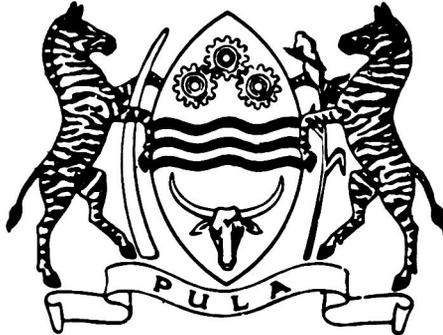


REPUBLIC OF BOTSWANA



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EXTRAORDINARY

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CONTENTS

Page

The following Supplement is published with this issue of the Gazette —
Supplement B — Sales Tax Bill, 1982 — Bill No. 26 of 1982..... B.139—144

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Bill No. 26 of 1982

SALES TAX BILL, 1982

(Published on 18th August, 1982)

MEMORANDUM

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

2. The main object of the Bill is to provide for the imposition of sales tax on certain business transactions. It is essentially a tax on a transaction.

3. Clause 3 provides that tax shall be chargeable on the goods specified in the Schedule, on any prescribed service rendered by any person in the course of any business carried on by him, on the provision of board and lodging by any person and on importation of goods into Botswana.

4. Clause 4 provides the method of calculating the tax payable on any transaction.

5. Clause 5 specifies the time for payment of tax exigible under the proposed Act.

6. Clause 6 specifies the persons liable to pay sales tax.

7. Clauses 7 and 8 require that any person liable to pay tax shall be registered and shall within each month make returns and declarations in respect of tax payable by him for the previous month.

8. Clause 9 gives the Director power to estimate the tax payable where the tax payer has failed to make proper returns.

9. Clause 10 provides that any tax due and payable which is not paid within a specified period shall bear interest at the rate of two per cent for each month during which the tax remains unpaid.

10. Clause 11 lays down the procedure for the recovery of tax where a tax payer is in default of payment of tax.

11. Clause 12 gives the Director power, in the case where the person liable for payment of tax is not resident in Botswana, to collect the tax from his representative or agent in Botswana.

12. Clause 13 makes it clear that tax payable under the proposed Act shall be in addition to any other tax imposed on any transaction mentioned in clause 3.

13. Clause 14 provides that where there is any dispute as to any tax payable, such dispute shall be resolved by the Minister whose decision on such issue shall be final.

14. Clauses 15 and 16 deal with penal provisions for contravening the provisions of the proposed Act.

15. Clause 17 gives the Minister power to make regulations for the purposes of giving effect to the provisions of the proposed Act.

P.S. MMUSI,

Minister of Finance and Development Planning

ARRANGEMENT OF SECTIONS

SECTION

- 1. Short title and commencement
- 2. Interpretation
- 3. Levy of sales tax
- 4. Determination of value of goods or services
- 5. Time of payment of sales tax
- 6. Persons liable to pay tax
- 7. Registration of persons liable to pay tax
- 8. Returns, declarations and payments of tax
- 9. Estimate of tax on failure to make proper returns
- 10. Interest on unpaid tax
- 11. Recovery of tax chargeable
- 12. Substitution of agent for person not resident in Botswana
- 13. Sales Tax to be additional to other taxes
- 13. Settlement of disputes
- 15. Offences
- 16. Offences by bodies of persons
- 17. Regulations

A BILL
entitled

An Act to provide for levying of sales tax on goods, services and other matters connected therewith.

Date of Assent:

Date of Commencement:

ENACTED by the Parliament of Botswana.

Short title
and com-
mencement

Inter-
pretation

Levy of
sales tax

1. This Act may be cited as the Sales Tax Act, 1982, and shall come into operation on 18th August, 1982.

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

“Director” means the Director of Customs and Excise;

“hotel” means a place used for the purchase and consumption on its premises of food and accommodation therein for payment and such other place as may be prescribed as an hotel;

“prescribed” means prescribed by regulations made under section 17;

“sales tax” has the meaning assigned to it under section 3;

“tax” means sales tax;

“transaction” includes the sale of any goods, rendering of any prescribed service, the provision of board and lodging or the importation of goods into Botswana.

3. (1) Subject to the provisions of this section, there shall be levied and paid a tax (in this Act referred to as “sales tax”) at a rate to be prescribed on the value of —

- (a) the sale of any of the goods specified in the Schedule hereto;
- (b) any prescribed service rendered by any person in the course of any business carried on by him;
- (c) board and lodging supplied by any person carrying on an hotel business; and

(d) goods imported into Botswana.

(2) The Minister may by statutory instrument make regulations under section 17 amending the Schedule by adding thereto or deleting therefrom any item of goods.

4. For the purposes of this Act, the value of any goods, service rendered or provision of board and lodging referred to in section 3 shall be, —

Deter-
mination
of value
of goods
or service

- (a) in the case of any sale of goods, the sum of all the amounts of the consideration accruing to the seller in respect of such sale;
- (b) in the case of any service rendered, each amount of the consideration which has accrued to the person rendering such services;
- (c) in the case of board and lodging, each amount of the consideration accruing to the person carrying on the hotel business in respect of such board and lodging; or
- (d) in the case of goods imported into Botswana, the price of the item of goods for assessing duty imposed under the Customs and Excise Act on the goods and the amount of customs duty paid under that Act on that item of goods.

Cap: 50:01

5. Tax payable under this Act shall be deemed to have become payable —

Time of
payment
of sales
tax

- (a) in the case of a sale of goods, on the date on which such sale is concluded;
- (b) in the case of any service rendered or the provision of any board and lodging, on the date of accrual to the person rendering the service or providing the board and lodging, of the consideration included in the value on the service rendered, or the provision of board and lodging, as the case may be; or
- (c) in the case of goods imported into Botswana, on the date on which the goods are imported:

Provided that goods which are cleared under the Customs and Excise Act for home consumption in Botswana shall for the purposes of this Act be deemed to have been imported on the date on which they are so cleared.

(2) For the purposes of this Act, the date of conclusion of a sale of goods shall be deemed to be the date on which delivery of the goods is effected under the sale or the date on which the consideration payable by the purchaser under the sale is paid in full, whichever date is the earlier.

(3) Any tax due and payable under subsection (1) shall be paid before the last day of the next succeeding month.

6. (1) Tax shall be paid —

- (a) in the case of a sale of goods by the seller;
- (b) in the case of any service rendered or any provision of board and lodging, by the person by whom such service is rendered or such board and lodging is supplied; or

Persons
liable
to pay tax

(c) in the case of goods imported into Botswana, by the importer.

(2) Where any business in respect of which tax payable under this Act in relation to any transaction carried out in that business is unpaid before the sale of the business to another person, the purchaser of the business shall be liable for the payment of such tax.

Registration of persons liable to pay tax

7. (1) Subject to the provisions of this section, every person liable to pay tax shall be registered under this Act in such manner as may be prescribed.

(2) Regulations may provide for the conditions and issue of a registration certificate.

(3) Every person who is required by this Act to be registered shall keep such records and accounts in such form, and shall preserve them for such period, as the Director may require, and shall produce them for inspection by any officer or other person authorized in that behalf by the Director at such time and such place as that officer or person may require.

Returns, declarations and payments of tax

8. (1) Every person who carries on any business in relation to which tax is required to be determined in accordance with the provisions of sections 3 and 4 shall, within 14 days before the end of the time specified under section 5 (3) for the payment of tax —

(a) furnish the Director with a return in such form as may be prescribed of the value of the transaction in respect of which tax has become payable by such a person during the previous month and containing such information as may be required; and

(b) compute such tax in accordance with the said sections 3 and 4 and pay it to the Director within the period specified under section 5 (3).

(2) Every person registered under section 7 shall within the period allowed by subsection (1) furnish the return referred to in that subsection in respect of each month in relation to such transaction, whether or not tax is payable in respect of such month.

Estimates of tax on failure to make proper returns

9. (1) Where —

(a) any person required under this Act to furnish any return or make any declaration fails to do so;

(b) the Director is not satisfied that the tax return furnished by any person is true and correct; or

(c) the Director has reason to believe that any person liable for payment of tax under this Act has not paid such tax,

the Director may estimate the amount of tax due.

(2) Where an estimate of the amount of tax due from any person has been made under subsection (1), then (without prejudice to the recovery of the full amount due or to the making of a further estimate in that behalf) the amount estimated shall be recoverable as tax properly due unless in any action relating thereto the person

liable proves the amount properly due, and that amount is less than the amount estimated.

10. Any tax due and payable which is not paid within the period specified in section 5 (3) shall bear interest at the rate of two per cent for each month or part of a month during which it remains unpaid:

Interest on unpaid tax

Provided that where the Director considers that the circumstances warrant it, remit the whole or part of any interest payable under this section.

11. (1) Any amount of tax or interest payable in accordance with the provisions of this Act shall be recoverable as a debt due to the state from the person liable therefor in accordance with the provisions of this section.

Recovery of tax chargeable

(2) Where any person liable to pay tax or interest on such tax fails to pay such tax or interest within the period specified in section 5 (3), the Director may file with the clerk or registrar of any court a statement certified by him as correct and setting forth the amount thereof due or payable by that person, and such statement shall thereupon have all the effects of a civil judgment lawfully given in that court in favour of the Director for a liquid debt of the amount specified in the statement.

(3) The Director may in consequence of the provisions of subsection (2) institute proceedings for the sequestration of the estate of any person liable for payment of tax or interest under subsection (2) and shall for the purposes of such proceedings be deemed to be the creditor in respect of any tax or interest payable by such person under the provisions of this Act.

12. Where a person who is liable for payment of tax under this Act, or on whom any duties are imposed by this Act or regulations made thereunder, is not resident in Botswana, the Director may by notice in writing served on any agent, manager or factor, who is resident in Botswana and has acted on behalf of that person in the matters by reference to which that person is liable or those duties are imposed, direct that he shall be substituted for that person as the person liable for the tax, or that he shall be under an obligation to discharge those duties or any of them.

Substitution of agent for person not resident in Botswana

13. Notwithstanding anything to the contrary in any other enactment, the tax payable in accordance with the provisions of section 3 shall be in addition to any other tax imposed on any transaction mentioned in the said section.

Sales tax to be additional to other taxes

14. If there is any dispute as to whether any transaction is liable to tax, such dispute shall be decided by the Minister whose decision thereon shall be final.

Settlement of disputes

15. Any person who contravenes any provision of this Act shall be guilty of an offence and shall be liable on conviction to a term of imprisonment for a year or a fine of P500, or to both.

Offences

B.144

Offences by
bodies of
persons

16. In the case of an offence committed under this Act by a body of persons —

- (a) where the body of persons is a body corporate, every director and officer of that body shall be deemed to be guilty of that offence; and
- (b) where the body of persons is a firm, every partner of that firm shall be deemed to be guilty of that offence:

Provided that no person shall be deemed to be guilty of an offence under this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of the offence.

Regulations

17. The Minister may, by statutory instrument, make regulations in respect of the following matters —

- (a) anything which is required to be prescribed or is to be provided for by regulations under this Act;
- (b) the registers, records, and accounts required to be kept by this Act;
- (c) the entry and examination of premises for the purposes of this Act;
- (d) the examination and inspection of records maintained for the purposes of this Act; and
- (e) any other matter which may be necessary for the purpose of giving effect to or carrying out the provisions of this Act.

SCHEDULE

(s.3)

Beer
Cigarettes
Clothing
Foodstuffs
Fuel
Furniture
Leather goods
Livestock
Spirits
Vehicles

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