

**CHAPTER 52:02 - MINERAL RIGHTS TAX: SUBSIDIARY LEGISLATION
INDEX TO SUBSIDIARY LEGISLATION**

Mineral Rights Tax Regulations

MINERAL RIGHTS TAX REGULATIONS

(under section 5)

(1st July, 1973)

ARRANGEMENT OF REGULATIONS

REGULATION

PART I

Preliminary

1. Citation
2. Interpretation

PART II

Returns and Information

3. Tax returns: general
4. Extension of time
5. Returns deemed to be furnished with due authority and in full knowledge of contents
6. Method of furnishing returns
7. Tax returns: where no return furnished
8. Powers of obtaining information
9. Powers of entry, inspection and removal of documents

PART III

Assessment of Tax

10. Commissioner to make assessment
11. Additional assessment
12. Reduced assessment
13. Time limit for assessment
14. Notice of assessment
15. Record of assessments

PART IV

Objections and Appeals

16. Objection to assessment
17. Decision by Commissioner on objection
18. Appeal from decision by Commissioner
19. Hearing by High Court
20. Right of further appeal
21. Payment of tax not suspended by objection or appeal

PART V

Payment and Recovery of Tax

22. When tax is payable
23. Extensions of time or payment by instalments
24. Interest on unpaid tax
25. Recovery of tax: general
26. Procedure for recovery of tax by court action
27. Recovery of tax from representative taxpayers
28. Right of representative taxpayer to indemnity
29. Personal liability of representative taxpayer
30. Recovery of tax from person holding money for another person
31. Remission of tax

PART VI
Offences

- 32. Civil penalties: general
- 33. Penalties: failure to furnish tax return
- 34. Penalties: failure to furnish correct tax return
- 35. Sanction for prosecution
- 36. Offences: failure to comply with requirements of the Act
- 37. Offences: intent to evade liability to tax
- 38. Aiding and abetting an offence
- 39. Mitigation of penalties and compounding of offences

PART VII
Miscellaneous

- 40. Forms of notices and returns
- 41. Service of notices or documents
- 42. Free postage

S.I. 79, 1973.

PART I
Preliminary (regs 1-2)

1. Citation

These Regulations may be cited as the Mineral Rights Tax Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires-

"assessment", in relation to any person, means a determination by the Commissioner of the value of the mineral rights, whether calculated at the area rate or the *ad valorem* rate, upon which tax is chargeable and includes an additional assessment or a reduced assessment;

"precedent partner or agent", in relation to a partnership, means the person notified to the Commissioner as the precedent partner of that partnership or appointed as agent of that partnership under the Income Tax Act;

"public officer", in relation to a company, means the person appointed as public officer of that company under the Income Tax Act;

"representative taxpayer", in relation to a person, has the same meaning as in the Income Tax Act, but also includes, in relation to a partnership, the precedent partner or agent of that partnership.

PART II
Returns and Information (regs 3-9)

3. Tax returns: general

(1) Every person liable to furnish a tax return in respect of any tax year, either personally or in a representative capacity, shall furnish such return in the prescribed form within two months of the end of that tax year, and such form shall be signed by him or by an agent authorized to sign on his behalf.

(2) The Commissioner shall give general notice in the *Gazette* and in such other manner and at such other places as he deems fit of the obligations imposed by this regulation, but failure to give any such notice shall in no way relieve any person liable to furnish a tax return from his obligation to comply with subregulation (1).

(3) Tax return forms may be obtained from the Commissioner and it shall be the duty of all persons liable to furnish a tax return to obtain such forms.

(4) Notwithstanding subregulation (3) the Commissioner may, if he deems it so

advisable, cause forms to be delivered by hand or post to any person.

4. Extension of time

Where under the Act any return is required to be furnished by any person within a specified number of days, the Commissioner may, by notice in writing served on such person, extend the period in which such return is to be furnished.

5. Returns deemed to be furnished with due authority and in full knowledge of contents

Every return, statement or form purporting to be furnished under the Act by or on behalf of any person shall for all purposes of the Act be deemed to have been furnished by that person or with his authority, as the case may be, unless the contrary is proved; and any person signing such return, statement or form shall be deemed to be cognizant of all matters contained therein.

6. Method of furnishing returns

Any return required to be furnished under the Act shall be delivered by hand or post to the address specified in the prescribed form.

7. Tax returns: where no return furnished

(1) Where it appears to the Commissioner that any person is or may be liable to furnish a tax return for any tax year and has not done so, he may, by notice in writing, require such person to furnish a tax return within such time as may be specified in the notice, not being less than seven days from the date of service of such notice.

(2) Nothing in this regulation shall be construed as extending the time limits provided by regulation 3 for the furnishing of any tax return.

8. Powers of obtaining information

(1) For the purpose of obtaining full information in respect of the liability to tax of any person, the Commissioner may, by notice in writing, require any person-

- (a) to furnish such further information as may be required by the Commissioner;
- (b) to produce at such time and place as may be specified in such notice, for examination by the Commissioner or for retention by him for such period as may be reasonable for their examination, any documents which the Commissioner may consider necessary for such purpose and, if any such documents are not available in the English or Setswana language, to produce at the taxpayer's expense a translation in English prepared and certified by an approved translator; or
- (c) to attend at such time and place as may be specified in such notice, for the purpose of being examined by the Commissioner respecting his liability to tax or the liability to tax of any other person or any transactions or matters appearing to be relevant thereto.

(2) Where any person is required to attend and give information under subregulation (1) in relation to any other person he may be allowed such expenses of attending as may be prescribed.

9. Powers of entry, inspection and removal of documents

(1) The Commissioner, or any officer authorized by him, may, for the purpose of obtaining information which he considers necessary in relation to the liability of any person to tax, enter any premises at any time during the day, without previous notice, and search for any documents; and in carrying out such search he may-

- (a) open, or cause to be removed and opened, any article in which he considers any documents may be contained;
- (b) seize any documents which he considers may afford material evidence of the liability of any person to tax;
- (c) retain any such documents for such period as may be reasonable for their examination or for the purposes of a prosecution; or
- (d) make copies of any such documents.

(2) Any officer exercising any power under subregulation (1) shall, upon demand, produce the authority furnished to him by the Commissioner.

(3) Where any documents are seized and retained under subregulation (1), the person to whom such documents belong shall be entitled to examine and make copies or extracts from them at such time and place and under such supervision as the Commissioner may determine.

PART III

Assessment of Tax (regs 10-15)

10. Commissioner to make assessment

(1) The Commissioner shall proceed to assess every person chargeable with tax as expeditiously as possible after the expiry of the time allowed to such person under regulation 3 or as extended under regulation 4 for the delivery of a tax return.

(2) Where a person has delivered a tax return the Commissioner may accept such return and make an assessment in accordance therewith.

(3) Where-

- (a) a person fails to furnish a tax return; or
- (b) the Commissioner is not satisfied that the tax return furnished by any person is true and correct,

the Commissioner may make an assessment to the best of his judgment.

11. Additional assessment

Where, in relation to an assessment made on any person for any tax year, the Commissioner is of the opinion that the tax charged is less than the amount which should have been charged by reason of the application of section 3(9)(a) of the Act, he shall make an additional assessment accordingly.

12. Reduced assessment

Where, in relation to an assessment made on any person for any tax year, the Commissioner is of the opinion that the tax charged is greater than the amount which should have been charged by reason of the application of section 3(9)(b) of the Act, he shall make a reduced assessment accordingly.

13. Time limit for assessment

(1) Subject to subregulation (2) an assessment under regulation 10, 11 or 12 may be made in relation to any person at any time prior to the expiry of six years after the end of the tax year to which it relates.

(2) Where, consequent upon a transaction relating to mineral rights taking place to which paragraph (a) or (b) of section 3(9) of the Act applies, the Commissioner assesses the transfer value of such mineral rights, for the purposes of ascertaining the tax payable in respect of the tax year commencing on the anniversary of the effective date next following such assessment of the transfer value, at an amount which is greater or less than the value disclosed in the first tax return, an additional assessment or a reduced assessment, as the case may be, in respect of each preceding tax year since the effective date may be made at any time.

14. Notice of assessment

(1) A notice of assessment in respect of every person chargeable with tax shall be made and issued to such person in the prescribed form.

(2) In this regulation "notice of assessment" includes a notice of a reduced assessment and an additional assessment.

15. Record of assessments

The Commissioner shall maintain in such manner as he thinks fit a record of all assessments made in respect of each tax year.

PART IV

Objections and Appeals (regs 16-21)

16. Objection to assessment

(1) Any person who is aggrieved by an assessment made on him may, by notice in writing to the Commissioner within 30 days after the date of service of the notice of assessment, or within such further time as the Commissioner may for good cause allow, object to the

assessment.

(2) Where the assessment is an additional assessment the person assessed shall have no further right of objection than he would have had if that assessment had not been made except to the extent to which that assessment has imposed a fresh liability on him.

(3) An objection shall specify particulars of the grounds on which it is made.

(4) In this regulation "aggrieved by an assessment" means aggrieved by-

- (a) the assessment of the value of mineral rights by the Commissioner under section 3(5) of the Act;
- (b) the amount of tax set off under section 3(11) and (14) of the Act;
- (c) the imposition of any amount of penalty for failure to lodge a tax return within the prescribed time or any extended time allowed under regulation 4; or
- (d) the imposition of any amount of penalty for failure to lodge a correct tax return.

17. Decision by Commissioner on objection

(1) The Commissioner shall consider any valid objection made under regulation 16 and may either disallow it or allow it either wholly or in part and shall by notice in writing inform the person concerned of his decision.

(2) If a decision of the Commissioner requires the reduction of an assessment made on any person, the Commissioner shall issue a notice of reduced assessment to that person together with the notice of his decision, or as soon as is practicable thereafter.

18. Appeal from decision by Commissioner

(1) Any person who is aggrieved by a decision of the Commissioner on an objection (hereinafter referred to as "the appellant") may, by notice of appeal to the High Court, appeal against such decision.

(2) A notice of appeal shall-

- (a) be made in writing;
- (b) be lodged with the Commissioner within 60 days after the date of service of the notice of his decision on the objection, or within such further time as the Commissioner may for good cause allow;
- (c) be restricted to the grounds stated in the objection given to the Commissioner except for such modifications as may be necessary, arising from the partial allowance by the Commissioner of the objection.

(3) In this section "aggrieved by a decision of the Commissioner" means aggrieved by-

- (a) the assessment of the value of mineral rights by the Commissioner under section 3(5) of the Act;
- (b) the amount of tax set off under section 3(11) and (14) of the Act;
- (c) the imposition of any amount of penalty for failure to lodge a tax return within the prescribed time or any extended time allowed under regulation 4; or
- (d) the imposition of any amount of penalty for failure to lodge a correct tax return.

(4) Upon receipt of a valid notice of appeal the Commissioner shall forward to the High Court as early as is practicable such number of copies as may be necessary of-

- (a) the tax return;
- (b) the notice of assessment under appeal;
- (c) the notice of objection;
- (d) the decision of the Commissioner on the objection;
- (e) the notice of appeal; and
- (f) a statement setting out the matter in dispute between the appellant and the Commissioner.

(5) Upon transmission of the documents referred to in subregulation (4) the Commissioner shall notify the appellant that such action has been taken and at the same time shall forward to the appellant a copy of such documents.

19. Hearing by High Court

(1) Upon every hearing of an appeal the High Court may confirm, increase or order the reduction of any assessment or may make such other order as it deems fit.

(2) On any appeal to which this section relates both the appellant and the Commissioner shall bear their own costs except where the High Court is of the opinion that-

- (a) the decision of the Commissioner on the objection was arbitrary and unreasonable; or
- (b) the grounds of appeal by the appellant were frivolous, when the court may make such order as to costs as it deems fit.

(3) On any appeal the burden of proof shall lie upon the appellant.

20. Right of further appeal

(1) The Commissioner or the appellant may appeal to the Court of Appeal as of right from any decision which involves a question of law, including a question of mixed fact and law, but in any other case the decision of the High Court on an appeal shall be final and not subject to further appeal.

(2) On any further appeal to which this section relates the Court of Appeal-

- (a) may confirm, increase or order the reduction of any assessment;
- (b) may make such order as it deems fit;
- (c) may make such order as to costs as it deems fit.

21. Payment of tax not suspended by objection or appeal

The obligation to pay any tax chargeable under an assessment shall not be suspended by reason of any notice of objection or appeal having been given against such assessment, and the tax charged may be recovered as if no such notice of objection or appeal had been given.

PART V

Payment and Recovery of Tax (regs 22-31)

22. When tax is payable

Subject to this Part, any tax charged shall be due and payable by the person chargeable thereto within 30 days of the date of service on him of the notice of assessment.

23. Extensions of time or payment by instalments

(1) On application by the person chargeable to tax, the Commissioner may in any case grant such extension of time for payment, or permit payment to be made by such instalments and within such time as he considers the circumstances warrant, and in such case the tax shall be due and payable accordingly.

(2) Where, under subregulation (1), the tax is permitted to be paid by instalments and there is default in payment of any instalment, the whole of the balance of tax outstanding shall become due and payable forthwith.

24. Interest on unpaid tax

(1) Any tax not paid within the time specified in regulation 22 shall bear interest at the rate of two per cent for each month or part of a month during which it remains unpaid.

(2) The Commissioner may, where he considers the circumstances warrant it, remit the whole or part of any interest payable under subregulation (1).

25. Recovery of tax: general

(1) Tax shall, when it becomes due and payable, be a debt due to the Government and payable to the Commissioner in the manner and at the place prescribed.

(2) Proceedings in any court for the recovery of tax shall be deemed to be proceedings for the recovery of a liquid debt.

(3) In any proceedings for the recovery of tax it shall not be competent for the defendant to enter a defence that-

- (a) the assessment of the value of mineral rights is incorrect;
- (b) the tax charged is excessive; or
- (c) the assessment is the subject of objection or appeal.

26. Procedure for recovery of tax by court action

(1) If any person fails to pay any tax when it becomes due and payable the

Commissioner may file with the clerk or registrar of any court of competent jurisdiction a statement, certified by him as correct, of the amount of tax due and payable and unpaid.

(2) A statement filed under subregulation (1) shall have the effect of a civil judgment given in that court in favour of the Commissioner for a liquid debt of the amount specified in the statement and the court shall, subject to subregulation (3), issue a writ of execution in respect thereof against the person who has so failed to pay.

(3) No writ of execution shall be issued against any person pursuant to subregulation (2) until 14 days after service on him by the court of a notice informing him that a writ of execution will be issued by the court in respect of tax due and payable by him and unpaid unless before the expiration of the period of 14 days he produces proof of payment thereof satisfactory to the court.

(4) After giving the Commissioner the opportunity of being heard, in the event of-

- (a) proof of payment being produced with which the court is satisfied, the writ of execution shall not be issued;
- (b) no proof of payment being produced with which the court is satisfied, the writ of execution shall be issued and execution thereon shall proceed forthwith; or
- (c) proof being produced which appears to the court to be inconclusive, the court shall proceed to set down a case for hearing and both parties shall be entitled to be heard personally or by representation; and upon completion of the hearing the court shall direct whether or not execution of the writ shall be issued.

27. Recovery of tax from representative taxpayers

(1) Where any person dies, then in respect of any tax payable under an assessment-

- (a) made upon him prior to and remaining unpaid at his death;
- (b) made upon his executor in relation to a period prior to his death; or
- (c) made upon his executor in relation to a period subsequent to the death of the deceased person,

the amount of tax unpaid by that person in his lifetime or payable under an assessment made on his executor shall be a debt due and payable out of the estate of the deceased person.

(2) Where a company is being wound up or has been placed under judicial management, then in respect of any tax payable under an assessment-

- (a) made upon the company, prior to and remaining unpaid at the commencement of the liquidation or judicial management;
- (b) made upon the liquidator or judicial manager in relation to a period prior to commencement of the liquidation or judicial management; or
- (c) made upon the liquidator or judicial manager in relation to a period during the winding up or judicial management of the company,

the amount of tax unpaid by the company or payable by the liquidator or judicial manager shall be a debt due and payable out of the assets of the company.

(3) Where any person is chargeable to tax as trustee of a trust the income of which is accumulated, then any tax payable by the trustee shall be due and payable out of the assets of the trust.

(4) Where any person is chargeable to tax as trustee for a legally disabled person, any tax payable by the trustee shall be due and payable out of the assets of the legally disabled person.

(5) Where any person is chargeable to tax as trustee for the beneficiaries of a trust, any tax payable by the trustee shall be due and payable out of the assets of the trust.

(6) Where any person is chargeable to tax as agent for a non-resident, any tax payable shall be due and payable out of the assets in Botswana of the non-resident.

(7) Where any person is chargeable to tax as public officer of a company, any tax payable shall be due and payable by the company.

(8) Where any person is chargeable to tax as precedent partner or agent of a

partnership, any tax payable shall be due and payable out of the assets of the partnership.

28. Right of representative taxpayer to indemnity

Every person who as a representative taxpayer pays any tax shall be entitled to recover the amount paid from the person on whose behalf it was paid or to retain out of any moneys that may be in his possession, or may come to him, in his representative capacity an amount equal to the amount paid.

29. Personal liability of representative taxpayer

Every representative taxpayer shall be personally liable for any tax payable by him in his representative capacity if, while it remains unpaid-

- (a) he alienates, charges or disposes of any amounts in respect of which the tax is charged; or
- (b) he disposes of or parts with any assets or money which is in his possession or comes to him after the date on which the tax is payable,

if the tax could legally have been paid out of such amounts, assets or money.

30. Recovery of tax from person holding money for another person

(1) For the purpose of recovery of any tax due from any person the Commissioner may, by notice in writing, declare any other person-

- (a) from whom any money is due or may become due to the first mentioned person;
- (b) who holds or may subsequently hold money for or on account of the first mentioned person;
- (c) who holds money on account of some other person for payment to the first mentioned person; or
- (d) who has authority from some other person to pay money to the first mentioned person,

to be the agent of that person and to pay to the Commissioner within 15 days of the date of service of that notice or if on such date no money is due from him to that person within 15 days of the date on which money becomes due to that person, the amount specified in the notice, or if the money due is less than the amount specified the whole amount of the money due.

(2) Where any person declared to be an agent under subregulation (1) fails to make any payment within the time specified in a notice under that subregulation, the provisions of the Act shall apply as if such amount were tax due and payable by that person on the date by which he was required to make such payment to the Commissioner.

31. Remission of tax

(1) The Minister may remit wholly or in part any tax payable by any person where he is satisfied that it is just and equitable to do so.

(2) Any decision made by the Minister under this regulation shall be final and not subject to appeal.

PART VI

Offences (regs 32-39)

32. Civil penalties: general

The penalties imposed by regulations 33 and 34 may be imposed by the Commissioner at his discretion and shall be in addition to any right to institute criminal proceedings against any person for an offence under the Act, and any fine payable on conviction for an offence shall be in addition to the penalties provided herein.

33. Penalties: failure to furnish tax return

Where any person who is required to furnish a tax return for any tax year fails to do so within the prescribed time or any extended time allowed under regulation 4, he shall be liable to interest at the rate of two per cent per month on the amount of tax charged for such tax year, calculated for the period-

- (a) commencing 30 days after the date on which the return should have been lodged, or 1st January following the end of that tax year, whichever is the later; and
- (b) ending on the date on which the tax becomes due and payable under the assessment

made on him for that tax year under regulation 10.

34. Penalties: failure to furnish correct tax return

(1) Where any person has failed to lodge a correct tax return for any tax year by reason of-

- (a) his failure to disclose the value of any mineral rights held by him;
- (b) the claim by him for set off against his liability to tax of an expenditure of an amount which was not expended; or
- (c) his failure to disclose any fact, the disclosure of which would result in an increase in the value of mineral rights held by him,

he shall be liable to a penalty in accordance with subregulation (2).

(2) Where the incorrectness of the tax return, statement or information was attributable to-

- (a) neglect or carelessness, he shall be liable to a penalty not exceeding the amount of tax which would have been lost if he had been assessed on the basis of the incorrect return, statement or information furnished by him; or
- (b) fraud or wilful default, he shall be liable to a penalty not exceeding twice the amount of tax which would have been lost if he had been assessed on the basis of the incorrect return, statement or information furnished by him.

35. Sanction for prosecution

(1) Subject to the powers of the Director of Public Prosecutions under the Constitution no criminal proceedings in respect of any offence under the Act shall be commenced except with the sanction of the Commissioner.

(2) Criminal proceedings under the Act shall be commenced in the name of the Commissioner.

36. Offences: failure to comply with requirements of the Act

(1) Any person who-

- (a) fails or neglects to furnish to the Commissioner any return or document as and when required under the Act;
- (b) fails to comply with the requirements of any notice in writing served on him under the Act;
- (c) refuses or neglects to answer truly and fully any questions put to him or to supply any information required from him respecting the value of mineral rights held by him or by any other person;
- (d) obstructs or hinders any person appointed or employed under the Act in the discharge of his duties;
- (e) fails to disclose in any tax return made by him the value of any mineral rights held by him or any material facts which should have been disclosed; or
- (f) signs any return or statement rendered to the Commissioner without reasonable grounds for believing that return or statement or any part thereof to be correct,

shall be guilty of an offence and liable to a fine not exceeding P400 or to imprisonment for a term not exceeding one year, or to both.

(2) Any person who, having been convicted under subregulation (1) of failing to do anything required to be done by him under the Act, fails, within any further period specified by the Commissioner in a notice served on that person, to comply with the requirements of the notice, shall be guilty of a further offence and shall be liable for each day during which the default continues to a fine not exceeding P10 or to imprisonment for a term not exceeding one month, or to both.

37. Offences: intent to evade liability to tax

(1) Any person who wilfully and with intent to evade assessment or liability to tax-

- (a) makes or causes or allows to be made any incorrect statement in any return lodged under the Act;

- (b) signs any statement in any return lodged under the Act having reason to believe such statement or any part thereof to be incorrect;
- (c) gives any incorrect answer, verbally or in writing, to any request for information made by the Commissioner;
- (d) prepares or maintains any incorrect books of account or other records or falsifies any books of account or other records;
- (e) authorizes the preparation or maintenance of any incorrect books of account or other records or the falsification of any books of account or other records; or
- (f) makes use of or authorizes the use of any fraud whatever,

shall be guilty of an offence and liable to a fine not exceeding P2000 or to imprisonment for a term not exceeding two years, or to both.

(2) In any proceedings under this regulation, if it is proved that any incorrect statement or entry is wilfully made in any return, answer, books of account or other records or statement by any person, he shall be presumed, until the contrary is proved, to have made or caused or allowed to be made that incorrect statement or entry with intent to evade assessment or liability to tax.

38. Aiding and abetting an offence

(1) Where any person-

- (a) wilfully makes or delivers on behalf of another person; or
- (b) aids or abets another person to make or deliver,

an incorrect return, account, statement or any incorrect information relating to any matter affecting the tax liability of that other person, the first mentioned person shall be guilty of an offence and liable to a fine not exceeding P400 or to imprisonment for a term not exceeding one year, or to both.

(2) Where any person with intent to assist any other person to evade assessment or liability to tax does any of the matters referred to in regulation 37 he shall be guilty of an offence and liable to a fine not exceeding P2000 or to imprisonment for a term not exceeding two years, or to both.

(3) In any proceedings under subregulation (2), if it is proved that any incorrect statement or entry is wilfully made in any return, answer, books of account or other records or statement by such person, he shall be presumed, until the contrary is proved, to have made such incorrect statement or entry with intent to assist such other person to evade assessment or liability to tax.

39. Mitigation of penalties and compounding of offences

(1) Where any person has committed a breach of the provisions of the Act for which a penalty is provided under regulation 33 or 34, then in relation to such breach the Commissioner may mitigate any penalty imposed by him, either wholly or in part and whether before or after judgment for its recovery has been obtained.

(2) Nothing in subregulation (1) shall be construed so as to authorize the Commissioner to mitigate any penalty where the penalty imposed by the Commissioner has been the subject of appeal under regulation 18.

(3) Where any penalty has been mitigated under subregulation (1) by agreement with the person concerned then, notwithstanding the provisions of regulations 16 and 18, that person shall not be entitled to object or to appeal against the imposition of, or the amount of, any penalty as so mitigated.

(4) Where any person has committed an offence against the Act for which criminal proceedings may be taken under regulation 36, 37 or 38, then in relation to such offence the Commissioner may, at any time prior to the commencement of the hearing by any court of such proceedings, compound the offence and order the person to pay such sum of money, not exceeding the amount provided in regulation 36, 37 or 38, as the case may be, for such offence as the Commissioner may think fit.

(5) The Commissioner shall not exercise his power to compound under this regulation unless the person who has committed the offence requests the Commissioner in writing to so deal with the offence.

(6) Where the Commissioner compounds any offence under this regulation and makes an order accordingly-

- (a) the order shall be made in writing and there shall be attached to it the request referred to in subregulation (5);
- (b) the order shall specify-
 - (i) the offence committed;
 - (ii) the sum of money ordered to be paid;
 - (iii) the date on which payment is to be made or the dates on which instalments of that sum are to be paid;
- (c) a copy of the order shall be given, if he so requests, to the person who committed the offence;
- (d) that person shall not be liable to any criminal proceedings or further criminal proceedings in respect of such offence, and if any such proceedings are taken it shall be a good defence for that person to prove that the offence has been compounded under this regulation;
- (e) the order shall be final and shall not be subject to any appeal; and
- (f) a statement of the amount due by reason of the order may be filed with any court of competent jurisdiction in the manner provided in regulation 26 and such amount shall be deemed to be an amount due and payable and unpaid, and recovery thereof shall be made in accordance with the provisions of that regulation.

(7) Where under subregulation (6)(b)(iii) any sum is paid by instalments and there is default in payment of any instalment the whole of the balance then outstanding shall become due and payable forthwith.

PART VII

Miscellaneous (regs 40-42)

40. Forms of notices and returns

(1) The Commissioner may from time to time prescribe the form of any notice, tax return or other return required for the purposes of the Act, and where any form has been so prescribed such form of notice or return shall be used for such purposes.

(2) Any notice given by the Commissioner under the Act may be signed by any officer authorized by him in that behalf, and any notice purporting to be signed on behalf of the Commissioner shall, unless the contrary is proved, be presumed to have been signed by an officer so authorized.

(3) Every form, notice or other document issued, served or given by the Commissioner under the Act shall be sufficiently authenticated if the name or title of the Commissioner, or the officer authorized in that behalf, is printed, stamped or written thereon.

41. Service of notices or documents

Where, under the Act, any notice or other document is required or authorized to be served on or given to any person by the Commissioner, then such notice or other document shall be sufficiently served-

- (a) in the case of a company if-
 - (i) personally served on the public officer of the company;
 - (ii) left at the company's address appointed for service of notices under the Income Tax Act; or
 - (iii) where no address for service of notices has been appointed under the Income Tax Act, left at or sent by post to any office or place of business of the company in Botswana;
- (b) in the case of a partnership if-

- (i) personally served on the precedent partner or agent of the partnership;
 - (ii) left at the partnership's address appointed for service of notices under the Income Tax Act; or
 - (iii) where no address for service of notices has been appointed under the Income Tax Act, left at or sent by post to any office or place of business of the partnership in Botswana; or
- (c) in the case of any other person if-
- (i) personally served on him;
 - (ii) left at his usual or last place of abode or office or place of business in Botswana; or
 - (iii) sent by post to such place of abode, office or place of business or to his usual or last known postal address in Botswana.

42. Free postage

All correspondence relating to the assessment and collection of tax, including tax returns, addressed to the Commissioner and posted within Botswana by any person, may be sent free of postage in envelopes which are marked "Mineral Rights Tax" and "On Botswana Government Service".