

INCOME TAX (AMENDMENT) ACT, 1983

No. 21

of 1983



ARRANGEMENT OF SECTIONS

SECTION

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An Act to amend the Income Tax Act

Date of Assent: 31.8.83

Date of Commencement: 9.9.83

ENACTED by the Parliament of Botswana.

1. (1) This Act may be cited as the Income Tax (Amendment) Act, 1983.

Short title
and com-
mencement

(2) Subject to the provisions of subsections (3) and (4), the provisions of this Act shall be deemed to have come into operation on 1st July, 1982.

(3) Sections 6 and 17 shall be deemed to have come into operation on 1st July, 1983.

(4) Section 9 shall be deemed to have come into operation on 1st July, 1977.

2. Section 5 of the Income Tax Act (in this Act referred to as "the principal Act") is hereby amended in subsection (4) thereof by substituting for the words "paragraph (b), (c) or (e)" which appear therein, the words "paragraph (c) or (e)".

Amendment
of section 5
of Cap. 52:01

Amendment
of section 10
of principal
Act

3. Section 10 of the principal Act is hereby amended —
- (a) by renumbering the section as section 10 (1);
 - (b) by inserting immediately after the words “of this Act” which appear therein, the words “and subject to subsection (2), ”; and
 - (c) by adding immediately after paragraph (c) thereof, the following new subsection —

S.I. 29 of 1982

“(2) Where an amount has been received by a person as a capital grant from the Productive Employment Development Fund for his business, the whole or so much of the amount which has been expended for the purposes of the business in any tax year shall be deemed to have accrued to him on the date on which the business commences to produce goods for sale if such amount was expended before that date.”.

Amendment
of section 22
of principal
Act

4. Section 22 (2) of the principal Act is hereby amended in paragraph (b) thereof —

- (a) by substituting for the full stop appearing at the end of the paragraph a colon; and
- (b) by adding at the end of the paragraph the following proviso —

“Provided that a partner shall not be entitled to set off such loss against any amount accruing to him in any tax year from any source outside the partnership.”.

Amendment
of section 28
(2) of
principal Act

5. Section 28 (2) of the principal Act is hereby amended —

- (a) in paragraph (f) thereof by deleting the word “and” which appears at the end of the paragraph;
- (b) in paragraph (g) thereof by substituting for the full stop which appears at the end of the paragraph, a semicolon and the word “and”; and
- (c) by adding at the end of paragraph (g) the following new paragraph —

“(h) the amount of a debt released or waived by a creditor which was owing to him by a person referred to in subsection (1).”.

Amendment
of section 31
of principal
Act

6. Section 31 of the principal Act is hereby amended by substituting for the provisions of subsection (3) thereof other than the proviso to the said subsection the following new provisions —

“(3) For the purposes of this section, the value of any quarters or residence provided for an employee in respect of his employment shall be deemed to be —

- (a) in the case where such quarters or residence is a

rateable property in accordance with the provisions of the Townships Act and regulations made thereunder, an amount equal to 6 per cent of the rateable value shown in the valuation roll in force in respect of such property at the commencement of the tax year; Cap. 40:02

- (b) in the case where such quarters or residence becomes a rateable property in the course of the tax year after the completion of the current valuation roll, an amount equal to 6 per cent of the interim valuation made of such property;
- (c) in the case where such quarters or residence is not a rateable property or has not been valued, an amount equal to 5 per cent of such amount as may be prescribed as being the value of the property (in this section referred to as "the current capital valuation") at the commencement of the tax year or the date of the completion of the construction of the property if such completion took place during the tax year; or
- (d) where the period for which the quarters or residence is provided in a tax year is less than 12 months, such amount (determined either under paragraph (a), (b) or (c) as the case may be) as bears to that amount the same ratio as that period bears to 12 months,

less any amount payable by the employee as rent for the quarters or residence in the tax year"; and

- (b) in subsection (6) thereof by substituting for paragraph (a) the following new paragraph —

"(a) the current capital valuation referred to in subsection (3) (c); and".

7. Section 34 of the principal Act is hereby amended in subsection (1) thereof —

Amendment
of section 34
of principal
Act

- (a) by inserting immediately after the word "amount" which appears on the third line therein, the words "whether in cash or otherwise";
- (b) by deleting the word "and" which appears at the end of paragraph (a);
- (c) by substituting for the full stop at the end of paragraph (b) a semicolon and the word "and"; and
- (d) by adding at the end of paragraph (b) the following new paragraph —

"(c) a residential property."

8. (1) Section 39 of the principal Act is hereby amended by substituting for subsection (2) thereof the following new subsection —

Amendment
of section 39
of principal
Act

“(2) Notwithstanding section 38 (2), in ascertaining the chargeable income of any person for any tax year, any expenditure incurred by him —

- (a) on hospitality or entertainment during the tax year shall be allowed as a deduction only to the extent to which, in the opinion of the Commissioner, such expenditure was wholly, exclusively and necessarily incurred in the production of the assessable income of that person;
- (b) on management or consultancy fees payable to a non-resident shall be allowed as a deduction only if it is proved to the satisfaction of the Commissioner that such expenditure was wholly, exclusively and necessarily incurred by him in the production of his assessable income.”

Amendment
of section 54
(3) of
principal Act

9. Section 54 (3) of the principal Act is hereby amended in paragraph (b) thereof by substituting for the words “granted to a non-resident” which appear therein, the words “derived from employment carried on by a person or any class of persons who are not citizens of Botswana.”

Amendment
of section
60A of
principal Act

10. Section 60A of the principal Act is hereby amended —

- (a) in subsection (1) thereof by substituting for that subsection the following new subsections —

“(1) Subject to the provisions of this section, where in any tax year any chargeable income ascertained in accordance with the provisions of the Twelfth Schedule is taken into consideration in calculating the taxable income of a person other than a company, the rate of tax chargeable on such chargeable income taken into consideration in calculating the taxable income of such person shall not exceed 10 per cent if the highest rate of tax charged on that person's taxable income in accordance with the rates specified in the Tenth Schedule for each of the three preceding tax years immediately before the tax year in question did not exceed 20 per cent:

Provided that if in any of the three years referred to he had no taxable income, the rate of tax for that tax year shall be deemed to be nil.

(2) The provisions of subsection (1) shall not apply in a case where the highest rate of tax charged on the taxable income of any person for any of the three years referred to in subsection (1) would have exceeded 20 per cent if an amount of assessed loss had not been deducted from his chargeable income in accordance with the provisions of section 43 or 43A.”

- (b) by renumbering subsections (2), (3) and (4) thereof as subsections (3), (4) and (5) respectively; and

(c) by deleting subsection (5) thereof.

11. Section 110 B of the principal Act is hereby amended —

Amendment
of section
110 B of
principal Act

(a) in subsection (2) (a) thereof by inserting immediately after the words “rate of tax specified” which appear therein the words “for that tax year”;

(b) in subsections (3) and (4) thereof by substituting for those subsections, the following new subsections —

“(3) Where, on application of a designated company, the Commissioner is satisfied that the amount of the taxable income of the company for the current tax year is likely to be less than the amount of the taxable income for the tax year immediately preceding the current tax year, he may accept the lesser amount as the company’s estimate of taxable income for the current tax year.

(4) When the final instalment of a designated company’s estimated tax for a tax year under subsection (1) becomes due and payable and it appears to the company that the actual tax due for that tax year is likely to exceed the estimated tax, the company shall, in such a case, submit an amended estimate of its taxable income and the tax calculated thereon and pay such amount of the amended estimated tax which remains unpaid.

(5) Any tax payable under this section shall —

(a) be due and payable within the time specified in subsection (1); and

(b) when it becomes due and payable, be a debt due to the Government and if unpaid, it shall bear interest at the rate of two per cent for each month or part of a month during which it remains unpaid.”.

12. Section 113 of the principal Act is hereby amended by adding at the end of subsection (4) thereof, the following new subsection —

Amendment
of section 113
of principal
Act

“(5) Where for any tax year the amount of estimated tax paid in accordance with the provisions of section 110 B by a company designated under section 110 A (1) is less than the tax due on its tax return for that year, the company shall be liable to pay a penalty calculated at the rate of two per cent per month on the amount of the difference between the tax payable on its tax return and the estimated tax paid for the period commencing on 1st July of the next tax year and ending on the date on which that tax return is furnished”.

13. Paragraph 2 of Part II of the First Schedule to the principal Act is hereby amended by substituting for subparagraph (a) thereof the following new paragraph —

Amendment
of paragraph
2 of Part II
of First
Schedule to
principal Act

“(a) where the farmer carried on farming operations on the last day of the previous tax year, the value of stock held on that day:

Provided that where a farmer, other than a company carrying on the business of farming, has used the relevant standard value in valuing any of his stock, such farmer may, in respect of the tax year commenced on 1st July, 1982 and any subsequent tax year, adopt the current standard value specified in paragraph 3 in valuing any such stock held by him at the beginning of the tax year; and”.

Amendment of paragraph 3 of Part II of First Schedule to principal Act

14. Paragraph 3 of Part II of the First Schedule to the principal Act is hereby amended —

- (a) in subparagraph (3) (a) thereof by inserting immediately after the word “Schedule” which appears therein, the words “or such amount as may be prescribed”; and
- (b) by substituting for the Table thereof the following new Table —

“TABLE
(paragraph 3)

<i>Class of Livestock</i>	<i>Standard Value 1982/3 and subsequent tax years</i>	<i>P</i>
CATTLE		
Calves of one year or under15	
Tollies and Heifers over one year and under three years40	
Cows, Bulls and Oxen75	
SHEEP AND GOATS		
Lambs and Kids of one year or under5	
Animals over one year20”	

Amendment of Part II of Second Schedule

15. Part II of the Second Schedule to the principal Act is hereby amended —

- (a) in paragraph (iii) thereof by substituting for the word “which” appearing therein, the word “whom”;
- (b) in paragraph (xxviii) thereof by deleting the word “and” which appears at the end of the paragraph;
- (c) in paragraph (xxix) thereof —
 - (i) by substituting for the word “income” which appears therein the word “amount”;

(ii) by substituting for the full stop which appears at the end of the paragraph, a semicolon and "and"; and

(iii) by adding at the end of the paragraph, the following new paragraph —

“(xxx) any amount paid to the Commissioner out of the Productive Employment Development Fund as tax payable by any person for any tax year.”.

16. The Third Schedule to the principal Act is hereby amended

Amendment
of Third
Schedule to
principal Act

(a) by substituting for paragraphs 1 and 2 of Part IA, the following new paragraphs —

“Initial
allowance
for
industrial
building

1. In ascertaining the chargeable income of any person for any tax year derived from an approved industrial business, there shall be deducted from his business assessable income an allowance (in this Part referred to as “an initial allowance”) in respect of expenditure incurred by that person on —

(a) the erection or purchase of any new industrial building; or

(b) any improvements, other than repairs, to any industrial building,

if that building was used solely for the purposes of such business carried on by that person.

Com-
putation of
initial
allowance

2. The initial allowance deductible under paragraph 1 shall be an amount equal to 25 per cent of the expenditure incurred by him on the building or improvements and such allowance shall be deducted in the tax year during which —

(a) in the case of a building, it was first used;
or

(b) in the case of improvements, they were completed:

Provided that where the expenditure was incurred before 1st July, 1982, but the building was not first used in that business before that date, then, such expenditure shall be deemed to have been incurred on the date the building was first brought into use.”;

(b) in Part II thereof —

(i) by substituting for paragraph 5, the following new paragraph —

"Annual allowances, industrial building

5. (1) The annual allowance deductible under paragraph 4 shall —

- (a) in the case of any expenditure incurred before 1st July, 1982, be made in respect of the tax year during which the building was first used or the improvements were completed and of the next 9 succeeding tax years and such allowance shall be an amount equal to 10 per cent of the expenditure incurred; and
- (b) subject to the provisions of subparagraph (2), in respect of expenditure incurred on or after 1st July, 1982, be made in respect of the tax year during which the building was first used or the improvements were completed and of the next 39 succeeding tax years and such allowance shall be of an amount equal to two and one half per cent of the expenditure incurred:

Provided that where an expenditure was incurred on a building before 1st July, 1982, but the building was not first used in that business before that date, then, such expenditure shall be deemed to have been incurred on the date the building was first brought into use.

(2) Where the aggregate amount of any initial and annual allowances deductible in respect of any industrial building in accordance with the provisions of Part IA and the preceding provisions of this paragraph, equals the expenditure incurred in respect of such building, no further allowance shall be deductible in respect of such building."

Amendment of Tenth Schedule to principal Act

17. The Tenth Schedule to the principal Act is hereby amended by adding immediately after Part IV thereof the following new Part —

"PART V

<i>Taxable Income</i>	<i>Rate of tax for 1983/84 and subsequent tax years</i>	
	<i>Rate of Tax</i>	
1. Person (other than a company)	First P 1 000	5%
	Next P 2 000	10%

	Next P 4 000	17 1/2%
	Next P 4 000	27 1/2%
	Next P12 000	37 1/2%
	Next P20 000	50%
	Exceeding P43 000	60%
2.	Resident company all taxable income	35%
3.	Non-resident company all taxable income	35%
4.	Botswana Meat Commission all taxable income	35%”

18. The Twelfth Schedule to the principal Act is hereby amended —

Amendment
of Twelfth
Schedule to
principal Act

(a) in paragraph 1 thereof —

(i) by substituting for the words “paragraphs 2, 3 and 4,” which appear therein, the words “paragraphs 2, 3, 4 and 4A”; and

(ii) by deleting the proviso to subparagraph (d);

(b) by substituting for paragraph 2 thereof, the following new paragraph —

“Amount accruing on disposal of immovable property acquired before 1st July, 1982”

2. (1) Subject to the provisions of subparagraph (2) where an amount accruing to any person on the disposal of a property is in respect of an immovable property acquired by such person before 1st July, 1982, there shall be added to the cost of acquisition and the cost of any improvements effected thereto before that date whether by the person making the disposal or any other person under agreement, an amount compounded at the rate of 10 per cent of such cost for every 12 months from the date on which the property was acquired or the improvements thereto were effected, as the case may be, up to 30 June, 1982.

(2) Where a loss accrued to a person on the disposal of a property by virtue of the application of the provisions of subparagraph (1), such loss shall be reduced by so much of the amount which has been added as a result of which a loss has been incurred.”;

(c) in the proviso to paragraph 3 (2) thereof by substituting for the words “the market value shall be the value on 1st July, 1982.” which appear therein, the words “the cost of acquisition shall be deemed to be the market value on 1st July, 1982.”;

(d) in paragraph 4 thereof by substituting for the words

“property, the cost of acquiring any such property shall be the value of such property included in the assessable income of such person as”, which appear therein, the words “property falling to be treated as a dividend under this Act, the cost of acquisition of such property shall be the amount included in the assessable income of such person as a”;

- (e) by inserting immediately after paragraph 4, the following new paragraph —

“Com-
putation of
chargeable
income on
disposal of
farming
property

4A. Where an amount accruing to any person on the disposal of a property is in respect of a farming property, there shall, in addition to such allowance as may be allowed under paragraph 1, be deducted from such amount so much of the aggregate of any assessed loss (other than deductions of expenditure of a capital nature allowed under Part IV of the Third Schedule which have been included in such loss) in the tax year in which the property was disposed of and the five preceding tax years in relation to his business of farming which has not been deducted or fully deducted under section 43 or 43A in ascertaining chargeable income under section 38 (1).”;

- (f) in paragraph 5 (1) thereof by substituting for the proviso thereto, the following new proviso —

“Provided that if the aggregate amount of losses incurred in any tax year exceeds the aggregate amount of gains made in that year, such excess loss shall be deducted from the excess of aggregate gains over aggregate losses, if any, accruing in the next succeeding tax year.”;

- (g) in paragraph 6 by substituting —

- (i) for the words “The provisions of this Schedule shall not apply to the disposal of any of the following properties —”, which appear in subparagraph (1) thereof, the following new words —

“Any amount accruing to any person from the disposal of the following properties shall be exempt from liability to tax under section 34 (1), namely —”;

- (ii) for the words “the principal private residence of any person”, which appear in subparagraph (1) (c) thereof the following new words, “the principal private residence of any person who is the owner of such residence”; and
- (iii) for the words in the sidenote, the following words, “Property exempted from liability to tax under section 34 (1)”.

PASSED by the National Assembly this 12th day of August, 1983.

B.K. TEMANE,
Clerk of the National Assembly.