
- (b) in any other case, at the time the goods are brought into Botswana.

(2) If any goods have been imported into a licensed Customs warehouse under the Customs Act or a licensed excise warehouse under the Excise Duty Act, but have not been cleared by customs officer, any supply of such goods before the goods are cleared by customs officer shall be disregarded for the purposes of this Act.

Value of
import

30. (1) Subject to this section, the value of an import of goods shall be the total of the following amounts —

- (a) the value of the goods for duty purposes under the customs legislation, whether or not any duty is payable on the import;
- (b) to the extent not included under paragraph (a) —
 - (i) the cost of insurance and freight incurred in bringing the goods to Botswana, and
 - (ii) the cost of services treated as part of the import of the goods under section 22(3); and
- (c) the amount of any duty and other fiscal charge, other than VAT, and any fee or other charge payable in respect of the import.

(2) Notwithstanding subsection (1), where a motor vehicle is imported by a natural person for his or her own use and not for sale, the Commissioner General may determine the value of the imported motor vehicle.

(3) Where goods are re-imported after being exported for the purpose of undergoing repair, renovation, or improvement, the value of the import shall be the amount of the increase in value of the goods as a result of the repair, renovation, or improvement:

Provided that —

- (a) the form and character of the goods has not changed; and
- (b) the ownership of the goods has not changed since the goods were exported.

(4) Where the cost of freight and insurance of the import is not provided, the Commissioner General shall determine the fair market value.

(5) The value of an import of goods to which section 29 (2) applies shall be the higher of the —

- (a) value determined under subsection (1); or
- (b) value of the supply of the goods referred to in section 29 (2).

PART VI — *Input Tax Credit*

31. (1) Subject to subsections (2), (3), and (4), a registered person shall be allowed a credit for the input tax payable by the registered person in respect of a creditable acquisition made by the registered person to the extent that the acquisition was for the purpose of making taxable supplies as determined at the time of the supply or import comprising the acquisition.

Allowance of
input tax
credit

(2) The input tax credit allowed to a registered person for creditable acquisitions made by the registered person during a tax period partly to make taxable supplies and partly to make other supplies shall be calculated according to the following formula —

$$A \times \frac{B}{C}$$

where —

- A is the total amount of input tax payable in respect of creditable acquisitions made by the registered person during the tax period partly to make taxable supplies and partly to make other supplies;
- B is the total value of taxable supplies made by the registered person during the tax period; and
- C is the total value of all supplies made by the registered person during the tax period.

(3) Where the fraction $\frac{B}{C}$ in subsection (2) is more than 0.90, the registered person shall be allowed a credit for the total amount of input tax in respect of creditable acquisitions referred to in that subsection.

(4) Subject to this Act, a registered person shall be allowed an input tax credit in the tax period in which the supply or import to which the creditable acquisition relates occurred:

Provided the registered person is in possession of the following documentation —

- (a) for a creditable acquisition that is a taxable import, a customs import declaration document issued by a customs officer as evidence of the payment of VAT in respect of the import;
- (b) for a creditable acquisition that is a taxable supply, the tax invoice for the taxable supply to which the acquisition relates;
- (c) for a creditable acquisition that is a reverse charged supply or a supply subject to section 59 (5), the recipient-created tax invoice for the supply as required under section 59 (4) or (5);
- (d) for an input tax credit allowed in respect of input tax referred to in section 49 (3) (b), the tax debit note required to be issued under section 49 (3) (a);
- (e) for an input tax credit allowed under section 50 (2) where the recipient of the supply to which the adjustment event relates is a registered person, a copy of tax credit note issued to the recipient of the supply under section 50 (3) (a);
- (f) for an input tax credit allowed under section 52 (1) and section 52 (3), a copy of the tax credit note required to be issued under section 52 (3); or

B.1122

Denial of
input tax
credit

(g) for an input tax credit allowed under section 53 (3), the tax debit note required to be issued under section 53 (3).

32. (1) A registered person shall not be allowed an input tax credit under this Act for input tax payable by the registered person, in respect of —

(a) a creditable acquisition by the person of a passenger vehicle, unless the —

(i) person's taxable activity involves dealing in or hiring of such vehicle and the vehicle was acquired for the purpose of such taxable activity, or

(ii) person acquires the vehicle for the supply to a customer for promotional, marketing, advertising or similar purpose for the furtherance of a taxable activity of the person:

Provided, the customer is not an employee or associate of the person;

(b) 50 per cent of the cost of a creditable acquisition of repair, maintenance and other services for a passenger vehicle for which no input tax credit is allowed under paragraph (a);

(c) a creditable acquisition by the person of goods or services acquired for the purposes of entertainment or providing entertainment, unless —

(i) the person's taxable activity is the providing of entertainment and the creditable acquisition relates to the provision of taxable supplies of entertainment in the ordinary course of that taxable activity,

(ii) the person's taxable activity is the providing of taxable supplies of transportation services and the entertainment is provided to passengers as part of the transportation service; or

(iii) the entertainment is food and beverages provided while the recipient of the entertainment is away from home for the purposes of the taxable activity of the recipient or the recipient's employer; or

(d) fees or subscriptions paid by the person in respect of membership of any person in a club, association, or a society of a sporting, social, or recreational nature.

(2) A registered person who supplies goods or services and a deduction for input tax paid on acquisition of such goods or services was denied, the supply by the registered person is a supply of goods or services otherwise than in the course or furtherance of a taxable activity.

(3) Section 31 applies in determining whether, and to the extent that, an input tax credit shall be allowed for a creditable acquisition that is not denied as a result of the operation of subsection (1) (a), (b), or (c).

(4) A registered person who does not conduct a taxable activity through a fixed place of business in Botswana shall not be allowed any input tax credit in relation to the making of taxable supplies.

- (5) In this section –
- (a) “entertainment” means the provision of food, beverages, recreation, tobacco and tobacco products, or hospitality of any kind;
 - (b) “passenger vehicle” means a road vehicle designed or adapted for the transport of nine or fewer seated persons, including double cab vehicles, but not including a safari vehicle; and
 - (c) “safari vehicle” means a vehicle designed or adapted for use in and is used in, transporting tourists in a game reserve, national park, sanctuary, or safari area, by a holder of a valid licence to operate a tourist enterprise, but does not include a saloon car, a station wagon, or similar passenger vehicle.

33. (1) A registered person may claim an input tax credit determined in accordance with sections 31 and 32 for the input tax paid or payable in respect of goods held at the date of registration for the purpose of making taxable supplies, if –

Input tax credit for newly registered person

- (a) at the end of the last day before the date of the person’s registration, the person held the goods as stock;
- (b) the stock was acquired by the registered person in a creditable acquisition made by the person;
- (c) the creditable acquisition occurred no more than four months prior to the date of the person’s registration; and
- (d) the person can provide documentary evidence to the satisfaction of the Commissioner General that the input tax has been paid on the acquisition.

(2) An input tax credit under subsection (1) shall be allowed in the first tax return lodged by the person after registration.

(3) Section 31 (4) shall not apply for the purposes of an input tax credit allowed under this section.

PART VII — *General Rules Relating to Particular Supplies*

34. (1) An application of goods or services by a registered person to a non-creditable use shall be treated as a taxable supply made by the person, but only if the person has been allowed an input tax credit in respect of the acquisition or import of the goods or services.

Self-supplies

(2) A taxable supply under subsection (1) shall be made by the registered person at the time that the goods or services are first applied to a non-creditable use.

(3) The amount of output tax payable by a registered person in respect of a taxable supply under subsection (1) shall be the amount of input tax credit allowed to the registered person for the acquisition or import of the goods or services that have been applied to a non-creditable use.

(4) In this section, “non-creditable use”, in relation to goods or services, means the use of the goods or services other than to make taxable supplies.

B.1124

Supply of
second-hand
goods

- 35.** (1) This section shall apply where —
- (a) a second-hand goods supplier has purchased second-hand goods from an unregistered person;
 - (b) the second-hand goods supplier did not import the goods;
 - (c) the supply of second-hand goods to the second-hand goods supplier was not an exempt or zero-rated supply; and
 - (d) the second-hand goods supplier has —
 - (i) supplied the second-hand goods in a taxable supply by way of sale or exchange, and
 - (ii) supplied the goods in substantially the same state as the goods were in at the time that the second-hand goods supplier purchased the goods.
- (2) Where this section applies, the second-hand goods supplier shall be —
- (a) treated as having acquired the second-hand goods in a creditable acquisition;
 - (b) treated as having paid an amount of input tax credit in respect of the acquisition of the second-hand goods equal to the tax fraction of the consideration paid for the second-hand goods; and
 - (c) allowed an input tax credit for the input tax treated as having been paid under paragraph (b) in the tax period in which the second-hand goods supplier makes the supply referred to in subsection (1) (d).
- (3) Where the second-hand goods supplier receives second-hand goods, referred to in this section as “traded-in goods”, as part payment for a supply the supplier makes to an unregistered person, the fair market value of the traded-in goods used to determine the price for the supply shall be the same as the fair market value used to determine the price paid by the supplier to purchase the traded-in goods.
- (4) A second-hand goods supplier receiving a supply of second-hand goods from an unregistered person shall maintain sufficient records to enable the following particulars to be ascertained —
- (a) the name and address of the person supplying the goods to the second-hand goods supplier;
 - (b) the date on which the second-hand goods were supplied to the second-hand goods supplier;
 - (c) a description of the goods supplied;
 - (d) the quantity or volume of the goods supplied; and
 - (e) the consideration for the supply.
- (5) In this section —
- (a) “second-hand goods” means goods that have previously been owned or used in Botswana by an unregistered person, but does not include livestock, domestic animals, or wild animals; and
 - (b) “second-hand goods supplier” means a registered person whose taxable activity principally involves the sale or exchange of second-hand goods in substantially the same state as the goods were in when purchased by the person.

- 36.** (1) This section applies where —
- (a) there is a supply of a right or option; and
 - (b) another supply, referred to in this section as “the subsequent supply”, is made on the exercise of the right or option.
- (2) Where this section applies and the supply of the right or option —
- (a) is a taxable supply, the amount of the consideration for the subsequent supply shall be limited to the additional consideration, if any, given for the subsequent supply or in connection with the exercise of the right or option; or
 - (b) is not a taxable supply but the subsequent supply is a taxable supply, the amount of the consideration for the subsequent supply shall include any consideration given for the supply of the right or option.
- 37.** (1) The issue of a voucher shall not be a supply where the voucher —
- (a) entitles the holder to receive supplies of goods or services up to a monetary amount on redemption of the voucher; and
 - (b) is issued for an amount in money.
- (2) Where a voucher referred to in subsection (1) is redeemed for a taxable supply, other than a zero-rated supply, made by a registered person, the amount referred to in subsection (1) (b) shall be treated as comprising two components, being an amount as the —
- (a) consideration or part of the consideration for the supply calculated as the amount referred to in subsection (1) (b) reduced by the tax fraction of that amount; and
 - (b) VAT or part of the VAT payable in respect of the supply calculated as the tax fraction of the amount referred to in subsection (1) (b).
- (3) Where the voucher referred to in subsection (1) expires without being used or fully used, the expiration of the voucher shall be treated as a supply of services by the supplier of the voucher to the person to whom the voucher is issued.
- (4) Where subsection (3) applies —
- (a) the time of the supply of services under subsection (3) shall be the time when the voucher expired; and
 - (b) the value of the supply of services under subsection (3) shall be —
 - (i) for a supplier who is a registered person at the time of expiration of the voucher, the unused amount of the voucher reduced by an amount equal to the unused amount multiplied by the tax fraction, or
 - (ii) for any other supplier, the unused amount of the voucher.
- (5) Subsection (6) shall apply where the following conditions are satisfied —
- (a) a registered person issues a voucher for no charge;
 - (b) the voucher entitles the holder to a discount on the price of goods or services supplied by another person; and
 - (c) the voucher is redeemed for a taxable supply, other than a zero-rated supply.

Supplies of rights and options

Vouchers

B.1126

(6) Where the conditions in subsection (5) are satisfied, the consideration for the supply referred to in subsection (5)(c) shall include the monetary value of the voucher reduced by an amount equal to the monetary value multiplied by the tax fraction.

(7) A registered person shall be entitled to an input tax credit for any amount paid to a supplier in respect of the redemption by the supplier of a voucher referred to in subsection (6).

(8) The amount of the input tax credit referred to in subsection (7) shall be the amount paid to the supplier multiplied by the tax fraction and the input tax credit shall be allowed in the tax period in which the amount is paid to the supplier.

(9) In this section, “voucher” means a stamp, token, coupon or similar article, including an article issued electronically that can be redeemed by the holder only for supplies of goods or services and includes a prepaid telecommunications product, but does not include a postage stamp.

Prepaid
supplies of
utility services

38. (1) Subject to subsection (2), this section shall apply to a supply by a —

- (a) telecommunications services supplier of a prepaid telecommunications product; or
- (b) person who acts as a telecommunications intermediary of a telecommunications services supplier for the supply of a prepaid telecommunications product.

(2) Subsection (1) shall not apply to a supply by one telecommunications services supplier to another telecommunications services supplier.

(3) If a telecommunications services supplier supplies a prepaid telecommunications product to a telecommunications intermediary at a discount from the intended retail price, the consideration for the supply shall be calculated as if the telecommunications intermediary had paid the intended retail price.

(4) If a telecommunications intermediary purchases and on-sells a prepaid telecommunications product —

- (a) the acquisition by the telecommunications intermediary shall be treated as if it were not an acquisition; and
- (b) the supply by the telecommunications intermediary shall be treated as if it were not a supply.

(5) Where a telecommunications services supplier supplies a prepaid telecommunications product through a telecommunications intermediary acting as agent for the telecommunications services supplier, the consideration for the supply shall not be reduced by the commission paid to the telecommunications intermediary.

(6) This section shall apply, with the necessary modifications, to prepaid electricity, water or any other utility services provided by supplier, a distributor or agent.

39. (1) A supply of goods pursuant to a lay-by agreement shall occur when the goods are delivered to the purchaser. Lay-by sales

(2) Where a lay-by agreement is cancelled and the seller retains any amount paid by the purchaser or recovers any amount owing by the purchaser under the agreement, the cancellation of the agreement shall be treated as a supply of services by the seller at the time of cancellation of the agreement.

(3) A supply under subsection (2), shall have the same VAT treatment as the supply of the goods under the lay-by agreement would have had if the agreement had not been cancelled.

(4) The value of the supply under subsection (2) shall be —

(a) where the seller is a registered person at the time of cancellation, the amount retained or recovered by the seller reduced by an amount equal to the amount retained or recovered multiplied by the tax fraction; or

(b) in any other case, the amount retained or recovered by the seller.

(5) In this section, “lay-by agreement” means a sale and purchase agreement for goods under which the —

(a) price is payable by at least one additional payment after the payment of a deposit;

(b) purchaser takes possession of the goods after full payment is made for the goods; and

(c) ownership of the goods is transferred at the time that the purchaser takes possession of the goods.

40. (1) Subject to subsection (2), where a registered person is an employer who makes a taxable supply to an employee as part of the employee’s remuneration, the supply shall be treated as having been made for consideration equal to the fair market value of the supply. Employee benefits

(2) A supply made by an employer to an employee shall be treated as having a nil value if the employer is not entitled to an input tax credit in respect of a creditable acquisition to make the supply to the employee.

(3) In this section, “employee” and “employer” have the same meanings assigned to the terms in the Income Tax Act.

41. (1) Subject to subsection (2), if a registered person receives a payment of a claim or is otherwise indemnified under a short-term insurance contract for a loss to the extent incurred in the course or furtherance of the person’s taxable activity, whether or not the person is a party to the contract, the payment or indemnity shall be treated as consideration for a supply of services made by the registered person in the course or furtherance of the person’s taxable activity. Short-term insurance

(2) Subsection (1) shall not apply where the —

(a) supply of the short-term insurance contract to which the payment relates was a zero-rated supply or exempt supply; or

(b) payment is for a loss of earnings for accidental personal injury.

B.1128

(3) The supply under subsection (1) shall occur on the date that the person receives the payment or indemnity and the value of the supply shall be the amount received reduced by the tax fraction of that amount.

(4) If a registered person that is an insurer makes a payment to another person to indemnify that other person under a short-term insurance contract, the insurer shall be allowed an input tax credit for an amount equal to the tax fraction of the amount paid where —

- (a) supply of the short-term insurance contract was a taxable supply;
- (b) payment is not in respect of a supply to, or an import by, the insurer;
- (c) supply of the short-term insurance contract is not a zero-rated supply and at the time the amount was paid, the other person was not a resident person and not a registered person; and
- (d) payment does not result from a supply of goods or services to that other person where those goods are situated outside Botswana at the time of the supply or those services are physically performed elsewhere than in Botswana.

(5) The input tax credit under subsection (4) shall be allowed in the tax period in which the insurer makes the payment.

(6) If a registered person that is an insurer recovers an amount, other than as aggravated or exemplary damages, as a result of the exercise of rights acquired by subrogation under a short-term insurance contract and subsection (4) applies to the payment to which the recovered amount relates, the payment shall be treated as consideration for a supply of services made by the insurer in the course or furtherance of the insurer's taxable activity.

(7) The supply under subsection (6) shall occur on the date that the insurer receives the payment.

Treatment of grants, subsidies and rates by registered persons

42. (1) A payment in the nature of a grant or subsidy made by a Government entity to or for the benefit of, a person carrying on a taxable activity to assist the person to make particular taxable supplies shall be treated as a consideration for a supply made by the person in the course or furtherance of the taxable activity.

(2) Rates payable by a person to a local authority shall not be treated as the consideration for a supply made by the local authority.

(3) In this section, "grant or subsidy" does not include a payment made by a Government entity that is an income transfer payment, a loan or advance, an equity injection, or a payment made to a person as general budget support for the person's taxable activity.

Supplies by auctioneer or Deputy Sheriff

43. (1) A supply of goods by auction shall be treated as a supply of goods for consideration made by an auctioneer as supplier in the course or furtherance of a taxable activity carried on by the auctioneer.

(2) Where VAT is payable by an auctioneer in respect of a supply of goods specified in subsection (1), the auctioneer shall —

- (a) charge the purchaser the amount of VAT payable in respect of the supply by adding the VAT to the purchase price;

- (b) recover the VAT from the purchaser; and
- (c) provide the purchaser with a tax invoice for the supply.

(3) A supply by a Deputy Sheriff of goods belonging to a debtor in execution of a judgement debt against the debtor shall be treated as a supply of the goods for consideration made by the Deputy Sheriff as the supplier of the goods in the course or furtherance of a taxable activity carried on by the Deputy Sheriff.

(4) Where VAT is payable by a Deputy Sheriff in respect of a supply of goods specified in subsection (3), the Deputy Sheriff shall —

- (a) charge the purchaser the amount of VAT payable in respect of the supply by adding the VAT to the purchase price;
- (b) recover the VAT from the purchaser; and
- (c) provide the purchaser with a tax invoice for the supply.

(5) The treatment of a supply of goods by an auctioneer or Deputy Sheriff under this section shall be separate from the treatment of the supply of services by the auctioneer or Deputy Sheriff.

44. (1) Where a creditor supplies the property of a debtor to a third person in full or partial satisfaction of a debt owed by the debtor to the creditor —

Sale of
property of
debtor

- (a) the supply to the third person shall be treated as having been made by the debtor and the nature of the supply is to be determined accordingly;
- (b) the creditor shall be liable to pay the VAT payable on the supply, unless the debtor provides the creditor with a written statement that the supply is not subject to VAT; and
- (c) the creditor shall provide the recipient of the supply with a tax invoice for the supply where VAT is payable on the supply and notwithstanding section 62 (2).

(2) A statement provided by a debtor under subsection (1) (b) shall set out the reasons why the supply is not subject to VAT.

(3) A creditor who has not received a statement under subsection (1) (b), shall treat the supply as a supply that would have been subject to VAT if the supply had been made by the debtor, unless there is clear evidence available to the creditor that the supply would not be subject to VAT if made by the debtor.

(4) The VAT payable under subsection (1) (b) shall be paid in priority to —

- (a) the satisfaction of the debt; and
- (b) any balance of amount due to the debtor, or any other person, of any part of the proceeds that is surplus to the debt.

(5) A creditor making a supply of the property of a debtor shall not be allowed a credit for any input tax incurred by the creditor against the output tax referred to in subsection (1) (b).

(6) A creditor who is required to pay VAT by the operation of subsection (1), shall —

B.1130

- (a) lodge a return in the approved form, and pay the VAT on or before the 28th day of the month following the month in which the supply occurred; and
 - (b) notwithstanding section 59(1), provide a recipient who is a registered person with a tax invoice containing the prescribed particulars.
- Supplies made by or to agents
- 45.** (1) A supply by a person as agent for another person, referred to in this section as the “principal”, shall be treated as a supply made by the principal.
- (2) A supply made to a person as agent for a principal shall be treated as a supply made to the principal.
- (3) Subsections (1) and (2) shall not apply to a —
- (a) supply of services made by the agent to the principal; or
 - (b) supply referred to in section 43.
- Gambling supplies
- 46.** (1) The amount of VAT imposed on a taxable gambling supply made by a registered person shall be determined on a periodic basis under this section for each tax period rather than separately for each taxable gambling supply.
- (2) The output tax of a registered person making taxable gambling supplies for a tax period shall include an amount calculated in accordance with the following formula —
- $(A - B) \times C$
- where —
- A is the total amount wagered in the period;
 - B is the total monetary prizes paid out in the period; and
 - C is the tax fraction.
- (3) Where the amount calculated under subsection (2) for a tax period is a negative amount, no amount shall be included under this section in the output tax of the registered person for that period.
- (4) A registered person making taxable gambling supplies may claim an input tax credit in accordance with this Act for input tax paid or payable on a creditable acquisition, including in acquiring a non-monetary prize, to make taxable gambling supplies.
- (5) A registered person —
- (a) acquiring a gambling supply, shall not be allowed an input tax credit in relation to the acquisition; and
 - (b) making a gambling supply, shall not issue a tax invoice for the supply.
- (6) In this section —
- (a) “casino game” has the same meaning assigned to the term in the Gambling Act;
 - (b) “gambling event” means —

 - (i) the conduct in Botswana of a lottery, raffle, or similar undertaking; or
 - (ii) a race, game, including a card or casino game, sporting event, or other event in Botswana that has or is intended to have an outcome;
- Cap. 19:03

- (c) “gambling supply” means —
- (i) the supply of a ticket, however described, in a lottery, raffle, or similar undertaking, or
 - (ii) the acceptance of a bet or wager, however described, relating to the outcome of a gambling event;
- (d) “taxable gambling supply” means a gambling supply that is a taxable supply;
- (e) “total amount wagered”, in relation to a registered person for a tax period, means the sum of —
- (i) the consideration for all the gambling supplies made by the registered person in the period, and
 - (ii) any amount recovered by the registered person in the tax period, in respect of an amount written off in the current or a previous tax period that were included in the total monetary prizes under subparagraph (iv) of the definition of “total monetary prizes; and
- (f) “total monetary prizes”, in relation to a registered person for a tax period, is the sum of the following amounts, whether or not the relevant gambling events, gambling supply or gambling loss occurred during the period —
- (i) the monetary prizes paid by the registered person in the tax period as a result of the outcome of the gambling event,
 - (ii) the amount of money paid in the tax period by the registered person to a recipient of the registered person’s gambling supplies as a result of an agreement between them requiring the registered person to repay a proportion of the recipient’s losses from those supplies,
 - (iii) the amount, if any, referred to in subsection (3) arising in the immediately preceding tax period, and
 - (iv) an amount that the person writes off as a bad debt in relation to all or a part of the consideration for a gambling supply made by the person that is due as a debt to the person and has not been received within 12 months of the debt being incurred.

(7) A payment referred to in subsection (6) (f) (ii) of the definition of “total monetary prizes” shall be treated as if it were not consideration for a supply.

47. (1) A registered person may apply, in the approved form, to the Commissioner General for a facility operated by the person for the manufacture of goods for export to be certified as a VAT manufacturing warehouse.

VAT
manufacturing
warehouse

(2) The Commissioner General may approve an application under subsection (1), if he or she is satisfied that the applicant is operating the facility principally for the manufacture of goods for export from Botswana.

B.1132

(3) Where the Commissioner General approves an application under subsection (2), the Commissioner General shall issue a certificate to the registered person and the approval of the application shall be subject to such conditions as may be specified by the Commissioner General in the certificate or as otherwise notified, in writing to the registered person.

(4) The following rules shall apply to a registered person operating a facility as a certified VAT manufacturing warehouse —

- (a) the removal of the goods from the warehouse by any person shall be treated as a supply of the goods by the registered person in the course or furtherance of a taxable activity carried on by the registered person in Botswana;
- (b) the supply referred to in paragraph (a) shall occur when the goods are removed from the warehouse; and
- (c) the value of the supply referred to in paragraph (a) shall be the fair market value of the supply at the time the goods are removed from the warehouse.

(5) The Commissioner General shall cancel a certificate issued to a registered person under subsection (3), if he or she is satisfied that the facility operated by the person no longer satisfies the requirements of subsection (2) or the person no longer satisfies the conditions attached to the certificate.

(6) The following rules shall apply to a registered person whose certificate is cancelled under subsection (5) —

- (a) the registered person shall be deemed to have made a taxable supply of goods on hand, including capital goods, that were imported into Botswana by the registered person as an exempt import;
- (b) the deemed taxable supply under paragraph (a) shall occur at the time the certificate is cancelled; and
- (c) the value of the deemed taxable supply shall be the fair market value of the goods at the time the certificate is cancelled.

Forfeited
deposits

48. (1) If a supplier has received a deposit in connection with a supply of goods or services and the deposit is forfeited to the supplier, the forfeiture of the deposit shall be treated as a supply of services by the supplier at the time the deposit is forfeited.

(2) A supply of services under subsection (1), shall have the same character as the supply to which the forfeited deposit relates would have had.

(3) The value of a supply of services under subsection (1) shall be —

- (a) for a supplier who is a registered person at the time of forfeiture of the deposit, the forfeited amount reduced by an amount equal to the forfeited amount multiplied by the tax fraction; or
- (b) for any other supplier, the amount of the forfeited deposit.

(4) This section shall not apply to a deposit on a returnable container.

PART VIII — *Post-Supply Adjustments*

- 49.** (1) This section shall apply where —
- (a) a registered person has made a supply;
 - (b) an adjustment event has occurred in relation to the supply; and
 - (c) as a result of the occurrence of the adjustment event under paragraph (b), the correct amount of output tax payable in respect of the supply exceeds the output tax that the registered person accounted for to the Commissioner General, in respect of the supply.
- (2) Where this section applies, the amount of the excess referred to in subsection (1)(c) shall be treated as output tax of the supplier for the tax period in which the adjustment event occurred.
- (3) If the recipient of a supply to which this section applies is a registered person and the supplier has provided the recipient with an original tax invoice for the supply —
- (a) the supplier shall provide the recipient with a tax debit note specifying the additional VAT payable in respect of the supply;
 - (b) subject to section 32, the recipient shall be allowed an input tax credit for the additional VAT specified in the tax debit note to the extent that the recipient used the supply to make taxable supplies; and
 - (c) the recipient shall be allowed the input tax credit referred to in paragraph (b) in the tax period in which the recipient received the tax debit note.
- 50.** (1) This section shall apply where —
- (a) a registered person has made a supply;
 - (b) an adjustment event has occurred in relation to the supply; and
 - (c) as a result of the occurrence of the adjustment event under paragraph (b), the output tax that the registered person accounted for to the Commissioner General for the supply, exceeds the correct amount of output tax payable in respect of the supply.
- (2) Subject to subsection (4), where this section applies, the supplier shall be allowed an input tax credit for the amount of the excess in the tax period in which the adjustment event occurred.
- (3) If the recipient of the supply to which this section applies is a registered person and the supplier has provided the recipient with an original tax invoice for the supply —
- (a) the supplier shall provide the recipient with a tax credit note specifying the amount by which the VAT payable in respect of the supply is reduced; and
 - (b) the amount referred to in paragraph (a) shall be treated as output tax of the recipient for the tax period in which the recipient received the tax credit note.

Adjustment
event resulting
in VAT being
under-charged

Adjustment
event resulting
in VAT being
over-charged

B.1134

(4) If the recipient of a supply to which this section applies is not a registered person, the supplier shall not be allowed the input tax credit referred to in subsection (2) until the supplier has repaid the excess VAT to the recipient of the supply, whether in cash or as a credit against an amount owing to the registered person by the recipient.

Adjustment
for remote
services

51. Where a registered supplier of remote services has overpaid or underpaid tax, the supplier shall make an adjustment in the subsequent return and the supplier shall state the reason for the adjustment in the return.

Adjustment for
bad debts

52. (1) Subject to subsection (3), where a registered person has accounted for output tax payable on a taxable supply made by the person and the whole or a part of the consideration for the supply is subsequently treated in the financial accounts of the person as a bad debt, the person shall be allowed an input tax credit for the amount of output tax accounted for to the Commissioner General in respect of the supply that corresponds to the amount of the debt treated as bad debt.

(2) An input tax credit under subsection (1) shall be allowed on the later of the —

(a) date on which the bad debt was written off in the financial accounts of the registered person; or

(b) 12 months after the end of the tax period in which the output tax was accounted for to the Commissioner General by the registered person in respect of the supply.

(3) If the recipient of a taxable supply to which subsection (1) applies is a registered person that is still in existence at the time the input tax credit arises under subsection (2), the input tax credit shall be allowed only if the supplier issues a tax credit note to the recipient specifying the amount of the VAT that relates to the bad debt calculated in accordance with subsection (1).

(4) The recipient of a taxable supply issued with a tax credit note under subsection (3) shall treat the amount of VAT specified in the tax credit note as output tax payable by the recipient in the tax period in which the credit note was received.

Adjustment
for bad debt
recovered

53. (1) If an amount in respect of which an input tax credit has been allowed in accordance with section 52 is, at any time, wholly or partly recovered by the registered person, the registered person shall be treated as having charged output tax in respect of a taxable supply made by the person during the tax period in which the bad debt is wholly or partly recovered, being an amount of output tax calculated according to the following formula —

$$A \times B/C$$

where —

A is the amount allowed as credit under section 52(2);

B is the amount of the bad debt recovered; and

C is the amount of the bad debt written off.

(2) Subsection (3) shall apply where —

- (a) section 52 applies in respect of a taxable supply, referred to in this section as the “original taxable supply”;
 - (b) subsection (1) applies to an amount that the supplier of the original taxable supply has recovered from the recipient of the original taxable supply; and
 - (c) the recipient of the original taxable supply was a registered person at the time of the original taxable supply and at the time of the deemed taxable supply under subsection (1).
- (3) Where the conditions in subsection (2) are satisfied, the supplier shall issue a tax debit note in accordance with section 60 to the recipient stating the amount of output tax referred to in subsection (1) and the recipient shall be allowed an input tax credit for that amount to the extent that the original taxable supply was used by the recipient to make taxable supplies.
- (4) The input tax credit under subsection (3) shall be allowed in the tax period in which the recipient receives the tax debit note.

PART IX — Calculation of VAT Payable by Registered Person

- 54.** (1) For the purposes of this Act —
- (a) “Category A” means the category of a registered person whose tax period is a period of two months ending on the last day of January, March, May, July, September and November of each year;
 - (b) “Category B” means the category of a registered person whose tax period is a period of two months ending on the last day of February, April, June, August, October and December of each year; and
 - (c) “Category C” means the category of a registered person whose tax period is a period of one month ending on the last day of each month of the calendar year.
- (2) The Commissioner General —
- (a) shall allocate registered persons as Category A or Category B registered persons so that approximately an equal number of registered persons fall within each category; and
 - (b) may reallocate a registered person from Category A to Category B, or vice versa by notice in writing to the registered person, and the change in the category shall —
 - (i) take effect from the date specified in the notice, and
 - (ii) be subject to the conditions specified in the notice.
- (3) A registered person shall be a Category C registered person where —
- (a) the total value of the taxable supplies made by the person —
 - (i) at the end of any 12-month period or lesser period, exceeds the amount specified in paragraph 5 of Schedule 5, or
 - (ii) at the beginning of any 12-month period, is reasonably expected to exceed the amount specified in paragraph 5 of Schedule 5;

Tax period

B.1136

- (b) the Commissioner General, upon application, in writing by the registered person, authorises the person to be a Category C registered person; or
- (c) the Commissioner General, by notice in writing, requires the person to be a Category C registered person because the person has regularly defaulted in performing his or her obligations under this Act.

(4) A registered person who is not a Category C registered person under subsection (3), shall be a Category A registered person or Category B registered person as determined by the Commissioner General by notice in writing to the registered person.

(5) Section 12 (3) and (4) shall apply, with the necessary changes made in determining the total value of taxable supplies by a registered person for the purposes of this section.

(6) A Category A or B registered person shall, by notice in writing, immediately notify the Commissioner General if he or she satisfies one of the requirements in subsection (4) (a).

(7) The Commissioner General may, either on notification under subsection (6), or on his or her own motion, direct that a Category A or Category B registered person be changed to a Category C registered person —

- (a) with effect from the date specified in the notice; and
- (b) subject to the conditions specified in the notice.

(8) The Commissioner General may, upon application in writing by a Category A, B, or C registered person and by notice in writing, grant the person approval to end their tax period within 10 days before or after the last day of the calendar month where —

- (a) the change is consistent with the registered person's accounting period; and
- (b) the registered person complies with the conditions imposed by the Commissioner General as set out in the approval notice.

(9) The tax period of a —

- (a) Government entity or a large unregistered person liable for VAT under section 7 (1) (c) shall be two calendar months; and
- (b) non-resident supplier whose only supplies are remote services to which section 27 (2) (c) applies shall be the period of three months ending on 31st March, 30th June, 30th September, and 31st December of each calendar year.

55. (1) The net VAT payable by a registered person for a tax period shall be calculated according to the following formula —

$$(A + B) - C$$

where —

A is the total amount —

- (i) of the output tax receivable by the registered person in respect of taxable supplies made by the person during the period, and
- (ii) treated as the output tax of the person for the period;

VAT payable
by registered
person for a
tax period

- B is the total reverse charged VAT that the registered person is liable for under section 7 (1) (c) and 7 (8) in respect of reverse charged supplies made to the person during the period; and
- C is the total input tax credit allowed to the person for the period under this Act.

(2) Notwithstanding subsection (1) and subject to subsection (3), where a registered person fails to include an input tax credit allowed to the person under this Act in the net VAT calculation for the tax period in which the credit is allowed under section 31, the person can claim the credit in the net VAT calculation for a tax period —

- (a) for a Category A or Category B registered person, that is no later than six tax periods after the tax period in which the input tax credit arose; or
- (b) for a Category C registered person, that is no later than twelve tax periods after the tax period in which the input tax credit arose.

(3) Where the input tax credit to which subsection (2) applies relates to a creditable acquisition that is a taxable import by a registered person, the registered person shall claim the input tax credit no later than in the net VAT calculation for tax period following the tax period in which the taxable import occurred.

56. (1) Subject to section 57, where component “C” of the formula in section 55 for a registered person for a tax period exceeds component “(A + B)” for the person for the period —

- (a) the excess shall be carried forward and allowed as an input tax credit in the next following tax period; and
- (b) any amount of the excess not credited in that period shall be carried forward to the next following tax period and allowed as an input tax credit in that period, and so on until the excess has been fully credited.

(2) Where a registered person has an excess input tax credit carried forward under this section for more than one tax period, the excess credit of the earliest tax period shall be allowed first.

(3) Notwithstanding subsection (1), where an excess input tax credit for a Category “A” or “B” registered person for a tax period has not been fully credited after being carried forward for two tax periods, the registered person may apply to the Commissioner General, in the approved form, for a refund of the amount of the uncredited excess.

(4) Notwithstanding subsection (1), where an excess input tax credit for a Category “C” registered person for a tax period has not been fully credited after being carried forward for four tax periods, the registered person may apply to the Commissioner General, in the approved form, for a refund of the amount of the uncredited excess.

(5) Where a registered person has made an application under subsection (3) or (4) and the Commissioner General is satisfied that a refund is due to the person, the Commissioner General shall apply the amount of the uncredited excess in accordance with section 54 (5) of the Tax Administration Act.

Carry forward
of excess input
tax credit

B.1138

(6) An application under this section by a registered person for a refund of excess input tax credit for a tax period shall be made for a refund under —

- (a) subsection (3), within two years after the end of the second tax period referred to in subsection (3); or
- (b) subsection (4), within two years after the end of the fourth tax period referred to in subsection (4).

Refund of
excess input
tax credit
without carry
forward

57. Where a registered person who primarily makes zero-rated supplies has an excess input tax credit for a tax period, the Commissioner General shall apply the excess in accordance with section 54(5) of the Tax Administration Act and refund the remainder, if any, within 28 days after the person has lodged the tax return for the tax period.

Interest
payable on
late refunds

58. (1) Subject to subsection (3), where the Commissioner General fails to apply a refund amount as required under section 56 (5) within 60 days after the refund application was lodged, the Commissioner General shall be liable to pay the registered person interest at the rate specified in paragraph 6 of Schedule 5 for the period commencing on the 60th day after the refund application was lodged and ending when the refund amount is applied as required under section 56 (5).

(2) Subject to subsection (3), where the Commissioner General fails to pay a refund referred to in section 57 to the registered person for a tax period within the time specified in the section, the Commissioner General shall be liable to pay the registered person interest at the rate specified in paragraph 6 of Schedule 5 for the period commencing on the 28th day after the tax return for the period was lodged and ending when the refund is paid.

(3) If, within the period specified under subsection (1) or (2) for the payment of a refund, the Commissioner General requests the registered person to provide further information relating to the person's entitlement to the refund, the period for which interest is payable by the Commissioner General commences on the later of —

- (a) the date that the registered person provided the requested information to the Commissioner General;
- (b) for an application under subsection (1), the 60th day after the registered person lodged the refund application; or
- (c) for an application under subsection (2), the 60th day after the registered person lodged the tax return to which the refund relates.

(4) If the whole or part of the principal amount to which interest paid to a registered person under this section is subsequently found not to have been refundable to the person, the person shall repay the interest, or part of the interest, relating to that amount to the Commissioner General.

PART X — VAT Documentation

59. (1) Subject to subsection (2), and section 15 of the Tax Administration Act, a registered person making a taxable supply shall, at the time of the supply, provide the recipient with the original tax invoice for the taxable supply.

Tax invoices

(2) A registered person shall not be required to provide a tax invoice if the total consideration for the taxable supply is in cash and does not exceed the amount specified in paragraph 7 of Schedule 5.

(3) A registered person who makes a reverse charged supply that is subject to VAT under section 7 (1) (c), shall not provide a tax invoice to the registered person receiving the supply.

(4) A registered person liable for VAT under section 7 (1) (c) and 7 (8) in respect of a reverse charged supply made to the person shall, at the time of the supply, prepare a recipient-created tax invoice for the supply.

(5) A registered person may prepare a recipient-created tax invoice in respect of a taxable supply made to the person by a registered person that shall be treated, for the purposes of this Act, as a tax invoice issued by the supplier to the recipient if —

- (a) the Commissioner General has granted the recipient or class of recipients, written approval to prepare a recipient-created tax invoice for specified taxable supplies;
- (b) the supplier and the recipient agree, in writing, that the supplier shall not issue a tax invoice with respect to such taxable supplies;
- (c) the original of the recipient-created invoice is provided to the supplier and a copy is retained by the recipient; and
- (d) the recipient complies with any other conditions that may be imposed by the Commissioner General in relation to the preparation of recipient-created invoices under this subsection.

(6) Where a recipient-created tax invoice relates to a taxable supply referred to in subsection (5), any tax invoice issued by the supplier in respect of the taxable supply shall not be treated as a tax invoice for the purposes of this Act.

(7) A tax invoice and a recipient-created tax invoice shall include the particulars specified in Schedule 4.

(8) Subject to section 15 of the Tax Administration Act, a registered person shall issue tax invoices electronically under the electronic billing system.

60. (1) A registered person shall issue a tax credit note or a tax debit note, as the case may be, to a registered person in the circumstances specified in Part VIII.

Tax credit notes and tax debit notes

(2) A tax credit note or a tax debit note, required to be issued by a registered person under Part VIII shall be issued to the recipient of a supply by the end of the tax period in which the adjustment event to which the tax credit note or a tax debit note relates occurred.

B.1140

(3) A tax credit note and a tax debit note, shall include the particulars specified in Schedule 4.

(4) Subject to section 15 of the Tax Administration Act, a registered person shall issue tax credit and debit notes electronically under the electronic billing system

Request for
VAT
documentation

61. (1) A registered person who, for any reason, has not received an original tax invoice, tax credit note, or tax debit note as required under this Act, may make a written request to the supplier to issue the tax invoice, tax credit note, or tax debit note.

(2) A request under subsection (1) shall be made for a —

(a) tax invoice, within 60 days of the time of the supply; and

(b) tax credit note or tax debit note, within 60 days of the date of the adjustment event to which the tax credit note or tax debit note relates.

(3) A registered person receiving a request under subsection (1), shall comply with the request within 14 days after receiving the request.

Maintenance
of VAT
documentation

62. (1) A registered person shall issue only one original tax invoice for a taxable supply or one original tax credit note, or a tax debit note for an adjustment event, but a copy clearly marked as such may be issued to a registered person who claims to have lost the original document.

(2) A person shall not issue a tax invoice, tax credit note, or tax debit note other than in the circumstances specified in this Act.

(3) The following documents shall be maintained by a registered person for the purposes of this Act and the Tax Administration Act —

(a) the original of a tax invoice, tax credit note, and a tax debit note received by the person;

(b) a copy of a tax invoice, tax credit note, and tax debit note received by the person;

(c) a copy of a tax invoice, tax credit note, and tax debit note issued by registered the person;

(d) documentation relating to any import and export of goods by the person;

(e) a recipient-created tax invoice prepared by the registered person in respect of a reverse charged supply received by the person; and

(f) a recipient-created tax invoice prepared by the registered person in accordance with section 59 (5).

(4) The documents referred to in subsection (3) (c) shall be maintained in chronological order.

(5) A supplier of remote services may maintain VAT documentation outside Botswana and shall make the documentation available to the Commissioner General on request by notice in writing and by the date specified in the notice.

VAT
documentation
for supplies
by agents

63. (1) Where a taxable supply is made by an agent on behalf of a principal and both the agent and principal are registered persons, any tax invoice, tax credit note, or tax debit note required to be issued by the principal may be issued by the agent using the name, address, and VAT registration number of the agent.

(2) Where a taxable supply is made to an agent on behalf of a principal and both the agent and principal are registered persons, any tax invoice, tax credit note, or tax debit note required to be issued to the principal may be issued to the agent using the name, address, and VAT registration number of the agent.

(3) Where a taxable supply is made by an agent on behalf of a principal and the principal is a registered person but the agent is not, any tax invoice, tax credit note, or tax debit note required to be issued by the principal may be issued by the agent using the name, address, and VAT registration number of the principal.

(4) Where a taxable supply is made to an agent on behalf of a principal and the principal is a registered person but the agent is not, any tax invoice, tax credit note, or tax debit note required to be issued to the principal may be issued to the agent, using the name, address, and VAT registration number of the principal.

(5) Where a taxable supply is made by, or to, an agent on behalf of a principal, any tax invoice, tax credit note, or tax debit note required to be issued under this Act shall be issued once only and shall not be issued by, or to, both the agent and the principal.

(6) A tax invoice, tax credit note, or tax debit note issued by, or to, an agent in accordance with this section shall be treated as having been issued by, or to, the principal, as the case may be, for the purposes of this Act.

64. (1) A registered person receiving a supply of remote services from a person who does not have a fixed place of business in Botswana shall notify the supplier that he or she is a registered person.

(2) A notification under subsection (1) shall be provided in writing to the supplier of the remote services at, or before, the time of supply.

Registered person receiving supplies of remote services

PART XI — VAT Procedure

65. (1) A registered person shall lodge with the Commissioner General, a tax return for each tax period within 28 days after the end of the tax period, whether or not VAT is payable by the person in respect of such period.

(2) A large unregistered person or Government entity that is not a registered person and that is liable for VAT for a tax period under sections 7 (1) (c) and 7 (8) shall lodge a tax return with the Commissioner General for the tax period within 28 days after the end of the period.

Tax returns

66. (1) The net VAT payable by a registered person for a tax period, as calculated under section 55, shall be payable by the due date for lodging the tax return for the period.

(2) The VAT payable by a Government entity or a large unregistered person for a tax period under section 7 (1) (c) and 7 (8) shall be payable by the due date for lodging the return for the period.

Due date for payment of VAT

B.1142

Collection of
VAT on
taxable
imports

(3) Subject to section 67 (4), the VAT payable by an importer in respect of a taxable import shall be payable at the time of the import.

67. (1) Subject to subsection (4), where VAT is payable by an importer on a taxable import —

- (a) for goods required to be entered under the customs legislation, the importer shall, at the time of entering the goods, lodge an import declaration with the Commissioner General and pay the VAT due on the import in accordance with the arrangements referred to in subsection (6);
 - (b) for goods imported from Eswatini, Lesotho, Namibia, or South Africa, the importer shall, at the time of import, lodge an import declaration with the Commissioner General and pay the VAT due in respect of the import in accordance with the arrangements referred to in subsection (6); or
 - (c) for any other goods, the importer shall, at the time of the import, lodge an import declaration with the Commissioner General and pay the VAT due in respect of the import.
- (2) Subject to subsection (4), the Commissioner General —
- (a) shall collect, at the time of import, any VAT due under this Act on an import of goods and, at that time, obtain the name and the VAT registration number, if any, of the importer, and the invoice values in respect of the import; and
 - (b) may make, an arrangement with the Post to perform such functions on his or her behalf in respect of imports through postal services.
- (3) An employee of the Post performing functions under an arrangement referred to in subsection (2) (b) shall —
- (a) be treated as a “tax officer” for the purposes of sections 82, 103, 104, 118, 119 and 120 of the Tax Administration Act; and
 - (b) not be liable for any damage to mail that occurred in the course of performing functions under the arrangement, where any force used was reasonably necessary to gain access to the contents of the mail.
- (4) The Commissioner General may authorise, by notice in writing, an importer who is a registered person to pay VAT on a taxable import within 28 days after the end of the month in which the taxable import occurred where —
- (a) the importer posts security as required by the Commissioner General, by notice in writing; or
 - (b) the Commissioner General is satisfied that the importer has regularly paid all VAT due on imports for the previous two years, from the date of the import.
- (5) Subject to sections 31 and 32, a registered person to whom subsection (4) applies shall be allowed an input tax credit for the VAT paid on a taxable import in the tax period in which the VAT is paid.

(6) Except where the contrary intention appears, the provisions of the customs legislation relating to the import, transit, coastwise carriage, clearance of goods, and payment and recovery of duty shall, with such exceptions, modifications, and adaptations as may be prescribed, apply insofar as it is relevant, to the VAT charged under this Act on the import of goods.

(7) For the purposes of the collection of the VAT payable on a taxable import, the Commissioner General may exercise any power conferred on him or her by the customs legislation, as if the reference to import duty in that legislation included a reference to VAT payable on a taxable import under this Act.

68. (1) This section shall apply where a registered person has, as a consequence of fraud or misrepresentation by the recipient of a supply, incorrectly treated the supply as —

- (a) an exempt supply;
- (b) a zero-rated supply; or
- (c) not otherwise subject to VAT.

(2) Where this section applies, the Commissioner General may raise an assessment upon the recipient of the supply for the amount of unpaid VAT in respect of the supply, together with any late payment interest and the late payment penalty payable under the Tax Administration Act.

(3) The Commissioner General shall serve a notice of an assessment under subsection (2) on the recipient specifying -

- (a) the reason for the assessment as set out in subsection (1);
- (b) the VAT, late payment interest, and late payment penalty payable;
- (c) the due date for payment of VAT, late payment interest, and late payment penalty; and
- (d) the time, place, and manner of objecting to the assessment.

(4) Subsection (2) shall not preclude the Commissioner General from recovering the VAT, late payment interest, and late payment penalty assessed to the recipient of a supply under subsection (2) from the registered person making the supply, but the Commissioner General shall not recover more than the VAT, late payment interest, and late payment penalty payable in respect of the supply.

(5) Any amount recovered from the —

- (a) recipient, shall be credited against the liability of the registered person making the supply; and
- (b) registered person making the supply, shall be credited against the liability of the recipient of the supply.

(6) Where an amount of VAT, late payment interest, or late payment penalty assessed to a recipient of a supply under subsection (2) is paid by the registered person, the registered person may recover the amount paid from the recipient of the supply.

(7) An amount assessed under this section shall be treated, for all purposes of this Act and the Tax Administration Act, as VAT charged under this Act.

Recovery of
VAT from
recipient of
supply

B.1144

Refund of VAT
to President,
diplomats,
public
international
organisations
and other
persons
Cap. 39:01

Cap. 39:05

(8) Nothing in the Tax Administration Act shall limit the power of the Commissioner General to amend an assessment, including a self-assessment, of the registered person making the supply to give effect to subsection (4).

69. (1) The Minister may authorise the granting of a refund of VAT paid or borne on a taxable supply made —

(a) for the personal or official use of the President or any dependent member of the President's family;

(b) to a person to the extent exempt from VAT as provided under —

(i) the Diplomatic Immunities and Privileges Act,

(ii) an international convention having force of law in Botswana,

(iii) the recognised principles of international law, or

(iv) the International Financial Organizations Act;

(c) to a diplomatic or consular mission of a foreign country established in Botswana, relating to transactions concluded for the official purposes of such mission;

(d) to an international organisation or foreign government to the extent provided under a technical assistance or humanitarian assistance agreement entered into between the Government of Botswana and the organisation or foreign government;

(e) to a non-resident individual in relation to prescribed goods that are exported from Botswana as accompanied baggage, but only if the total VAT paid on such goods exceeds the amount specified in paragraph 8 of Schedule 5;

(f) to a person not required to apply for registration under section 12 who exports goods within a period of three months from the date such goods were imported and subject to VAT if, at the port of exit, the person identifies the goods and presents, to the customs officer, the documentary proof required by the Commissioner General; or

(g) to a non-resident, who is not a registered person, in respect of goods acquired by, and delivered to the non-resident in Botswana that are exported from Botswana by the non-resident.

(2) The refund provided for in subsection (1) (e) or (g) shall not be available to any citizen or an individual resident in Botswana.

(3) The Minister may prescribe the conditions to be met and the restrictions to apply for the claiming of a refund under this section.

(4) Subject to subsection (5), where the grant of a refund of VAT is authorised by the Minister under subsection (1), a person may apply to the Commissioner General for a refund under this section and the application shall be —

(a) made in the approved form;

(b) made within four months after the time of the taxable supply to which the refund relates; and

(c) accompanied by —

- (i) a tax invoice or other proof of payment of VAT, and
- (ii) evidence of the applicant's entitlement to make an application for the refund under subsection (1).

(5) An application for a refund under subsection (1) (e) shall be made before the non-resident departs Botswana.

(6) Where the grant of a refund of VAT is authorised by the Minister under subsection (1) and the Commissioner General is satisfied that an applicant under subsection (4) qualifies for the refund, the Commissioner General shall make the refund within 28 days of the refund application being lodged with the Commissioner General.

70. (1) Where there are reasonable grounds to believe that a person who is required to apply for registration but who does not carry on a taxable activity through a fixed place of business in Botswana is unable to comply with their obligations under this Act, the Commissioner General may require the person to —

- (a) appoint a VAT representative in Botswana; or
- (b) lodge security with the Commissioner General in accordance with the Tax Administration Act.

(2) The Minister may prescribe the mode, manner, and requirements for the appointment of a VAT representative and the responsibilities of the representative.

(3) A VAT representative appointed under subsection (1) shall be responsible for doing all things required of the person he or she represents under this Act or the Tax Administration Act, including applying for registration, the lodging of returns, and the payment of VAT.

(4) The registration of a VAT representative under subsection (1) shall be in the name of the person he or she represents.

(5) A person may be a VAT representative under subsection (1), for more than one person but the VAT representative shall maintain a separate registration of each person he or she represents.

- (6) The VAT representative of a person under this section shall be —
- (a) a representative of the person for the purposes of the Tax Administration Act; and
 - (b) personally liable for the VAT liability of the person he or she represents and this liability shall be treated as a secondary liability for the purposes of the Tax Administration Act.

VAT
representatives
of foreign
service
providers

PART XII — *Special Cases*

71. (1) Subject to subsections (3) and (6), where a taxable activity is carried on by a registered person in branches or divisions, the registered person shall be treated as carrying on a single taxable activity for purposes of this Act.

(2) Subject to subsections (3) and (6), a registered person who carries on a taxable activity in branches or divisions under subsection (1) shall be registered in the name of the registered person and not in the names of its branches and divisions.

Branches and
divisions

B.1146

(3) The Commissioner General may, upon application, in writing by a registered person, authorise the registered person to register one or more of its branches or divisions as separate registered persons where the Commissioner General is satisfied that the branch or division —

- (a) maintains an independent accounting system; and
- (b) can be separately identified by the nature of its activities or location.

(4) The registration of a branch or division under subsection (3), shall be subject to such conditions and restrictions as the Commissioner General may specify in a notice in writing, to the registered person.

(5) Where a branch or division of a registered person is separately registered under subsection (3) —

- (a) the branch or division shall be treated as a separate person for the purposes of this Act; and
- (b) the registered person and the branch or division of that registered person shall be treated as associates.

(6) A Government entity may register its branches or divisions separately as if they were separate persons for the purposes of this Act.

Unincorporated
bodies of
persons

72. (1) This Act shall apply to an unincorporated body of persons on the following basis —

- (a) the body shall be treated as a person separate from the members of the body;
- (b) the registration of the body shall be separate from the registration of any of its members in respect of any other taxable activity carried on by the member;
- (c) the liability for VAT in respect of taxable supplies made by, or reverse charged supplies made to, the body shall be determined and calculated in respect of the taxable activity of the body independently of any taxable activity carried on by any of its members;
- (d) any refund under section 56 or 57 relating to that body's taxable activity shall be paid to the body; and
- (e) any duties and obligations imposed by this Act on a body as a registered person shall be separate from the duties and obligations imposed on any of its members in relation to a separate taxable activity of the member.

(2) Subsection (3) shall apply where —

- (a) an unincorporated body of persons is dissolved in consequence of —
 - (i) the retirement or withdrawal of one or more, but not all, of its members, or
 - (ii) the admission of a new member;
- (b) as a result of the change referred to in paragraph (a), a new body comes into existence consisting of —
 - (i) the remaining members, or
 - (ii) one or more of the remaining members and one or more new members; and

(c) the new body under paragraph (b) continues to carry on the taxable activity of the dissolved body as a going concern.

(3) Where the conditions in subsection (2) are satisfied, the dissolved body of persons and the new body of persons shall, for the purposes of this Act, be treated as one and the same body, unless the Commissioner General, having regard to the circumstances of the case, otherwise directs by notice in writing.

(4) In this section —

(a) “member”, in relation to a body of persons, includes a partner in a partnership; and

(b) “unincorporated body of persons” includes a partnership.

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

(a) a registered person has died or the estate of a registered person has been sequestered; and

(b) either of the following applies —

(i) a taxable activity previously carried on by the registered person is carried on by, or on behalf of, the executor or trustee of the person’s estate, or

(ii) anything is done by the executor or trustee of the person’s estate in connection with the termination of the taxable activity of the registered person.

(2) Where the conditions in subsection (1) are satisfied —

(a) the transfer of the assets of the taxable activity of the registered person to the executor or trustee of the person’s estate shall not be treated as a supply; and

(b) the estate of the registered person, as represented by the executor or trustee, shall, for the purposes of this Act, be treated as continuing to carry on the taxable activity of the registered person.

(3) Subsection (4) shall apply where —

(a) a mortgagee takes possession of land or any other property previously mortgaged by the mortgagor who is a registered person; and

(b) the mortgagee continues to carry on the taxable activity of the mortgagor in relation to the land or any other property.

(4) Where the conditions in subsection (3) are satisfied, the mortgagee shall, from the date the mortgagee took possession of the land or other property until the date the mortgagee ceases to be in possession of the land or other property, be treated as the registered person carrying on the taxable activity in relation to the land or other property.

74. A person who is a trustee in more than one capacity shall be treated for the purposes of this Act as a separate person, in relation to each of those capacities.

Death or
insolvency of
registered
person;
mortgagee in
possession

Trustee

PART XIII — *General Provisions*

Administration of Act

75. The Commissioner General shall be responsible for the administration of this Act.

Application of Tax Administration Act

76. The Tax Administration Act shall apply for the purposes of the administration of this Act.

Variation of consideration on change in VAT rate

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

- (a) a registered person has entered into an agreement for a supply of goods or services; and
- (b) subsequent to entering into the agreement referred to in paragraph (a), VAT is imposed on the supply or the rate of VAT applicable to the supply is increased.

(2) Where the conditions in subsection (1) are satisfied, the supplier may, notwithstanding anything to the contrary in the agreement or any written law, recover from the recipient, in addition to the amount payable by the recipient of the supply, an amount equal to the amount of VAT imposed or the amount by which VAT was increased, as the case may be.

(3) Subsection (4) shall apply where —

- (a) an agreement for a supply of goods or services by a registered person has been entered into; and
- (b) subsequent to entering into the agreement referred to in paragraph (a), VAT on the supply is withdrawn or the rate of VAT applicable to the supply is decreased.

(4) Where the conditions in subsection (3) are satisfied, the supplier shall, notwithstanding anything to the contrary in any agreement or any written law, reduce the amount payable by the recipient by an amount equal to the amount of VAT withdrawn or the amount by which VAT was decreased, as the case may be.

(5) Subsection (6) shall apply where —

- (a) the VAT payable in respect of a supply of goods or services has been increased under subsection (2) or decreased under subsection (4); and
- (b) the supply of the goods or services is subject to —
 - (i) any fee, charge, or other amount, whether a fixed, maximum, or minimum fee, charge or other amount, or
 - (ii) any charge or other amount, prescribed by, or determined pursuant to, any written law.

(6) Where the conditions in subsection (5) are satisfied and subject to subsections (7) and (8), the fee, charge, or other amount may be increased or decreased, as the case may be, by the amount of VAT or additional VAT chargeable or the amount of VAT no longer chargeable.

(7) Subsection (6) shall not apply if the fee, charge, or other amount has been altered in any written law to take account of any imposition, increase, decrease, or withdrawal of VAT.

(8) Nothing in subsection (6) shall be construed so as to permit any further increase or require any further decrease, as the case may be, in a fee, charge, or other amount where the fee, charge, or other amount is calculated as a percentage or fraction of another amount which represents the consideration in money for a taxable supply.

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

(a) goods, other than immovable property, are supplied by a supplier before the date on which —

(i) a change in the rate of VAT applicable to the supply becomes effective,

(ii) VAT is imposed in respect of the supply, or

(iii) VAT is withdrawn in respect of the supply; and

(b) the time of the supply of the goods under section 23 is on or after the date referred to in paragraph (a).

(2) If the conditions in subsection (1) are satisfied then —

(a) for a change in VAT rate referred to in subsection (1) (a) (i), the VAT rate applicable to the supply shall be the rate applicable immediately before the date referred to in subsection (1) (a);

(b) for the imposition of VAT referred to in subsection (1) (a) (ii), the supply shall be treated as not being subject to VAT; and

(c) for the withdrawal of VAT referred to in subsection (1) (a) (iii), the supply shall be treated as being subject to VAT, as if VAT had not been withdrawn.

(3) Subsection (4) shall apply, where —

(a) services are performed or goods, other than immovable property, are supplied in respect of a periodic supply referred to in section 23 (5) during a period beginning and ending before the date on which —

(i) a change in the rate of VAT applicable to the supply becomes effective,

(ii) VAT is imposed in respect of the supply, or

(iii) VAT is withdrawn in respect of the supply; and

(b) the time of the supply of the goods or services under section 23 is on or after the date referred to in paragraph (a).

(4) If the conditions in subsection (3) are satisfied, then —

(a) for a change in the VAT rate, the VAT rate applicable to the supply shall be the rate applicable immediately before the date referred to in subsection (3)(a)(i);

(b) for the imposition of VAT, the supply shall be treated as not being subject to VAT; or

(c) for the withdrawal of VAT, the supply shall be treated as being subject to VAT as if VAT had not been withdrawn.

(5) Subsection (6) shall apply where —

(a) services are performed or goods, other than immovable property, are supplied in respect of a periodic supply referred to in section 23 (5) during a period beginning before and ending on or after the date on which —

Application
of increased
or reduced
VAT rate

B.1150

- (i) a change in the VAT rate applicable to the supply becomes effective,
 - (ii) VAT is imposed in respect of the supply, or
 - (iii) VAT is withdrawn in respect of the supply; and
- (b) the time of supply of the goods or services is on or after the date referred to in paragraph (a).
- (6) If the conditions in subsection (5) are satisfied, then the value of the supply shall, on the basis of a fair and reasonable apportionment, be treated as consisting of a part, referred to in this section as the “first part”, relating to the performance of services or provision of goods before the date referred to in subsection (5) (a), and a part, referred to in this section as the “second part”, relating to the performance of services or provision of goods on or after that date and —
- (a) for a change in the VAT rate, the VAT payable in respect of the first part, shall be determined at the rate applicable before the date referred to in subsection (5)(a), and the VAT payable in respect of the second part shall be determined at the rate applicable on that date;
 - (b) for the imposition of VAT, the first part shall not be subject to VAT; or
 - (c) for the withdrawal of VAT, the first part shall be subject to VAT as if VAT had not been withdrawn.
- (7) For purposes of subsections (1), (3) and (5), goods —
- (a) shall be treated as supplied by the supplier when the goods are delivered to the recipient; and
 - (b) supplied under a rental agreement shall be treated as provided to the recipient when the recipient takes possession or occupation of the goods.
- (8) Subsection (9) shall apply where —
- (a) a written agreement is concluded for the sale of immovable property or the construction of a new dwelling by a registered person carrying on a construction business;
 - (b) the written agreement is concluded before the date on which an increase in the VAT rate becomes effective;
 - (c) the price of the sale or construction referred to in paragraph (a) was determined and stated in the written agreement which was in force before the date referred to in paragraph (b) and signed by the parties to the agreement before that date; and
 - (d) the time of supply of the immovable property or construction services under the agreement under section 23 is on or after the date referred to in paragraph (b).
- (9) If the conditions in subsection (8) are satisfied, the VAT rate levied under section 7 on the supply shall be the VAT rate that would have been levied had the supply taken place on the date on which such agreement was concluded.
- (10) In this section, “immovable property” means —
- (a) any dwelling together with land on which it is erected, or of any real right conferring a right of occupation of a dwelling, or of any unit as defined in section 2 of the Sectional Titles Act, such unit being a dwelling; or

- (b) land, or of any real right conferring a right of occupation of land for the sole or principal purpose of the erection by or for the purchaser of any dwelling on the land, as confirmed by the purchaser, in writing.

79. (1) This section shall apply where the Commissioner General is satisfied that —

VAT avoidance schemes

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

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

(3) The Commissioner General shall give effect to a determination made under subsection (2) by serving the person affected by the determination with a notice of a tax assessment, including an amended assessment, giving effect to the determination.

(4) Where the tax assessment under subsection (3) is an amended assessment, notice of the amended assessment shall be served on the person affected by the decision within the time limits for amended assessments specified in the Tax Administration Act.

(5) In this section —

- (a) “scheme” includes —
- (i) any agreement, arrangement, or promise, whether express or implied and whether or not enforceable, or intended to be enforceable by legal proceedings, or
 - (ii) any undertaking, plan, proposal, course of action, or course of conduct, whether undertaken unilaterally or by two or more persons; and
- (b) “tax benefit” includes —
- (i) a reduction in the liability of any person to pay VAT,
 - (ii) an increase in the entitlement of a person to an input tax credit,
 - (iii) an entitlement of a person to a VAT refund,
 - (iv) a postponement of liability for the payment of VAT,
 - (v) an acceleration of an entitlement to an input tax credit,
 - (vi) anything that causes a taxable supply, taxable import, or reverse charged supply not to be a taxable supply, taxable import, or a reverse charged supply, as the case may be, or
 - (vii) anything that gives rise to an entitlement to an input tax credit for an acquisition or import that is used, or is to be used, other than in making taxable supplies.

B.1152

Currency translation

80. (1) For the purposes of this Act, all amounts of money shall be expressed in Pula.

(2) Subject to subsection (3), where an amount is expressed in a currency other than Pula —

(a) in the case of an import of goods, the amount shall be translated to Pula at the exchange rate applicable under the customs legislation for calculating the import duty payable on the import; or

(b) in any other case, the amount shall be translated to Pula at the exchange rate applying between the foreign currency and Pula on the date that the amount is taken into account under this Act.

(3) A supplier of remote services to which section 26 (2) (c) applies may, with the permission of the Commissioner General, report and pay VAT in United States Dollars, Euros, Great Britain Pounds, or other foreign currency as may be approved by the Commissioner General.

(4) A supplier of remote services to which section 26 (2) (c) applies, may elect to translate any foreign currency amounts to Pula —

(a) in accordance with subsection (2) (b);

(b) at the exchange rate applicable on the last day of the relevant tax period; or

(c) on such other basis as agreed with the Commissioner General.

(5) A supplier of remote services may not revoke an election made under subsection (4), until at least one year after making the election, unless the Commissioner General agrees otherwise.

(6) In this section, “exchange rate” means the telegraphic transfer buying rate issued by a financial institution.

International agreements

81. (1) The Minister may, on behalf of the Government, enter into an agreement with the government of a foreign country or territory, referred to in this section as the “other Contracting State”, to make arrangements for —

(a) the prevention, mitigation, or discontinuance of the levying, under the laws of Botswana and the other Contracting State, of VAT or any similar tax when a supply of goods or services is subject to such tax in both Botswana and the other Contracting State, when such goods or services are imported into Botswana or the other Contracting State, as the case may be;

(b) the refunding of VAT or any similar tax, or any portion of such tax, levied under the laws of Botswana and the other Contracting State, in respect of the supply of goods or services in Botswana or the other Contracting State, as the case may be, when such goods or services are imported into Botswana or the other Contracting State, as the case may be;

(c) regulating or coordinating any matter with regard to the levying and collection under the laws of Botswana or the other Contracting State of VAT or any similar tax; or

(d) the rendering of reciprocal assistance in the administration and collection of VAT or any similar tax under the laws of Botswana and the other Contracting State, or in respect of the execution of the arrangements provided for in an agreement entered into in terms of this section.

(2) As soon as may be possible after the conclusion of an agreement referred to in subsection (1), the agreement shall be laid before the National Assembly, but shall not take effect unless or until it is approved by resolution of the National Assembly, when it shall come into operation or be deemed to have come into operation from the date specified in the agreement.

(3) The Minister may, at any time by Order published in the *Gazette*, amend or cancel an agreement entered into under subsection (1), and if the amendment or cancellation is approved by resolution of the National Assembly, the agreement shall stand amended or cancelled from the date specified in such Order.

(4) The cancellation of an agreement under this section shall not affect the validity of anything previously done thereunder.

82. (1) A registering authority shall not register registrable goods imported or acquired by a person unless the person provides the registering authority with the following —

Prohibition of registration of certain goods

(a) for registrable goods imported into Botswana by the person, a customs document, or a receipt or certificate issued by the Commissioner General stating that —

- (i) VAT has been paid in respect of the import, or
- (ii) the import is an exempt import; or

(b) for registrable goods acquired by the person in a supply —

- (i) a declaration, in the approved form, issued by the registered person making the supply of the registrable goods certifying that the VAT payable in respect of the supply has been, or shall be, paid by the person, or
- (ii) a certificate issued by the Commissioner General stating that the supply is an exempt supply.

(2) In this section —

- (a) “registering authority” means an authority responsible for the registration of registrable goods; and
- (b) “registrable goods” means an aircraft, boat, fishing vessel, ship, yacht, motor cycle, motor vehicle, tractor, caravan, or trailer requiring registration under any written law.

83. (1) Where the Commissioner General is satisfied that, because of the manner in which any person carries on business activities, difficulties or anomalies may arise with regard to the application of any of the provisions of this Act, the Commissioner General and that person may enter into an arrangement on the manner in which those provisions shall be applied in order to overcome those difficulties or anomalies.

Arrangement to overcome difficulties or anomalies

(2) An arrangement under subsection (1) shall not have the effect of substantially reducing or increasing the ultimate liability for VAT levied under this Act.

84. (1) Notwithstanding section 85 and subject to subsection (2), the Minister may, including when Parliament is not in session, by Order published in the *Gazette*, increase or decrease a rate of VAT under section 7(2) by not more than two percentage points.

Variation in VAT rate

(2) Where the Minister changes a rate as specified under subsection (1) before Parliament has met for the first time for the dispatch of business in any session during which the Minister introduces the Appropriation Bill, the change in rate shall lapse six months after the effective date specified in the Order unless, within that time, the amended rate is confirmed by resolution of Parliament.

(3) Where a change in rate lapses under subsection (2), the amended rate shall be valid for the period prior to lapsing.

(4) Where, during the sitting of Parliament, the Minister tables a tax proposal to increase or decrease a rate of VAT under section 7 (2) and publishes an Order of the proposal in the Gazette, the increased or decreased rate shall apply for the purposes of determining the amount of VAT payable under this Act on any date on or after the effective date which the Minister has specified in the Order of any such increase or decrease in the VAT rate, as the case may be:

Provided that the amended rate shall lapse six months after the effective date specified in the Order unless, within that time, the amended rate is confirmed by resolution of Parliament.

(5) Where, in any legal proceedings, a question arises as to whether the Minister has tabled a taxation proposal referred to in subsection (4), or as to the particulars contained in that proposal, a copy of a document purporting to be printed by order of the Speaker of the National Assembly and to contain such proposal, shall be accepted as sufficient evidence that such proposal was tabled and of the particulars contained therein.

Regulations

85. (1) The Minister may make regulations —

- (a) for matters prescribed to be made under this Act;
- (b) concerning particular types of supplies or the allowance of an input tax credit;
- (c) concerning the licensing and operation of VAT manufacturing warehouses;
- (d) for the provision of remote service supplies;
- (e) for low value imported goods;
- (f) for the supply of foodstuffs in their natural state and not mixed with other products set out under paragraph 1(b) of Schedule 1 in Part III;
- (g) for the procedure for the approving of a non-profit body by the Commissioner General under paragraph 2 of Schedule 2;
- (h) prescribing substances as precious metal under paragraph 2 of Schedule 2;
- (i) for the import of goods which are not entered or are required to be entered in terms of the Customs Act, where the goods are imported into Botswana under paragraph (d) (i) and (ii) of Schedule 3;
- (j) for the proper and efficient administration of this Act;
- (k) of a saving or transitional nature consequent upon the making of this Act;

- (l) provide for the imposition by the Commissioner General of administrative penalties not exceeding P500,000; and
- (m) provide for the imposition by a court of fines not exceeding P500,000, imprisonment for a period not exceeding two years, or to both.

(2) Transitional regulations made within six months after the commencement of this Act, may provide that they take effect from the date on which this Act comes into force.

86. The Minister may amend Schedules 4 and 5 by Order published in the *Gazette*.

Amendment
of Schedules
4 and 5

87. The Value Added Tax Act (hereinafter referred to as the “repealed Act”) is hereby repealed.

Repeal of Cap.
50:03

88. (1) Any subsidiary legislation made under the repealed Act and in force immediately prior to the coming into operation of this Act shall, in so far as such legislation is consistent with the provisions of this Act, continue to be in force as if made under this Act.

Savings and
transitional
provisions

(2) Any taxes which, before the coming into operation of this Act, were pending shall be enforced by the Revenue Service in the same manner as they would have been enforced before the coming into operation of this Act.

(3) A reference in this Act to a previous tax period shall include, where the context requires, a reference to a tax period under the repealed Act.

(4) The repealed Act shall continue to apply to supplies and imports occurring prior to the commencement of this Act.

(5) Any certificate, authorisation, or any other documentation which were issued under the repealed Act shall remain valid until they expire as if they were issued under this Act.

(6) Any action, suit, or legal proceedings commenced under the repealed Act shall be continued and disposed of by or against the Revenue Service in terms of the provisions of this Act.

(7) Any right of appeal which subsisted immediately before the commencement of this Act is to be treated as subsisting by virtue of the corresponding provisions of this Act.

(8) Any appeal which commenced under the repealed Act shall be prosecuted and disposed of as though commenced in terms of the provisions of this Act.

SCHEDULES

SCHEDULE 1

(section 8)

ZERO-RATED SUPPLIES

Part 1

Exports of Goods

1. Subject to paragraph 2, the following supplies of goods are zero-rated supplies for the purposes of section 8 —

- (a) a supply of goods where the supplier has entered the goods for export to an export country, pursuant to the customs legislation and the goods have been exported from Botswana by the supplier;
- (b) a supply of goods where the Commissioner General is satisfied that the goods have been exported from Botswana to an export country, even though the goods have not been entered for export;
- (c) a supply of goods where the goods are not situated in Botswana at the time of supply and are not to be entered into Botswana for home consumption pursuant to the customs legislation by the supplier of the goods; and
- (d) a supply of goods in the course of repairing, renovating, modifying, or treating temporarily admitted goods, if the goods —
 - (i) are wrought into, affixed to, attached to, or otherwise form part of those other goods, or
 - (ii) being consumable goods, become unusable or worthless as a direct result of being used in that repair, renovation, modification, or treatment process.

2. Paragraph 1 shall not apply in respect of any export of goods that have been, or will be, re-imported to Botswana by the supplier.

3. Paragraph 1 (a) shall apply where a registered person carrying on a taxable activity in Botswana transfers goods from Botswana to a branch or main business permanently located outside Botswana:

Provided the following conditions are satisfied —

- (a) the branch or main business can be separately identified; and
- (b) the branch or main business maintains a separate system of accounting.

Part II
Exports of Services

1. Subject to paragraph 2, the following supplies of services are zero-rated supplies for the purposes of section 8 —

- (a) a supply of services for use or consumption in an export country by the recipient of the supply as evidenced by documentary proof acceptable to the Commissioner General;
- (b) a supply of services in connection with temporarily admitted goods;
- (c) a supply of international transport services;
- (d) a supply of services to a person outside Botswana without a place of business in Botswana and who is not a registered person comprising the arranging for the person of —
 - (i) a supply of goods referred to in paragraph 1(a) of Part I,
 - (ii) a supply of services to which paragraph (b) applies, or
 - (iii) a supply of ancillary transport services; and
- (e) a supply of telecommunications services by a resident telecommunications services provider to a non-resident telecommunications services provider, without a place of business in Botswana.

2. The following shall not be a zero-rated supply under paragraph (1) (a) —

- (a) a supply of services directly in relation to immovable property in Botswana;
- (b) a supply of services directly in relation to movable property situated in Botswana at the time that the services were supplied, unless the movable property is exported from Botswana subsequent to the supply of services;
- (c) a supply of services comprising the refraining from undertaking any taxable activity in Botswana;
- (d) a supply of services comprising the tolerating of another person undertaking any taxable activity in Botswana; or
- (e) a supply of an inbound tourism product or a supply that consists of the facilitation of inbound tour operations.

3. Paragraph 1 (a) shall apply where a registered person carrying on a taxable activity in Botswana transfers services from Botswana to a branch or main business permanently located outside Botswana:

Provided the following conditions are satisfied —

- (a) the branch or main business can be separately identified; and
- (b) the branch or main business maintains a separate system of accounting.

4. For the purposes of paragraph 2 (e), services that consist of the facilitation of inbound tour operations are services provided in packaging one or more inbound tourism product or products in Botswana and selling them to a person who is outside Botswana and who is not a registered person.

Part III
Domestic Zero-Rated Supplies

1. The following supplies are zero-rated supplies for the purposes of section 8 —
 - (a) a supply of goods or services as part of the transfer of a taxable activity or a part of a taxable activity as a going concern by a registered person to another registered person if —
 - (i) all the goods or services necessary for the continued operation of the taxable activity, or the part of the taxable activity, are supplied to the transferee,
 - (ii) the transferor carries on the taxable activity until the day of transfer,
 - (iii) the transferee shall not carry on the taxable activity to make exempt supplies and shall not use the goods or services for private use,
 - (iv) the transferor and transferee agree in writing, on or before the date of the transfer, that the transfer shall be treated as a transfer of a taxable activity or a part of a taxable activity as a going concern for the purposes of this Act, and
 - (v) the transferor notifies the Commissioner General, in the approved form and within 28 days of the transfer or within such further time as the Commissioner General may allow, that the transfer is treated as a transfer of a taxable activity, or a part of a taxable activity, as a going concern for the purposes of this Act;
 - (b) a supply of the following foodstuffs in their natural state and not mixed with other products —
 - (i) sorghum or maize meal for human consumption but not including maize meal for human consumption when it is furnished or served as a meal or as cooked or prepared food,
 - (ii) millet grain as specified under the Customs Tariff Heading 1008.29,
 - (iii) millet meal as specified under the Customs Tariff Heading 1103.19.91,
 - (iv) wheat grain as specified under the Customs Tariff Heading 1001.19 and 1001.99.10,
 - (v) maize cobs as specified under the Customs Tariff Heading 1005.90.90, and
 - (vi) sugar as specified under the Customs Tariff Heading 1701.13 and 1701.14;
 - (c) a supply of —
 - (i) brown bread as specified under the Customs Tariff Heading 1905.90.40,
 - (ii) fresh vegetables as specified under Customs Tariff headings 0701.90.00, 0702.00.00, 0703.10.00, 0704.90.00, 0709.99.00, 0706.90.00, 0706.10.00, 0709.70.00, not cooked or treated in any manner except for the purpose of preserving such vegetables in their natural state, but excluding dehydrated, dried, canned or bottled vegetables,
 - (iii) fresh fruit as specified under Customs Tariff Headings 0805.10.10, 0808.10.00, 0803.10.10, not cooked or treated in any manner except for the purpose of preserving such fruit in its natural state, but excluding dehydrated, dried, canned or bottled fruit and nuts,
 - (iv) rice as specified under the Customs Tariff Heading 1006, whether husked, milled, polished, glazed, parboiled or broken,

- (v) samp as specified under the Customs Tariff Heading 1104.23.10, not further prepared or processed,
 - (vi) bread flour as specified under the Customs Tariff Headings 1101.10 and 1101.90, whether white, brown or whole wheat,
 - (vii) cooking oil as specified under Customs Tariff Headings 15.07, 15.08, 15.09, 15.10, 15.11, 15.12, 15.13, 15.14 and 15.15,
 - (viii) liquid petroleum gas as specified under Customs Tariff Headings 2711.11.00, 2711.12.00, 2711.13.10, 2711.13.90, 2711.14.00 and 2711.19.00,
 - (ix) infant formula as specified under Customs Tariff Heading 1901.10.00,
 - (x) baby diapers as specified under Customs Tariff Heading 9619.00.00,
 - (xi) sanitary pads or tampons as specified under Customs Tariff Heading 9619.00.00;
 - (xii) pesticides as specified under Customs Tariff Heading 38.08,
 - (xiv) the first 5000 litres of water per month by Water Utilities Corporation to a residential dwelling, excluding water commonly supplied in bottles or other packaging suitable for supply to consumers;
- (d) a supply of the following agricultural farming implements —
- (i) disc harrows as specified under Customs Tariff Heading 8432.21.00,
 - (ii) ploughs as specified under Customs Tariff Heading 8432.10.00,
 - (iii) seeders, planters and transplanters under the Customs Tariff Heading 8432.30,
 - (iv) harrows, scarifiers, cultivators, weeders, hoes as specified under Customs Tariff Heading 8432.20.00,
 - (v) manure spreaders as specified under Customs Tariff Heading 8432.41.00,
 - (vi) fertilizers distributors as specified under Customs Tariff Heading 8432.42.00,
 - (vii) rotavators as specified under Customs Tariff Heading 8432.29.00,
 - (viii) rippers as specified under Customs Tariff Heading 8432.29.00,
 - (ix) cutter bars for tractor mounting as specified under Customs Tariff Heading 8433.20.00,
 - (x) hay making machinery as specified under Customs Tariff Heading 8433.30.00,
 - (xi) straw of fodder balers and pick up balers as specified under Customs Tariff Heading 8433.40.00,
 - (xii) combine harvesters-threshers as specified under Customs Tariff Heading 8433.51.00,
 - (xiii) threshing machinery as specified under Customs Tariff Heading 8433.52.00,
 - (xiv) root or tuber harvesting machinery as specified under Customs Tariff Heading 8433.53.00,
 - (xv) forage harvester as specified under Customs Tariff Heading 8433.59.00,
 - (xvi) tractors of an engine power not exceeding 18 kW as specified under Customs Tariff Heading 8701.91.00,
 - (xvii) tractors of an engine power exceeding 18 kW but not exceeding 37 kW as specified under Customs Tariff Heading 8701.92.00,
 - (xviii) tractors of an engine power exceeding 37 kW but not exceeding 75 kW as specified under Customs Tariff Heading 8701.93.00,
 - (xix) tractors of an engine power exceeding 75 kW but not exceeding 130 kW as specified under Customs Tariff Heading 8701.94.00,

B.1160

- (xx) tractors of an engine power exceeding 130 kW as specified under Customs Tariff Heading 8701.95.00, and
- (xxi) trailers as specified under Customs Tariff Heading 8716.20.00;
- (e) a supply of leaded petrol, unleaded petrol, diesel oil and illuminating paraffin, which consist of fuel levy goods as defined in section 2 of the Excise Duty Act;
- (f) a supply of condoms as specified under the Customs Tariff Heading 3926.90.87;
- (g) a supply of prescription medicines for humans that can be dispensed only under a written prescription as specified in Schedules 1A, 1B, 1C, and 2 referred to in the Medicines and Related Substances Act.

2. Where paragraph 1 (a) has applied to a supply of goods or services and, after the supply, the transferee does not satisfy paragraph 1 (a) (iii), the transferee is treated as having made a taxable supply of the goods or services to which paragraph 1 (a) applied and —

- (a) the taxable supply shall be treated as taking place at the time that paragraph 1(a) (iii) was not satisfied; and
- (b) the value of the taxable supply shall be the fair market value of the goods or services at the time specified in paragraph (a).

Part IV
Interpretation

In this Schedule —

“ancillary transport services” means stevedoring services, lashing and securing services, cargo inspection services, preparation of customs documentation, container handling services, and storage of transported goods or goods to be transported;

“international transport services” means —

- (a) the services, other than ancillary transport services, of transporting passengers or goods by road, rail, water, or air —
 - (i) from a place outside Botswana to another place outside Botswana where the transport or part of the transport is across the territory of Botswana,
 - (ii) from a place outside Botswana to a place in Botswana, or
 - (iii) from a place in Botswana to a place outside Botswana;
- (b) the services of transporting passengers from a place in Botswana to another place in Botswana to the extent that transport is by aircraft and constitutes “international carriage” as defined under the Convention for the Unification of Certain Rules Relating to International Carriage by Air;

- (c) the services, other than any ancillary transport services, of transporting goods from a place in Botswana to another place in Botswana, to the extent that those services are supplied by the same supplier as part of the supply of services to which paragraph (a) applies; or
 - (d) the services of insuring or the arranging of the insurance or the arranging of the transport of passengers or goods to which paragraphs (a) to (c) applies;
- “maize meal for human consumption” means —
- (a) maize meal graded as super maize meal, special maize meal, sifted maize meal, unsifted maize meal, samp, or mealie rice, but only when provided for human consumption; and
 - (b) maize intended to be used for the production of maize meal contemplated in paragraph (a);
- “sorghum” means sorghum or sorghum meal, but only if provided for human consumption; and
- “temporarily admitted goods” means goods temporarily admitted into Botswana under sub-part G of Part VII of the Customs Act and includes an aircraft or train in Botswana in transit.

SCHEDULE 2
(section 9)

EXEMPT SUPPLIES

1. The following supplies are exempt supplies for the purposes of section 9 —

- (a) a supply of financial services;
- (b) a supply of a precious metal;
- (c) a supply of services specified in the regulations by a person in the ordinary course of operating a public medical facility, including a hospital, maternity home, nursing home, convalescent home, hospice or clinic;
- (d) a supply of donated goods or services by a non-profit body;
- (e) a supply of education services;
- (f) a supply of public transport services;
- (g) a supply of a services by a home owners' association to any of its members in the course of the management of the association, where the cost of supplying such services is met out of contributions made by the members to the association;
- (h) a supply of any goods or services by a Government entity or a non-profit body, where the consideration for the goods or services is nominal in amount or not intended to recover the cost of such goods or services; and
- (i) a supply by way of a lease of residential premises, other than a lease for a term of less than 45 days.

2. In this Schedule —

“custody services” means the service of holding securities (in physical or electronic form), cash, valuables or other similar items for safe-keeping and includes providing access to a safety deposit box;

“donated goods or services”, in relation to a non-profit body, means goods or services that are gifted to the non-profit body and that are intended for use in carrying out the purposes of the non-profit body;

“education services” means education and hostel facilities for students and scholars, as prescribed, provided by —

- (a) a pre-primary, primary, or secondary school;
- (b) a technical college or university; or
- (c) an institution established for the promotion of adult education, vocational training, technical education, or the education or training of physically or mentally handicapped persons;

“financial services” means any of the following services except to the extent that the service is rendered for a fee, commission, or other similar charge, other than a discounting cost —

- (a) the granting, negotiating, or dealing with loans, credit, credit guarantees, or any security for money, including the management of loans, credit, or credit guarantees by the grantor;
- (b) transactions concerning money, including deposits and current accounts, payments, transfers, debts, cheques, or negotiable instruments, but not including debt collection and factoring;
- (c) transactions relating to financial derivatives, forward contracts, options to acquire financial instruments, and similar arrangements;
- (d) transactions relating to shares, stocks, bonds, treasury bills, unit portfolios, or other debt or equity securities, but not including custody services;
- (e) the management of investment funds;
- (f) the provision or transfer of ownership of a life insurance contract or the provision of reinsurance in respect of any such contract;
- (g) the provision, or transfer of ownership, of an interest in a scheme for the payment or granting of benefits by a benefit fund (including a medical aid or other similar fund), provident fund, pension fund, retirement annuity fund, or preservation fund;
- (h) a supply of credit under a hire-purchase agreement, but only if the credit for the goods is provided for as a separate charge and the charge is disclosed to the recipient of the goods;
- (i) the provision of intermediation services by a medical aid or similar fund; or
- (j) the arranging of any of the services referred to in paragraphs (a) to (i);

“holiday or hotel accommodation” means —

- (a) a supply of accommodation in a building, part of a building, or a group of buildings, including all structures within the immediate surrounds of the building, that constitute a hotel, motel, inn, boarding house, guest house, hostel or similar establishment in which in which lodging is regularly or normally provided to five or more persons at daily, weekly, monthly or other periodic charge; or
- (b) a supply of accommodation not covered by paragraph (a) if the accommodation is held out for use for short term occupation by a natural person other than as his or her main residence;

“home owners association” means —

- (a) an association established under section 39 of the Sectional Titles Act; or

B.1164

- (b) any other association of home owners with responsibility to provide services to members of the association;
- “life insurance contract” means a contract of insurance made or agreed to be made by an insurer as transacting long-term insurance business;
- “non-profit body” means a body or association corporate or unincorporated, or an irrevocable trust —

 - (a) that is established solely —

 - (i) to provide relief to those suffering from poverty, distress, or the effects of a natural disaster, or
 - (ii) for the advancement of education, religion, or amateur sport;
 - (b) in relation to which, no part of the income or other funds, or assets, of the body or trust are used or are available for use for the private benefit of a member of the body or beneficiary of the trust; and
 - (c) that has been approved by the Commissioner General, in accordance with the procedure as may be prescribed, as a non-profit body;
- “precious metal” means —

 - (a) gold, in any form, being gold of a fineness of not less than 99.5 per cent;
 - (b) silver, in any form, being silver of a fineness of not less than 99.9 per cent;
 - (c) platinum, in any form, being platinum of a fineness of not less than 99.0 per cent; or
 - (d) any other substance prescribed as a precious metal;
- “public medical facility” means a Government operated medical facility or Government aided medical facility;
- “public transport services” means the transportation, regulated by Government, of fare-paying passengers and their personal effects in Botswana by road or rail, other than the transportation of tourists; and
- “residential premises” means land or building occupied or capable of being occupied as a residence, but not including hotel or holiday accommodation.

SCHEDULE 3
(*section 10*)

EXEMPT IMPORTS

1. The following imports are specified as exempt imports for the purposes of section 10 —

- (a) an import of goods for the personal or official use of the President or any dependent member of the President's family;
- (b) an import of goods by a registered person operating a VAT manufacturing warehouse under a certificate described in section 47, for use in connection with the manufacturing operations covered by that certificate;
- (c) an import of services where the recipient of the services received the services in respect of a technical assistance or humanitarian assistance agreement referred to in section 69 (1) (d);
- (d) an import of goods that are entered, or are required to be entered, under the Customs Act and the Excise Duty Act, where —
 - (i) the goods fall under any heading and description and such extent as may be provided under the Customs Act and the Excise Duty Act and subject to the Notes set out in Schedule No. 4 to the Excise Duty Act and in respect of which either no customs duty is payable or a rebate of customs duty is granted in terms of the said Act including —

Item No. Heading and Description

405.04 Goods for welfare of charitable purposes.

406.00 Goods for Heads of State, Diplomatic and other Foreign Representatives.

407.04 Motor vehicles imported by natural persons on change of permanent residence.

407.06 Household furniture, other household effects and other removable articles, including equipment necessary for the exercises of the calling, trade or profession of the person, other than industrial, commercial or agricultural plant and excluding motor vehicles, alcoholic beverages and tobacco goods, the bona fide property of a natural person (including a returning resident of Botswana after an absence of 6 months or more) and members of his or her family, imported for own use on change of his or her residence to Botswana:

Provided these goods are not disposed of within a period of 6 months from the date of entry.

408.01 Cups, medals and other trophies awarded abroad to any person, imported by him or her or on his or her behalf, and such articles imported for presentation:

B.1166

- i. as prices at public exhibitions or shows, at public examinations or examinations in any educational institution, or for skill or sport in public competition or competition in any educational institution;
- ii. as prices for target shooting by air, military, naval or police forces; or
- iii. for bravery, good conduct, humanity, for excellence in art, industry, invention, manufactures, learning, science, or for honourable or meritorious public services.

409.01 Imported goods (including packing containers) re-exported, thereafter returned to or brought back by the exporter or any other party, without having been subjected to any process of manufacture or manipulation and without a permanent change of ownership:

Provided that the exemption shall not apply if at the time of export of such goods —

(1) the supply of the goods was charged with tax at the rate of zero percent under section 10; or

(2) the supply of those goods was made before the commencement date and that supply would have been charged with tax at the rate of zero percent under section 10, if the supply had taken place on or after the commencement date.

409.02 Goods (including packing containers) produced or manufactured in Botswana, exported therefrom and thereafter returned to or brought back by the exporter or any other party, without having been subjected to any process of manufacture or manipulation (excluding excisable goods exported ex a customs and excise warehouse warehouse):

Provided that the exemption shall not apply if at the time of such goods —

(1) the supply of the goods was charged with tax at the rate of zero percent under section 8; or

(2) the supply of those goods was made before the commencement date and that supply would have been charged with tax at the rate of zero percent under section 8, if the supply had taken place on or after the commencement date.

409.04 Imported or locally manufactured articles sent abroad for processing or repair, provided they are exported under customs and excise supervision, retain their essential character, are returned to the exporter, no change of ownership having taken place, and can be identified on re-importation:

Provided that the exemption shall apply only to the extent of the value of the goods sent from Botswana on the day the goods left Botswana.

409.06 Excisable goods exported ex a customs and excise warehouse and thereafter returned or brought back by the exporter, without having been subjected to any process of manufacture or manipulation and without a permanent change in ownership having taken place:

Provided that the exemption shall not apply if at the time of export of such goods —

(1) the supply of the goods was charged with tax at the rate of zero percent under section 8; or

(2) the supply of those goods was made before the commencement date and that supply would have been charged with tax at the rate of zero percent under section 8, if the supply had taken place on or after the commencement date.

409.07 Compensating products obtained abroad from goods temporarily exported for outward processing, in terms of a specific permit issued by the Permanent Secretary, Ministry responsible for commerce and industry:

Provided that —

(1) the specific permit is obtained before the temporary exportation of the goods;

(2) any additional conditions which may be stipulated in the said permit are complied with; and

(3) the exemption shall apply only to the extent of the value of the goods sent from Botswana on the day the goods left Botswana.

412.03 Used personal or household effects (excluding motor vehicles bequeathed to persons residing in Botswana.

412.04 Used property of a person normally resident in Botswana who dies while temporarily outside Botswana.

412.10 Bonafide unsolicited gifts of not more than two parcels per person per calendar year and of which the value per parcel does not exceed UA 400, excluding goods contained in passengers' baggage, wine, spirits and manufactured tobacco (including cigarettes and cigars) consigned by natural persons abroad to natural persons in Botswana.

412.11 Goods imported —

(1) for the relief of distress of persons in cases of famine or other national disaster;

(2) under any technical assistance agreement; or

(3) in terms of an obligation under any multilateral international agreement to which Botswana is a party.

412.12 Goods imported for any purpose agreed upon between the Governments of Botswana, Lesotho, South Africa, Eswatini, and Namibia.

470.01 Goods temporarily admitted for processing:

Provided that such goods do not become the property of the importer.

B.1168

470.02 Goods (including parts thereof) temporarily admitted for repair, cleaning or reconditioning.

470.03 Goods cleared in terms of a permit issued by the Permanent Secretary, Ministry responsible for commerce and industry for use in the manufacture, processing, finishing, equipping or packing of goods exclusively for export.

480.00 Goods temporarily admitted for specific purposes.

490.00 Goods temporarily admitted subject to exportation in the same state.

- (ii) the goods are any of the following in respect of which the Commissioner General has in terms of section 41 (1) of the Excise Duty Act, granted permission that entry need not be made —
 - (aa) containers temporarily imported;
 - (bb) human remains;
 - (cc) goods which in the opinion of the Commissioner General are of no commercial value; or
 - (dd) goods imported under an international carnet; or
- (iii) the goods are printed books, newspapers, journals and periodicals imported into Botswana by post;
- (e) an import of goods which are not entered or are not required to be entered in terms of the Customs Act, where the goods are imported into Botswana from any specified country and are —
 - (i) goods referred to in paragraph (d) (i) under Item Nos. 405.04, 406.00, 407.01, 407.02, 407.06, 412.02, 412.03, 412.04, 412.10, 412.11, 412.12, 470.01, 470.02, 480.00 and 490.00, or
 - (ii) goods referred to in paragraph (d) (ii) or (iii);
- (f) goods imported into or produced or manufactured in Botswana, exported therefrom to any specified country and thereafter directly returned to or brought back by the exporter without having been subjected to any manufacturing process, manipulation or modification and without a change in ownership, and tax under this Act or the Act repealed under section 87, was paid in respect of the acquisition thereof;
- (g) goods which are shipped or conveyed to Botswana for transshipment or conveyance to any other country; or
- (h) goods in a passenger's accompanying baggage —
 - (i) 2 litres of wine,
 - (ii) 1 litre of spirits or other alcoholic beverage,
 - (iii) 200 cigarettes,
 - (iv) 20 cigars,
 - (v) 250 grams of cigarette or pipe tobacco,
 - (vi) 50 millilitres of perfume,
 - (vii) 250 millilitres of toilet water,
 - (viii) other new or used goods of a total value not exceeding P3 000 for passengers arriving from a specified country, and
 - (ix) other new or used goods of a total value not exceeding P5 000 for passengers arriving from a country other than a specified country.

2. In this Schedule, “specified country” means Namibia, Lesotho, South Africa, and ESwatini.

SCHEDULE 4
(sections 59 (7) and 60 (3))

TAX INVOICES, TAX CREDIT NOTES,
AND TAX DEBIT NOTES

1. Except as the Commissioner General may otherwise allow, a tax invoice required to be provided by a registered person under section 59, shall contain the following particulars —

- (a) the words “original tax invoice” in a prominent place;
- (b) the name, address, and VAT registration number of the registered person making the supply;
- (c) the name, address, and VAT registration number of the registered person receiving the supply;
- (d) the individualised serial number and the date on which the tax invoice is issued;
- (e) a description of the goods or services supplied;
- (f) the quantity or volume of the goods or services supplied; and
- (g) the total amount of the VAT charged, the consideration for the supply, and the consideration including VAT.

2. A tax invoice provided to a non-registered person may omit the details specified in paragraph 1(c).

3. Except as the Commissioner General may otherwise allow, a recipient-created tax invoice for a supply required to be prepared by a registered person under section 59, shall contain the following particulars —

- (a) the words “recipient-created tax invoice” in a prominent place;
- (b) the name, address, and TIN of the recipient of the supplier;
- (c) the individualised serial number and the date on which the recipient-created tax invoice is issued;
- (d) the description of the goods or services that are the subject of the supply and the date on which the supply was made; and
- (e) the consideration for the supply and the amount of VAT charged.

4. Except as the Commissioner General may otherwise allow, a tax credit note required to be provided by a registered person under section 60, shall contain the following particulars —

- (a) the words “original tax credit note” in a prominent place;
- (b) the name, address, and VAT registration number of the registered person making the supply;
- (c) the name, address, and VAT registration number of the registered person receiving the supply;
- (d) the date on which the tax credit note was issued;

B.1170

- (e) the value of the supply shown on the tax invoice for the supply, the correct amount of the value of the supply, the difference between those two amounts and the VAT charged that relates to that difference;
- (f) a brief explanation of the adjustment event giving rise to the issuing of the tax credit note; and
- (g) any information sufficient to identify the taxable supply to which the tax credit note relates.

5. Except as the Commissioner General may otherwise allow, a tax debit note required to be provided by a registered person under section 60, shall contain the following particulars —

- (a) the words “original tax debit note” in a prominent place;
- (b) the name, address and VAT registration number of the registered person making the supply;
- (c) the name, address and VAT registration number of the registered person receiving the supply;
- (d) the date on which the tax debit note was issued;
- (e) the value of the supply shown on the tax invoice for the supply, the correct amount of the value of the supply, the difference between those two amounts, and the VAT that relates to that difference; and
- (f) a brief explanation of the adjustment event giving rise to the issuing of the tax debit note; and
- (g) any information sufficient to identify the taxable supply to which the tax debit note relates.

SCHEDULE 5
(sections 2, 12, 13, 14, 54, 58, 59, 69)

REGISTRATION THRESHOLD AND OTHER AMOUNTS

1. For purposes of section 2, for large unregistered person, the amount is P 1000 000.
2. For purposes of section 12 (2), the amount is P1 000 000.
3. For the purposes of section 13 (2), the amount is P500 000.
4. For the purposes of section 14 (2), the amount is P500 000.
5. For the purposes of section 54 (3), the amount is P12 000 000.
6. For the purposes of section 58 (1) and (2), the rate of interest is 1 per cent per month or part thereof, compounded monthly.
7. For the purposes of section 59 (2), the amount is P20.
8. For the purposes of section 69 (1)(e), the minimum amount is P600.