

INCOME TAX (AMENDMENT) ACT, 1985

No. 22



of 1985

ARRANGEMENT OF SECTIONS

SECTION

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An act to amend the Income Tax Act

Date of Assent: 16.10.85

Date of Commencement: 1.7.85

ENACTED by the Parliament of Botswana.

1. (1) This Act may be cited as the Income Tax (Amendment) Act, 1985.

(2) Subject to the provisions of subsection (3), this Act shall be deemed to have come into operation on 1st July, 1985.

(3) Section 3B shall be deemed to have come into operation on 1st July, 1984.

2. Section 5 of the Income Tax Act (in this Act referred to as the "principal Act") is hereby amended in subsection (3) thereof —

(a) by substituting for the full stop appearing at the end of paragraph (g) therein, a comma; and

(b) by adding at the end of the said paragraph (g) the following —

"and any information obtained by the Commissioner in the performance of his duties under this Act may be used by him for the purposes of any other fiscal law administered by him."

Short title
and
commence-
ment

Amendment
of section 5
of Cap. 52:01

Amendment of section 13 of principal Act

3. Section 13 of the principal Act is hereby amended by substituting for the provisions of that section, the following new provisions —

“(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.

(2) Subsection (1) shall not apply to any amount accrued —

- (a) to a woman after the death of her husband or her divorce or separation from him; or
- (b) to a married woman who is a resident and her husband is a non-resident.”.

Insertion of section 13A in principal Act

3A. The principal Act is hereby amended by inserting immediately after section 13 thereof the following new section —

“Election of wife by spouses as person in whose name tax is to be charged **13A.** (1) Subject to the provisions of this section, where a married woman and her husband are both residents, they may jointly elect that their taxable income derived from the aggregate of their gross income shall be charged to tax in the name of the woman and in the same amount as would have been charged on the husband.

(2) An election under this section must be made in such form and manner as may be prescribed and must be made not later than three months before the end of any tax year.

(3) An election under this section for any tax year shall be binding on the parties for that tax year and for the next five succeeding tax years.

(4) Notwithstanding the preceding provisions of this section the Commissioner may if at any time he is satisfied that an election made under this section is prejudicial to the assessment and collection of tax, disregard such election and shall accordingly inform the parties in writing.”.

Amendment of section 34 of principal Act

3B. Section 34 of the principal Act is hereby amended in subsection (2) thereof —

- (a) by deleting the word “and” which appears at the end of paragraph (i) of the proviso to the said subsections (2);
- (b) by substituting for the full stop which appears at the end of the subsection, a semicolon, and the word “and”; and
- (c) by adding at the end of paragraph (ii) of the proviso to the subsection the following new proviso —

“(iii) where a payment under a life insurance policy is made within five years from the commencement date of the insurance, as a result of the occurrence of an act, other than death, giving rise to benefits under the policy, six-tenth of

the amount paid or payable shall be included in the gross income of that person.”.

4. Section 46 of the principal Act is hereby amended —

(a) by inserting immediately after subsection (1) (c) thereof the following new subsection —

“(1) (A) Notwithstanding the provisions of subsection (1) (a), in ascertaining the taxable income of a person who is an individual, there shall be deducted from the aggregate of his chargeable income an amount of P500 (in this section referred to as “standard allowance”) in lieu of any allowance and deductions (in this section referred to as the “normal allowance”) to which he is entitled under sections 48, 49 and 50:

Provided that a person furnishing a tax return may, at the time of furnishing such return, elect either the standard allowance or normal allowance as the allowance which should be deducted from the aggregate of his chargeable income in ascertaining his taxable income.”;

(b) in subsection (3) thereof by inserting immediately before the words “No person” which appear therein, the words “Subject to section 64A”.

5. The principal Act is amended by inserting immediately after section 64 thereof the following new sections —

“Relief from liability to furnish tax returns in special cases

64A. (1) Notwithstanding section 64, an employee shall not be liable to furnish a tax return for any tax year in respect of which his chargeable income does not exceed —

(a) in the case of a married person, P11 500; and

(b) in the case of unmarried person, P9 500.

Non-application of section 64A

64B. The provisions of section 64A shall not apply to an employee in the following cases —

(a) where in any tax year his gross income includes any amount in respect of which tax is not deductible under the Seventh Schedule;

(b) if he is notified by the Commissioner that he is required to furnish a tax return under section 66 for that tax year; or

(c) if he notifies the Commissioner that his tax liability should be determined on an assesment and furnishes a tax return for that purpose.”.

6. Section 82 of the principal Act is hereby amended by substituting for subsection (1) thereof the following new subsections —

“(1) Subject to the provisions of this section, an assesment may be made in relation to any person under this Act at any time prior to the expiry of four years after the end of the tax year to which it relates.

Amendment of section 46 of principal Act

Insertion of sections 64A and 64B in principal Act

Amendment of section 82 of principal Act

(1A) An assessment may be made at any time prior to the expiry of four years from the end of the four years specified in subsection (1) if the Commissioner is satisfied that an amount which was subject to tax and should have been assessed under subsection (1) has not been assessed because the person in relation to whom an assessment should have been made under the said subsection (1) —

- (a) has misrepresented certain material facts or neglected or failed to disclose such facts;
- (b) has failed to furnish a tax return; or
- (c) has furnished an incorrect tax return.

(1B) Where a person in relation to whom an assessment should have been made under subsection (1) is deceased, such assessment may only be made within three years after the end of such tax year.

(1C) Where any fraud or wilful default has been committed in connexion with tax for any tax year by or on behalf of any person, and —

- (a) such person is an individual who is alive at the time the assessment is made, or a person other than an individual, an assessment in relation to such tax year may be made at any time; or
- (b) such person is deceased, subject to subsection (2), an assessment may only be made in respect of the tax year in which he died and the five immediately preceding tax years.”.

Amendment
of section 86
of principal
Act

7. Section 86 of the principal Act is hereby amended in subsection (5) thereof —

- (a) by deleting the word “or” which appears at the end of paragraph (a);
- (b) by substituting for the colon which appears immediately before the proviso to the subsection, a semicolon and the word “or”; and
- (c) by inserting immediately before the proviso, the following new paragraph —

“(c) lodged with him within such further period as he shall specify if a tax return was furnished to him within the sixty day period prescribed by subsection (1):”.

Amendment
of section 103
of principal
Act

8. Subsection (1) of section 103 of the principal Act is hereby amended by substituting for that subsection the following new subsection —

“(1) Any tax due and payable by a married person may be recovered from the assets of the other spouse.”.

Amendment
of Part II
of First
Schedule
to principal
Act

9. Part II of the First Schedule to the principal Act is hereby amended —

- (a) in paragraph 1 thereof by substituting for the full stop which appears at the end of the paragraph, a colon, and by

adding at the end of the said paragraph the following proviso —

“Provided that horses, donkeys and mules used as working animals or held for purposes other than for the business of farming shall not be included in the value of stock held.”;

(b) in paragraph 3 thereof —

(i) by deleting the words “not being livestock acquired by purchase for breeding purposes” which appear in subparagraph (1),

(ii) by substituting for subparagraph (2) therein, the following new subparagraph —

“(2) The exercise of an option by a farmer under subparagraph (1) in respect of any class of livestock specified in the Table containing the amounts of standard value for livestock for any tax year shall be binding upon such farmer in that tax year and every subsequent tax year in respect of which that livestock is specified in the Table.”,

(iii) by inserting immediately after subparagraph (2) the following new subparagraph —

“(2A) Where the Table containing the amounts of standard value for any particular class of livestock is amended in any tax year —

(a) by including any class of livestock not included in the previous year, any farmer having such livestock may, at the end of that tax year, exercise a further option in accordance with the provisions of subparagraph (1) and the exercise of such option shall be binding on him in accordance with the provisions of subparagraph (2); and

(b) by excluding any class of livestock included in the previous year, any option exercised by any farmer in respect of such livestock before its removal from the Table shall lapse and the value of such stock held by the farmer at the end of that tax year shall be ascertained —

(i) in the case of livestock acquired by purchase in accordance with either the provisions of subparagraph (1) (a) (i) or (ii), as the farmer may choose to adopt and whichever method is adopted by him shall be binding on him in accordance with the provisions of subparagraph (2), and

(ii) in the case of livestock acquired otherwise than by purchase, in accordance with the provisions of subparagraph (1) (b) (i).”;

and

Amendment
of Seventh
Schedule
to principal
Act

(c) by substituting for paragraph 4 thereof, the following new paragraph —

“4. Notwithstanding the provisions of paragraph 2 (a), any farmer referred to in the said paragraph, whose livestock is affected by any amendment made in any tax year to the Table shall revalue the livestock held by him at the beginning of that tax year by adopting the same method which he used in valuing his stock at the end of that tax year.”.

10. The Seventh Schedule is hereby amended —

(a) in paragraph 3 (3) thereof —

- (i) by substituting for the words “an employee’s” which appear therein, the words “a resident employee’s”,
- (ii) by substituting for the words “made at” which appear therein, the words, “based on”;

(b) in paragraph 4 thereof —

- (i) by deleting the word “and” which appears at the end of subparagraph (2) (a),
- (ii) by substituting for the full stop which appears at the end of subparagraph (2) (b), a semicolon and the word “and”, and
- (iii) by adding at the end of the said subparagraph (2) (b), the following —
“(c) the standard allowance deductible under section 46 (1) (A).”, and
- (iv) by inserting immediately before the words “Tax shall be” appearing in subparagraph (3), the words “In the case of a resident individual,”.

PASSED by the National Assembly this 24th day of September, 1985.

C.G. MOKOBI,
Clerk of the National Assembly.