



REPUBLIC OF BOTSWANA

*Department of Taxes, Government of Botswana*

**DEPARTMENTAL GUIDANCE NOTE ON COMPANIES  
PUBLIC OFFICER & ADDRESS FOR SERVICE OF NOTICES**  
( Section 135\* of the Income Tax Act 1995)

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**1. INTRODUCTION**

**1.1. Purpose of this DGN:**

This Departmental Guidance Note is issued to explain the provisions and procedure with regard to the nomination of

- a. Public Officers, and
- b. Address for service of notices

by the companies operating in Botswana.

As such , this note is prepared to disseminate the relevant information such as

- i. The obligations of the officers of companies (i.e., Directors, Secretaries and Managers) as regards the nominations of public officers and nomination of addresses for service of notices;
- ii. The responsibilities of the individuals themselves who are appointed as Public Officers ; and
- iii. The consequences of non-compliance with the requirements under the Income Tax Act, which include possible imposition of

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*\* All references to the provisions of the Income Tax Act are based on the latest edition of Laws of Botswana published in 2002.*

civil as well as criminal penalties under section 119 of the Income Tax Act 1995.

The Note has no force in law. It neither binds the Commissioner nor restricts the taxpayer's rights of Objection and Appeal as provided by the Income Tax Act 1995 as amended from time to time.

## **2. RELEVANT PROVISIONS OF THE LAW**

2.1 Section 135 of the Act requires that any company carrying on business in Botswana must appoint a Public Officer to represent it for purposes of the Income Tax Act.

2.2. This section also requires that the same company appoint an address for Service of Notices on the company.

2.3. Finally, the section provides that the appointments be notified to the Commissioner and that any changes in either Public Officer or Address for Service of Notices be similarly notified within 15 days of such a change occurring.

## **3. PUBLIC OFFICER**

### **3.1 Time of Appointment**

The appointment must be made within one month of commencing business in Botswana.

Any company, which has been so carrying on business for more than one month and does not, currently, have a Public Officer to represent it, must therefore appoint one immediately.

### **3.2 Person to be appointed**

The person appointed must be an individual and he must "reside" in Botswana.

It is considered that the wording of the provisions in the Act precludes another company, a partnership or other body of persons from acting as Public Officer.

As the Act uses the words “residing in Botswana” it is clearly intended that he must not be either transient or merely “resident for tax purposes”.

In making an appointment, the company should consider whether the appointee has undertaken the responsibilities of the office and thus protect the company.

### 3.3 Notification Requirements

Written notice of the first appointment is to be given to the Commissioner by the company.

That notice is to specify the full name of the appointee, his residential address and his postal address in Botswana.

The Commissioner will look for confirmation from the appointee of his preparedness to act as the Public Officer of that company.

It is to be noted in this connection that Notice of the appointment be given on the company’s letter-head, over the signature of an officer of the company, with the appointee’s signed agreement to act advised below that Notice.

### 3.4 Commissioner’s Approval

For the appointment to have full effect, it is necessary that the Commissioner approves the appointee. .

On the basis of the Notice of appointment as mentioned in 3.3 above, the Commissioner may approve or decline to approve an appointee and in deciding which action to take, will have in mind the measure of responsibility which the appointee has for the affairs of the company and/or awareness of the requirements of the Act which might be expected of him.

Commissioner’s approval will be notified in writing to the company and the appointee.

Where, in any case, the Commissioner does not approve an appointee, the company is required to appoint and notify another individual for approval.

It is to be noted that the Commissioner has the right to withdraw approval of a Public Officer at any time.

### 3.5 Changes of Public Officer

Where a Public Officer ceases to act by reason of the withdrawal of approval by the Commissioner the company should, on receipt of the notice from the Commissioner, appoint another person and follow the procedure in paragraph 3.3.

Where for any reason an approved Public Officer ceases to act in that office, the company is to notify the fact in writing to the Commissioner specifying the date of and reason for cessation. The notification will be acknowledged to the Company and the withdrawing Public Officer.

Where the Public Officer ceases to act because of an order for liquidation or judicial management, the company is to advise the name and address of the liquidator or judicial manager which officer takes over the responsibilities as Public Officer of the company.

Where an approved Public Officer ceases so to act for any other reason, the company is required to appoint another Public Officer and follow the procedure in paragraph 3.3.

Similarly, where the order for liquidation or judicial management is discharged or, in the case of a voluntary liquidation not proceeded with, the company is to notify this fact to the Commissioner, appoint a Public Officer and follow the procedure in paragraph 3.3.

### 3.6 Responsibilities of a Public Officer

The Public Officer is seen as an individual who personifies the legal fiction of the person of the company with regard to requirements of the Income Tax Act.

It is the Public Officer who is required to furnish Tax Returns of the company; to comply with any Notices served on the company or on himself as its Public Officer and to ensure that the company complies with the withholding tax provisions and all other requirements of the Act.

These responsibilities lie with the Public Officer for his period in office and are considered to follow him even after voluntary withdrawal from office.

### 3.7 Liability of Public Officer

In the event that there is a default by the company or its Public Officer in complying with any requirement of the Act, the Public Officer is personally liable to any statutory civil penalty shown as payable by the company.

In the event that default falls within the criminal category, the Public Officer is liable to prosecution in his own name and, in consequence, liable to the criminal penalties.

### 3.8 Relationship of Public Officer/Company

An approved appointee is seen as an officer of the company albeit in the limited field of Income Tax.

The Public Officer is not seen as an employee of the company in respect of his appointment nor is the relationship of professional agent and client recognised.

As penalties for default can be visited on the company as well as on its Public Officer, it is considered advisable that the officers of a company be sure that its Public Officer is able to advise them as to requirements of the Act.

## 4. **ADDRESS FOR SERVICE OF NOTICES**

### 4.1 Time of Appointment

The appointment must be made within one month of commencing business in Botswana.

Any company which has been carrying on business for more than one month and has not appointed such an address or does not have one currently available to it must, therefore, appoint such an address immediately. Failure to appoint an address which is available for the service of Notices at all times gives rise to liability to penalty on the Public Officer and the company.

### 4.2 Address to be appointed

The address appointed must be a location address, in Botswana, which is readily identifiable.

Should the address be in a block of offices, used in common by a number of enterprises or persons, that address must incorporate the office and floor numbers.

#### 4.3 Notification

Written notice of the address first appointed is to be given to the Commissioner by the company.

#### 4.4 Change of Address for Service of Notices

Where an address already notified becomes unavailable to the company, voluntarily or otherwise, the company must, within fifteen days, appoint and notify to the Commissioner a new Address for Service of Notices.

#### 4.5 Purpose of the Address for Service of Notices

The requirements under this head relate to matters of Income Tax only.

The Address is seen as one at which service of any Notice can be made on the company and this, in particular, where there is a failure to be represented by a Public Officer.

However, any Notice left at the last notified address for Service of Notices is considered to be sufficiently served for purposes of the Act, whether or not there is a Public Officer.

In this regard, it is important that a company's officers and its Public Officer ensure that the latest notified address is available to them at all times.

### 5. CONCLUSION

#### 5.1 It is important that a company's officers address themselves to matters in this Note as failure to comply with its requirements leads to liability to penalties.

A similar situation lies with Public Officers now acting or appointed in the future.

With regard to penalties , non-compliance with matters in this Note leads to a liability to Civil Penalty.

However, it must be borne in mind that liability to criminal penalty could follow non-compliance as, for example, where a change of Address for Service of Notices is not advised and the requirements of a Notice served on the last notified address are not met within the time allowed in such notice.

With these matters in mind companies and Public Officers should look for formal acknowledgment of any Notices given or notifications made to the Commissioner.

## **6. Assistance available**

If in need of any clarification, please contact the offices of the Commissioner of Taxes at the addresses and phone numbers given below:

Department of Taxes Private Bag 0013 Gaborone	Department of Taxes Collection Division Private Bag 38 Francistown	Department of Taxes Collection Division Private Bag 13 Selebi-Phikwe
Phone: 3614600 Fax: 3953101	Phone: 212734 Fax: 214267	Phone: 810795 Fax: 814862

**Revised 19 September 2003**



**COMMISSIONER OF TAXES  
PRIVATE BAG 0013  
GABORONE.**