Statutory Instrument No. 87 of 1990

INCOME TAX ACT
(Cap 52:01)

DEVELOPMENT APPROVAL (BEVCAN BOTSWANA (PTY) LIMITED) ORDER, 1990

(Published on 28th September, 1990)

(under section 53)

IN EXERCISE of the powers conferred by section 53 of the Income Tax Act the Minister of Finance and Development Planning hereby makes the following Order —

Citation and duration

1. (*a*) This Order may be cited as the Development Approval (Bevcan Botswana (Pty) Limited) Order, 1990.

(*b*) Subject to the provisions of section 53 of the Act, this Order shall come into operation on the 1st. July, 1993, and shall continue for a period of ten years, which period shall not include a further period of two years during which the Commissioner may exercise his power of review as provided in paragraph (3) of the Schedule hereto.

Interpretation

2. For the purposes of this Order —

"date of commissioning" means the date on which the plant commences to produce cans in commercial quantities, which date is required to be the first day of a month;

"tax year" shall mean the first period commencing on the date of commissioning and ending on 30th September following and every subsequent period of twelve months thereafter for the duration of this Order;

"tax holiday period" means the period of five consecutive tax years commencing on the first day of the third tax year after the date of commissioning;

"the amount of benefits received" means the income tax that would be chargeable for each of the tax years during the tax holiday period but for the operation of paragraph (2) of the Schedule hereto;

"value added" in relation to any tax year falling within the period of this Order means the sum of —

(i) the total amount of income tax payable by employees, other than citizens of Botswana, on their remuneration and on the value of other taxable benefits receivable from the business;

(ii) the total amount of remuneration and the total value of other taxable benefits payable by the business to employees who are citizens of Botswana, less the amount of contributions made by these employees to an approved superannuation fund or an approved provident fund;

(iii) amounts payable by the business as costs of removal to a business which is based in Botswana and the owner of which is resident in Botswana;

(iv) amounts payable by the business to the Government of Botswana or to any parastatal body in Botswana as licence fees, rentals or charges for telecommunication services, power or water, but not as income tax chargeable on the company;

(v) amounts payable by the business as rent for business premises or for housing of employees in Botswana;

(vi) interest payable by the business to any financial institution or entity which is resident in Botswana;

(vii) amounts payable by the business to any other business in respect of professional or other services ; and

(viii) a part of any other item of expenditure on packaging material, paint, gas or similar product which is proportionate to the local content in Botswana, the value of which local content should not in any case be less than 40 percent as certified by an accountant registered under the Accountants Act, and which is subject to the approval of the Commissioner:

Provided that the reference to a "business" in items (iii), (v), (vi), (vii) and (viii), other than to the business to which this Order relates, means a business in which 51% ownership is held by companies, individuals or institutions resident in Botswana.

Prescription

3. Bevcan Botswana (Pty) Limited is prescribed as a business which may be granted additional tax relief for the purpose of its production of metal cans to be used for the canning of any form of beverage in Botswana or elsewhere, being a business project for the development of the economy of Botswana.

Additional tax relief

4. The business prescribed in paragraph 3 may be granted additional tax relief as set out in the Schedule hereto.

SCHEDULE

(1) In ascertaining the business chargeable income for any or all of the first ten tax years from the date of commencement of this Order, the allowances due under Parts IA and II of the Third Schedule of the Act in respect of capital expenditure incurred during that period of ten tax years may be deducted in any one or more tax years within the said period which are not earlier than the tax year in which the expenditure was incurred and not later than the tax year in which the capital asset was disposed of.

(2) Prior to the application of (1) above, in each tax year falling within the tax holiday period, taken in chronological order, there shall be exempted from tax so much of the tax chargeable as is not greater than —

(*a*) one half of the value added in that tax year, plus a surplus or minus a deficit of value added brought forward from the preceding tax year as calculated under (*b*);

(*b*) a surplus or deficit of value added is the difference between the amount of tax exemption which could have been granted under (a) in preceding tax years (falling within the tax holiday period) and one half of the value added in the same preceding tax years:

Provided that —

(i) one half of the value added in the first two tax years immediately preceding the tax holiday period which has not been taken into account under (*a*) and (*b*) above shall be utilized to increase a surplus or reduce a deficit and any tax paid for a tax year within the tax holiday period which is in excess of the amount properly chargeable as a result of such allowance shall be refunded to the business;

(ii) one half of the value added in each of the three tax years immediately succeeding the end of the tax holiday period shall be utilized for the same purpose and in the same manner as under (i) and any tax similarly paid in excess shall be refunded to the business.

(3) Notwithstanding sections 86, 89 or any other provision of the Act, the Commissioner may, within twenty four months after the end of the tenth tax year under this Order, make an assessment, reduced assessment or additional assessment (as the case may be) in respect of any of those ten tax years, if he considers it necessary to do so in order to ensure that the amount of benefits received in respect of the tax holiday period is not greater than one half of local value added in those ten tax years, and for this purpose he may treat those ten tax years as a single period of ten years from the commencement of this Order.

(4) The business prescribed under paragraph 3 of this Order shall not, during the first ten years of this Order, engage in any business activity other than that prescribed in the said paragraph 3.

(5) Any assessed loss incurred during any of the first ten tax years from the commencement of this Order shall not be carried forward to any subsequent tax year.

(6) Nothing in this Order shall be construed to mean that paragraph 3 of Part II, and Parts VI and VII, of the Third Schedule of the Act shall not apply.

(7) Any reference to expenditure for purposes of value added shall not be construed to include expenditure incurred outside Botswana.

MADE this 14th day of September, 1990.

F.G. MOGAE,
Minister of Finance and Development Planning.

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