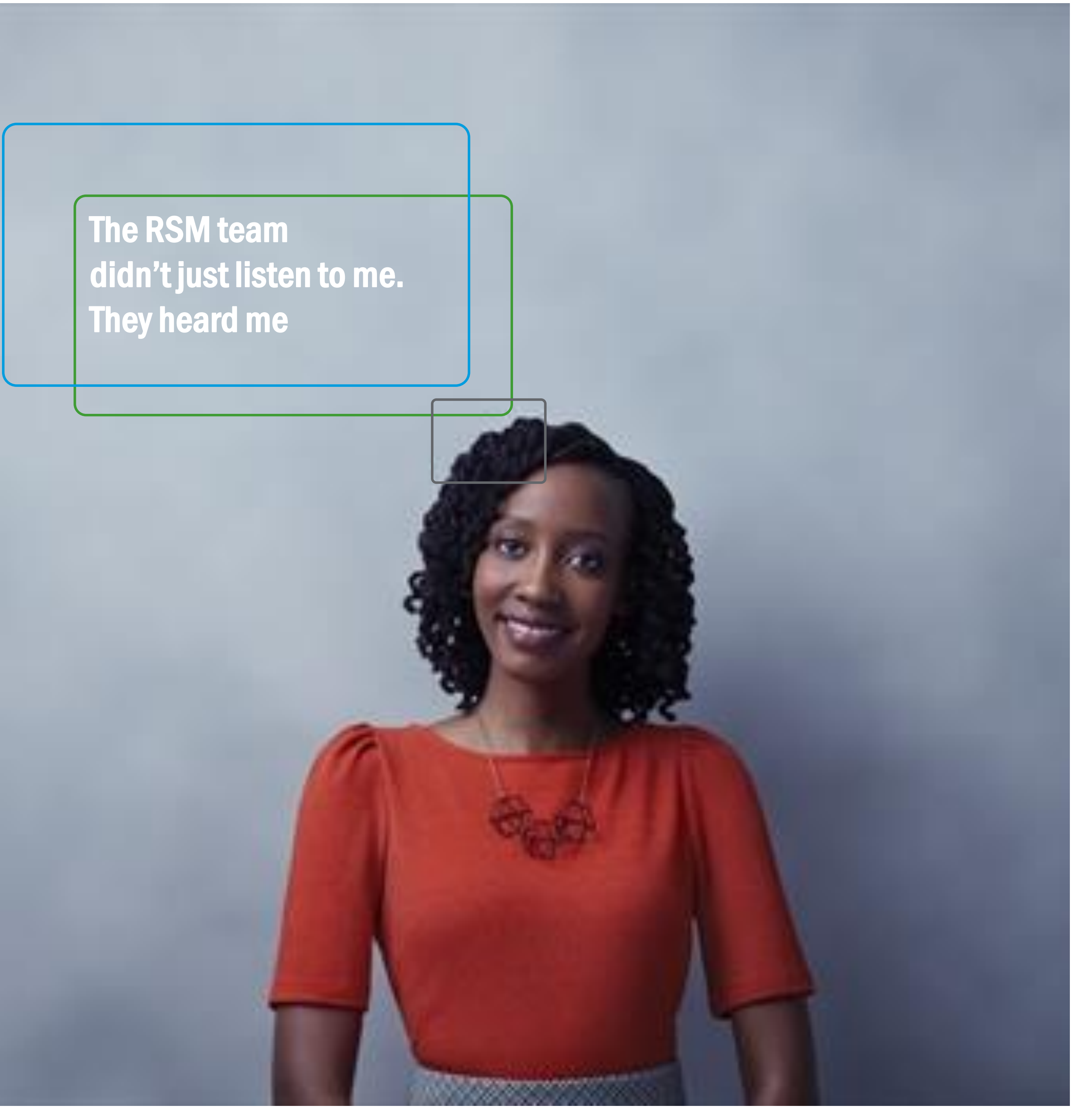


A GUIDE TO DOING BUSINESS IN BOTSWANA

THE POWER OF BEING UNDERSTOOD
AUDIT | TAX | CONSULTING

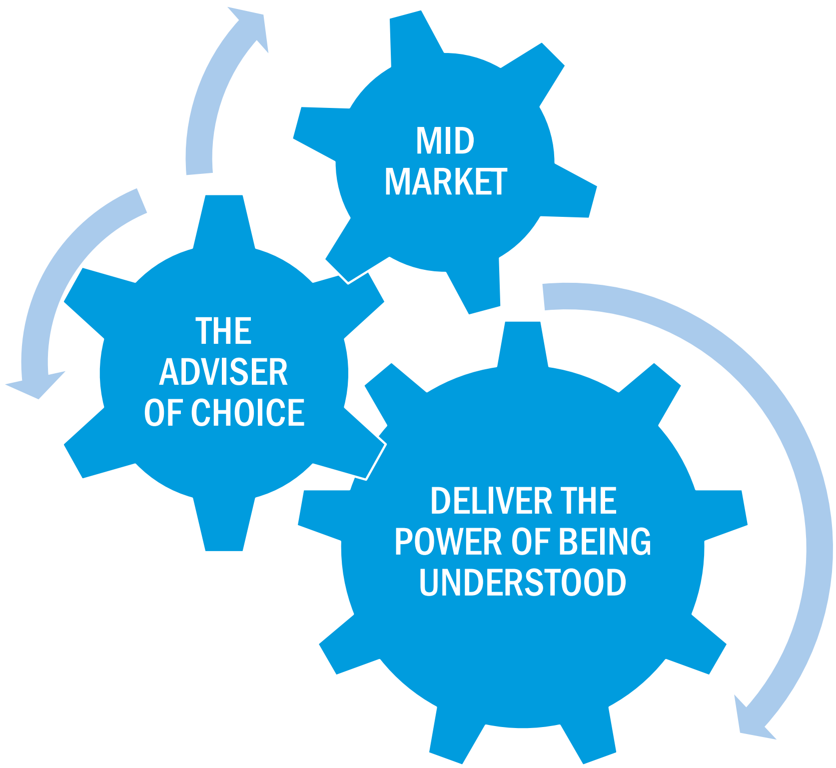
RSM

Vision

We aim to be the business advisor or the choice by mid-market.

Mission

We deliver the Power of being Understood to our clients.



Values

Excellence

Respect

Stewardship

Teamwork

Integrity

Contents

FOREWORD

It gives all partners and members of staff a great pleasure that RSM Botswana is able to publish DOING BUSINESS IN BOTSWANA containing good pieces of information about investing in Botswana.

Botswana has a rich tradition of hospice and welcoming guests and investors alike - whether they are resident investors or international investors. RSM Botswana has attempted to give maximum possible information in DOING BUSINESS IN BOTSWANA with a view to assisting investors to assess the risks of investing in Botswana.

We believe that Botswana is a great country and is a best kept secret of Africa. We hope that any foreign or local investor will be able to protect his or her investment, to get educated, qualified and trainable members of staff, to import capital equipment free of duties, to find enormous market by accessing the entire Southern African region using Botswana as a pivotal hub, to repatriate investments without restriction whatsoever and above all to have an investor-friendly environment to continue investing and enjoying.

Botswana also equally welcomes any skilled person who seeks employment and subject to the requirement that a localisation plan is developed to transfer and impart skills and knowledge to Batswana understudies who should be able to take over crucial positions at the time agreed with the Commissioner of labour.

Any reader is most welcome to email any query whether clarification or additional information to partners@rsm.co.bw, for it will only help us to come up with better revisions of DOING BUSINESS IN BOTSWANA.

We wish all readers - clients and prospects alike - a very fruitful reading! Hopefully you will get in touch with RSMer's and make your life-enriching decisions based on this DOING BUSINESS IN BOTSWANA.

GENERAL

Location

Botswana is centrally located in the heart of Southern Africa. It is a land locked country. It shares borders with Zambia in the north, Namibia in the north and north-west, Zimbabwe in the north-east and South Africa in the south and south-east.

Economic Performance

Botswana has achieved impressive economic performance over the past five decades due to prudent macroeconomic management, consistent policies, political stability and good governance. The economic success of Botswana is attributable to successful exploitation of its vast mineral resources, especially diamonds. Botswana continues to be the largest exporter of gem diamonds in the world in terms of value. There are no exchange controls in Botswana. Government of Botswana takes constant efforts to minimise bureaucratic procedures and processes and to promote free market enterprise. Botswana is highly rated by international organisations on a number of indicators. Botswana has opportunities to access international markets through bilateral and multilateral agreements.

Key Information

Political Leadership	President: His Excellency Mokgweetsi Eric Masisi
Government	Democratic (Elections every 5 years and 57 constituencies)
Judiciary	The judiciary authority rests with the courts and the rule of law which is courts and the rule of law which is applied impartially without fear, favour impartially without fear, favour or prejudice.
Currency	One pula (BWP) is made up of 100 thebe
Time	Two hours ahead of GMT
Measurements	Metric system
Electricity Standards	220V
Languages	English and Setswana

Public Holiday	Besides New Year's Day, Easter Monday, Labour Day, Ascension Day, Day, Ascension Day, Christmas and Boxing Day, Botswana enjoys public Botswana enjoys public holidays being Botswana Day on the 30th Day on the 30th September, Sir Seretse Khama Day on the 1st July and Day on the 1st July and Presidents Day on the 19th July. In addition in a year 19th July. In addition in a year Botswana has 3 or 4 additional public 3 or 4 additional public holidays, which are unpaid public holidays.
Geography	581 730 square kilometres. Botswana is 84% covered by Kgalagadi Desert.
Summer (also Rainy)	November to March (High temperatures up to 40 °C mark and higher).
Winter (also Dry)	May to August
Average Elevation	1000 metres
Population	2.33 million growing at the rate 2% per annum (2018)
Population Distribution	80% of population lives in Gaborone, Francistown, Selibe Phikwe, and

Compelling Reasons to Invest in Botswana

- Stable Economy
- No foreign exchange controls.
- Access to huge SADC (Southern African Development Community) market of 200 million people, Europe and the USA.
- Low tax regime
- Industrial relations are good and trade unions are not militant.
- Zero tolerance to corruption.
- Moderate levels of inflation (3%-4% in 2017/18)
- Bank Rate 5% (July 2018) Prime rate 6.5% (July 2018)
- Protection of foreign investment

TYPES OF BUSINESS ENTITIES

Private (called "Proprietary") and public limited companies are two most common business entities used in Botswana. Private companies have members of 25 or less; As are common with private limited companies, their shares can't be freely transferred and such companies may not seek funds publicly. Please refer to Brief Summary of Botswana Companies Act in a separate section.

Sole-traders are often hawkers or small traders or professionals such as doctors, engineers and accountants practising on their own. Partnerships are normally audit and attorney firms and joint ventures between two or three companies. It is rare to find a partnership firm carrying out business in Botswana. "Close Corporation" is a new type of entity which does not have directors or shareholders but only members who will however have limited liability like a proprietary or public limited company. Close Corporations are however not popular. Cooperative Societies conduct business in Botswana but they are not popular. There are family trusts and public trusts carrying out business in Botswana but such forms are not popular, either. In July 2018 Trust Property Control Act has been enacted to register trusts and protect beneficiaries. Therefore We hope that Trusts will become better known in Botswana.

When it comes to non-profit entities, Trusts are the most common entities. Trusts own mostly schools, places of worship, colleges and vocational centres. Companies are also formed to carry out non-profit activities and they are exempted to keep "Limited" as part of their name. Private individuals and association of persons often form companies to carry out non-profit activities particularly when they seek donor funds. Cooperative Societies in Botswana carry out Savings and micro-lending operations in the form Employee Associations.

FOREIGN EXCHANGE CONTROLS

Exchange Control Act (CAP 55:03), was repealed with effect from 9 February 1999. There are no restrictions on non-residents holding shares in listed companies on the Botswana Stock Exchange. However for collection of Macro-economic data like balance of payments and enforcement of anti-money laundering measures, the authorised dealers such as Banks will require some forms to be completed. Non-citizens residing and or working in Botswana as well as temporary residents are regarded as residents.

However, subscription monies for issue of shares to non-residents in companies registered in Botswana should originate from external sources.

TAXATION

Basis of Taxation

The residence of the taxpayer plays no part in determining whether an amount is taxable or not. The income chargeable to tax is income arising from a source in or deemed source within Botswana. Income arising from outside Botswana is generally not taxable. Exceptions are discussed later. Generally, accruals of capital nature escape taxation but exceptions are discussed later.

Income tax applies on assessable income derived after deducting allowable expenses from gross income. Gross income does not include exempt income. Capital Gains are taxed in certain cases.

Exempt Gross Income

Income of local authorities, of Bank of Botswana, of approved benefit and pension funds, of religious, charitable and educational institutions provided it is business income used to promote the objects of the institution, of statutory bodies, trade unions etc. - these are exempt gross income based on the nature of the recipient.

Further scholarships, bursaries and school fees, the first P7, 800 per year of interest accruing to resident individuals from banks and financial institutions, value of medical treatment paid by an employer for the employee, benefits for death, injury or sickness received from trade union, benefit fund, insurance policy, etc - these are exempt by their very nature.

Capital Gains Tax

The assets specified as subject to capital gains are movable and immovable assets of a business, company shares, residential property and assets of International Financial Services Centre Company situated in Botswana. In case of a movable property, 75% of capital gain is taxed at 22% in case of resident company and 30% in case of non-resident company. In case of immovable property, purchase costs are indexed to compensate for inflation prior to determining capital gains which is then taxed at rates as above. In case of individuals, capital gain above P18,000 is taxed at 5%, above P72,000 at an additional 12.5%, above P108,000 at an additional 18.75% and above P144,000 at maximum marginal tax rate of 25%.

Exempt Capital Gains

Exempt capital gains include gains from disposal of assets like plant, equipment, furniture, vehicles, etc. (not land and buildings) qualifying for capital allowance (somewhat akin to depreciation), certain mining properties, principal private residence self-occupied for at least 5 years, units and debentures of a resident public company or units and debentures actually traded on Botswana Stock Exchange, entire stock of equity shares of a company that has released 49% of its equity shares for listing on the BSE. Exemption also applies to disposals as a result of re-structure, merger of two or more resident companies (listed in Botswana Stock Exchange or not) without altering the ownership of shares in the resulting re-structure or merger.

Personal Tax

Individuals are taxed on wages, salaries, leave pay, fee, commission, bonus, gratuity, compensation and commutation due under any contract of employment or service, pension, lump sum payment. Two-thirds of severance pay or terminal gratuity is taxed. Pension contribution not more than 15% of remuneration is deductible. An individual may escape tax in Botswana if he is away from Botswana for a period in excess of 183 days in a year.

Housing benefit is taxed on 10% of municipal rateable value. Rural properties are taxed on 8% of value computed by applying P250 per square metre. Sometimes where employees are paid low salaries, then housing benefit tax is computed on value derived by multiplying applicable percentage (between 1% and 25%) on salaries. Any rent recouped is deducted and occupation for a portion of the year attracts proportionate housing benefit tax.

Vehicle benefit is taxed at between 5% and 10% for the vehicles valued at or less than P 200,000 and at an additional 15% for values exceeding P200,000. Free furniture is taxed at 10% of value over P15,000.

Tax Free Benefits

Employer medical contributions provided to full time employees or director, necessary or customary job-related accommodation, meal vouchers given to all employees and child care facilities given to employees' children are tax free. Further, a third of severance benefit is tax free.

Gross Income for Business

Gross income includes value of closing stock, subsidies to carry on the business, market value of any benefit obtained, insurance compensation against loss of profit or damage to business property, amount of revenue nature accruing after cessation of business , any outstanding debt released by or waived by a person`s creditor, rent or premium for occupation, management or consultancy fee, bad debts recovered and capital gain from disposal of business property movable or immovable.

Besides, income brought into Botswana by a resident citizen and management and consultancy fees paid to a non-resident with no permanent establishment in Botswana, balancing charge (somewhat similar to profit on sale of assets) and foreign income including foreign interest, dividend or royalties are also part of gross income.

Deductions Allowable

The general rule is that it should pass the test of being wholly, necessarily and exclusively incurred in the production of income. Specifically deductions for purchases, wages, salaries, rates, rent, interest, repairs, subscriptions to trade unions, etc. are allowed. Employers' contribution to pension fund is allowed up to 20% of remuneration. Cost of listing shares in Botswana stock exchange is allowed as a deduction. Legal fee incurred during the course of conducting business is allowed. Bad trade debt is allowed after reasonable collection efforts have been taken. Annuity paid to a former employee is allowed.

Depreciation is not allowed but instead capital allowance is allowed at 10% for furniture, fixtures, fittings, 15% for plant and equipment, 25% for vehicles and 2.5% for commercial and industrial buildings. Industrial buildings attract an initial allowance of 25% too. Any balancing charge (akin to profit on sale of assets) can be rolled over meaning deducted from the cost of the assets that replace the assets sold.

Deductions not allowable

Expenditure on hospitality not wholly, exclusively and necessarily incurred in the production of assessable income, expenditure or loss recoverable under an insurance contract, donations not made to specific persons, capital allowances on expenditure in excess of P175,000 of a motor car acquisition cost, general provisions of bad and doubtful debts, gratuities, leave pay and other provisions, tax payments and penalties and interest thereon, cost of travel between home and place of business, domestic expenses incurred by an individual and expenses involving crime such as bribes and pre-production expenses - these are not allowed.

Rent Income

Rental Income accruing to an individual is considered business income. Expenses such as mortgage interest, rates, and repairs to property are deductible. Expenses such as mortgage repayment and improvements to property are not deductible as they are capital in nature.

Interest Income

Where an individual is in receipt of interest on loans by directors/shareholders to companies or on savings bonds, certificates of deposits etc., he or she is subject to 10% withholding tax on interest in excess of P1950 per year. Non-Resident tax on gross (no threshold P1950 applies) interest is also withheld but it is a final charge and it shall not be subject to tax by assessment. Income from foreign investment made by a resident who is a citizen is included in his individual`s return for each tax year. Withholding tax of 10% deducted from interest received from Botswana Savings Bank is the final charge in the hands of a resident, unlike other interest receipts such as interest from deposits held with commercial banks.

Assessed Loss

Assessed loss in one accounting period may be carried forward for 5 years. Farming loss can be carried forward indefinitely and also carried backward for years.

Farming and Mining Income

There are special provisions providing for liberal tax treatment in respect of farming and mining. Details are beyond the scope of this booklet. Please do email partners@rsm.co.bw, if any reader needs further information on farming and mining income tax.

Self-Assessment Tax (SAT)

A person who estimates his annual tax liability to be more than P50, 000 is required to calculate the tax applicable, divide the tax by five and pay quarterly tax at the end of each quarter during the accounting year and the 5th instalment upon filing the tax return. SAT is mandatory for companies but is optional for individuals.

Any shortfall on quarterly instalments is charged interest at the rate of 1.5% compounded per month or part of the month if the instalment is less than 20% of the tax due on the tax return for the tax year.

Tax Returns

Tax returns should be submitted within 4 months of the accounting year-end for companies and within 3 months for individuals. The Commissioner General can call for a tax return by a special notice if he thinks a person is likely to leave the country permanently. Such return is to be furnished within a period of not less than 7 days of the special notice. If a person is unable to submit a return for genuine reasons, he may apply for extension of time to submit the return. A provisional tax return is required when an extension of time is granted.

Assessments

Assessment is a charge to tax and is made on the basis of a tax return. Commissioner General may make an assessment without a tax return where he believes tax is owed and the person chargeable to tax may leave the country without settling his tax liability. Where the return is not satisfactory or has not been submitted, the Commissioner General may make an assessment to best judgment. Late submission of return may also lead to penalty assessment.

The assessment can be time-barred if it not revised within 4 years after the date of issue of the assessment. For estates of deceased persons, assessment should be made within 3 years from the date of death. An assessment is final when it is time-barred, or when no objection or appeal has been lodged or when there is no further right of appeal. For fraudulent reasons, Commissioner General may re-open the assessment going back up to 8 years.

Document Retention

Records need to be kept for 8 years.

Objection and Appeals

Any person who may be aggrieved by an assessment made on him by the Commissioner General may object to that assessment within 60 days of the date of issue of the assessment provided he has submitted a return for the relevant tax year. If the Commissioner General disallows an objection in part or in whole the aggrieved person may appeal to the Board of Adjudicators within 60 days of receipt of the Commissioner General`s decision on the objection. The appellant is required to confine his appeal to matters specified in the objection to the Commissioner. If the appellant is still not satisfied he has the right to appeal to the High Court. A decision of the High Court is final. The payment of tax is not suspended by the lodging of a valid objection or appeal nor is the Commissioner General restrained from using his powers to recover the tax.

When tax is payable

Tax is due when the assessment is made and should be paid within 30 days of the date of assessment. Belated payments attract 1.5% interest per month or part thereof compounded.

Withholding Taxes and Final Tax Rates

Type of Income	Resident	Non-Resident
Dividends	7.5%	7.5%
Interest	10%	15%
Commercial royalties	0%	15%
Entertainment/Sporting Fees	0%	10%
Management, Technical or Consulting Fees or software Fees or software customization fee	0%	15%
Rent	5%	5%
Commission & brokerage fee	10%	-
Value Added Tax	12%	12%
Capital Gains Corporate	25%	25%
Income Tax- Corporate	22%	25%
Unapproved Pension & provident investment income	7.5%	-
Taxable Income not covered above	22%	30%
Dividends accruing from outside Botswana	7.5%	-
Late Payment interest (monthly compounded)	1.5%	1.5%
Manufacturing and International Financial Services Centre Financial Services Centre Companies	15%	-

Double Taxation Agreements [DTA]

The following are indicative withholding or final tax rates.   For more detailed information please email partners@rsm.co.bw.

Country	Dividend	Interest	Technical / fees	Royalties
South Africa	7.5%	10%	10%	10%
France	5% if beneficial owner owns 25% owns 25% shareholding in Botswana in Botswana or 12%	10%	7.5%	10%
Namibia	7.5%	10%	15%	10%
Seychelles	5% if beneficial owner owns 25% owns 25% shareholding in Botswana in Botswana or 7.5%	7.5%	10%	10%
Barbados	5% if beneficial owner owns 25% owns 25% shareholding in Botswana in Botswana or 7.5%	10%	10%	10%
United Kingdom	5% if beneficial owner owns 25% owns 25% shareholding in Botswana in Botswana or 7.5%	10%	7.5%	10%
Zimbabwe	5% if beneficial owner owns 25% owns 25% shareholding in Botswana in Botswana or 7.5%	10%	10%	10%
Russia	5% if beneficial owner owns 25% owns 25% shareholding in Botswana in Botswana or 7.5%	10%	10%	10%
Swaziland	7.5%	10%	10%	10%
Lesotho	7.5%	10%	10%	10%

Other countries on board are: Mozambique, Malawi, Zambia and Tanzania (signed and ratified); Serbia and Montenegro (to be renegotiated); Belgium (negotiations concluded) Kenya, Angola, Nigeria, Uganda, DRC, Germany, The Netherlands, Luxembourg, Japan, Malaysia and Canada, Libya [feeling way towards negotiations], India, Mauritius and Sweden are in force.

Personal Tax Rates

	CAPITAL TRANSFER TRANSFER		CAPITAL GAINS		INCOME TAX (RESIDENT) (RESIDENT)	
First	100,000	2%	18000	0%	36000	0%
Next	200,000	3%	54000	5%	36000	5%
Next	200,000	4%	36000	12.50%	36000	12.50%
Next			36000	18.75%	36000	18.75%
Balance e		5%		25%		25%

Threshold of P36,000 for income tax is not available for non-residents.

Branch Tax

A permanent establishment of a non-resident foreign company is taxed on all income derived from a source or deemed source in Botswana. In determining profits of the permanent establishment located in Botswana, deductions of interest, royalties, foreign exchange rate loss in respect of assets and liabilities established between the permanent establishment and its head office, management & professional fees paid or to be paid by the permanent establishment to its head office may not be deducted.

Tax Agreement

Tax Agreement is between the Minister and some large companies or conglomerate which are subject to tax in Botswana. It must be ratified by an Act of Parliament. The essence of the agreement is to charge tax at a lower or higher rate or it may give a tax holiday as an incentive thus creating a tax regime outside the provisions of the Income Tax Act. These agreements for companies that would benefit the economy of Botswana very significantly.

Development Approval Orders [DAO]

The effect a DAO is to vary the Income Tax Act to give tax incentives in the form of deductions in ascertaining chargeable income which are over and above the normal deductions allowable under the Act. DAO is granted in respect of any business engaged in a project to promote development of the economy of Botswana, but on application by the tax-payer. The Minister will grant DAO to a company if he is satisfied that:

- There will be a number of Batswana employed in certain empowering capacities.
- The applicant has adequate facilities for training and acquisition of skills.
- There is provision for localization.
- The Applicant has adequate capital investment in Botswana.
- The project is carried out to develop remote and undeveloped areas in Botswana.
- The project will influence reduction of consumer prices and
- The project will have spread effects to other economic, commercial or industrial activities.

Capital Transfer Tax Rates

CTT (akin to gift tax) applies in case of gratuitous disposals made by a donor to a donee in any tax year. Companies pay 12.5% company transfer tax. Donees are liable to pay CTT. Individual tax rates are given separately. In case of deceased estate (assets less liabilities) P100,000 of distributable assets is not subject to CTT.

TAXATION OF PUBLIC BENENFIT ORGANIZATIONS IN BOTSWANA

	Business Income AND Disposal Disposal Gain		Any other income	
	Applied towards towards the the objectives objectives	Not so Applied Applied	Applied Towards Towards the objectives	Not so Applied Applied
Public Trust or Religious, Religious, Educational and Educational and charitable charitable institution	NOT TAXED	TAXED	NOT TAXED	NOT TAXED
Social and Sporting Sporting Association	NOT TAXED	TAXED	NOT TAXED	TAXED

Taxation of Close Companies or participator taxation

Any person having 5% of shares in a company including a loan creditor is called a participator. A payment to a participator is treated as a distribution and taxed in his hands with no deduction available in the hands of the close company. The following benefits enjoyed by a participator are deemed to be dividends:

Gratuity in respect of employment,

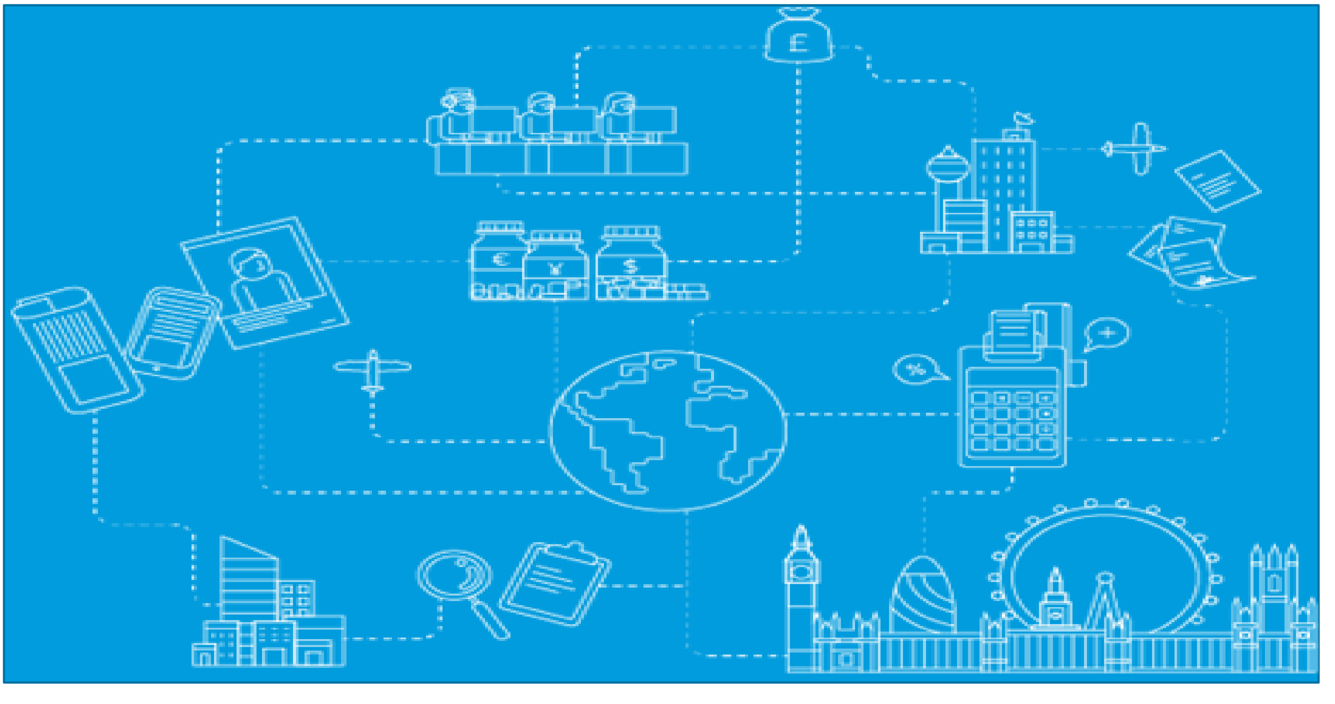
Cost of any passage benefit more frequently than once in 2 years

Interest free or low interest loan not repaid within 9 months.

VALUE ADDED TAX

Output VAT is collected by registered vendors on sale of goods and services and input VAT is paid on purchase. Excess of output value is paid to Botswana Unified Revenue Service usually once every 2 months. Excess of input VAT is claimed, on the contrary. This is an indirect tax. Every vendor making supplies in excess of P500,000 is required to be registered for VAT. Persons may make adjustment to correct errors made in previous VAT returns within a period of 4 months. Input tax may not be recoverable if purchases are not for business e.g. expenditure on registered person`s grocery, entertainment whether entertaining residents or non – residents, provision of domestic accommodation and purchase of motor vehicle.

Interest, school fees, cremation or burial service and postal service are exempt from VAT. Essential food items such as sorghum, printed matter such as books and newspapers, construction of residential buildings, caravans used for permanent residences, transport by bus or aircraft, exports, supplies to charity, drugs and medicines supplied on prescription and sale of residential property by builders are zero-rated supplies. Input VAT can be claimed for zero-rated supplies but not for exempt supplies.



EMPLOYMENT

Recruitment

Campus recruitment at University or other Tertiary Institutions is yet to become a common practice. Same is the case with online portals. The most common method is advertisement in local newspapers. Further, there are employment agencies in Botswana who recruit local or regional top talent.

Employment or Self-Employment of Expatriates

A work permit is granted for people with skills or qualifications that no citizen (Motswana) is demonstrated to possess. The employer needs to advertise for the position in local newspapers and should demonstrate failure to obtain applications from suitable citizen applicants, which is a pre-condition to application of work permits. Where expatriates are employed, employers should submit a training and localization programme with a view to replacing the expatriate with a citizen (Motswana) understudy (who should be employed) at the end of the training period. Residence permits should also be obtained together with work permit.

Residence and work permits are granted to investors based on investment, industry, employment, previous track record and market being available. In case of dependents, residence permits are granted when financial and moral support is available. Dependent resident permit holders are not allowed to work in Botswana.

Permanent residence permit is given upon application to residents who have resided in Botswana for a period of 5 years or more. The principal consideration is the contribution that the applicant has made to the economy of Botswana in terms of skills transfer, employment, investment, export, import substitution and such economic and social development efforts.

Employment Contract

A written employment contract is a common practice observed in Botswana. The essence of the contract of employment is that the employer should provide work and employee should place his services at the disposal of employer. Wages and other terms of conditions are agreed in the employment contract. Contracts are also asked for by the Botswana Unified Revenue Service with a view to verifying the taxable income or benefit of the employee.

Basic Conditions of Employment

The ordinary working period of 8 hours a day or 48 hours per 6-day week or 9 hours per day for a 5-day week. Rest period of at least 24 hours in a period of 7 consecutive working days and 30 hours in the case of shift employees.

Wages paid to security guards, workers in manufacturing industry, hotels, restaurants, wholesale and retail trade should not be less than the minimum wage which in most cases is about P6.00 per hour (around 60 US Cents in September 2018). Leave with pay should not be less than 15 days in a year. 8 of these days should be used before the first half of the following year or they elapse. Unexpired leave may be carried forward for 3 years after which it elapses. Leave pay is due when employment is terminated. Sick leave should not be less than 21 days in a year. Further severance pay is payable upon conclusion of employment at the rate of 1 day per month of service up to 5 years of employment and 2 days for each month worked beyond 5 years. Employment is deemed confirmed after probation period, where it is so specified. Depending on the nature of the job, probation is normally between 3 and 12 months. Female employees are accorded 12 weeks of maternity leave (6 weeks confinement before giving birth and 6 weeks confinement after giving birth). The Employment Act prescribes that female employees should be paid a minimum of 50% of their basic wage. Some of these issues are discussed in greater detail later in this Chapter.

Occupational Health and Safety

Employers are required to provide reasonably safe and healthy work environment, protective clothing and equipment where required, training and supervision to ensure health and safety standards are adhered to. Employers are required to report incidences of accidents at work or death when dangerous situations arise. Employees also have a duty to report unsafe and unhealthy work environments and they, themselves, must obey and observe health and safety rules. The Act provides for the compensation to be paid for disability, death or impairment caused by occupational injuries or diseases contracted by employees in the course of their employment. Without satisfactory health and safety measures employers will not be able to get trading and manufacturing licenses or registrations or permissions required to conduct various business activities. These are also pre-requisites for registration for manufacturing companies under Factories Act.

Retirement, Pension and Medical Aid

Retirement, pension and medical aid funds are registered with the Non-Bank Financial Institutions Regulatory Authority (NBFIRA).and only registered pension and retirement funds and medical societies can conduct business in the related field. It is, therefore, not possible for employers to run their own funds under their administration and they are required to subscribe to registered funds. It is not, however, compulsory for employers to contribute to any of these funds or medical aid. What is compulsory is payment of severance pay or gratuity at the end of the contract period, which is not normally less than the severance pay otherwise payable.

Government has placed medical facilities within easy reach of members of public. But contribution to medical aid is for access to private hospitals and clinics. Medical Aid Societies reimburse medical expenses incurred even outside Botswana by the members, subject to their rules and regulations. The employee is allowed to contribute a maximum of 15% of his remuneration for tax reasons. Employers may contribute up to 20% of the employee remuneration. On retirement the employee may commute 1/3 of his total retirement benefit while the remaining 2/3 is applied to purchase a retirement annuity which will be payable monthly for the remainder of the life of the pensioner

Severance Pay

Severance pay computed at a day's pay for a month of service up to 5 years and 2 days per month thereafter, is payable upon termination of contract. It is not payable where the employee benefits from pension or gratuity. One-third of the severance pay or retirement benefit is tax exempt while the other two-thirds is taxed according to marginal rates of tax applicable to individuals. Employees may demand gratuity once every five years.

Payment of Wages

Wage period for casual workers is a maximum of one week and for others, a maximum of one month. Wages are paid, latest, within three working days after the last day of the wage period and during working hours and at designated workplace. Payment of wages-in- kind is limited to 40% of employee`s wages. Only certain deductions are permitted from the wages and will include Income Tax withholding tax (PAYE), pension contribution, recovery of advance payment and amount relating to leave without pay. Attachment of wages is not permitted if the result is undue hardship to an employee and his family. Wages for partial performance are prorated by reference to any period of work to length of period worked. Payment of wages has priority over payment to the judgment creditors.

Female Employees

Female employees proceeding on maternity leave are paid a maternity allowance of not less than 50% of basic pay in three instalments (for 3 months), first for a period of absence to the day of confinement after informing the employer of the date of confinement, second, for period of absence of 6 weeks immediately after day of confinement and the third, where period of absence is extended for a further 2 weeks due to illness arising out of confinement. If the female employee is given notice of termination of her employment for no good cause she will remain entitled to maternity allowance.

Period of maternity leave is 12 weeks from date of confinement. Further the employer is required to allow all the female employees time to nurse their children for half hour twice a day or for one hour in the morning or in the afternoon as may be agreed with the employer. Medical expenses in connection with pregnancy are however borne by the female employee and not by the employer.

Employment of Casual Workers

Where an Employer engages casual workers he is required to keep a record of casual workers for a period of two years. Upon winding up of the business in which casual workers were employed all the registers are deposited with the Commissioner of Labour.

Employment of Children and Young Persons

No employer is permitted to employ children or young persons who are aged not more than 14 years unless if, in the case of a young person, Commissioner of Labour allows the employment, terms and conditions applying.

Breaches of Employment Contract

A party, who breaches a contract of employment with result that the contract ceases, is required to pay to the other party compensation equivalent to basic pay that would accrue to the employee during the minimum lawful period of notice. If the termination is unlawful, then the employee may approach Labour Conciliation Office for mediation, whose findings may be produced as evidence in Labour Court, because any recommendation made during conciliation court need not necessarily by accepted by either party.

Termination of Employment

Contract of employment terminates when a specified piece of work is completed or specified period of time expires or otherwise when lawfully terminated. A minimum period of notice of one month is prescribed by law and must be given by either party to a contract of employment. Either party may waive the requirement of a notice. If notice is not given the party in default pays the other party an amount equal to basic pay for the period a notice is required to be given or where notice is given and is partly observed, the basic pay equal to remainder of the notice period. If notice is given during probation period, a minimum of 14 days is the notice period required. Whatever be the notice period, an employee is allowed to spot-resign after paying a month's wage in cash to the employers. In the same way an employer may pay a month's wage in cash in lieu of notice.

Redundancy to ensure efficient operations of the undertaking is a valid reason for lawful termination. Those to be retrenched first are those who were first employed but it should not compromise efficient operations or lead to loss of essential services staff. Employment within six months after retrenchment in the occupations affected by redundancy should give preference to former employees.

Certificate of Service

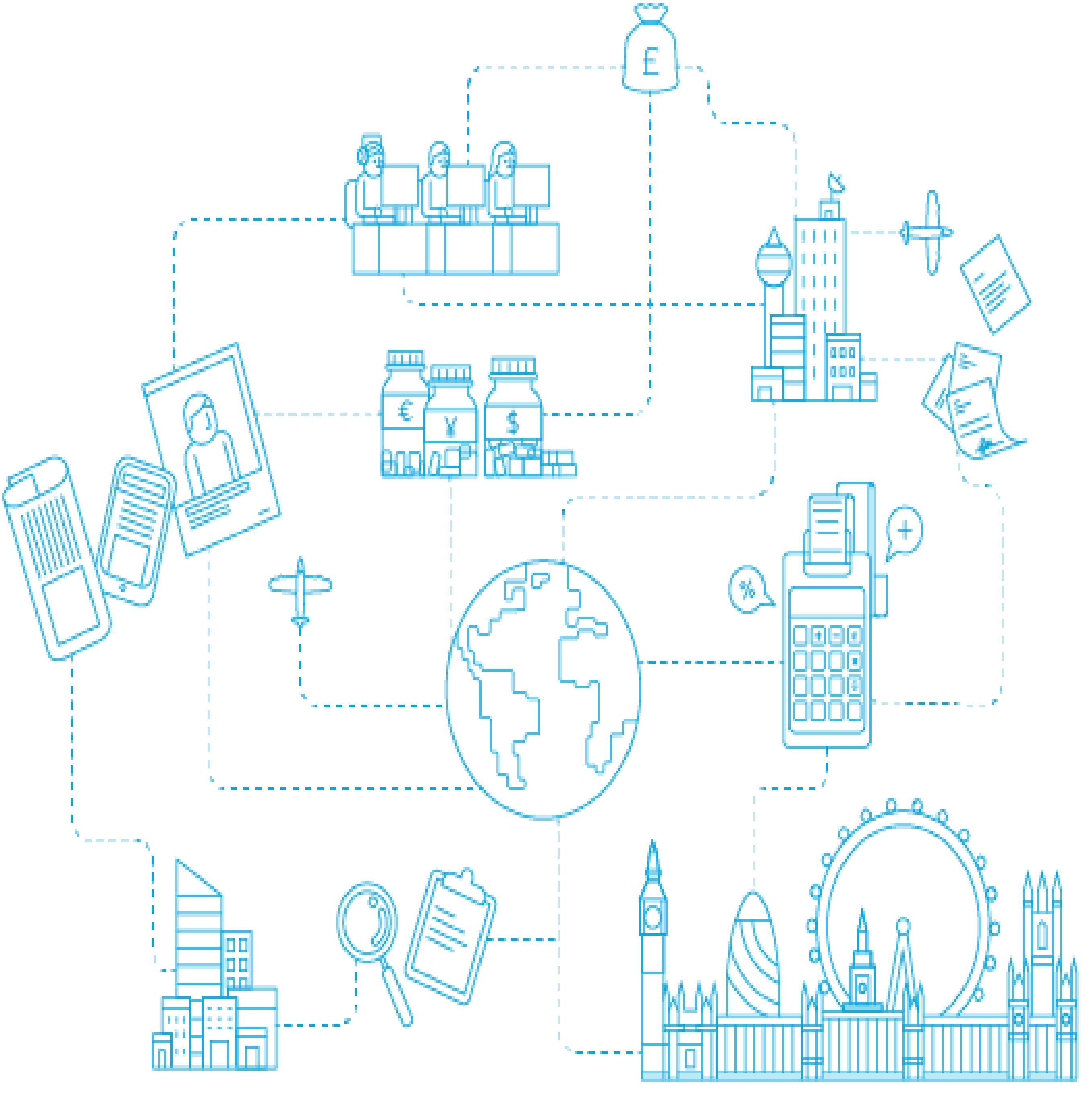
An employer is required to provide an outgoing employee with certificate of service upon termination of employment. The certificate shall be a plain certificate with no characterization of the employee.

Repatriation

An employer is required to pay costs of repatriation of an employee, whether or not he brought him to work, by direct route from Botswana to expatriate`s home country when a contract of employment expires by efflux of time or when the parties to the contact fail to fulfil the contract, the employer for just cause terminates the contractor when both parties agree to terminate or termination is by order of court. Where the expatriate chooses to remain in Botswana for whatever reason or unreasonably delays the repatriationor when the employer`s obligation to pay the repatriation expenses and costs will no longer apply. Should the Commissioner of Labour pay repatriation expenses and costs for emergency casesor when the employer shall be liable to reimburse the Commissioner. The employer is exempted from repatriating an employee who has not completed 3 months at work or who has been dismissed for non-performance or for misconduct that has brought the organization into disrepute.

Summary Dismissal from Work

An employer may summarily lay off an employee if he has reasonable grounds to do so. In the majority of cases he may do so if an employee commits a serious misconduct that has brought the organisation into disrepute or for repeated non-performance. Participation in trade union activities, representing workers at workplace, questioning employer's involvement in violation of law or based on race, tribe, place of origin, sex, marital status -- these are never good reasons for summary dismissal.



ACCOUNTING

Sage Accpac, Sage Pastel and Quick-books are used accounting and ERP software products in SME sector. Large companies and parastatals often use Sage Evolution. Bachelor of Commerce in Accounting & Finance is a popular course offered by local universities and colleges such as University of Botswana and Ba Isago University College. Botswana Accountancy College (a parastatal) and private accountancy colleges offer accounting programs of various UK\USA based universities. Association of Accounting Technicians is also open for accounting education for students willing to qualify in accounting at para-professional or under-graduate level. AAT courses are offered by Botswana Accountancy College and Botho University.

Botswana Institute of Chartered Accountants (BICA) regulates the profession of accountancy in Botswana. All qualified auditors and qualified accountants in practice or in service are members of BICA. Botswana CA is a new qualification that is recently implemented by BICA based on partnership agreement with the Institute of Chartered Accountants of England and Wales. The accounting industry has seen about 15 BICA CA qualified accountants (At September 2018). Those in practice or those in service currently are Chartered Accountants of other countries like South Africa, India, Zimbabwe, Sri Lanka, England, Scotland and Ireland or members of the Institute of Chartered Certified Accountants (ACCA-UK) or of the Institute of Chartered Management Accountants (ACMA-UK). ACCA and CIMA are very popular in Botswana.

Botswana Accountancy Oversight Authority (BAOA) is a oversight body which regulates corporate financial reporting. BAOA has powers to certify, conduct practice reviews and discipline those who carry out audit of public interest entities, such as banks, insurance companies and other economically significant entities. Further BAOA has authority to require financial statements prepared by public interest entities for examination of compliance with standards that BAOA has the sole authority to adopt for Botswana

According to Botswana Companies Act, 2003, financial statements are required to be prepared strictly in accordance with International Financial Reporting Standards (IFRS) in respect of companies whose total assets are more than P10 million (P 10.50 = 1 USD (September 2018)). Also more than P 10 million or where total assets employed in more than P 5 million or whose turnover is more than P20 million. This threshold is rather low and many companies are covered by the stipulation of having to prepare IFRS-compliant financial statements. In addition, these companies are required to be audited in terms of International Standards on Auditing.

The Act prescribes that other companies (called Exempt companies) prepare their financial statements based on GAAP (Generally Accepted Accounting Practice). Currently Botswana Institute of Chartered Accountants - Generally Accepted Accounting Practice (BICA-GAAP) should be used by exempt companies. It is quite simplified. However Botswana Tax Act does not require use of this standard for submission of tax returns.

Practically speaking non-exempt companies (those below the turnover threshold of P10 million and total assets threshold of P 5 million in the previous year) prepare financial statements basically to comply with Botswana Taxation and prepare financial statements according to currently un-coded GAAP. There is therefore currently no uniformity in accounting treatment and presentation for such companies. Other forms of business organizations such as sole proprietors, partners, cooperative societies, Unions, Trusts, etc. prepare accounts based on BICA-GAAP. Serious efforts are ongoing to convert Government accounting system on accrual basis.

INTELLECTUAL PROPERTY RIGHTS

Introduction

The Intellectual Property Act, 2010 not only protects patents, industrial designs, appearance of product or trade mark, symbol or word or logo but it also protects copy right that applies to literary and artistic work. The Registrar of Marks, Patents and Designs administers the Act and maintains separate registers in respect of the Intellectual Property in Botswana.

Patents

A patent may be granted to an invention if the invention is new or inventive or useful as an industrial application and not abstract. A discovery of plant or theory or mathematic method or an aesthetic creation or a method of doing business or a computer program will not be regarded as inventions and therefore can't be patented. In the same way, methods of treatment of human or animal body by surgery or therapy and biological processes for production of animals and plants can't be protected by patents.

Legal Issues

The inventor or his agent applies for patent giving information about inventor, invention and justification. An application is a petition for patent. Foreign applicants submit applications through Botswana agents. International application is covered by Patent Cooperation Treaty although the application is made under the Botswana Act. Non-payment of annual maintenance fee may lapse the patent.

The application is published normally 18 months after the filing date. After following prescribed procedures, Registrar grants a patent certificate, which is valid for 20 years from the date of filing. When a certificate is granted, it prevents any third party from exploiting the patent in Botswana. The patent rights may be ceded by the inventor.

The inventor has a responsibility to supply the market adequately with the products patented within 3 years from the grant of patent. Otherwise, the government may issue compulsory licences to third parties to exploit a patent. Further government may directly or through authorised agents import patented products that are in short supply.

Trade Marks or Industrial Design

These are basically words, symbols, logos or a combination of these used to identify source of goods or services. The procedure is similar to patent application. Trade mark can be transferred by cession or assignment. The owner of the mark can sue for infringement of the mark where the infringement is in respect of:

- Using the mark without owner`s authorization or performing acts conducive to commission of that infringement.
- Use of sign similar to registered mark as to cause confusion in the public mind.
- Reproducing or imitating or translation of registered mark.

- The damages for infringement are an interdict, delivery up or destruction of the infringing material plus damages and account of the profit derived from infringement.

The mark may be removed if it has not been used for three years or more. A trade mark may be licensed.

Copyright

Copyright applies to literary and artistic works such as books, speeches, stage productions, study guides, photography, sculpture, etc. An idea or a procedure or a system or a principle or a discovery cannot be protected by copyright. Copyright does not have to be registered since it automatically belongs to the author or performer. Copy right is transferable. Copy right is valid for 50 years after the death of the author.

Trade Name

Trade name that may mislead, deceive, be contrary to public order or morality is not permissible for use. Trade name is protected against unlawful use by third party even prior to or without registration. Business Name registration is a must when company name or owner's name is different from the business name.

ASSET VALUATION

Botswana is proud to follow International Financial Reporting Standards across the board for medium and large-scale companies and parastatals. The reasons are simple. One, threshold is at a lower level P 10 million and P 5 million and P 10.50 = 1 USD (September 2018) thus making most companies non-exempt. Two, the statutes establishing parastatals require audit which cannot be conducted without IFRS-compliant financial statements. As readers may be aware IFRS has a lot of stipulations for asset valuations as a main conduit to find fair values where ready market may not exist.

There are quite a few Real Estate valuing companies, being members of the recently formed Real Estate Advisory Council, which carry out professional valuation of assets such buildings, plant, machinery and equipment. Leading real estate broking companies have own valuation divisions. Banks and financial institutions have a panel of valuers that they use for lending purposes. Valuation is a pre-condition for purchase/sale of fixed property in Botswana.

Most valuation reports contain Open Market Value, Forced Resale Value and Insurance Replacement Cost for real estate valuations. Depreciated Replacement Cost is specified for plant, machinery and equipment. Upon request professional valuers provide information on estimated useful lives of the assets and working condition of assets. Desktop valuations are often used as indicative values for previously valued assets.

Business Valuations are often conducted by audit and consulting firms and by corporate finance companies. For valuation of brands, patents, copyrights, franchise and other intangible assets, professional valuation services are often imported from South Africa or from Zimbabwe.

INVESTING IN BOTSWANA

Compelling Reasons to Invest in Botswana

✓Stable Economy

- Since independence in 1966 Botswana Democratic Party has won in all elections has led the country to date.

✓No foreign exchange controls.

- Foreign exchange controls were abolished in 1999.

✓ Access to huge SADC (Southern African Development Community) market of 200 million people, Europe and the USA.

- SADC headquarters is located in Botswana. Southern African Customs Union (SACU) allows movement of goods amongst South Africa, Swaziland, Lesotho, Namibia and Botswana free of customs duty
- Botswana has duty free and quota free access to Europe
- African Growth Opportunities Act enables Botswana to export to the USA on a liberal basis.
- Botswana has trade agreement with Zimbabwe.

✓Low tax regime

- Company tax 22%
- Dividend tax 7.5%
- Personal income tax maximum marginal rate 25%
- Manufacturing companies tax 15%
- International Financial Services Companies tax 15% with 0% dividend tax
- Ever-expanding network of Tax treaties include countries like the UK, Zimbabwe, Mauritius, South Africa, France, India, Barbados, Lesotho, Swaziland, etc.

✓Industrial relations are good and trade unions are not militant.

✓Zero tolerance to corruption.

✓Low levels of inflation (About 3.5% (September 2018))

✓Protection of foreign investment

- Constitution prohibits nationalisation of private companies
- Signatory to the World Bank's Multilateral Investment Guarantee Agency (MIGA).
- Signatory to bilateral investment treaty in 1997 with the Overseas Private Investment Corporation (OPIC), which provides guarantees for US private investors.

Main Motivation to Invest in Botswana

✓ Botswana is one of the best performing economies of Africa. It does not have foreign exchange controls and it is a low tax regime. These are strong general reasons motivating investors to invest in Botswana.

✓ It is borders South Africa, a channel or conduit to do business with rest of Southern Africa. Botswana is a regional hub. Botswana is a regional financial services centre. Botswana Government lays emphasis on export promotion. These are strong marketing reasons to invest in Botswana.

✓ Botswana has a tradition to attract foreign direct investment. Besides, Botswana is a politically stable country. Botswana's investor friendliness and political stability attract investors to live peacefully in Botswana.

✓ Botswana Innovation Hub, power generation, transnational transport corridor network, tourism sector and International Financial Services Centre sector offer good opportunities to invest in Botswana.

✓ Bio-technology, Energy and Environment, Information and Communication Technology and Mining Technologies are four sectors currently receiving greatest focus from Botswana Innovation Hub.

✓ Food processing, Leather products manufacturing, Container glass and otehr silica related industries, Pharmaceuticals, Vegetable production using green houses and hydroponics, Dairy farming, Hatchery, Livestock production and feedlots, infrastructure development, development of commercial, industrial and hotel property - these sectors provide great investment opportunities.

How to Invest in Botswana

First step is to form a company in Botswana, open bank accounts and apply for residence and work permits for employees and investors. Second step is to obtain necessary approvals, register for taxes or permissions or licences to commence operations. Joint ventures are encouraged and it is advisable for investors to consider establishing joint venture partnerships with citizens. Any business consulting firm such as RSM Botswana will be able to advise and guide foreign investors to invest in Botswana. Botswana Investment and Trade Centre (BITC) offers 1-stop service to investors to process all the necessary permissions, approvals, residence and work permits.

LISTING RULES IN BOTSWANA

PRODUCTS

Botswana Stock Exchange trades in Equities both domestic and foreign. It has Venture capital board. In addition to equity, the Exchange trades in corporate bonds, government bonds and exchanged traded funds.

VOLUME

#	Particulars	2012	2013	2014	2015	2016
1	Volume of shares Traded (Million)	409.9	710.5	591.6	803.1	778.2
2	Value of Shares Traded (BWP'Million)	894.7	2,315.40	2,177.40	3,032.40	2,541.20
3	Market Capitalisation (BWP'Million)	412,349.00	416,590.40	418,156.70	421,099.20	421,313.19
4	Domestic Market Cap (BWP'Million)	35,530.80	43,457.60	46,209.90	50,213.90	46,571.96
5	Avg. Domestic Market Cap (BWP'M)	35,530.80	39,494.20	44,833.70	48,211.90	48,572.01
6	Average GDP (BWP'Million)	107,668.20	117,493.20	129,552.70	146,345.40	157,409.40
7	Mkt Cap/GDP (%)	33	33.6	34.6	32.9	30.9
8	Turnover/Mkt Cap (%)	2.5	5.9	4.9	6.3	5.5
9	Price to Book Value (%)	2.5	2.7	2.8	2.2	1.8
10	P/E Ratios (times)	9.2	11.4	11	12.3	13.37
11	Dividend yield (%)	4.3	4.1	4.3	4	4.4
12	Number of Trading Days	247	248	247	248	249
13	Average Daily T/O (BWP'Million)	3.6	9.3	8.8	12.2	10.2
14	Average Daily Volume (Million)	1.7	2.9	2.4	3.2	3

Shares in 36 companies are listed (both domestic and foreign) (October 2018)

GENERAL RULES

Securities for listing must be fully paid up and freely transferable. Non- voting equity securities can't be listed. Convertible securities may be listed only if sufficient unissued securities are available. Dividends must be declared 14 days prior to the last day of registering shares through Botswana Stock Exchange with a copy to shareholders. Decision not to declare dividends must also be communicated through Botswana Stock Exchange, since generally such decisions are price sensitive. Interim reports and preliminary reports must be published in the press and distributed to shareholders half yearly and quarterly respectively. Alteration to capital structure, basis of allotment of listed shares offered to the public for cash and claw- back offers to shareholders, extensions to temporary documents of title, issues affecting conversion rights, results affecting new issues - all these matters should be published by way of press announcement. Audited financial statements must be distributed to BSE Listing Committee and to the shareholders within 6 months of the end of the year and 21 days before the date of the annual general meeting.

For Detailed Listing Rules please click bse_listings_requirements.pdf.

MAJOR CHANGES

Listing rules will change in a big way effective 1st January 2019. Please click listing_major_changes_july18.pdf for a power point presentation from www.bse.co.bw.

RELEVANT WEBSITES FOR FUTHER READING

Botswana Government
www.gov.bw

Ministry of Investment, Trade and Industry
www.miti.gov.bw

Ministry of Finance and Economic Development
www.finance.gov.bw

Central Statistics Office
www.cso.gov.bw

Bank of Botswana
www.bankofbotswana.bw

Botswana Innovation Hub
www.bih.co.bw

Botswana Investment Trade Centre
www.bitc.co.bw

Citizen Entrepreneurial Development Agency
www.ceda.co.bw

Botswana Development Corporation Limited
www.bdc.bw

Botswana Stock Exchange
www.bse.co.bw

National Development Bank
www.ndb.bw

Botswana International financial Services Centre
www.ifsc.co.bw

Botswana Institute of Chartered Accountants
www.bica.org.bw

BRIEF SUMMARY OF BOTSWANA COMPANIES ACT

Introduction

The New Companies Act commenced on the 3rd July 2007. It is modern and incorporates fundamental changes in the concept and style of running of a company.

Solvency

Solvency is a corner stone of the Botswana Companies Act. A company is able to buy back its shares or finance a person to buy its own share or reduce the shares, so long as solvency tests are performed, and directors record their opinion that the company is solvent before making such decisions. A company is solvent when it is able to pay its debts in the normal course of business and where its assets are in excess of its liabilities.

Special Resolution

Amendment to constitution, major transactions (worth more than half the value of the company), gifts of more than 2% of net profit or P100,000, winding up, removal of a director in case of a private company - all these need special majority, meaning 75% should agree. Capital reduction will also require special resolution but in addition a public notice too.

Minimum Requirements

Nature of Organization	Minimum number	Other requirements
Close Corporations	1 Member	Should have an accounting officer accounting officer and registered and registered office;
Proprietary Limited Companies	1 Director	Should have a Secretary and Secretary and registered office.
Public Limited Companies	2 Directors	

companies. For companies registered under the old Act, Memo & Articles is the constitution.

You do not have to file the Objects of the company. A company can do anything in and out of Botswana. If you give a constitution with Objects, it does not affect the company. It however affects shareholders and directors but not third parties. A company's constitution, if submitted may have so many internal procedures. But just because it is filed with the Registrar, a third party is not expected to know it.

At any time, shareholders of a company not having a constitution may adopt a constitution by special resolution. They may revoke or alter a constitution.

Shares and Shareholders

Shares will have no par value or face value. Existing ones are deemed not to have a par value. But it does not affect any rights and obligations on shares. The basic proof that a share is transferred or is owned or sold is an entry in the share register. A share is issued when name is entered in the Shares Register. A share certificate is only a preliminary but not final proof.

A company can supply goods to shareholders at a discounted price but it should be fair and reasonable to the company and shareholders. The Board of Directors should approve the scheme.

A company can buy its own shares but the Constitution should allow. If the old Memorandum and Articles of Association do not allow it, you need to adopt a new constitution if you want your company to buy its own shares. Board approval and majority shareholder approval is necessary. A company cannot buy its own shares and put shareholders at a loss. So, the Board of Directors should resolve that it is not aware of any information that has not been disclosed to shareholders which is important to an assessment of the value of shares. If however the company does not satisfy solvency test after distribution, then it should get it back from the shareholder. But a shareholder does not need to pay if he received in good faith and does not have the knowledge of the company not satisfying the test.

If a company wrongly purchases its own shares then directors are responsible to compensate the company. A director may apply to court for an order directing return of purchase consideration. Any creditor can also do the same. The limit for this is three years.

Shares are deemed cancelled upon purchase by the company of its own shares. The company can hold the repurchased shares if its constitution allows but it cannot so hold more than 5% of its issued share capital, again a board resolution is necessary. Company can transfer its own share but it should obey the rules that the constitution provides for transfer of shares. It cannot use those shares in take-over schemes.

A company can give financial assistance (like guarantee) to a person buying its shares. The Board should resolve that it thinks that it is fair and reasonable to the company and its shareholders and that it would satisfy solvency test after giving financial assistance and that it is in the best interests of the company. For any money owed by the shareholder to the company, a company may register a lien on shares in priority to any other claim. Listed company cannot do it. But constitution should expressly provide for it.

A subsidiary company cannot hold more than 10% of shares in holding company. If it has more than 10% then it cannot vote on it.

Directors

Shareholders can sue the directors for breach of duties. Generally, they have two kinds of duties. One kind of duties is that they should be efficient, proficient and knowledgeable. Their technical duties are:

a) To exercise powers under the Act and subject to constitution;
b) Seek authorisation of general meeting per Act;
c) Exercise skill, diligence and care;
d) Attend meetings with reasonable regularity;
e) Not to incur obligations that the company cannot perform; and
f) To keep proper accounting records.

The other kind of duties is that they should be honest, transparent and should exercise due care and diligence. Particularly, these are their ethical duties:

a) To disclose interests,
b) Not to make the company do illegal things,
c) To account for his monetary gain (other than his remuneration),
d) To act as trustee and give over collections on company's behalf,
e) Honesty and in good faith and in the best interests of the company,
f) Not to make use of confidential information and
g) Not to compete with the company.

If you derive material benefit for any transaction with the company, then you have interest. Entry of your interest should be made in Interest Register. It must be entered in minutes. Interest Register can be avoided if 100% shareholders agree to it. Subject to the constitution, the interested director can attend the meeting, can sign the minutes, can vote and do anything as if he is not interested.

A company can avoid the contracts in which directors are interested within 6 months from the date on which shareholders are informed (either through annual report or otherwise) but the avoidance cannot affect a third-party's title. But if the company receives fair value then it cannot be avoided.

A director having shares in a company, can buy and sell in shares at fair value - not less than fair value when selling and not more than fair value while buying. Otherwise, he is liable for the difference and should pay it over to the other party.

A sole director cannot resign without calling for a shareholders' meeting to receive resignation and appoint one or more directors. Directors' acts are always valid even if the director is disqualified or even if the appointment was defective. A director is liable for his actions, even after resignation or removal or disqualification. If you want to remove a director, give notice that should say that it is removal of director. Ordinary resolution is enough for public companies but special resolution is necessary for private companies (subject to constitution).

A general meeting by ordinary resolution may decide on directors' remuneration. But a company cannot give loans to directors. But salary advance or travel advance can be granted.

Secretary

Every private and public company should have a secretary who is resident in Botswana. A secretary should be qualified and should give consent to act as secretary. Subject to the constitution the board may appoint or remove a secretary.

An Auditor cannot be the secretary; a sole director cannot be a secretary; an insolvent person cannt be a secretary. For a non-exempt private company and public company (meaning a company with a turnover of more than P 20 million or total assets of more than P10 million - as of May 2013), a lawyer, qualified accountant (Botswana Institute of Accountants) and a member of Southern African Institute of Chartered Secretaries and Administrators can be a company secretary.

A company Secretary should submit statutory forms to the Registrar, take responsibility with directors for accounts, keep Registers of shareholders, Directors, Secretaries, Charges including Directors' Interest, attend meetings, minute the proceedings and sign with the Chairman of the Board as true copy of minutes, send notices for meetings and maintain adequate system of correspondence, affairs and activities of the company.

Pre-incorporation Contract

A company can enter into a contract before it is legally registered. But when it is registered, the contract should be delivered so that it binds the company upon and after formation.

Registered Office

Constitution, Minutes, Interests Register, Certificates by the Directors, Full name and address of current directors and secretary; All written communications to the shareholders; financial statements, accounting records, Share Register, Register of Charges and documents giving rise to charge - all these should be kept in the Registered Office. Records can be kept in writing or in electronic form but when kept electronically, back up is necessary and control is necessary so that falsification is avoided.

Accounts and Audit

While preparing accounts, non-exempt companies and public companies should comply with IFRS and company law schedules and other laws relating to accounts. An exempt private company should comply with generally accepted accounting principles. A holding company should consolidate its accounts; an intermediary holding companies need not consolidate; subsidiaries that do not follow IFRS are not obliged to be consolidated.

An audit should be performed according to International Standards on Auditing for every non-exempt private or public limited company or even a close company. An auditor should report irregularities in the management of financial affairs or any matter that is important to the exercise of powers and duties imposed by the Act within 7 days to the Board. Within 30 days board has to remedy or inform the shareholders. Otherwise auditor can report the material irregularity to the Registrar who may convene a shareholders' meeting at his instance.

The Board of Directors has to approve the accounts within 5 months a public company and 7 months for a private company. Two directors should sign the accounts. In the event the company has a sole director then one director should sign the accounts.

Private Company

Private company cannot have more than 25 members and it cannot make public offer to subscribe to shares or debenture. It may restrict right to transfer shares. Private company may dispense with shareholders' meetings through resolutions of all the members of the company. Exempt private company does not need to have an auditor. Exempt private company does not need to comply with IFRS. Exempt private company does not need to have a qualified company secretary. A private company does not need an annual report or Directors' Interests Register with unanimous consent of shareholders. Private companies may remove a director by special resolution.

Close Company

A Close Company can only have natural human beings as members, meaning those who are both shareholders and directors, since a member in a CC cannot be just any one of them. A member can bind and represent CC. Members having 75% interests should agree for change of business or major transaction. Otherwise, majority will prevail for the day to day running of the CC. You cannot form a CC for banking and insurance business.

Every CC shall have a registered office. Every CC should have members' interest in the place of shares. Meetings can take place in a CC much like a company. If all members agree, there is no need for a meeting. They all together can sign resolutions in the place of a meeting. Members' interest is a percentage. It is a movable like a share but not a share in terms of procedures attached to transfer, sale, purchase, etc. as explained in the next paragraph.

A new member can buy the member's interest from the old member. Or a new member can contribute, he and other members can agree on the new member's percentage of interest. If a member wants to sell his or her interest to the CC, then all other members should agree in writing. After the CC buys members' interest, a CC should be able to pay debts in its ordinary course of business and its assets should be more than the liabilities (like solvency test in case of a limited company). Otherwise a CC cannot buy. If it buys then members should return the money. If you want to buy a member's interest in a CC, the CC can give you security to buy that interest. But then after the security is given, the CC should be able to prove that it will be solvent. Again, all other members should agree.

Secretarial procedures are less for a CC. An accounting Officer should within 30 days should notify the Companies and Intellectual Property Authority (CIPA), of all changes in Constitution, Registered Office, Name and Address of members, new member, outgoing member, accounting officer, name of the close company, financial year, change in %age of members' interests, additional contribution or reduction in members' interests.

A member in a CC is like a trustee for the CC. He should be honest and fair to other members. He should account for any profit made from the CC. He should give full information to other members. He cannot compete with CC without the consent of other members. If he does, then all profits of that other (competing business) will belong to the CC.

A CC can make any payment to its members but after the payment is made the CC should be solvent. If any excess payment is made, then they should repay. Payment includes anything like dividend or distribution or reduction of share but will exclude rent paid to member, interest paid to member and salary paid to member for his employment. A CC cannot give loans to members. If all members agree in writing, then the CC can give loans to members.

A member of a CC should exercise diligence, care and skill. If not he is personally liable to the CC. But if all members agree in writing, then he does not have to compensate the company for the loss suffered by or through his negligence.

Dormant Companies

If there are no significant accounting transactions, then the company is dormant.   Special resolution that it is dormant should be filed with the Registrar. But when significant accounting transactions happen, then notify the Registrar again. Dormant company pays less or no filing fee. Further it is exempted from accounting and audit requirements.

INTERNATIONAL FINANCIAL REPORTING STANDARDS

This is an over-simplified executive summary with a view to enhancing the understanding of accounting for small business owners who are required to comply with IFRS, meaning those businesses whose turnover is above P20 million or whose total assets employed are above P 10 million.

IFRS 2: Share based payment

When you give shares to your employees recognizing their performance or when you buy goods and pay for them through shares, then you should bring the transaction into books.

IFRS 3: Business Combination

When you buy another business, all the assets that you buy should be accounted for on fair value and you recognize goodwill in your books. You should not write off this goodwill for a fixed number of years unlike in the past. You have value the goodwill every year and should reduce it only if it falls in value (called "impairment").

IFRS 5: Held for Sale or Discontinued Operations

Property, plant & equipment that are held for sale (not abandoned assets but which are really meant for immediate sale) and that relate to discontinued operations must be disclosed separately in the financial statements and they should not be added to Property, plant and equipment. If a division of business is held for sale, then income statement should show income from discontinued operation separately.

IFRS 7: Financial Instruments – Disclosure

Debtors, creditors and loans are called financial instruments (not stock). Your business carries a lot of risk with financial instruments. These risks should be clearly mentioned in the notes to financial statements – like exchange risk, credit risk, interest risk, etc. The importance of these financial instruments should be mentioned in the notes.

IAS 1: Presentation of financial statements

Financial Statements = Income Statement, Balance Sheet, Changes in Equity Statement, Cash Flow Statement, Accounting Policies Statement and Notes to the financial statements. The standard deals with line items or contents of these parts of financial statement. It also tells you that you cannot merge or combine or net off items. All important items have to be shown separately. Financial Statements should indicate if International Financial Standards are complied with. If you do not comply with any IFRS, then your financial statements should include explanations for non-compliance. There are lot of estimates and judgments that you make in preparing financial statements for provisions and depreciation. Your financial statements should explain the assumptions behind these estimates.

IAS 2: Stocks

You should value your stocks at cost. If net realizable value is lower, then you should value stocks at net realizable value. You should use First In First Out method of stock valuation. Last In First Out is not the correct method. You can also use Weighted Average Cost Method. Stock value should include all expenses incurred in bringing it to the present location, like transport, customs, duty etc. Foreign exchange changes should not be included in Stocks.

IAS 7: Cash Flow Statement

A cash flow statement is a must for financial statements. Cash comes or goes because of investing activities (fixed assets), financing (loans & shares) activities or operating (business) activities. These should be separately shown. Cash should include bank balance, call account, short-term investments which can be readily converted to cash.

IAS 8: Accounting Policies, Errors & Accounting Estimates

All your accounting policies should comply with IFRS. For example you cannot have an accounting policy to value stock on LIFO (Last in First out basis). You should follow accounting policies year-after-year without changing. You can only change where IFRS requires a change or when financial statements will make more sense. Where an accounting policy changes you have to account for it retrospectively, as if the changed policy was always there. When you make an error in previous years, you correct these errors not in the current year but in the year in which you made the error. You are changing your estimate, you can however make changes for the present and future and not the past financial statements.

IAS 10: Post Balance Sheet Events

Events happen after the balance sheet date but before the release date. Some of these events confirm the conditions that prevailed on the balance sheet date. Under these circumstances you can adjust the balance sheet figures. In other cases, you cannot adjust them just because your assumption was wrong on the balance sheet date or market changed after the balance sheet date against your expectation. Major non-adjusting events (market changes) should be disclosed in the financial statements. For example, destruction of stock by fire, or change in tax rates, major sale of business.

IAS 11: Contract Turnover

If you are contractor, your turnover is based on the progress of contract performance and not based on cash collections or invoicing, for that matter. If a contractor estimates a loss (probable loss) on a contact, then it should be provided for in the current financial statements, without waiting for the time when losses might actually happen.

IAS 12: Income Tax

In addition to current tax, even deferred tax (future tax payable for current income) should be accounted for. Sometimes you pay less because of current loss. This should also be accounted for (called Deferred Tax Asset), provided you will make enough income to absorb that tax loss. Deferred tax relates to all differences between the carrying amount of assets and liabilities in the balance sheet, and the tax base of assets and liabilities. So, your income statement will not only have current tax but also deferred tax.

IAS 16: Property, Plant & Equipment (Fixed Assets)

You recognize these property, plant and equipment initially at cost. All expenses to get an asset ready should be included in the cost of asset like transfer duty, erection charges, commissioning charges, etc. (not repairs & maintenance). You depreciate the assets when you keep the asset ready and not when you start using it.

Sometimes, you have an asset but one part of an asset has a useful life different from other part or parts of the asset. For example, your building can live for 40 years but the air-conditioning plant in the building may live for 20 years. In such cases, you should use component-wise depreciation – you cannot just have one depreciation rate.

Every year-end you should estimate the useful life of the asset and change depreciation. It is not necessary that you write off an asset at 10% every year. At the end of 7^{th} year, if you think that the asset would still come for 5 years than you can change the depreciation for the 8th year to 12th year. Sometimes an asset may suffer a big damage. You should estimate a reduction in value of asset (impairment) and account for it.

You can always revalue a building and bring the valuation figure in the balance sheet. But you should then revalue it consistently and regularly – say every three years.

IAS 17: Leases

You buy a car on lease. This is a financial lease because you will own the car one day after the lease is paid. You lease your office. This is an operating lease because you are not going to own it. You should record a financial lease as if you have taken a loan to buy a car. You should record the operating lease as an expense on straight line basis (equally every year during the lease period).

IAS 18: Turnover

When you sell goods, sale is recognized when the ownership, risk and control in goods is passed on to your customer. When you render a service, sale is recognized to the extent you deliver the service. Interest is recognised based on time proportion method, computed on the effective yield on the asset. Royalties are recognised in accordance with the substance of the agreement. Dividends are recognised when the shareholder has the right to receive payment.

Revenue is measured at the fair value of the consideration received or receivable by the entity on its own account. When receipt of cash is deferred, the nominal consideration is split between sales revenue and interest revenue.

An exchange of goods or services for similar items does not generate revenue. An exchange for dissimilar items generates revenue measured at the fair value of the goods or services received.

IAS 19: Employee Benefits

You should bring into books severance benefits, gratuities, leave pay and other cash benefits due to employees as a liability specifies accounting for and disclosure of employee benefits by employers. You should not wait until you actually pay. Contributions to defined contribution plan should be recognized as expense since it is for employees' services already rendered. If you contribute to defined benefit plan, then the liability of the benefit plan becomes your liability and you have to recognize it in your financial statements, soon or later depending on the extent of increase in liability.

IAS 20: Government Grants

You recognize grants when you are sure that you will comply with grant conditions and you will receive grants. If the grant is in kind, recognize it at fair value. If a grant relates to an expense recognize it when the expense is recognized. If it relates to assets, then you bring into income the grant as you bring depreciation of that asset into expense.

IAS 21: Foreign Currency

Pula is the reporting currency for a business in Botswana – even if it imports and exports 100% of its merchandise. When it imports it has to convert the import costs into Pula on the date of purchase and NOT on the date of payment to supplier. In the same way when you export, you convert to Pula on the date of export invoice and not on the date of collection of sale proceeds.

Debtors, creditors, foreign bank account balances, etc. are converted to Pula at the rate prevailing on balance sheet date. Foreign currency fixed assets are converted on the date of original purchase (not at balance sheet date rate).

Exchange differences on debtors, creditors, foreign bank accounts (monetary assets) are taken to the income statement. But if these relate to a foreign operation, you bring the differences into the income statement only when you sell that foreign operation.

This Standard allows you to prepare your financial statements in any currency, but then you should follow a different foreign currency translation practice. Assets & liabilities should be converted at closing rate. Income & expenses should be converted at transaction (or average) rate. The resulting difference should be taken to equity and not to profit and loss account.

IAS 23: Interest on Loans

You should always take interest to profit and loss. Sometimes you may borrow for machines (or building or any productive asset) that may take a long time to construct and put to use. In these cases you can capitalize the interest during the construction period and increase the value of the asset. Of course, you can also take the interest to profit & loss.

IAS 24: Related Parties

All transactions with related parties should be disclosed in the Notes to financial statements – sales, purchases, debtors and creditors. Related parties include companies with same directors/shareholders, in which your company has more than 20% shares, joint ventures, directors and shareholders. Notes should include the nature of relationship, nature of transaction, interest, security, terms of repayment, etc.

IAS 27: Consolidated Financial Statements

If your company has more than 50% shares in another company (subsidiary) or if it can control the operational and financial decision making through any other means, then in addition to preparing the financial statements of your (holding) company, consolidated financial statements of both entities (group) should be prepared. There is no need to do consolidated financial statements when shareholders/directors are common.

IAS 28: Investments in Associates

An associate is any company (called investee) entity over which the investor has power to participate (not control) in financial and operating policy making. This condition is assumed to be fulfilled if the company has 20% shares in the investee.

You should account for investment in an associate at cost initially. After that any increase (or decrease) in net assets of investee should be accounted for. A one-line entry in the income statement presents the investor's share of the associate's profit or loss. There is also a one-line adjustment to the investment in the balance sheet. There is no need to follow this method (called equity method) in certain circumstances.

IAS 29: Joint Venture

The essential element of a joint venture is a contractual arrangement, which establishes joint control. If your company is in joint venture with another company, then your assets that you use in the joint venture should still be accounted for as your assets in your financial statement. You should also account for your share of joint venture's assets, liabilities and profits. You can use the equity method as in IAS 28 or you can also use proportionate consolidation method where you do line by line consolidation (totalling). Again there is no need to following these methods under certain circumstances.

IAS 32: Presentation of financial instruments

IAS 32 specifies rules for presentation of financial instruments. A financial asset (debtors and receivables) cannot set of a financial liability (creditors and payables) in the absence of a legal right. Equity may be a financial instrument in the sense that your company may have an obligation to pay interest (or dividends), may have given security, may have an obligation to repay after a certain time or upon fulfillment of a certain condition. In such cases, it is in fact a long term obligation or a financial instrument although termed "legally" as "share" or "equity". Remember that accounts are not so much based on law as are based on "substance" or the practical business sense.

IAS 36: Impairment of Assets

If you show an asset in the balance sheet at P100,000, you should be able to recover P100,000 from sale or use. If you can only recover P85,000 for example, then there is an impairment of asset for P15,000. This is an impairment loss and is an expense. The standard also applies to groups of assets (known as cash-generating units), like when you have two or three businesses operated by the same company. You should assess the recoverable amount at each year-end for goodwill in business combination and intangible assets (for example, development cost). For fixed assets, like building or furniture, you can assess impairment when there is an indication that it may be impaired (not at each year-end). If there is an impairment of a revalued asset, then revaluation surplus can be decreased instead of calling it an expense. There are disclosure requirements, since you make assumptions to decide on impairment.

IAS 37: Provisions and Contingent Liabilities

A liability is a definite, legal or constructive (imputed by law) obligation like for purchases, electricity, water, phone, etc. You know when you have to pay and how much to pay. Sometimes you may not know how much to pay or when to pay but you that you have to pay. This is a provision. If you sell goods on warranty, you make a provision. Sometimes you know you may have to pay but you are not certain if you will pay. This is a contingent liability. If you are sued and if you are think that you may be on the losing side, it is a contingent liability. But you cannot call any future loss a provision.

A liability is shown in the balance sheet. A provision is shown in the balance sheet and a contingent liability is not shown in the balance sheet but is disclosed in the notes to the balance sheet if there is a good probability that you may have to pay it.

IAS 38: Intangible Assets

It is like fixed asset that gives you the benefit of income for foreseeable future but you cannot see it like a table or chair. You should be able to separate it practically (not necessarily legally) from the business and sell it – for example, a franchise fee or licence fee for software, a licence fee for a production technology or pattern, trade mark and patents. Goodwill is an intangible asset but it is covered by IFRS 3 so you cannot call it intangible asset for this Standard. If you generate goodwill internally, like your training or research, or trading style, etc., you cannot recognize it as goodwill because it is not separable from your business.

An intangible asset is expensed off and not shown in the balance sheet. If you want to show in the balance sheet, then you have to prove that (1) future economic benefits will be there and (2) cost of the asset can be measured accurately (reliably).

Intangible assets are measured initially at cost. Every year you depreciate intangible assets, if useful life is definite. If it is indefinite, then you do not amortise it (depreciate it) but test it for impairment every year (See IAS 36 to understand the meaning of impairment). You can choose to measure you intangible asset at fair value, if there is an active market for it (very rate).

IAS 39: Recognising and Measuring Financial Assets

You have to measure financial assets (debtors, receivables, payables, creditors) at fair value. For example, if you have debtors who owe you P10,000 but will pay you only next year, then it may be worth today (balance sheet date) only of P9,000. You show debtors at P9,000 which is the fair value. It does not matter if the invoice shows P10,000, the same applies to creditors. This is how you initially measure financial assets and liabilities. But then how do you treat it year after year? This depends on your intention.

Sometimes you hold a financial asset to maturity or "held to maturity asset". Like having shares in related companies. This is carried in the balance sheet at amortised cost. Sometimes you make related company loans or "loans and receivables". This is also carried at amortised cost. Sometimes you hold financial assets for trading. You may have shares quoted in stock exchange. You carry these assets at market value and take the differences to profit & loss, although you have not sold it. This is called carried "fair value through profit or loss".

Sometimes you don't have a clear intension because it is generally "available for sale" but not kept in active trading. You also carry them at fair value but you do not take the differences to profit or loss but keep it in equity (balance sheet). You can release it to income statement, when you really sell it.

If you have a creditor in US$ you have a forward contract. This is a type of hedging. If you agree to pay someone even in Pula on Johannesburg stock exchange index, it is a derivative transaction, but you may hedge it by making a counter sale. You have to bring into books the net effect of changes in fair value of hedges as on the date of balance sheet. So you should have proper formal documentation and you should have the practice of doing it regularly and consistently.

IAS 40: Investment Properties

An investment property is land or a building (including part of a building) or both, held to earn rentals or for capital appreciation or both. It is not owner-occupied, and is not used in production or supply of goods and services, or for administration. It is not property that is for sale in the ordinary course of business. It is not property that is being constructed or developed for future use by the entity as an investment property but may include investment property that is being redeveloped.

An investment property is initially measured at cost. For subsequent measurement an entity must adopt either the fair value model or the cost model for all investment properties. All entities must determine fair value, for measurement (if the entity uses the fair value model) or for disclosure (if it uses the cost model). Fair value reflects market conditions at the reporting date. Simply put, investment properties should be re-valued regularly. Under the fair value model, investment property is remeasured at each reporting date. Changes in fair value are recognised in the income statement as they occur. Fair value is the price at which the property could be exchanged between knowledgeable, willing parties in an arm's length transaction, without deducting transaction costs.

Under the cost model, investment property is measured at cost less accumulated depreciation and any accumulated impairment losses. Gains and losses on disposal are recognised in profit or loss.

IAS 41: Agriculture

IAS 41 prescribes the accounting treatment, financial statement presentation, and disclosures related to agricultural activity – animals & plants. Biological assets and agricultural produce at the point of harvest is also measured at fair value less estimated point-of-sale costs. Changes in the value of biological assets are included in profit or loss. Biological assets that are attached to land (e.g., trees in a plantation forest) are measured separately from the land.

The fair value of a biological asset or agricultural produce is its market price less any costs to get the asset to market. Point-of-sale costs include commissions, levies, and transfer taxes and duties.

When an agricultural company gets a government grant, it does not have to follow IAS 20. Grants can be accounted on receivable (accrual) basis, if they are unconditional. If they are conditional, then conditions should be met before you account for grants.

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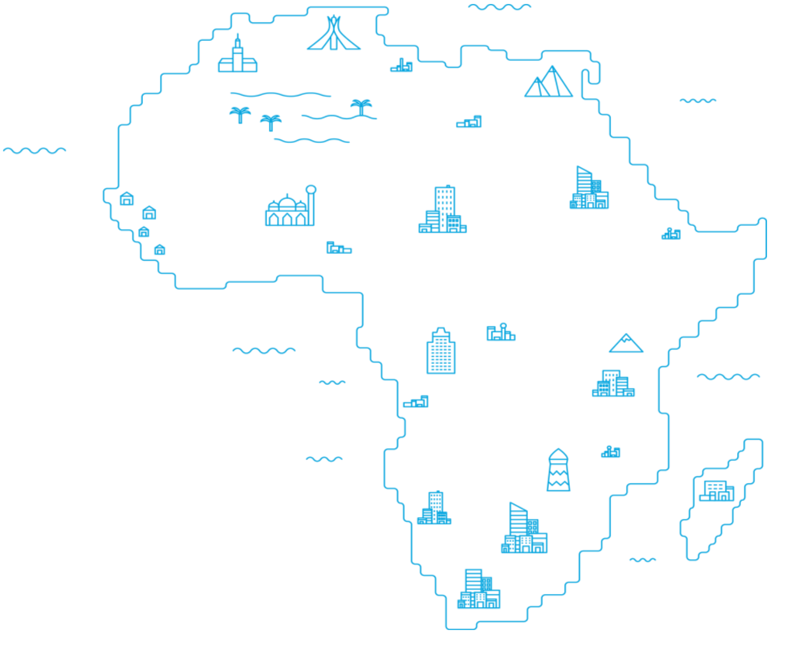
RSM Botswana Values

✓Adaptability - to develop an impeccable understanding of clients
✓Being proactive and deliver on time every time to prevent possible occurrences of non-compliance
✓Team spirit, for the synergistic effect it has on client satisfaction and public interest.



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