

VOLUME: XI

VALUE ADDED TAX

Part ID: X Refund of Tax and Tax Relief (ss 42-43)

CHAPTER: 50:03

42. Refund of tax

(1) Where-

(a) the total amount deductible by a registered person under section 19(1) for a tax period exceeds the person's output tax for that period; or

(b) the amount of tax paid by a person, other than in circumstances specified under paragraph (a), was in excess of the amount properly charged to tax under this Act, the amount of the excess shall be treated in the manner provided for in this section.

(2) Subject to this section, if, for any tax period, a registered person files a return reporting an excess referred to in subsection (1)(a), the return constitutes a claim for a refund and where the Commissioner General is satisfied that the registered person is due a refund-

(a) the Commissioner General may apply the amount of the refund in reduction of any tax, levy, interest, or penalty payable by the person in terms of this Act, the Customs and Excise Duty Act; the Income Tax Act; and any unpaid amounts in terms of the Sales Tax Act, 1993; and

(b) any excess remaining shall be refunded to the registered person-

(i) where-

(A) the Commissioner General is satisfied that the excess is due to excess input tax deductions that arise from the regular export of goods or services from Botswana as specified in a notice issued to the person by the Commissioner General; or

(B) the Commissioner General is satisfied that the excess is due to excess input tax deductions that arise from the operation under a certificate described in section 75, of a value added tax manufacturing warehouse or an international financial services centre company,

at the end of the calendar month following the due date for the return reporting the excess; or

(ii) in any other case, at the end of the second calendar month following the due date for the return reporting the excess.

(3) Where a person has overpaid tax in the circumstances specified under subsection (1)(b), the person may apply in writing to the Commissioner General for a refund of the excess amount of tax, accompanied by documentary proof of payment of the excess amounts.

(4) Subject to this section, where the Commissioner General is satisfied that a person who has made an application under subsection (3) has overpaid tax, the Commissioner General shall-

(a) first apply the amount of the excess as specified under subsection (2)(a); and

(b) then repay any amount remaining to the person.

(5) The Commissioner General shall not make a refund under subsection (4), unless-

(a) the amount to be refunded is more than the amount specified in paragraph 4 of the Fifth Schedule; and

(b) the Commissioner General is satisfied that any amount of output tax claimed to be refundable to a registered person will, if such amount has been borne by any other person, in turn be refunded by the registered person to that other person.

(6) Where a registered person has failed to furnish a return for any tax period as required under this Act, the Commissioner General may withhold payment of any amount refundable under this section until the registered person furnishes such return as required.

(7) A claim for a refund referred to under subsection (2) or (3) shall be made within three years after the date the excess arose.

(8) The Commissioner General shall serve on a person claiming a refund, a notice in writing of the decision in respect of the claim.

(9) A person claiming a refund under this section who is dissatisfied with a decision referred to under subsection (8) may appeal against the decision only in accordance with the provisions of Part VIII.

(10) Where the Commissioner General fails to pay a refund of tax relating to an excess under subsection (1)(a) by the date specified under this section, the Commissioner General shall pay the registered person entitled to the refund, an additional amount as interest at the rate specified in paragraph 5 of the Fifth Schedule and calculated from the date on which the refund was due until the date on which the payment of the refund is made.

(11) A person who improperly claims a refund under this section, commits an offence and is liable on conviction, to a fine not exceeding P15,000 or to imprisonment for a term not exceeding three years, or to both.

43. Others eligible for tax refund

- (1) The Minister may authorise the granting of a refund of tax paid or borne on a supply to, or import by-
- (a) any person to the extent provided under-
 - (i) the Diplomatic Immunities and Privileges Act;
 - (ii) an international convention having force of law in Botswana;
 - (iii) the recognised principles of international law; or
 - (iv) under the International Financial Organizations Act; or
 - (b) any diplomatic or consular mission of a foreign country established in Botswana, relating to transactions concluded for the official purposes of such mission;
 - (c) an organization or government to the extent provided under a technical assistance or humanitarian assistance agreement entered into between the Government of Botswana and any organization or government of any country;
 - (d) a non-resident individual on goods specified in the regulations that are exported from Botswana as accompanied baggage only if the total tax on such goods exceeds the amount specified in paragraph 6 of the Fifth Schedule; or
 - (e) a person not required to register under section 16 who exports goods within a period of three months from the date such goods were imported and subject to tax if, at the port of exit, the person identifies the goods and presents, to the customs officer, the documentary proof required by the Commissioner General.
- (2) A refund provided for under subsection (1)(a) and (d) is not available to a citizen or a resident of Botswana.
- (3) The Minister may authorise relief under this section on such conditions or subject to such restrictions as the Minister may deem fit.
- (4) A claim for a refund of tax under this section, shall be made in such form and at such time as the Minister may prescribe, and shall be accompanied by proof of payment of tax.