

INCOME TAX (AMENDMENT) ACT, 1979

No. 10



of 1979

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An Act to amend the Income Tax Act

Date of Assent: 26.4.79

Date of Commencement: See section 1 (2), (3) and (4)

ENACTED by the Parliament of Botswana

Short title
and
commence-
ment

1. (1) This Act may be cited as the Income Tax (Amendment) Act, 1979.

(2) Subject to the provisions of subsections (3) and (4), this Act shall come into operation on 1st July, 1979.

(3) Sections 8, 9, 18 and 34 shall be deemed to have come into operation on 1st July, 1973.

(4) Sections 5, 6, 10, 13 and 30 shall be deemed to have come into operation on 1st July, 1978.

Amendment
of section
2 of
Cap. 52:01

2. Section 2 of the Income Tax Act (hereinafter referred to as "the principal Act") is hereby amended —

(a) by the insertion, immediately after the definition of —

(i) "child", of the following new definition —

““commercial royalty” means any amount payable for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films, and films or tapes for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience;”;

(ii) "employment income", of the following new definition —

““entertainment fee” means any amount payable to an entertainer (including any cabaret, motion picture, radio, television or theatre artiste and any musician) or a sportsman for his personal activity as such;”;

(iii) "livestock", of the following new definition

““management or consultancy fee” means any amount payable for administrative, managerial, technical or consultative services or any similar services, whether such services are of a professional nature or not;”;

(iv) "married person", of the following new definition —

““member of the Botswana Development Corporation Limited group of companies”, in relation to any tax year, means —

(aa) the Botswana Development Corporation Limited;

(bb) any company of which the whole of every class of equity share issued is, throughout

the whole of that tax year, held by the Botswana Development Corporation Limited; or

(cc) any company of which the whole of every class of equity share issued is, throughout the whole of that tax year, held by a company referred to under subparagraph (bb);”;

(b) by substituting for the definition of “farming” the new following definition —

““farming” means the carrying on of farming operations;”;

and

(c) by the insertion, immediately after the new definition of “farming”, of the following new definition —

““farming operations” includes livestock, agricultural and pastoral farming;”.

3. Section 11 of the principal Act is hereby amended by substituting for paragraph (c) the following new paragraph —

Amendment
of section
11 of
principal
Act

“(c) any service rendered or work done out of Botswana —

(i) by such person under a contract of employment with the Government; or

(ii) by such person, being a resident, for or on behalf of his employer in Botswana during his temporary absence from Botswana, whether the payment for such services rendered or work done is made by a resident or a non-resident and wherever the payment is made;”.

4. Section 13 of the principal Act is hereby amended by the substitution for that section of the following new section —

Substitution
of section
13 of
principal
Act

“Married
women

13. (1) Any amount accrued to a married woman, including any amount deemed under section 14, 15 or 16 to have so accrued, shall be deemed to have accrued to her husband and shall be included in his gross income:

Provided that where a married woman is a resident and her husband is a non-resident any amount accrued to her from any business or employment carried on by her shall be deemed to have accrued to an unmarried person chargeable to tax in her own name and shall be included in her gross income.

(2) Subsection (1) shall not apply to any amount accrued to a woman after the death of her husband or her divorce or separation from him.”.

5. Section 26 of the principal Act is hereby amended by substituting for subsections (2) and (3) the following new subsections —

Amendment
of section
26 of
principal
Act

“(2) In this section “a proper record” means —

Amendment
of section
29 of
principal
Act

- (a) in the case of a business of farming carried on by any person other than a company, such records as the Minister may prescribe; and
- (b) in the case of any business other than a business referred to in paragraph (a), such records or books of account as the Commissioner considers reasonable to reflect the true and full nature of the transactions of the business, regard being had to the nature of the activities concerned and the scale on which they are carried on.

(3) In relation to any business to which subsection (2) (b) applies, the Commissioner may, in the case of any person or class of persons, direct the method of accounting or the manner in which payments should be made or commercial transactions should be recorded.”.

6. Section 29 of the principal Act is hereby amended by the substitution for subsections (2), (3) and (4) of the following new subsections —

“ (2) Where any person carrying on a business of farming makes a donation of any livestock or produce during a tax year to any other person there shall be included in the gross income of the person making the donation an amount equal to the current market price of such livestock or produce at the date of making the donation.

(3) Where any person, other than a person in relation to whom section 39B or 39C applies, ceases to carry on a business of farming during any tax year but does not dispose of the whole of his livestock or produce, the value of such livestock or produce held at the end of the tax year shall be included in his gross income for that year.

(4) Where a person, in relation to whom the provisions of subsection (3) apply, makes a donation of any livestock or produce after ceasing to carry on such business during any tax year, an amount equal to the current market price of such livestock or produce at the date of making the donation shall for the purposes of section 28 (2) (e) be deemed to be the amount accrued for that livestock or produce.

(5) Notwithstanding section 28 (2) (e), where any person, in relation to whom section 39B or 39C applies, ceases to carry on a business of farming during any tax year but does not dispose of the whole of his livestock or produce but subsequently disposes of any such livestock or produce there shall be included in the gross income of such person the amount of the livestock or produce so disposed of for the tax year in which he disposed of such livestock or produce.

(6) Where any person referred to in subsection (5) makes a donation of any livestock or produce after ceasing to carry

on the business of farming, an amount equal to the current market price of such livestock or produce at the date of making the donation shall for the purposes of subsection (5) be deemed to be the amount for which he disposed of such livestock or produce.”.

7. Section 32 of the principal Act is hereby amended by the substitution for that section of the following new section —

Substitution
of section
32 of
principal
Act

“Dividends,
interest and
certain
royalties
and fees

32. (1) The gross income of any person for any tax year shall include

- (a) any commercial royalty, entertainment fee, or management or consultancy fee accrued or deemed to have accrued to him from a source situate or deemed to be situate in Botswana; and
- (b) in the case of a resident, any dividend or interest accrued or deemed to have accrued to him from a source situate or deemed to be situate in Botswana or in any country in the Rand Monetary Area; or
- (c) in the case of a non-resident, any dividend or interest accrued or deemed to have accrued to him from a source situate or deemed to be situate in Botswana.

(2) Notwithstanding the provisions of Parts V, VI and VII, where gross income to which subsection (1) relates accrues or is deemed to accrue to a non-resident and tax is deducted from the payment thereof under section 58 and in accordance with the Ninth Schedule, that tax shall be a final charge in relation to such gross income and such gross income shall not form part of the assessable income of the non-resident.

(3) Where a loan is made by a resident to a person resident in any country in the Rand Monetary Area, either free of interest or at a rate of interest lower than the commercial rate generally prevailing at the time the loan is made, and the Commissioner is of the opinion that the loan is not one between independent persons dealing at arm's length with each other, interest shall be deemed to have accrued to the resident at such commercial rate as the Commissioner deems reasonable in the circumstances.

(4) In this Act —

- (a) the source of any interest shall be deemed to be situate in any country where the person paying the interest is resident or has in that country a permanent establishment in connexion with which the indebtedness on which the interest is paid was

incurred and such interest is borne by that permanent establishment; and

- (b) the source of any commercial royalty or management or consultancy fee shall be deemed to be situated in Botswana where the person paying the commercial royalty or management or consultancy fee is resident in Botswana or has in Botswana a permanent establishment and such commercial royalty or management or consultancy fee is borne by that permanent establishment.

(5) For the purposes of subsection (4) "permanent establishment" means a fixed place of business or a fixed base for the performance of professional services, and the expression "fixed place of business" includes —

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a mine or any other place of extraction of natural resources;
- (f) an installation or structure used for exploration of natural resources; and
- (g) a building site or construction or assembly project."

Substitution
of section
33 of
principal
Act

8. The principal Act is hereby amended by the substitution for section 33 of the following new section —

"Rents,
premiums
and
improve-
ments to
land or
buildings

33. (1) The gross income of any person for any tax year insofar as it is derived from rents or premiums in relation to land, buildings or other property shall include —

- (a) the gross rent payable to him by a lessee of any property;
- (b) any premium or other consideration, however described, payable to him by a lessee for the right of use or occupation of any property; and
- (c) in the case of any person to whom, in terms of any agreement relating to the grant to any other person of the right of use or occupation of land or buildings or by reason of the cession of any rights under any such agreement, there has accrued in that tax year the right to have improvements effected on the land or to the buildings by any other person —
 - (i) the amount stipulated in the agreement as the value of the improvements or as the amount to be expended on the improvements; or

(ii) if no amount is so stipulated, such amount as, in the opinion of the Commissioner, is a fair and reasonable value of the improvements.

(2) Any person to whom the right has accrued in any tax year to have improvements effected on his land or to his buildings under subsection (1) (c) may, within six months after the end of that tax year by notice in writing to the Commissioner, elect that the value of such improvements shall not be included in his gross income for that tax year but instead an amount equal to the market value of the improvements in the tax year in which such property reverts to him shall be included in his gross income for that tax year:

Provided that, in relation to any such right which has accrued to any person within the six tax years ending on 30th June, 1979, such person may elect under this subsection at any time before 1st July, 1979, and, notwithstanding section 85, the Commissioner may make any reduced assessment required to give effect to such election.

(3) For the purposes of subsections (1) (c) and (2) any grant of land or buildings for a fixed period, other than a fixed period State grant, shall be deemed to be an agreement relating to the grant by one person to another person of the right of use or occupation of land or buildings.”.

9. Section 39 (1) (g) of the principal Act is hereby amended by the insertion, immediately after subparagraph (ii) and before the proviso to the paragraph, of the following new paragraph —

Amendment of section 39 of principal Act

“(iii) for the purposes of this paragraph any grant of land or buildings for a fixed period, including a fixed period State grant, shall be deemed to be an agreement whereby the right of use or occupation of land or buildings is granted by one person to another person:”.

10. The principal Act is hereby amended by the insertion, immediately after section 39, of the following new sections —

Insertion of new sections 39A, 39B and 39C in principal Act

“Farming: average chargeable income

39A. Save as provided in section 39C, any person carrying on a business of farming may, within six months after the end of any tax year by notice in writing to the Commissioner, elect that his chargeable income derived from the business of farming shall be determined by substituting for such tax year's chargeable income the annual average chargeable income derived from his business of farming over the tax year for which the election is being made and the preceding two tax years.

Farming
exclusion
of stock

39B. (1) Subject to the provisions of this section, where any person, other than a company, carrying on a business of farming is unable to ascertain the value of all livestock or produce in any tax year in accordance with the provisions of the First Schedule but is otherwise able to keep a proper record of his farming business transactions as required by section 26, such person may, within six months after the end of that tax year by notice in writing to the Commissioner, elect that his chargeable income derived from his business of farming shall be ascertained without taking into account the value of livestock or produce held in that year.

(2) Subject to subsection (3), the exercise of an election under subsection (1) shall be binding upon that person in respect of all subsequent tax years.

(3) Subject to subsection (4), a person making an election under subsection (1) may, within six months after the end of any subsequent tax year by notice in writing to the Commissioner, revoke such election for that tax year and any subsequent tax year.

(4) Any person revoking an election made by him shall not be entitled to again exercise such right of election under subsection (1).

Person
unable to
keep
proper
records
relating to
business
of farming

39C. Notwithstanding anything in this Act, where any person, other than a company or a person to whom the provisions of section 39B apply, is unable in any tax year —

- (a) to ascertain in accordance with the provisions of the First Schedule the value of all livestock or produce held and not disposed of by him; and
- (b) to keep a proper record of his farming transactions as required under section 26,

the chargeable income of such person derived from his business of farming shall be ascertained in such manner as may be prescribed by the Minister.”.

Amendment
of section
41 of
principal Act

11. Section 41 of the principal Act is hereby amended by substituting for subsection (1) the following new subsection —

“(1) in ascertaining the chargeable income of any person carrying on business for any tax year there shall be deducted from his assessable business income an amount equal to two hundred per centum of any expenditure actually incurred by such person during that tax year on —

- (a) approved education (not being primary or secondary education) or training, at an approved educational, professional or vocational training

establishment, of citizens of Botswana who are employed by or bonded to such person for the purposes of his business; and

- (b) the employment in Botswana of an approved training officer wholly engaged in approved vocational training of citizens of Botswana who are employed by or bonded to such person for the purposes of his business.”

12. Section 43 of the principal Act is hereby amended, in the proviso to subsection (2), by substituting for the words “farming or mining” the words “farming, mining or prospecting”.

Amendment of section 43 of principal Act

13. The principal Act is hereby amended by the insertion, immediately after section 43, of the following new section —

Insertion of new section 43A in principal Act

“Special deduction for farming assessed loss”
43A. (1) Subject to subsection (2) and notwithstanding section 43, where an assessed loss is incurred in any tax year in carrying on a business of farming by any person, other than a company or a person whose election under section 39B (1) is effective for that tax year, such person may elect, within three years after the end of that tax year by notice in writing to the Commissioner, that the whole or any part of such assessed loss shall be deducted in ascertaining his chargeable income for that tax year:

Provided that the amount of such assessed loss deducted shall not exceed the aggregate amount of such chargeable income.

(2) Where an election is made in respect of an assessed loss under this section the Commissioner may, notwithstanding section 85, make any reduced assessment in accordance with the provisions of subsection (1).”

14. Section 46 of the principal Act is hereby amended by substituting for that section the following new section —

Substitution of section 46 of principal Act

“Taxable income, general”
46. (1) Subject to the provisions of this Part, the taxable income for any tax year of any person shall be —

- (a) where that person is an individual, the aggregate of his chargeable income from all sources for that tax year less any allowance and deductions to which he is entitled under sections 47, 48, 49, 50 and 51 for that tax year;
- (b) where that person is a resident company, the aggregate of the chargeable income of such company from all sources for that tax year less any deduction to which such company is entitled under section 51A for that tax year; and

(c) in any other case, the aggregate of the chargeable income of such person from all sources for that tax year.

(2) In this section "individual" includes, for the purposes of section 47, the estate of a deceased person.

(3) No person shall be entitled to any allowance or deduction under this Part except upon due claim and subject to such evidence as the Commissioner may require."

Amendment
of section
47 of
principal Act

15. Section 47 (1) of the principal Act is hereby amended —

(a) in paragraph (a), by substituting for the words "three thousand pula" the words "three thousand six hundred pula"; and

(b) in paragraph (b), by substituting for the words "one thousand five hundred pula" the words "one thousand eight hundred pula".

Substitution
of section
51 of
principal Act

16. Section 51 of the principal Act is hereby amended by the substitution for that section of the following new section —

"House
purchase
loan
interest
allowance

51. (1) Where in any tax year a person resident in Botswana pays interest, at a rate which the Commissioner is satisfied does not differ substantially from normal commercial rates operating in that tax year, on a loan made to him by —

(a) a building society; or

(b) any other financial institution recognized by the Commissioner as an institution whose business includes the lending of moneys for the purchase of homes,

and applied by him in purchasing or building his principal private residence in Botswana, and the payments of such interest are ultimately borne by him out of his chargeable income, he shall be entitled, subject to subsection (2), to a deduction in respect of such interest.

(2) The interest deductible under this section shall apply only to such interest payable on so much of the amount of the loan which does not exceed thirty thousand pula."

Insertion of
new section
51A in
principal Act

17. The principal Act is hereby amended by the insertion, immediately after section 51, of the following new section —

"Allowance
for
dividends
distributed
by resident
companies
to resident
shareholders

51A. (1) Subject to the provisions of this section, in ascertaining the taxable income for any tax year of a resident company there shall be deducted any amount of dividend declared by that company and which in that tax year has accrued to any resident shareholder.

(2) The provisions of subsection (1) shall not apply to any dividend —

(a) which has accrued to —

- (i) the Government of Botswana;
- (ii) any person specified in Part I of the Second Schedule as being exempt from tax; or
- (b) specified in Part II of the Second Schedule as being exempt from tax.”.

18. Section 55 in Division II of Part VIII of the principal Act is hereby amended by the substitution for that section of the following new section —

“ **DIVISION II — *Specified Corporations***
55. Notwithstanding anything contained in this Act —
 (a) the taxable income of the Botswana Meat Commission shall be ascertained in accordance with the provisions of Part I of the Sixth Schedule; and
 (b) the chargeable income of any company which is a member of the Botswana Development Corporation Limited group of companies shall be ascertained in accordance with the provisions of sections 38 to 45 inclusive and Part II of the Sixth Schedule.”.

Substitution of section 55 in Division II of Part VIII of principal Act

19. Section 57 of the principal Act is hereby amended by substituting for subsection (1) the following new subsection —

“ (1) Every person who makes any payment to a non-resident under a contract relating to construction operations shall deduct tax from such payment, if so directed by the Commissioner, in accordance with and in the manner specified in the Eighth Schedule and shall carry out such other obligations as are imposed by that Schedule.”.

Amendment of section 57 of principal Act

20. Section 58 of the principal Act is hereby amended by the substitution for that section of the following new section —

“**Deduction of tax from payments of dividends, interest and certain royalties and fees**
58. (1) Every person who —
 (a) being a resident company, makes any payment of dividend to a resident or a non-resident; or
 (b) makes any payment of interest, commercial royalty, entertainment fee, or management or consultancy fee to a non-resident,
 shall deduct tax from such payment in accordance with and in the manner specified in the Ninth Schedule and shall carry out such other obligations as are imposed by that Schedule.

Substitution of section 58 of principal Act

(2) For the purposes of this section a person, including a partnership, to whom any payment is made to which this section applies shall be presumed, unless the contrary is proved, to be a non-resident if such payment is made to an address outside Botswana.

(3) The Commissioner may direct that this section shall not apply to —

- (a) any payment of dividend to a resident; or
- (b) any payment of interest to a non-resident, if he is satisfied that, by reason of the small amount of the payment or any other special circumstances, it is reasonable to so direct.”.

21. Section 59 of the principal Act is hereby amended by substituting for subsection (2) the following new subsection —

Amendment
of section
59 of
principal Act

“ (2) Where any dividend, interest, commercial royalty, entertainment fee, or management or consultancy fee accrues from Botswana to a non-resident tax shall be charged for each tax year at the rates specified in paragraph 2 of the Ninth Schedule.”.

22. Section 60 of the principal Act is hereby amended by the substitution for that section of the following new section —

Substitution
of section 60
of principal
Act

“Rates of
tax:
resident
individual
assessable
on earned
income of
wife

60. (1) Subject to this section, where for any tax year the taxable income of a resident individual includes earned income of his wife, the tax charged on such individual under section 59 shall be reduced by any amount by which the part of that tax which relates to such earned income exceeds the tax which would be charged under section 59 for such tax year on an unmarried person who was entitled only to —

- (a) the personal allowance provided in section 47 (1) (b); and
- (b) a deduction under section 50 (1) (a) in respect of any contribution made by that person as a member of an approved superannuation fund, and whose chargeable income consisted only of such earned income.

(2) Where the earned income referred to in subsection (1) accrues for part only of a tax year (hereinafter in this section referred to as “the relevant period”) by reason of —

- (a) the marriage of the parties;
- (b) the presence in or absence from Botswana of the wife; or
- (c) the death of one of the parties or their divorce or separation,

in such tax year, the calculation of tax in subsection (1) in respect of an unmarried person shall be made by reference to a proportion only of the personal allowance referred to therein, the amount thereof being calculated in accordance with subsection (3).

(3) The amount of the proportion of the personal allowance referred to in subsection (2) shall be such

amount as bears to the full amount of that personal allowance the same ratio as the relevant period bears to twelve months.

(4) Where the Commissioner is of the opinion that any arrangement made in relation to the earned income of the wife of a resident individual was made to avoid or reduce the tax liability of such individual, then the provisions of subsections (1) and (2) shall not apply and the tax charged on such individual under section 59 shall be reduced only by such amount as the Commissioner considers reasonable having regard to all matters which appear to him to be relevant.

(5) In this section –

(a) “earned income”, in relation to a wife, means chargeable income derived from any business or employment carried on by her; and

(b) the amount of tax referred to in subsection (1) as relating to the earned income of the wife is the amount by which the tax charged on the husband under section 59 has been increased by the inclusion in his taxable income of the earned income of his wife.”.

23. Section 62 (2) of the principal Act is hereby amended by inserting, immediately before the words “interest or dividends”, wherever they appear therein, the words “employment income,”. Amendment of section 62 of principal Act

24. Section 64 of the principal Act is hereby amended by substituting for the proviso to subsection (5) the following new proviso – Amendment of section 64 of principal Act

“ Provided that, where the gross income accrued or deemed to have accrued from sources situate or deemed to be situate in Botswana to a non-resident for any tax year consists only of amounts to which section 32(1) relates and tax is deducted from the payment of all such amounts under section 58 and in accordance with the Ninth Schedule, such non-resident shall be relieved of the obligation of furnishing a tax return in respect of that tax year and the Commissioner shall not assess such non-resident or issue any notice of assessment to him for that tax year.”.

25. Section 89 (5) (b) of the principal Act is hereby repealed. Repeal of section 89 (5) (b) of principal Act

26. Section 97 of the principal Act is hereby amended by deleting from the section the words “or for professional services”. Amendment of section 97 of principal Act

Substitution of section 98 of principal Act	27. Section 98 of the principal Act is hereby amended by the substitution for that section of the following new section —	<p>“When tax deducted under section 58 is payable</p> <p>98. Any tax deducted or deductible by any person under section 58 shall be due and payable by that person within fifteen days after the end of the month during which such tax was deducted or deductible.”.</p>
Substitution of section 122 of principal Act	28. Section 122 of the principal Act is hereby amended by the substitution for that section of the following new section —	<p>“Offences under section 58</p> <p>122. Any person who fails to comply with the provisions of section 58 shall be guilty of an offence and liable on conviction to a fine of four hundred pula or to imprisonment for one year.”.</p>
Repeal of section 126 of principal Act	29. Section 126 of the principal Act is hereby repealed.	
Amendment of Part II of the First Schedule to principal Act	30. Part II of the First Schedule to the principal Act is hereby amended —	<p>(a) in paragraph 1, by substituting for the words “Every farmer” the words “Subject to sections 39B and 39C, every farmer”;</p> <p>(b) by substituting for paragraph 3 the following new paragraph —</p>
“Value of livestock held at end of tax year	3. (1) Subject to subparagraph (2), the value of any livestock, not being livestock acquired by purchase for breeding purposes, held by any farmer at the end of any tax year shall be ascertained in accordance with any of the following methods as the farmer may choose to adopt —	<p>(a) where the livestock was acquired by the farmer by purchase, the value shall be —</p> <p style="padding-left: 20px;">(i) an amount equal to the purchase price of such livestock;</p> <p style="padding-left: 20px;">(ii) an amount equal to the current market price of such livestock; or</p> <p style="padding-left: 20px;">(iii) an amount equal to the relevant standard value of such livestock; or</p> <p>(b) where the livestock was acquired by the farmer otherwise than by purchase, the value shall be either —</p> <p style="padding-left: 20px;">(i) an amount equal to the current market price of such livestock; or</p> <p style="padding-left: 20px;">(ii) an amount equal to the relevant standard value of such livestock.</p> <p>(2) The exercise of an option by a farmer under subparagraph (1) shall be binding upon such farmer in respect of all subsequent tax years.</p> <p>(3) In this paragraph “the relevant standard value”, in relation to any livestock, means —</p>

- (a) the amount of the standard value specified in the Table to this Schedule for the class of such livestock; or
- (b) any amount not greater than one hundred and twenty-five per centum of the amount of such standard value and not less than seventy-five per centum of the amount of such standard value.”;
- (c) by substituting for paragraph 4 the following new paragraph —

“Value of breeding stock held at end of tax year	4. The value of any livestock acquired by any farmer by purchase for breeding purposes held by such farmer at the end of any tax year shall be an amount equal to the purchase price of such livestock.”;
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- (d) by repealing paragraph 5;
- (e) by substituting for paragraph 6 the following new paragraph —

“Value of produce held at end of tax year	6. The value of any produce held by any farmer at the end of any tax year shall be such amount as, in the opinion of the Commissioner, is reasonable.”; and
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- (f) by repealing paragraphs 7, 8, 10 and 11.

31. The Second Schedule to the principal Act is hereby amended by substituting for Part I thereof the following new Part —

Substitution of Part I of Second Schedule to principal Act

“ PART I. — *Persons Exempted*

The following persons shall be exempt from tax for any tax year:

- (i) any local authority;
- (ii) Bank of Botswana;
- (iii) Botswana Agricultural Marketing Board;
- (iv) Botswana Housing Corporation;
- (v) Botswana Power Corporation;
- (vi) National Development Bank;
- (vii) Water Utilities Corporation;
- (viii) any prescribed organization of which Botswana and one or more other countries are members;
- (ix) any religious, charitable or educational institution of a public character;
- (x) any approved benefit fund or approved superannuation fund;
- (xi) any building society;
- (xii) any institution which is, in the opinion of the Commissioner, a mutual savings bank or a mutual loan association;
- (xiii) any trade union or employees’ association registered under the Trade Unions Act;

- (xiv) any association of employers established for a purpose approved by the Minister;
- (xv) any association of individuals formed for the purpose of promoting social or sporting amenities, not involving the acquisition of gain, or the possibility of future gain, by its individual members;
- (xvi) any political party listed in the Schedule to the Societies Act”.

Cap. 18:01
 Amendment of Part II of Second Schedule to principal Act
 Amendment of Part III of Third Schedule to principal Act
 Amendment of Sixth Schedule to principal Act
 “

32. Part II of the Second Schedule to the principal Act is hereby amended, in paragraph (xxv), by substituting for the words “in the same” the words “in the tax year in which it was payable”.

33. Part III of the Third Schedule to the principal Act is hereby amended, in paragraph 1, by substituting for the words “one thousand pula” the words “five thousand pula”.

34. The Sixth Schedule to the principal Act is hereby amended by the substitution for that Schedule of the following new Schedule

SIXTH SCHEDULE

(section 55)

PART I. — Botswana Meat Commission

Gross income

1. The gross income of the Botswana Meat Commission (hereinafter referred to as “the Commission”) for any tax year shall comprise the aggregate of —

- (a) the gross proceeds of sale by the Commission of —
 - (i) its products from the slaughtering of livestock; and
 - (ii) cattle sold on the hoof; and
- (b) any amounts recovered by way of insurance against loss or damage to such livestock or products,

during the tax year.

Taxable income

2. Subject to paragraph 3, the taxable income of the Commission for any tax year shall be ascertained by deducting from the gross income of that tax year all direct marketing expenses incurred during that tax year by the Commission in the marketing of its products by way of —

- (a) bank exchange;
- (b) charges incurred for the handling and storage of its products outside Botswana;
- (c) cartage and railway and shipping freight charges;
- (d) insurance premiums in respect of such cartage and freightage;
- (e) sales commissions;
- (f) survey and inspection fees charged and Government taxes imposed outside Botswana;
- (g) advertising and sales promotion expenses; and
- (h) royalties paid in respect of trade marks and labels,

and shall be a proportion of the amount remaining after deducting such expenses (hereinafter referred to as “the remainder”) calculated as follows —

- (i) where the remainder does not exceed three million pula (P3 000 000), one-tenth of the remainder;
- (ii) where the remainder exceeds three million pula (P3 000 000) but does not exceed six million pula (P6 000 000), the sum of one-fifth of such part of the remainder as exceeds three million pula (P3 000 000) and three hundred thousand pula (P300 000);
- (iii) where the remainder exceeds six million pula (P6 000 000) but does not exceed nine million pula (P9 000 000), the sum of three-tenths of such part of the remainder as exceeds six million pula (P6 000 000) and nine hundred thousand pula (P900 000); or
- (iv) where the remainder exceeds nine million pula (P9 000 000), the sum of one-third of such part of the remainder as exceeds nine million pula (P9 000 000) and one million eight hundred thousand pula (P1 800 000).

3. From the amount calculated in paragraph 2 there shall be deducted in ascertaining the taxable income of the tax year therein referred to an allowance to the extent approved by the Minister in respect of expenditure incurred after 31st December, 1970, on or in connexion with development projects approved by the Minister for the time being responsible for agriculture with the concurrence of the Minister. Special deductions

PART II. – MEMBERS OF THE BOTSWANA DEVELOPMENT CORPORATION LIMITED GROUP OF COMPANIES

1. (1) In this Part “member of the Botswana Development Corporation Limited group of companies”, as defined in section 2, is referred to as “member of the Development Corporation”. Interest on loan made within group

(2) Where a member of the Development Corporation lends money to another member of the Development Corporation there shall be included in the gross income of the member lending the money in any tax year only such amount of interest on the loan which has been actually paid to such member by the borrowing member of the Development Corporation.

(3) In ascertaining the chargeable income or the assessed loss for any tax year of a member of the Development Corporation to whom a loan has been granted under subparagraph (2) there shall be deducted any amount of interest paid on such loan.

2. Where a person, other than a member of the Development Corporation, lends money to a member of the Development Corporation and such member (in this paragraph referred to as “the lending member of the Development Corporation”) in turn lends such money to another member of the Development Corporation, then, in ascertaining the chargeable income or determining the assessed loss of the lending member of the Development Corporation for any tax year, there shall be deducted any expenditure incurred by way of interest on the loan made to the lending member of the Development Corporation, whether or not any interest has accrued on the loan made to the other member of the Development Corporation. Interest on loan payable to person outside group

3. (1) Subject to subparagraph (2), where in any tax year a member of the Development Corporation has incurred any assessed loss, such member may, within six years after the end of that tax year, by notice in writing to the Commissioner, elect that the whole or any part of the Offsetting of losses incurred within group

assessed loss shall be deducted in ascertaining the chargeable income of one or more of the other members of the Development Corporation and such member shall be notified accordingly by the member making the election.

(2) Any member, in relation to whom an assessed loss is to be deducted in ascertaining his chargeable income in accordance with the provisions of subparagraph (1), may by notice in writing to the Commissioner make a claim within three months of the notification of the election that such assessed loss shall be deducted in ascertaining his chargeable income for that tax year and the Commissioner may make any reduced assessment required to give effect to the provisions of this paragraph:

Provided that the aggregate of deductions allowed under this paragraph for that year for the assessed loss shall not exceed the amount of such assessed loss.

(3) For the purposes of section 43 any assessed loss referred to under subparagraph (1) shall be reduced by such amount of assessed loss deducted under subparagraph (2) and, in ascertaining the chargeable income for any subsequent tax year of the member of the Development Corporation incurring such assessed loss, no deduction shall be made in respect of any portion of the assessed loss deducted in accordance with the provisions of subparagraph (2).

(4) For the purposes of subparagraphs (1) and (2) an assessed loss incurred in any tax year means an assessed loss incurred in the tax year for which the election is made and does not include —

- (a) any assessed loss, or part thereof, incurred in any preceding tax year; or
- (b) any assessed loss, or part thereof, which has been deducted under section 43 in ascertaining the chargeable income for any tax year.”.

Amendment
of Eighth
Schedule to
principal Act

35. The Eighth Schedule to the principal Act is hereby amended, in paragraph 3, by substituting for subparagraph (1) the following new subparagraph —

“ (1) The amount of tax to be deducted by the person making any payment, in respect of which a direction is given under paragraph 2, under a contract relating to construction operations shall be twenty per centum of so much of the payment as is not shown to represent the direct cost to any other person of materials used or to be used in carrying out the construction operations to which the contract relates.”.

Substitution
of Ninth
Schedule to
principal Act

36. The Ninth Schedule to the principal Act is hereby amended by the substitution for that Schedule of the following new Schedule —

"NINTH SCHEDULE
(section 58)

**DEDUCTION OF TAX FROM DIVIDENDS PAID TO RESIDENTS
AND NON-RESIDENTS, AND FROM INTEREST, COMMERCIAL
ROYALTIES, ENTERTAINMENT FEES, AND
MANAGEMENT OR CONSULTANCY FEES PAID TO
NON-RESIDENTS**

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

1. Person making payment to deduct tax
 2. Amount to be deducted
 3. Resident remains liable to the provisions of the Act
 4. Certificate of amount of tax deducted
 5. Record to be kept of payments made and tax deducted
 6. Tax remittance returns
 7. Annual return of deductions and remittances
 8. Personal liability where failure to deduct tax
1. Every person who makes any payment to which this Schedule applies shall deduct tax in accordance with paragraph 2. Person making payment to deduct tax
2. The amount of tax to be deducted shall be – Amount to be deducted
- (a) fifteen per centum of each payment of dividend made to a resident;
- (b) fifteen per centum of each payment of dividend, interest, commercial royalty, or management or consultancy fee made to a non-resident; or
- (c) ten per centum of each payment of entertainment fee made to a non-resident.
3. No deduction of tax under this Schedule from any payment of dividend made to a resident shall relieve that person from the obligation to furnish any tax return under, or from any other obligations imposed by, this Act. Resident remains liable to the provisions of the Act
4. Every person who has deducted any tax under paragraph 1 shall furnish to the person to whom payment is made a certificate, in the prescribed form, showing the amount of the payment made and the tax which has been deducted therefrom. Certificate of amount of tax deducted
5. Every person making any payment to which this Schedule applies shall maintain a record showing, in relation to each tax year, – Record to be kept of payments made and tax deducted
- (a) the payments of dividends made to each resident and tax deducted from such payments; and
- (b) the payments of dividends, interest, commercial royalties, entertainment fees, or management or consultancy fees made to each non-resident and tax deducted from such payments,
- and such record shall be kept available for examination by the Commissioner as and when required.

Tax
remittance
returns

6. Every person when making any payment under section 98 shall furnish a tax remittance return in the prescribed form.

Annual
return of
deductions
and
remittances

7. (1) Every person to whom this Schedule applies shall, in respect of each tax year, within fifteen days after the end of that tax year or within such further time as the Commissioner may allow, furnish to the Commissioner a return in the prescribed form showing the total amount of tax deducted by him during the tax year and the total payments of such tax which have been made to the Commissioner.

(2) The return referred to in subparagraph (1) shall be accompanied by the first carbon copy of all certificates issued pursuant to paragraph 4.

(3) In the event of there being any difference between --

(a) the total amount of tax deducted; and

(b) the total payments of such tax made to the Commissioner,
that person shall be required to account to the Commissioner for any such difference.

Personal
liability
where failure
to deduct
tax

8. (1) Where any person fails to deduct any tax under paragraph 1, he shall, in addition to any penalty for which he may be liable, be personally liable to pay to the Commissioner within the time specified in section 98 the amount which he has failed to deduct.

(2) Where any person pays to the Commissioner the amount of tax which he failed to deduct, such amount shall be deemed to have been deducted under this Schedule.

(3) The person making such payment to the Commissioner under subparagraph (1) shall be entitled to recover such amount from the person to whom a payment to which this Schedule applies was made.

(4) Where any person has failed to deduct tax as required under paragraph 1 but the Commissioner is satisfied that --

(a) the failure to deduct such tax was not due to any intent to postpone payment or to avoid that person's obligations under this Schedule and that there is reasonable probability of recovering the tax from the payee by means other than under this Schedule; or

(b) that tax deducted under this Schedule from earlier or later payments is sufficient to meet the amount of tax which he has failed to deduct,

the Commissioner may absolve the person who should have deducted tax from his liability under subparagraph (1)."

PASSED by the National Assembly this 3rd day of April, 1979.

I.P. GONTSE,
Clerk of the National Assembly.