

THE INCOME TAX (AMENDMENT) ACT, 1968

No. 20



of 1968

AN ACT TO FURTHER AMEND THE INCOME TAX (CONSOLIDATION) PROCLAMATION, 1959

Date of Assent: 6.3.68.

Date of Commencement: 1.7.67

ENACTED by the Parliament of Botswana.

Short Title and Commencement

1. This Act may be cited as the Income Tax (Amendment) Act, 1968, and shall be deemed to have come into force on the first day of July, 1967, and shall have effect for the year of assessment ending on the thirtieth day of June, 1968, and subsequent years.

Amendment of Section 6 of Proclamation No. 81 of 1959

2. Section 6 of the Income Tax (Consolidation) Proclamation, 1959 (hereinafter referred to as the principal law) is amended by the deletion of subsection (2) and by the substitution of -

“(2) The rate to be levied shall be fixed annually by law, but the rate so fixed for any year shall be deemed to continue in force until the next such annual determination:

Provided that after the next such determination of rates any tax paid in pursuance of such interim application shall be adjusted in accordance with such

subsequent rates for which purpose, subject to the provisions of the Second Schedule, amounts paid in excess shall be refunded and amounts shortpaid shall be recoverable :

Provided further that where the rate to be levied, in the case of any employee as defined in paragraph 1 of the Second Schedule, includes a minimum rate or rates such minimum rate or rates shall be expressed in the law as a minimum charge leviable and payable in respect to each separate calendar month of the year of assessment and no refund shall be made which shall reduce the tax payable below the appropriate amount fixed as a minimum by such law."

Amendment of Section 8 of Proclamation No. 81 of 1959

3. Section 8 of the principal law is amended -

- (a) in subsection (1) by the insertion after "Proclamation" of "or in any other law, including the law referred to in section 6 (2)";
- (b) by the deletion of subsection (2) and the substitution of -

"(2) In the case of a person who is present in Botswana solely or mainly for the purpose of employment, and who arrives in Botswana or leaves it during any year of assessment in circumstances in which he was not ordinarily resident in Botswana prior to his arrival or after his departure, as the case may be, the deductions under subsection (1) shall be such amounts as bear, to the full amount of the respective deductions provided for under that subsection, the same ratio as the period of the year of assessment, during which the person was so employed, bears to twelve months."

Amendment of Section 11 of Proclamation No. 81 of 1959

4. Section 11 of the principal law is amended in subsection (3) -

- (a) by inserting, in paragraph (b) after "person" the words "who is ordinarily resident in Botswana (other than an employee as defined in paragraph 1 of the Second Schedule)";
- (b) by inserting, in paragraph (c) after "excepting a company", the words "and excepting an employee as defined in paragraph 1 of the Second Schedule who is ordinarily resident in Botswana."

Amendment of Section 15 of Proclamation 81 of 1959

5. Section 15 of the principal law is amended by inserting prior to "Schedule" the word "First".

Amendment of Section 31 of Proclamation No. 81 of 1959

6. Section 31 of the principal law is amended -

- (a) in paragraph (a) of subsection (1) by inserting after "capacity, are", the words ", subject to the provisions of subsection (17)";
- (b) in subsection (2) by inserting after "persons", where it first appears ", other than those excluded under the provisions of subsection (17)";

- (c) in subsection (3) by inserting after "person" the words " , other than a person excluded under the provisions of subsection (17)";
- (d) in subsection (5) by inserting after "person", where it first appears " , other than a person excluded under the provisions of subsection (17)";
- (e) by the addition of the following subsection –

“(17) An employee, as defined in paragraph 1 of the Second Schedule, from whose remuneration, as defined in that Schedule, no more than twenty-four rand has been deducted or withheld in respect of any year of assessment shall not be required to furnish a return for that year –

- (a) unless he is required to do so by the Collector by notice in writing; or
- (b) unless he is a married person with taxable income from other sources which together with his remuneration brings his total taxable income for that year to an amount in excess of nine hundred and sixty rand or unless he is unmarried with taxable income from other sources which together with his remuneration brings his total taxable income for that year to an amount in excess of six hundred rand.”.

Amendment of Section 42 of Proclamation No. 81 of 1959

7. Section 42 of the principal law is amended by the addition of the following subsection –

“(5) Notwithstanding the provisions of subsection (1), no particulars of assessment and no particulars of tax payable shall be entered in the assessment register in respect of employees (as defined in paragraph 1 of the Second Schedule) paying the minimum rate of tax and notwithstanding the provisions of subsection (2), notice of assessment shall not be given to such employees.”.

Insertion of New Section 58A in Proclamation No. 81 of 1959

8. The principal law is amended by inserting, immediately after section 58, the following section –

“Payments of Employees’ Tax and Interest on Overdue Payments of Such Tax

58A. (1) Payments in respect of the liability (whether or not such liability has been ascertained or determined at the date of any payment) of every employee, as defined in the Second Schedule, for any tax shall be made in accordance with the provisions of the Second Schedule, and any such payment may be made at such place as may be notified by the Collector.

(2) If any amount of the employees tax is not paid in full within the period of seven days prescribed for payment of such amount by sub-paragraph (1) of paragraph 2 of the Second Schedule, interest shall, unless the Collector having regard to the circumstances of the case otherwise directs, be paid by the person liable to pay the amount in question at the rate of one per cent for every month or part of a month during which the default continues on so much of the amount

as remains unpaid in respect of the period (reckoned from the end of the relevant period prescribed as aforesaid for payment of such amount) during which the amount underpaid remains unpaid.”.

Amendment of Section 71 of Proclamation No. 81 of 1959

9. The principal law is amended in section 71 by the deletion of all words following ““employer”” and the substitution of “shall have the meaning assigned to the expression in paragraph 1 of the Second Schedule.”.

Addition of Second Schedule to Proclamation No. 81 of 1959

10. The principal law is amended by inserting, immediately after the Schedule thereto, which becomes thereby the First Schedule, the following additional Schedule –

“SECOND SCHEDULE

AMOUNTS TO BE DEDUCTED OR WITHHELD BY EMPLOYERS IN RESPECT OF INCOME TAX

(Section 58A)

PART I

Interpretation

1. For the purpose of this Schedule, unless the context otherwise requires –

“employee” means any person (other than a company) who in respect of an employment, office or appointment, receives remuneration from an employer or to whom remuneration accrues;

“employees’ tax” means the tax which an employer is required or requested to deduct or withhold from remuneration paid or payable to an employee;

“employees’ tax certificate” means a certificate required to be issued by an employer in terms of paragraph 13;

“employer” means any authority or person (including any person acting in a fiduciary capacity or in his capacity as a trustee in an insolvent estate, an executor or an administrator of a benefit fund, pension fund, provident fund, retirement annuity fund or any other fund) who pays or is liable to pay to any person other than a company any amount by way of remuneration, and any company;

“remuneration” means any amount of income which is paid or is payable to any person by way of any salary, leave pay, allowance, wage, overtime pay, bonus, commission, fee, emolument, pension, superannuation allowance, retiring allowance or stipend, and whether or not in respect of services rendered, including an amount referred to in paragraph (a), (b) or (c) of the definition “gross income” contained in section 7, but not including –

- (a) any amount paid or payable to any person in respect of services rendered or to be rendered by him as a domestic or private servant if such amount is calculated at a rate not exceeding three hundred rand per annum;
 - (b) any amount paid or payable to any director of any private company in respect of services rendered or to be rendered by such director to such company, unless the Collector in the particular case otherwise directs;
- and
- (c) any annuity under an order of divorce or decree of judicial separation or under any agreement of separation;

“representative employer” means –

- (a) in the case of any company, the public officer of that company, or, in the event of such company being placed in liquidation or under judicial management, the liquidator or judicial manager, as the case may be; or
- (b) in the case of any town or district council or like authority or any body corporate or unincorporate (other than a company or a partnership) any manager, secretary, officer or other person responsible for paying remuneration on behalf of such council, authority or body; or
- (c) in the case of a person under legal disability, any guardian, curator, administrator or other person having the management or control of the affairs of the person under legal disability; or
- (d) in the case of any employer who is not ordinarily resident in Botswana, any agent of such employer having authority to pay remuneration;

but nothing in this definition shall be construed as relieving any person from any liability, responsibility or duty imposed upon him by this Schedule.

PART II

EMPLOYEES' TAX

Employers to Deduct Tax

2. (1) Every person (whether or not registered as an employer under section 71) who pays or becomes liable to pay any amount by way of remuneration to any employee on or after the first day of April, 1968, shall, unless the Collector has granted authority to the contrary, deduct or withhold from that amount by way of employees' tax an amount which shall be determined as provided in paragraph 9, 10, 11 or 12, whichever is applicable, in respect of the liability for income tax of that employee, or, in the case of an employee who is a married woman and is not separately assessed from her husband in terms of subsection (1) of section 35, in respect of such liability of her husband, and shall pay the amount so deducted or withheld to the Collector within seven days after the end of the month during which the amount was deducted or withheld, or in the case

of a person who ceases to be an employer, within seven days after the day on which he ceases to be an employer, or in either case within such further period as the Collector may approve.

(2) An employer may, at the written request of any employee, deduct or withhold from any amount of remuneration an amount by way of employees' tax greater than that required to be deducted or withheld in terms of sub-paragraph (1), and shall remit such amount to the Collector, and the provisions of this Schedule relating to employees' tax shall, *mutatis mutandis*, apply in respect of such amount.

(3) For the purposes of this paragraph, "month" means calendar month.

(4) An amount required to be deducted or withheld from any amount of remuneration under this Schedule by way of employees' tax shall be calculated on the balance of such amount of remuneration remaining after deducting any current contribution by the employee concerned to any pension fund (excluding so much of such contribution to a pension fund not established by law as is made at a rate exceeding four hundred rand per annum) which is calculated with reference to such amount of remuneration or to a portion of that amount or to the period in respect of which the amount of remuneration is paid or payable and which the employer is, *vis-a-vis* the employee concerned, entitled or required to deduct or withhold from such amount of remuneration.

Liability of Employer Not Affected by Other Deductions

3. (1) The liability of any employer to deduct or withhold any amount of employees' tax in terms of paragraph 2 of this Schedule shall not be reduced or extinguished by reason of the fact that the employer has a right or is otherwise than in terms of any law under an obligation to deduct or withhold any other amount from the employees' remuneration, and such right or obligation shall, notwithstanding anything to the contrary in any other law contained, for all purposes be deemed to have reference only to the amount of the remuneration remaining after the amount of the employees' tax referred to in that paragraph has been deducted or withheld.

(2) The provisions of paragraph 2 of this Schedule shall apply in respect of all amounts payable by way of remuneration, notwithstanding the provisions of any law which provide that any such amount shall not be reduced or shall not be subject to attachment.

Employees' Tax a Debt Due by the Employer to the State

4. Any amount required to be deducted or withheld in terms of paragraph 2 of this Schedule shall be a debt due to the State and the employer concerned shall save as otherwise provided be absolutely liable for the due payment thereof to the Collector.

Employer Personally Liable for Employees' Tax

5. (1) Subject to the provisions of sub-paragraph (6), any employer who fails to deduct or withhold the full amount of employees' tax as provided in paragraph 2 of this Schedule shall be personally liable for the payment to the Collector of the amount which he fails to deduct or withhold, and shall, subject to the provisions of sub-paragraph (2), pay that amount to the Collector not later than the date on which payment should have been made if the employees' tax had in fact been deducted or withheld in terms of paragraph 2.

(2) Where the employer has failed to deduct or withhold employees' tax in terms of paragraph 2 and the Collector is satisfied that the failure was not due to an intent to postpone payment of the tax or to evade the employer's obligations under this Schedule, the Collector may, if he is satisfied that there is a reasonable prospect of ultimately recovering the tax from the employee, absolve the employer from his liability under sub-paragraph (1) of this paragraph.

(3) An employer who has not been absolved from liability as provided in sub-paragraph (2) shall have a right of recovery against the employee in respect of the amount paid by the employer in terms of sub-paragraph (1) in respect of that employee, and such amount may in addition to any other right of recovery be deducted from future remuneration which may become payable by the employer to that employee, in such manner as the Collector may determine.

(4) Until such time as an employee pays to his employer any amount which is due to the employer in terms of sub-paragraph (3), such employee shall not be entitled to receive from the employer an employees' tax certificate in respect of that amount.

(5) Any amount which an employer is required to pay in terms of sub-paragraph (1) and which he is entitled to recover from the employee in terms of sub-paragraph (3) shall, in so far as the employer only is concerned, be deemed to be a penalty due and payable by that employer.

(6) The provisions of sub-paragraph (1) shall not apply in respect of any amount or any portion of any amount of employees' tax which an employer has failed to deduct or withhold and in respect of which the provisions of sub-paragraph (3) of paragraph 16 of this Schedule apply.

Penalty for Failure to Collect Employees' Tax

6. (1) If an employer fails to pay any amount of employees' tax for which he is liable within the period allowed for payment thereof in terms of paragraph 2 of this Schedule he shall, in addition to any other penalty or charge for which he may be liable under this Proclamation, pay a penalty equal to ten *per centum* of such amount.

(2) The Collector may, if he is satisfied that the employer's failure to pay the amount of employees' tax was not due to an intent to postpone payment of such tax or otherwise evade his obligations under this Proclamation and was

not designed to enable the employee concerned to evade such employees' obligations under this Proclamation, remit the whole or any part of the penalty imposed under sub-paragraph (1).

(3) The penalty imposed under sub-paragraph (1) shall be paid to the Collector when payment is made of the amount of employees' tax to which it refers or within such further period as the Collector may approve.

Agreement not to Deduct Tax Void

7. Any agreement between an employer and an employee whereby the employer undertakes not to deduct or withhold employees' tax shall be void.

Employee can not Recover Tax Payments from Employer

8. An employee shall not be entitled to recover from an employer any amount deducted or withheld by the employer from the employee's remuneration in terms of paragraph 2 of this Schedule.

Deduction Tables

9. (1) The Collector may from time to time, having regard to the rates of income tax as fixed by law, to the rebates applicable in terms of paragraphs (a) and (b) of subsection (1) of section 8, and to any other factors having a bearing upon the probable liability of taxpayers for those taxes, prescribe deduction tables applicable to such classes of employees as he may determine, and the manner in which such tables shall be applied, and the amount of employees' tax to be deducted from any amount of remuneration shall, subject to the provisions of sub-paragraph (3) of this paragraph and paragraphs 10, 11 and 12 of this Schedule, be determined in accordance with such tables or, where sub-paragraph (3) is applicable, in accordance with that sub-paragraph.

(2) Any tables prescribed by the Collector in accordance with sub-paragraph (1) shall come into force on such date as may be notified by the Collector in the *Gazette*, and shall remain in force until withdrawn by the Collector.

(3) The amount to be deducted or withheld in respect of employees' tax from any lump sum to which the proviso to paragraph (b) of the definition of "gross income" in section 7 applies, shall be ascertained by the employer from the Collector before paying out such lump sum, and the Collector's determination of the amount to be so deducted or withheld shall be final.

Variation in Amounts to be Deducted

10. (1) If the Collector is satisfied that the circumstances warrant a variation of the basis provided in paragraph 9 for the determination of amounts of employees' tax to be deducted or withheld from remuneration of employees in the case of any employer, he may agree with such employer as to the basis of determination of the said amounts to be applied by that employer, and the amounts to be deducted or withheld by that employer in terms of paragraph 2 shall, subject to the provisions of paragraphs 11 and 12, be determined accordingly.

(2) Any agreement made in terms of sub-paragraph (1) shall remain in force indefinitely, but the Collector or the employer concerned may give notice of termination thereof and upon the expiration of a period of three months from the date of such notice such agreement shall terminate.

Special Provision in Case of Hardship or Error

11. In order to alleviate hardship to an employee due to illness or other circumstances or to correct any error in regard to the calculation of employees' tax, whether arising from the furnishing to an employer by an employee of a false or incorrect return of personal particulars or otherwise, or where the employee has in terms of sub-paragraph (2) of paragraph 12 applied to the Collector for the issue of a directive to his employer, to enable the employer to deduct or withhold the correct amount by way of employees' tax, the Collector may, having regard to the circumstances of the case, issue a directive to the employer concerned authorizing the employer to refrain from deducting or withholding any amount under paragraph 2 by way of employees' tax from any remuneration due to the employee or to deduct or withhold by way of employees' tax a specified amount or an amount to be determined in accordance with a specified rate or scale, and the employer shall comply with such directive.

Employees to Furnish Returns of Personal Particulars to Employers

12. (1) Subject to the provisions of sub-paragraph (2), every employee shall furnish his employer with a return of personal particulars in such form as the Collector may prescribe, and shall furnish a fresh return within seven days of the date on which any change in the particulars previously furnished occurs:

Provided that until a new return is received or a directive is received from the Collector in terms of paragraph 11, the employer shall regard the latest return submitted to him by the employee concerned as correct, and shall continue to determine the amounts to be deducted or withheld by way of employees' tax in accordance with the particulars disclosed therein.

(2) If for any reason an employee does not wish to furnish the return referred to in sub-paragraph (1), he may instead apply to the Collector in such form as the Collector may prescribe for the issue of a directive to his employer and in such case the Collector may in his discretion issue a directive to the employer as provided in paragraph 11 of the Schedule.

(3) If an employer has not at any time received any return of personal particulars whatsoever from an employee as required by sub-paragraph (1), or has not in respect of that employee received a directive from the Collector as provided in paragraph 11 of this Schedule, he shall, until such return or directive is received, deduct or withhold employees' tax under the provisions of paragraph 9 or 10 of this Schedule, whichever may be applicable, at the rate applicable to a person who is not a married person and who is not entitled to have any child or stepchild taken into account in the determination of the amount of employees' tax to be deducted or withheld.

(4) If the latest return of personal particulars furnished by any employee to his employer in terms of sub-paragraph (1) discloses that the employee is a divorced person the employer shall, until he has in respect of that employee received a directive from the Collector issued under paragraph 11, deduct or withhold employees' tax under the provisions of paragraph 9 or 10, whichever may be applicable, at the rate applicable to a person who is not a married person and with due regard to the number of children or stepchildren of the employee disclosed by the said return who will not have attained the age of eighteen years on the last day of the employee's year of assessment during which the employees' tax is deducted or withheld.

Furnishing and Obtaining of Employees' Tax Certificates

13. (1) Subject to the provisions of paragraphs 5 and 16 of this Schedule, every person who during the periods of three months ending the last day of June, 1968, twelve months ending the last day of June, 1969, and any succeeding period of twelve months deducts or withholds any amount by way of employees' tax as required by paragraph 2 shall, within the time allowed by sub-paragraph (2) of this paragraph, deliver to each employee or former employee to whom remuneration has during the period in question been paid or become due by such person, an employees' tax certificate, in such form as the Collector may prescribe or approve, which shall show the total remuneration of such employee or former employee and the sum of the amounts of employees' tax deducted or withheld by such person from such remuneration during the said period, excluding any amount of remuneration or employees' tax included in any other employees' tax certificate issued by such person unless such other certificate has been surrendered to such person by the employee or former employee and has been cancelled by such person and dealt with by him as provided in sub-paragraph (10).

(2) The employees' tax certificate referred to in sub-paragraph (1) shall be delivered -

- (a) if the person who is required to deliver the certificate has not ceased to be an employer in relation to the employee concerned, within fourteen days after the end of the period to which the certificate relates; or
- (b) if the said person has ceased to be an employer in relation to the employee concerned but has continued to be an employer in relation to other employees, within fourteen days of the date on which he has so ceased; or
- (c) if the said person has ceased to be an employer, within seven days of the date on which he has so ceased;

or in any particular case within such further period as the Collector may approve.

(3) For the purposes of sub-paragraph (2), a person shall if the Collector having regard to the circumstances of the case so directs, be deemed not to have ceased to be an employer in relation to any of his casual employees who is likely from time to time to be re-employed by such person.

(4) Notwithstanding the provisions of sub-paragraphs (1) and (2), any person who has deducted or withheld employees tax from remuneration of any employee shall as and when required by the Collector deliver to such employee and employees' tax certificate, in such form as the Collector may prescribe or approve, which shall show the total remuneration of such employee or former employee and the sum of the amounts of employees' tax deducted or withheld by such person from such remuneration during any period specified by the Collector but excluding any amount of remuneration or employees' tax included in any other employees' tax certificate issued by such person unless such other certificate has been surrendered to such person by the employee or former employee and has been cancelled by such person and dealt with by him as provided in sub-paragraph (10).

(5) It shall be the duty of any employee or former employee who has not received an employees' tax certificate within the time allowed by sub-paragraph (2) forthwith to apply to the employer for such certificate.

(6) Every taxpayer shall, when rendering a return of income under the provisions of section 31, attach to such return all employees' tax certificates in his possession which disclose information in respect of the year of assessment to which the return relates.

(7) It shall be sufficient compliance with the provisions of sub-paragraph (1) or (4) in regard to the delivery of any employees' tax certificate to any employee or former employee if such certificate is delivered to the employee's authorized agent or the representative taxpayer in respect of the remuneration shown in such certificate or, where delivery cannot conveniently be effected by personal delivery, if such certificate is sent to the employee or former employee or such agent or representative taxpayer by registered post.

(8) An employer may at the request of the employee or former employee issue a duplicate employees' tax certificate but any such duplicate shall be clearly marked as such and shall disclose full details of the original certificate.

(9) Unless authorized thereto by the Collector no duplicate employees' tax certificate may be issued by an employer otherwise than as provided in sub-paragraph (8).

(10) Any cancelled or spoiled employees' tax certificate shall not be destroyed by the employer concerned but shall be retained by him until the Collector requires it to be surrendered to him.

(11) The Collector shall control the issue to employers of stocks of unused employees' tax certificates and may prescribe conditions in regard to the manner in which such unused certificates may be used or as to the surrender of unused stocks of such certificates and every employer shall account to the Collector for used, unused, cancelled or spoiled certificates as and when required by the Collector.

(12) In the case of any employer who has a mechanical accounting system the Collector may, subject to such conditions as he may impose, approve the use by such employer of employees' tax certificates in a form other than the form prescribed for general use and, if any such employer fails to comply with the conditions imposed by the Collector, the Collector may withdraw his consent for the use of such certificates and the employer shall forthwith or from any date specified by the Collector cease to use such certificates and shall within such period as the Collector may prescribe surrender to the Collector all unused stocks of such certificates.

(13) Every person who ceases to be an employer shall, unless the Collector otherwise directs, within fourteen days of his ceasing to be an employer surrender to the Collector all unused employees' tax certificates in his possession.

(14) If any person fails to surrender any unused employees' tax certificates as required by sub-paragraph (12) or (13), any officer engaged in carrying out the provisions of this Act, who has in relation to such person been authorized thereto by the Collector by telegram or other writing, may, without previous notice, at any time during the day enter any premises whatsoever and on such premises search for and seize such certificates and, in carrying out such search, open or cause to be removed and open any article in which he suspects any such certificates to be contained.

(15) For the purposes of this Schedule any employees' tax certificate on which appears the name or any trade name of any employer shall, until the contrary is proved, be deemed to have been issued by such employer if such certificate is in a form prescribed by the Collector for general use and was supplied by the Collector to such employer for use by him or is in a form approved by the Collector under sub-paragraph (12) for use by such employer.

Employers to Keep Records and Furnish Returns

14. (1) Every employer shall in respect of each employee maintain a record showing the amounts of remuneration paid or due by him to such employee and the amount of employees' tax deducted or withheld from each such remuneration, and such record shall be retained by the employer and shall be available for scrutiny by the Collector.

(2) Every employer shall when making any payment of employees' tax submit to the Collector a declaration in such form as the Collector may prescribe showing, in addition to any other information that may be required, the total amounts included in such payment in respect of employees resident in Botswana and employees resident outside Botswana.

(3) Every employer shall –

- (a) in respect of the period of three months ending the last day of June, 1968 ;
- and

(b) in respect of the period of twelve months ending the last day of June, 1969, and each succeeding period of twelve months; and

(c) if he ceases to carry on any business or other undertaking in respect of which he has paid or become liable to pay remuneration to any employee or otherwise ceases to be an employer, in respect of the period from the first day of July immediately preceding the date on which he has ceased to carry on such business or other undertaking or to be an employer, as the case may be, to the date on which he has so ceased to carry on such business or undertaking or to be an employer, as the case may be;

within fourteen days after the end of the period in question, or within such longer time as the Collector may approve, render to the Collector a return, in such form as the Collector may prescribe, showing the names and addresses of all the persons who during such period were employees in relation to such employer and the total remuneration paid to or accrued to each employee in respect of such period and the total amount of employees' tax deducted or withheld from the remuneration of each such employee during such period.

(4) The Collector may call upon any employer to allow an auditor to examine his records to verify the accuracy with the employees' tax certificates.

Liability of Representative Employers and Others

15. (1) Every representative employer shall as regards the remuneration which he pays or is liable to pay to any employee in his representative capacity, be subject in all respects to the same duties, responsibilities and liabilities under this Schedule as if that remuneration was remuneration paid or liable to be paid by him in his personal capacity.

(2) Any employees' tax or interest on employees' tax or any penalty imposed under this Schedule shall be recoverable from the person who in terms of the definition of "employer" in paragraph 1 of this Schedule is an employer by virtue of his having paid or become liable to pay remuneration in a fiduciary capacity, or in his capacity as a trustee in an insolvent estate, an executor, or an administrator of a benefit fund, pension fund, provident fund, retirement annuity fund or any other fund, or from the representative employer, but to the extent only of any assets belonging to the person, body, trust estate or fund represented or administered by him which may be in his possession or under his management, disposal or control, and the provisions of sections 46 and 47 of this Proclamation shall, *mutatis mutandis*, apply in the case of such first-mentioned person or representative employer as if he were a representative taxpayer.

(3) The executor of the estate of any deceased employer or the trustee of the insolvent estate of any employer shall fulfil such obligations of the deceased or insolvent employer under paragraphs 13 and 14 of this Schedule as arise in consequence of that employer ceasing to be an employer because of his death or insolvency, or as have not been fulfilled by such employer before his death or insolvency.

PART III

GENERAL

Employees' Tax To Be Set Off Against Tax Liability

16. (1) There shall be set off against the liability of the taxpayer, in respect of income tax due by the taxpayer and payable under Part VII of this Proclamation, the amounts of employees' tax deducted or withheld by the taxpayer's employer during any year of assessment for which the taxpayer's liability for income tax has been assessed by the Collector, and –

- (a) if the sum of the said amounts of employees' tax exceeds the amount of the taxpayer's total liability for the said taxes, the excess amount shall be refunded to the taxpayer;
- (b) if, in the case of any taxpayer, the taxpayer's total liability for the aforesaid tax exceeds the sum of the said amounts of employees' tax, the amount of the excess shall be payable by the taxpayer to the Collector.

(2) The burden of proof that any amount of employees' tax has been deducted or withheld by his employer shall be upon the taxpayer and any employees' tax certificate shall be *prima facie* evidence that the amount of employees' tax reflected therein has been deducted by the employer.

(3) If the Collector is satisfied that the amount or any portion of the amount of employees' tax shown in any employees' tax certificate has not been deducted or withheld by the employer and the amount of employees' tax shown in such tax certificate has been applied as provided in sub-paragraph (1), the employer and the employee shall be jointly and severally liable to pay to the Collector the amount which should not have been so applied and such amount shall be recoverable under this Proclamation as if it were tax.

(4) An employer who has, under sub-paragraph (3), paid to the Collector an amount which has, but should not have, been applied under the provisions of sub-paragraph (1), may, if the amount was shown or included in the certificate because of a *bona fide* error, recover the amount so paid from the employee concerned, and in that case the provisions of sub-paragraph (3) of paragraph 5 shall, *mutatis mutandis*, apply.

(5) No employees' tax certificate shall be issued by the employer in respect of any amount recovered by him from the employee in terms of sub-paragraph (4) nor shall any such amount be included in any return rendered in terms of sub-paragraph (3) of paragraph 14.

(6) If the Collector is satisfied that the employee to whom an employees' tax certificate refers was directly or indirectly responsible for an incorrect amount being shown on such certificate, he may absolve the employer from the liability imposed upon him by sub-paragraph (3), and in that case the employee shall be solely liable under that sub-paragraph.

Refunds

17. No refund of any amount of employees' tax shall be made to the taxpayer concerned otherwise than as provided in paragraph 16.

Offences

18. (1) A person who --

- (a) makes or becomes liable to make any payment of remuneration and who fails to deduct or withhold therefrom any amount of employees' tax or to pay such amount to the Collector as and when required by paragraph 2; or
- (b) uses or applies any amount deducted or withheld by him by way of employees' tax for purposes other than the payment of such amount to the Collector; or
- (c) makes or issues or causes to be made or issued or knowingly possesses or uses or causes to be used any employees' tax certificate which is false; or
- (d) without just cause shown by him, fails to comply with any directive issued to him by the Collector in terms of paragraph 11 of this Schedule; or
- (e) furnishes to his employer or the Collector a false or misleading return of personal particulars or gives any false information or misleads his employer in relation to any matter affecting the amount of employees' tax to be deducted in his case; or
- (f) fails or neglects to deliver to any employee or former employee any employees' tax certificate as required by paragraph 13; or
- (g) fails to comply with any condition prescribed by the Collector in terms of sub-paragraph (11) of paragraph 13 in regard to the manner in which employees' tax certificates may be used or as to the surrender of unused stocks of such certificates, or to account for used, unused or spoiled employees' tax certificates when required by the Collector under that paragraph or on ceasing to be an employer fails to surrender unused employees' tax certificates in his possession as required by sub-paragraph (13) of that paragraph; or
- (h) fails to comply with any condition prescribed by the Collector by which he is bound in terms of sub-paragraph (12) of paragraph 13 of this Schedule; or
- (i) fails or neglects to maintain any record as required by paragraph 14 or to retain such record for a period of five years from the date of the last entry therein or to furnish to the Collector any declaration as required by that paragraph; or
- (j) alters any employees' tax certificate made or issued by any other person or authority or falsely pretends to be the employee named in any employees' tax certificate or for his own advantage or benefit obtains credit with

respect to or payment of the whole or any part of any amount of employees' tax deducted or withheld from remuneration received by another person ; or

(k) not being an employer and without being duly authorized by any person who is an employer, issues or causes to be issued any document purporting to be an employees' tax certificate ;

shall be guilty of an offence and liable, on conviction, to a fine not exceeding four hundred rand or imprisonment for a period not exceeding one year or both such fine and such imprisonment.

(2) For the purposes of item (b) of sub-paragraph (1), an amount which has been deducted or withheld by any person from remuneration shall, until the contrary is proved, be deemed to have been used or applied by such person for purposes other than the payment of such amount to the Collector if such amount is not paid to the Collector within the period allowed for payment under paragraph 2.

Recovery of Employees' Tax, Penalty, Additional Tax and Interest

19. Any amount of employees' tax, penalty or additional tax payable in terms of this Schedule, and any amount of interest payable in terms of section 58 (2) shall, when it becomes due or is payable, be a debt due to the Government and may be recovered by the Collector in the manner prescribed in section 60 for the recovery of tax and interest due or payable under this Proclamation."

Passed by the National Assembly this day, the 17th January, 1968.

G.T. MATENGE,
Clerk of the National Assembly.