

INCOME TAX (AMENDMENT) ACT, 1984

No. 18



of 1984

ARRANGEMENT OF SECTIONS

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An Act to amend the Income Tax Act

Date of Assent: 12.6.84.

Date of Commencement: 15.6.84. 84

ENACTED by the Parliament of Botswana.

1. (1) This Act may be cited as the Income Tax (Amendment) Act, 1984.

(2) Subject to the provisions of subsections (3) and (4), this Act shall come into operation on 1st July, 1984.

(3) The provisions of section 3 shall be deemed to have come into operation on 1st July, 1982.

(4) The provisions of section 20 shall be deemed to have come into operation on 13th February, 1984.

Short title
and
commence-
ment

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) in the definition of "assessment", by substituting for the words "assessment or a provisional assessment", which appear therein, the words "assessment, a provisional assessment or a penalty imposed under section 112(2)"; and
- (b) in the definition of "dividend", by substituting for the semicolon which appears at the end of paragraph (b) thereof a colon and adding to that paragraph, immediately after the colon, the following proviso —

"Provided that bonus shares shall not include shares issued by a company on or after 1st July, 1984, to a shareholder in satisfaction of bonus award and included in its equity share capital;"

Amendment
of section
34 of
principal
Act

3. Section 34(1) (b) of the principal Act is hereby amended by inserting therein, immediately after the words "any shares", which appear therein, the word "in".

Amendment
of section
35 of
principal
Act

4. Section 35 of the principal Act is hereby amended by substituting for subsections (1) and (2) thereof the following new subsections —

"(1) Where the Commissioner is of the opinion that a transaction, operation or scheme (in this section referred to as a "transaction"), including a transaction for the alienation of property, is entered into or carried out otherwise than as a transaction between independent persons dealing at arm's length and that such a transaction has the effect of avoiding, reducing or postponing the liability to tax of any person for any tax year, he may disregard such transaction for the purposes of this Act and determine the liability for the tax chargeable under this Act as if the transaction had not been entered into or carried out, or in such manner as in the circumstances he deems appropriate to counteract such avoidance, reduction or postponement.

(2) Without prejudice to the generality of the expression "at arm's length", a transaction of any of the following kinds shall for the purposes of subsection (1) be deemed not to be a transaction at arm's length —

- (a) a contract of employment or agency where the employee or agent or a relative or nominee of such employee or agent is the employer or principal or one of the employers or principals of such employee or agent:

Provided that for the purposes of this paragraph —

- (i) where the employer or principal is a close

company in terms of section 126, every participator or relative or nominee of such participator shall be deemed to be an employer or principal of such employee or agent;

- (ii) where the employer or principal is a firm carrying on business in partnership, every partner with an interest in the capital of the business or a relative or nominee of such a partner shall be deemed to be an employer or principal of such employee or agent;
- (b) an agreement or contract for the provision of management or consultancy services to which both parties to the agreement or contract are in effect the same person or substantially the same person, or if each party is a partnership, any partner of one party is a partner of the other, or a relative or nominee of any partner of one party is a partner of the other;
- (c) a contract for the sale of goods or other property where the buyer controls the seller or the seller controls the buyer or a third person controls both buyer and seller; or
- (d) a trust established for the benefit of any person, the instrument of which contains conditions or appointments that enable the settlor or any other person instrumental in the establishment of the trust to retain control of the trust property or to derive benefits from the trust or to prevent the beneficiary from legally enforcing his rights under the trust.”.

5. Section 47 (1) of the principal Act is hereby amended by substituting for paragraphs (a) and (b) thereof the following new paragraphs —

Amendment
of section
47 of
principal Act

- “(a) a married person who is resident in Botswana shall be entitled to a personal allowance of four thousand pula; and
- (b) an unmarried person who is resident in Botswana shall be entitled to a personal allowance of two thousand pula.”.

6. Section 48 (2) of the principal Act is hereby amended by substituting for the words “six hundred pula”, which appear therein, the words “nine hundred pula”.

Amendment
of section 48
of
principal
Act

7. Section 50 of the principal Act is hereby amended —

- (a) in subsection (2) thereof by substituting for the words “eight hundred pula”, which appear therein, the words “one thousand two hundred pula”; and
- (b) in subsection (4) thereof by inserting therein, immediately after the words “motor insurance”, which appear therein,

Amendment
of
section 50
of principal
Act

the words "or a policy of insurance in terms of which the event or any of the events in respect of which the policy was issued is or are precluded from happening more than five years immediately after the policy's inception".

Amendment
of
section 51A
of principal
Act

8. Section 51A of the principal Act is hereby amended by substituting for subsection (1) thereof the following new subsection —

"(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 or treated as dividend under section 126A and which in that tax year has accrued to or been treated under section 126A as distributed and accrued to any resident shareholder."

Insertion
of new
section
59A
in principal
Act

9. The principal Act is hereby amended by inserting therein, immediately after section 59 thereof, the following new section —

Branch
profits
tax

59A. (1) There shall be charged, in addition to any tax chargeable under this Act, a tax to be known as branch profits tax on the profits for any tax year of a non-resident company carrying on business in Botswana through a branch therein at the rate specified in the Tenth Schedule.

(2) For the purposes of this section, —

(a) "branch", in relation to any company, includes any factorship, agency, receivership or management; and

(b) "profits", in relation to any company, means the amount arrived at by deducting from the taxable income of such company the sum of —

(i) the tax chargeable on its taxable income for the tax year under this Act;

(ii) the amount which has been reinvested in the company during the tax year; and

(iii) such amount as may be agreed upon in writing with the Commissioner as expenditure to be incurred in the development of the business of the company in Botswana within a year from the end of the tax year.

(3) Where the amount of expenditure referred to in subsection (2) (b)(iii) or part of such amount has not been expended within the period specified in the said subsection, the amount or part of it which has not been expended shall be charged to tax under subsection (1) as profits for the tax year referred to.

(4) Where an amount has been deducted in pursuance of subsection (2) (b)(iii) in arriving at the profits for any tax year, no part of that amount shall

be deducted in arriving at the profits of any subsequent tax year.”.

10. Section 68 (1) of the principal Act is hereby amended by substituting for the words “gross income”, where they thrice appear therein, the words “chargeable income”.

Amendment
of section
68 of
principal Act

11. Section 77 of the principal Act is hereby amended by adding thereto, immediately after subsection (3) thereof, the following new subsections —

Amendment
of section
77 of
principal Act

“(4) Notwithstanding the provisions of subsection (3), where the Commissioner is of the opinion that a person in any of the circumstances specified in section 66 is chargeable to tax for any tax year, he may at any time assess such person without first requiring him to furnish a tax return under any of the provisions of this Act.

(5) When a person fails to furnish a tax return for any tax year, the Commissioner shall serve on such person a notice in writing requesting him to furnish the tax return within such time as may be specified in the notice.

(6) If after the expiration of the time specified in the notice referred to in subsection (5) the person on whom the notice was served fails to furnish the tax return, the Commissioner shall, where a penalty has been imposed under section 112 (2), make an assessment on him in respect of the penalty.

(7) The provisions of section 86 shall not apply to an assessment made on any person under subsection (6) except where the person so assessed objects that he is not liable to furnish a tax return.”.

12. Section 79 of the principal Act is hereby amended —

Amendment
of section
79 of
principal Act

(a) by substituting for subsection (1) thereof the following new subsection —

“(1) Where in relation to an assessment made on any person for any tax year commencing on or after 1st July, 1984, the Commissioner is satisfied that —

(a) the tax charged is greater than the amount which should have been charged;

(b) any assessed loss is less than the amount at which it should have been assessed; or

(c) a refund has been made which is less than the amount which should have been refunded,

by reason of some error, mistake or omission in the assessment, the Commissioner may within two years of the date of the notice of the assessment make a reduced assessment accordingly.”;

and

(b) in subsection (3) thereof, by substituting for the words “six years after the end of that tax year”, which appear therein,

the words "one year after the date of the notice of assessment".

Insertion
of new
section
79A in
principal
Act

13. The principal Act is hereby amended by inserting therein, immediately after section 79 thereof, the following new section —

79A. Where any person other than a company or partnership fails to lodge an objection to an assessment in the absence of a tax return or otherwise, and the Commissioner is satisfied that the tax charged is greater than the amount which should have been charged, he may within four years after the date of the notice of assessment reduce or cancel the assessment accordingly:

Provided that this section shall not apply in a case where tax chargeable in respect of any person in any tax year exceeds one thousand pula."

Amendment
of section 82
of principal
Act

14. Section 82 (1) of the principal Act is hereby amended by substituting for the words "six years", which appear therein, the words "four years".

Amendment
of section
85 of
principal Act

15. Section 85 (1) of the principal Act is hereby amended by substituting for the words "section 79 (3)", which appear therein, the words "sections 79 (1) and (3) and 79A".

Amendment
of section
86 of
principal Act

16. Section 86 of the principal Act is hereby amended —

(a) by substituting for subsection (1) thereof the following new subsection —

"(1) Any person aggrieved by an assessment made on him may, by notice in writing lodged with the Commissioner within sixty days after the date of the notice of assessment, object to the assessment accordingly:

Provided that no objection shall be considered in the absence of a tax return for the tax year to which the assessment relates.";

and

(b) by adding thereto, immediately after subsection (4) thereof, the following new subsection —

"(5) Notwithstanding the provisions of subsection (1), the Commissioner may consider an objection to an assessment —

(a) lodged with him any time after the sixty days' period prescribed by subsection (1) if the assessment was made following the furnishing to him of a tax return for the tax year to which the assessment relates; or

(b) lodged with him, in the absence of such a tax return, within the sixty days' period prescribed by subsection (1) if such a tax return is subsequently furnished to him within such period as he shall specify:

Provided that the Commissioner shall not consider an objection to an assessment in terms of this subsection unless

he is satisfied that reasonable cause has been shown for the delay in lodging the objection or furnishing the tax return, as the case may be.”.

17. Section 101 of the principal Act is hereby amended by inserting therein, immediately after subsection (4) thereof, the following new subsection —

Amendment of section 101 of principal Act

“(4A) Notwithstanding the provision of any other law, the Registrar of the High Court may, in order to facilitate the operation of the procedure prescribed by the preceding subsections, appoint the Commissioner or any other officer appointed in terms of section 3 (1) as a Deputy Sheriff in terms of the High Court Act and a court bailiff in terms of the Magistrates’ Courts Act.”.

Cap. 04:02
Cap. 04:04

18. Section 110 of the principal Act is hereby amended by substituting for subsection (3) thereof the following new subsection —

Amendment of section 110 of principal Act

“(3) After first consulting the accounting officer for the purposes of the Finance and Audit Act, the Commissioner may, if he is satisfied that the same is irrecoverable, remit any amount of tax, not exceeding one thousand pula, unpaid by any person in respect of any tax year.”.

Cap. 54:01

19. Section 112 of the principal Act is hereby amended —
(a) by renumbering the section as subsection (1) thereof; and
(b) by adding thereto, immediately after subsection (1) thereof, the following new subsection —

Amendment of section 112 of principal Act

“(2) Without prejudice to the provisions of subsection (1), if a person on whom a notice has been served in accordance with section 77 (5) requiring him to furnish a tax return fails to do so within the time specified in the notice, the Commissioner may, if he considers it appropriate in the circumstances to do so, impose on such person a penalty not exceeding two hundred pula at any time after the date on which the tax return is due to be furnished and such penalty shall be in addition to any amount of interest and penalty to which he is liable in accordance with subsection (1):

Provided that, upon submission of the tax return, a penalty imposed under this subsection may be mitigated, in whole or in part, without the application of the provisions of section 124.”.

20. The principal Act is hereby amended by inserting therein, immediately after section 125 thereof, the following new sections —

Insertion of new sections 126, 126A, 126B and 126C in principal Act

Meaning of close company

126. (1) For the purposes of this section and sections 126A, 126B and 126C and subject to subsection (2), a “close company” is a resident company recognized as a private company in

accordance with section 125 (3) in which a person (in this section and sections 126A, 126B and 126C referred to as a "participator") is, either on his own or with a relative or nominee, —

- (a) the beneficial owner of or able to control, directly or indirectly, five per cent or over of the equity share capital of the company;
- (b) the beneficial owner, directly or indirectly, of shares in the company carrying five per cent or over of the voting powers; or
- (c) a loan creditor.

(2) The expression "close company" referred to in subsection (1) does not apply —

- (a) to a company in which the Government of Botswana owns shares;
- (b) to a company with which the Government of Botswana has a tax agreement under section 54; or
- (c) to a company designated under paragraph 6 (1)(d)(ii) or 6 (2) of the Twelfth Schedule.

(3) In subsection (1), the term "loan creditor" in relation to a company means a creditor or other person having a beneficial interest in respect of any redeemable loan capital issued by the company or any debt incurred by the company —

- (a) for any money borrowed or capital assets acquired by the company; or
- (b) for any right to receive income created in favour of the company:

Provided that a person carrying on a business of banking shall not be deemed to be a loan creditor in respect of any loan capital or debt issued or incurred by the company for money lent by him to the company in the ordinary course of that business.

Payment
of
participators

126A. (1) Where any amount paid by a close company in any tax year to or for a participator or to a relative or nominee of such a participator is —

- (a) a gratuity in respect of employment;
- (b) the cost of any passage or other benefit or advantage granted to the participator in respect of his employment which has not been included in his gross income under section 31;
- (c) the cost of any other passage, travel or entertainment which, in the opinion of the Commissioner, has not been incurred by the company wholly, exclusively and necessarily in the production of its assessable income; or

- (d) a loan made to the participator either free of interest or on conditions which, in the opinion of the Commissioner, are not characteristic of a transaction between independent persons dealing at arm's length,

such amount shall, notwithstanding any provision to the contrary in this Act, be treated as dividend distributed to the participator and accrued to him as gross income under section 32 (1) for that tax year:

Provided that the amount shall not be so treated if the Commissioner is satisfied —

- (i) disregarding section 35 (2) (a), that it was paid to the participator as part of a transaction in fact entered into or carried out as a transaction between independent persons dealing at arm's length; or
- (ii) that it is the cost of a passage such as is referred to in paragraph (b) paid to a participator no more than once in every two years during his residence in Botswana and does not exceed the reasonable cost of direct travel between Botswana and the participator's country of permanent residence.

(2) Where in any tax year any loan made by a close company under subsection (1) to a participator has been repaid, in whole or in part, during the tax year and no further loan has been made to the participator within nine months of the repayment, then in arriving at the amount to be treated as a dividend under subsection (1)(d), there shall be deducted from the amount of any loan made under the said subsection so much of the amount that has been repaid.

(3) For the purposes of subsection (1)(d), where a loan is made by a close company to a person who is not a participator in that company but is a participator in another company and the companies are acting under arrangements made between them, then the loan shall be treated as having been made by that other company.

126B. Where any amount of dividend in any tax year is remitted by or credited in the books of a close company to a non-resident company which would be a close company if it were a resident company, that amount may be included in the gross income of a person resident in Botswana who would in that case be a participator in that non-resident company for that tax year.

Dividend
remitted
or
credited
to
non-resident
company

Interest payable to participator

126C. (1) Where in any tax year a loan is made by a participator, or by a relative or nominee of a participator, to a close company, 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 on the loan shall be deemed to have accrued to the participator for that tax year and any subsequent tax year in which the loan remains unpaid at such commercial rate as the Commissioner deems reasonable in the circumstances.

(2) In the case of a person who is not resident in Botswana, every amount of interest deemed to have accrued to him by virtue of subsection (1) shall be deemed, for the purposes of section 58, to have been paid to him.

(3) Any amount of interest which is deemed to have accrued to any person by virtue of this section shall not be deducted in ascertaining the chargeable income of the company for that tax year.

(4) If a loan referred to in subsection (1) is repaid in full by the issue of equity shares in any tax year to the participator, the provisions of subsection (1) shall not apply to that tax year."

Amendment of Eighth Schedule to principal Act

21. The Eighth Schedule to the principal Act is hereby amended, in paragraph 3 (1) thereof, by substituting for the words "twenty per cent", which appear therein, the words "twenty-five per cent".

Amendment of Tenth Schedule to principal Act

22. The Tenth Schedule to the principal Act is hereby amended by adding thereto, immediately after Part V thereof, the following new Part —

"PART VI

	<i>Taxable Income</i>	<i>Rate of tax 1984/85 and subsequent tax years</i>
1. Person (other than company)	first	P 1 000 5%
	next	P 2 000 10%
	next	P 4 000 15%
	next	P 4 000 25%
	next	P 12 000 35%
	next	P 20 000 45%

	next	P 20 000	55%
	exceeding	P 68 000	60%
2. Resident company	all taxable income		35%
3. Non-resident company	all taxable income		35%
4. Branch of non-resident company	profits tax		15%
5. Botswana Meat Commission	all taxable income		35%

PASSED by the National Assembly this 13th day of April, 1984.

G.M. BASELE,
Acting Clerk of the National Assembly.