

INCOME TAX ACT
(Act No. 12 of 1995)

INCOME TAX (TAX AGREEMENT) ORDER, 1997
(Published on 1st August, 1997)

IN EXERCISE of the powers conferred on the Minister of Finance and Development Planning by section 53(2) (a) of the Income Tax Act, the following Order is hereby made —

1. This order may be cited as the Income Tax (Tax Agreement) Order, 1997. Citation
2. The Tax Agreement entered into between the Minister of Finance and Development Planning on behalf of the Government of the Republic of Botswana and Gallery Resources NL, A.C.N. 009 125 197 and Others is set out in the Schedule hereto — Tax agreement

SCHEDULE

TAX AGREEMENT

THIS AGREEMENT made this 13th day of December 1996 between:

The Minister of Finance and Development Planning on behalf of the Government of the Republic of Botswana ("the Government");

Gallery Resources NL, A.C.N. 009 125 197, a company incorporated in Western Australia and having its registered office at Suite 6, 24 Leura Street, Nedlands, Western Australia ("Gallery");

St Francis Mining NL, A.C.N. 055 719 394, a company incorporated in Western Australia and having its registered office at Level 20, 140 St George's Terrace, Perth Western Australia ("St Francis");

Celtic Trust Company Ltd, of care of Kestrel SA, Pausilippe, Chenin Des Trois-Portes 11.2000 Neuchatel, Switzerland, ("Celtic"); and

Monarch Goldfields Botswana (Pty) Limited ("Monarch");

Shashe Holdings (Pty) Ltd ("Shashe Holdings"); and

Shashe Mines (Pty) Ltd ("Shashe"); all of Private Bag F86, Francistown, Botswana.

WHEREAS:

1. Gallery and St Francis are both public companies listed on the Australia Stock Exchange, and each own 47.5 percent of the shares in Monarch and Shashe Holdings, with Celtic owing the remaining 5 percent. Shashe Holdings owns 85 percent of the shares in Shashe and the Government of the Republic of Botswana owns 15 percent of the shares in Shashe.

2. Gallery, St Francis and Celtic acquired all the shares of Monarch and Shashe Holdings pursuant to an agreement dated 25 May 1994, and took possession of the companies on 24 August 1994, and furthermore that pursuant to the agreement, Gallery, St Francis and Celtic had ceded to them various loans made by the vendors to Mindev and Shashe Holdings.
3. Monarch currently operates a gold mine on Mining Lease 89/2 and holds a prospecting licence 126/94, and Shashe holds Mining Lease 87/3 and is a party to the Map Nora Development Agreement and the Map Nora Development-Tax Agreement, both dated 9 September 1987. Monarch and Shashe are incurring significant exploration and development expenditure in order to establish profitable mining operations on the leases, and require significant financial assistance in the form of loans from Gallery, St Francis and Celtic.
4. It is not the usual practice for mining companies to charge interest on loans to subsidiaries during the exploration and development stages of a mining operation.
5. The parties wish to enter into an agreement in respect to the tax treatment for income tax purposes of certain loans:

NOW THEREFORE the Parties hereto have agreed as follows:

1. That in relation to any loans (and including any loans ceded to any party to this Agreement) owing to any party to this Agreement by Shashe, Shashe Holdings and Monarch where such loans are free of interest and were made for the purposes of carrying out exploration, development and mining operations on Mining Leases 89/2, 87/3 and/or Prospecting Licence 126/94:
 - (a) the provisions of Section 35 of the Act shall not be invoked; and
 - (b) for the purposes of Section 133 of the Act no interest shall be deemed to accrue to any party to the Agreement whilst the loans continue to be used for the purposes of carrying out exploration, development and mining operations on Mining Lease 89/2, 87/3 and/or Prospecting Licence 126/94 and remain outstanding.
2. That no liability to income tax will arise to any party to the Agreement from and by reason alone of the issue of equity shares in Shashe or Mindev to the Government.
3. The effective date of this agreement shall be 24 August 1994.
4. For the purposes of the Agreement Parties shall include any subsidiaries of Gallery, St Francis and Celtic.

IN WITNESS whereof the parties have hereunto set their hands.

THUS DONE AND SIGNED AT GABORONE this 13th day of December 1996.

For and on Behalf of the Government}
of the Republic of Botswana: }

Name: F.G. MOGAE,

Witness: F. MODISE

THUS DONE AND SIGNED AT PERTH this 7th day of August, 1996.

For and on Behalf Gallery Resources NL }
by its authorised officer: }

Name: M.W. ATKINS,

Witness: G.R. DALE

THUS DONE AND SIGNED AT PERTH this 7th day of August, 1996.

For and on Behalf of St Francis Mining }
NL by its authorised officer: }

Name: M.W. ATKINS,

Witness: G.R. DALE

THUS DONE AND SIGNED AT NEUCHATEL this 12th day of August 1996.

For and on Behalf of Celtic Trust }
Company Ltd by its authorised officer: }

Name: Mr. S.W. Screech

Witness

THUS DONE AND SIGNED AT PERTH this 7th day of AUGUST, 1996.

For and on Behalf of Monarch Goldfields }
Botswana (Pty) Ltd by its authorised }
officer: }

Name: M.W. ATKINS

Witness: G.R. DALE

THUS DONE AND SIGNED AT PERTH this 7th day of AUGUST, 1996.

For and on behalf of Shashe Holdings }
(Pty) Ltd by its authorised officer: }

Name: M.W. ATKINS

Witness: G.R. DALE

THUS DONE AND SIGNED AT PERTH this 7th day of AUGUST 1996.

For and on Behalf of Shashe Mines }
(Pty) Ltd by its authorised officer: }

Name: M.W. ATKINS

Witness: G.R. DALE

POWER OF ATTORNEY

By this Power of Attorney made this 24th day of June, 1996 **St Francis Mining NL** (ACN 055 719 394) a company incorporated in Western Australia (the "Company") and having its registered office at Level 20, 140 St Georges Terrace, Perth 6000, Western Australia **Hereby Appoints Michael William Atkins** of Unit 6, 24 Leura Street, Nedlands 6009, Western Australia to be the true and lawful attorney of the Company for and in the name of and on behalf of the Company to complete and execute an agreement styled "Tax Agreement", substantially in the form of the agreement attached hereto, between the Company, the Minister of Finance and Development on behalf of the Government of the Republic of Botswana, Gallery Resources NL, Celtic Trust Company Ltd, Monarch Goldfields Botswana (Pty) Limited, Shashe Holdings (Pty) Ltd and Shashe Mines (Pty) Ltd.

This Power of Attorney shall in all respects be interpreted in accordance with and governed by the laws of Western Australia.

The common seal of
St Francis Mining NL
(ACN 055 719 394)
was hereunto affixed
by authority of the
Directors in the presence of:



Director

Director

MADE this 16th day of July, 1997.

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