

Statutory Instrument No. 69 of 2001

INCOME TAX ACT
(Act No. 12 of 1995)

INCOME TAX (TAX AGREEMENT)
ORDER 2001

(Published on 9th November, 2001)

IN EXERCISE of the powers conferred on the Minister of Finance and Development Planning by Sections 53 (1) and (3) of the Income Tax Act 1995 as amended, the following Order is hereby made –

1. This Order may be cited as the Income Tax (Tax Agreement) Order No. 1 of 2001. Citation

2. The Agreement to be entered into between the Minister of Finance and Development Planning on behalf of the Government of the Republic of Botswana and Botswana Insurance Fund Management Limited (“BIFM”) for itself and for and on behalf of persons who or which actually occupy accommodation in the Project as described below, is and shall be as set out in the Schedule hereto — The Agreement

SCHEDULE

TAX AGREEMENT

This Agreement is made this 5th day of November, 2001

between

The Minister of Finance and Development Planning
on behalf of
the Government of the Republic of Botswana
(**“the Government”**)

and

Botswana Insurance Fund Management Limited
or such a successor company that owns the
Project on behalf of the Tenants of the Project

WHEREAS

- (a) BIFM has promoted the erection of buildings upon Lot 50676 (comprising Lot 50374, 50375, 50376, 50377, 50378 and 50379) Fairground Office Park Gaborone for the provision of accommodation and at a cost which, excluding cost of finance, shall not be less than P300, 000,000 and which is anticipated to be in excess of P844, 000,000, (herein referred to as “the Project”).
- (b) The Project will, in the erection stages, provide substantial employment opportunities for citizens of Botswana.
- (c) The Project will provide, indirectly, substantial permanent employment opportunities for citizens of Botswana.
- (d) The support of efforts to create employment for citizens of Botswana is a policy of Government.
- (e) The Project will, on completion, provide substantial impetus to the International Financial Services Centre the establishment of which and the viability, sustainability and success of which is part of Government Policy.
- (f) The Project will on completion raise the profile of Gaborone and Botswana, as a capital in Africa and an International Financial Services Centre, which profile Government Policy, seeks to enhance. The Project will provide state-of-the-art telecommunications and other facilities to occupy and in so doing raise the reputation of the infrastructure of Botswana, which reputation Government Policy seeks to enhance.
- (g) The Project seeks to mobilise and utilise long term contractual savings of life and pension funds, and in order to make the Project attractive to such investors, it is necessary that an investment in the Project render an immediate and market related yield.
- (h) In order to render such a yield it is necessary that Tenants (as hereinafter defined) of accommodation in the Project pay rentals in respect of the first ten years of the Project (calculated from date of practical completion) in excess of market related rentals.
- (i) The take up of occupancy in the Project should be encouraged to ensure the start, success and viability of the Project.
- (j) Additional tax relief accorded to persons who or which as Tenants (as hereinafter defined) take up and occupy accommodation in the Project, in respect of rentals payable by such Tenant (as hereinafter defined) in respect of such accommodation would mitigate the effect of the cost of rentals in excess of market related rentals, and encourage occupancy in the Project.

- (k) The effect of the tax relief is to defer the payment of the tax. The tax would be collected from shareholders in the company, which owns the Project. In the case of taxpaying shareholders, the tax would be imposed on the enhanced benefits received by such shareholders. In the case of shareholders in the company owning the Project which are not taxpaying, the tax would be collected from the ultimate beneficiary and against the enhanced benefits received by those beneficiaries.

NOW THEREFORE THE PARTIES HAVE AGREED AS FOLLOWS: -

1. For the purposes of this Agreement the term Tenant shall mean and include a natural person or legal entity, resident in the Republic of Botswana, in actual occupation of accommodation in the Project (as defined hereinbefore) in terms of a written instrument of lease evidenced by certificate issued by the owner or management company of the Project (as defined hereinbefore).
2. That provided: —
 - 2.1 the cost of the Project (excluding the cost of financing) shall not be less than P300, 000,000;
 - 2.2 the cost of the Project shall be certified by an independent professional quantity surveyor;
 - 2.3 Phase 1 of the Project is commenced within six months of the date of ratification hereof by the National Assembly of Botswana.
3. That in relation to any rental payable by the Tenant in respect of accommodation actually occupied by the Tenant in the project: —

the Tenant shall be entitled to deduct from its gross income in any tax year, an amount equal to 200% of the rental actually paid by the Tenant in respect of accommodation in the Project actually occupied by it, in the tax year, for the period that the Tenant so occupies the said accommodation, or the period of the relief as set out in paragraph 3 or paragraph 4, whichever is the earlier.
4. The effective date of this Agreement is the 1st day of July, 2002.
5. The entitlement set out in paragraph 3 above shall commence in respect of that tax year in which the date upon which the architect to the Project issues a practical completion certificate in respect of the accommodation in the Project to be occupied by the Tenant and subject to paragraph 4 herebelow, endure for the 10 tax years immediately following the tax year in respect of which the entitlement set out in paragraph 3.1 commenced.

6. Notwithstanding anything to the contrary herein contained, and notwithstanding the date upon which the architect to the Project issues a practical completion certificate in respect of accommodation in the Project to be occupied by the Tenant and notwithstanding the date of expiry of the 10 tax years calculated in terms of paragraph 4 above, no Tenant who occupies any accommodation in the Project shall be entitled to any relief as envisaged herein which is in excess of that provided for in the Income Tax Act, after the 15th tax year from 1st July 2002, which date follows the expiry of the tax year in which this Agreement is rendered effective.

In witness whereof the Parties hereto have signed the Agreement.

Thus done and signed at Gaborone this 5th day of November, 2001.

On behalf of the Government of
the Republic of
Botswana

For and on behalf of Botswana
Insurance Fund Management
Limited

B. GAOLATHE

A.D. NORRIE