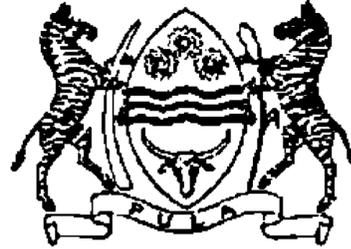


INCOME TAX (AMENDMENT) ACT, 1991

No. 11



of 1991

ARRANGEMENT OF SECTIONS

SECTION

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An Act to amend the Income Tax Act

Date of Assent: 11th October, 1991.

Date of Commencement: 1st July, 1991.

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Income Tax (Amendment) Act, 1991, and shall come into operation on the 1st July, 1991, unless or to such extent as is otherwise specifically stated.

Short title
and commence-
ment

2. Section 2 of the Income Tax Act, hereinafter referred to as "the Act", is amended—

Amendment
of section 2
Cap. 52:01

(a) by deleting the definition of "Appeals Committee";

(b) by substituting for the definition of "associated company" the following new definition —

““associated company” in relation to a group of two or more resident companies means a resident company in which another resident company holds 20 percent or more of every class of equity share;”; and

(c) by inserting in their appropriate alphabetical order, the following definitions —

““Board of Adjudicators” means the Board of Adjudicators established under section 92 and constituted in accordance with the provisions of the Eleventh Schedule;”;

““group”, in relation to one or more associated companies and the companies with which they are associated, shall not include a non-resident company;”.

Amendment
of section
39 (1)

3. Section 39 (1) of the Act is amended —

(a) in paragraph (d) by substituting for the figure “P6 000” wherever it appears, the figure “P9 000” in each case; and

(b) by adding after paragraph (o) the following new paragraph —

“(p) expenditure incurred in any tax year by a company solely for the purpose of having its shares listed by the Botswana Stock Exchange, and for maintaining the listing annually.”.

Amendment
of section 50

4. Section 50 of the Act is amended —

(a) in subsection (2) by substituting for the figure “P6 000” the figure “P9 000”; and

(b) by substituting for subsection (4) thereof the following new subsections —

“(4) (a) In the five years immediately succeeding the tax year in which a company, including a wholly owned subsidiary of such company, is accepted for listing on the Botswana Stock Exchange, and if the claim is supported by a certificate from the Chairman of the Botswana Stock Exchange Committee stating that at least twenty five per cent of the paid up capital was held by the general public throughout the tax year, there shall be allowed as a deduction from its chargeable income an amount equal to twelve and a half per cent of such chargeable income.

(b) Where a company is listed on the Botswana Stock Exchange on the 1st July, 1991, it shall be entitled to the deduction under paragraph (a), if supported by a certificate such as is referred to in paragraph (a), for the tax year 1991/1992 and for the four immediately succeeding tax years.

(5) No person shall be entitled to any deduction under this Part except upon due claim and subject to the production of such evidence as the Commissioner may require.

(6) For the purposes of this section, the expression “general public” shall, without prejudice to its generally accepted meaning, be deemed to include any approved benefit, pension or superannuation fund and any other fund which, in the opinion of the commissioner, is of a public character.”.

5. (1) Section 60 of the Act is amended by adding at the end thereof the following new subsection — Amendment of section 60
- “(3) Where a resident company pays withholding tax under paragraph 2 of the Ninth Schedule, at the rate specified therein, on dividends distributed to a shareholder, this shall be a final charge to tax, and the dividends shall not form part of the assessable income of the shareholder.”.
- (2) The amendment effected by this section shall be deemed to have come into operation on the 1st July, 1990.
6. Section 61 of the Act is amended by adding at the end thereof the following new subsection — Amendment of section 61
- “(4) The Ninth Schedule shall not apply to the payment of dividends from one associated company to another company with which it is associated, but where an associated company pays dividends to a shareholder outside its group of companies, any amount of tax deducted under paragraph 2 (1) (a) of the Ninth Schedule in respect of such dividends shall, notwithstanding any other provision of the Act, be available for set-off under subsection (1) against additional company tax payable by such associated company, or by any one company within the group, and the provisions of subsection (2) shall apply in the event that an excess of additional company tax arises.”.
7. Sections 82, 93, 94 and 95 of the Act are amended by substituting for the words “an Appeals Committee” and “the Appeals Committee”, wherever they appear, the words “the Board of Adjudicators” in each case. Amendment of sections 82, 93, 94 and 95
8. Sections 90 (4) and 93 (3) of the Act are amended by substituting for paragraph (g) in each case the following new paragraph — Amendment of sections 90 (4) and 93 (3)
- “(g) any decision relating to the status of a company under sections 132, 132A and 133.”.
9. The Act is amended by substituting for section 92 thereof the following new section — Replacement of section 92
- “Board of Adjudicators 92. For the purposes of this Part there shall be a Board of Adjudicators constituted and regulated in accordance with the provisions of the Eleventh Schedule.”
10. Section 93 of the Act is amended by deleting subsections (4) and (5) therefrom, and in subsection (1) (b) by deleting the words “subject to subsection (4) and,”. Amendment of section 93
11. Section 95 (1) of the Act is amended by inserting in line 4 immediately before the word “but” the words “or where the amount of tax in dispute exceeds the sum of P10 000,”. Amendment of section 95 (1)
12. Section 116 (2) (b) (i) of the Act is amended by deleting the words “less the estimated amount of dividend referred to in section 52 which is expected to be paid in the current tax year”. Amendment of section 116
13. The Act is amended by substituting for section 132 thereof the following new section — Replacement of section 132

"Status of
companies:
private and
public

132. (1) For the purposes of this Act the expression "private company", in respect of each tax year, means —

(a) a company which by its memorandum or articles of association —

- (i) restricts the right to transfer its shares;
- (ii) limits the number of its members to fifty, not including persons who are in the employment of the company and persons who have been formerly in the employment of the company and who were while in that employment and after the termination of that employment, members of the company; or
- (iii) prohibits any invitation to the general public to subscribe for any shares or debentures of the company;

(b) a company whose membership is less than seven persons; or

(c) a company which is not recognised as a public company, either by the Registrar of Companies under the Companies Act, or by the Commissioner under this Act.

(2) For the purposes of this Act, a company, not being a private company, shall be recognised as a public company in relation to a tax year if —

(a) in the case of a resident company —

- (i) all classes of its shares are listed for quotation on the Botswana Stock Exchange on the last day of the tax year or any substituted accounting period and the general public, throughout the tax year either directly as shareholders or indirectly as shareholders in any other public company, held more than fifty per cent of every class of equity share issued by the company:

Provided that in respect of a tax year prior to the establishment of the Botswana Stock Exchange all classes of its shares are listed for quotation by Stock brokers Botswana Ltd. with the approval of the Interim Stock Exchange Committee appointed by the Minister;

- (ii) it is a subsidiary of a public company;
- (iii) it is an insurance company transacting life insurance business;

- (iv) it is a society or company registered under the Cooperative Societies Act; or
- (v) it is a specified corporation;
- (b) in the case of a non-resident company, it is recognised as a public company under the law of the country in which it is resident.
- (3) For the purposes of subsections (1) and (2) the expression "general public" shall have the same meaning as in section 50, and for the purposes of subsection (2) (a) (ii), a company shall be deemed to be a subsidiary of a public company if one or more companies which are public companies, throughout the tax year, hold more than fifty per cent of every class of equity shares issued by the company.
- (4) Where, by reason of changes in the constitution or shareholding of any company or for any other reason, a company which has been recognised as a public company ceases to satisfy the requirements of subsection (2) in any tax year, such company shall be recognised as a private company in relation to that tax year."

14. Section 133 (1) of the Act is amended by substituting for the word and numerals "section 132 (3)" the word and numerals "section 132 (1)". Amendment of Section 133

15. (1) Part II of the Second Schedule to the Act is amended by substituting for item (xxvi) thereof the following new item — Amendment of Second Schedule
 "(xxvi) terminal, sitting, ward, subsistence and meal allowances payable to a councillor of a local authority, or to a member of a land board or a subordinate land board;"

(2) The amendment effected by this section shall be deemed to have come into operation on the 1st July, 1990.

16. Paragraph 3 (3) of the Seventh Schedule to the Act is amended by substituting for the figure "P6 000" the figure "P9 000". Amendment of Seventh Schedule

17. The Ninth Schedule to the Act is amended by deleting subparagraph (2) of paragraph 2 thereof. Amendment of Ninth Schedule

18. The Act is amended by substituting for the Eleventh Schedule the following new Schedule — Replacement of Eleventh Schedule

"ELEVENTH SCHEDULE
(section 92)
Board of Adjudicators

1. For the purposes of Part XII, the Minister may by notice in the Gazette appoint three suitable persons to serve as members of the Board of Adjudicators, and shall appoint one of their number to be the Chairman of the Board.

2. Members of the Board shall be appointed for a period of five years, but shall be eligible for reappointment.

3. Vacancies in the Board, for any reason, may be filled by appointments made by the Minister in the same manner as in paragraph 1, and temporary vacancies may be filled by temporary appointments made in the same manner.

4. At any meeting of the Board, the Chairman and any other member shall form a quorum, and in the event of an equal division of opinion amongst those present, the Chairman shall have a casting vote.

5. The members of the Board shall receive such remuneration and travelling and other allowances out of public funds as the Minister shall determine.

6. The Board shall have the following powers -

(a) power to summon to attend at the hearing of an appeal any person who in its opinion is or might be able to give evidence relevant to the subject of the appeal;

(b) power to examine on oath or otherwise any person summoned or required to give evidence;

(c) power to require any person to produce any books or documents which are in his custody or under his control and which the Board considers necessary for the purposes of the appeal;

(d) power to grant reimbursement of any reasonable expenses incurred in connexion with his attendance by any person summoned to attend;

(e) all the powers of a magistrate with regard to the enforcement of attendance of witnesses hearing evidence on oath and punishment for contempt of court;

(f) power to admit or reject evidence adduced, whether or not admissible under the provisions of any written law for the time being in force relating to the admissibility of evidence;

(g) power to postpone the hearing of an appeal where the Board is satisfied that, owing to sickness, accident or other reasonable cause the appellant has been prevented from attending on the date fixed for the hearing; and

(h) such other powers as the Minister may, by regulations, prescribe.”.

Transitional 19. Consequent upon the amendments introduced by sections 7 and 18 of this Act, the Commissioner may refer any appeal that, at the date of commencement of this Act, is pending before an Appeals Committee, to the Board of Adjudicators established under this Act.

PASSED by the National Assembly this 19th day of September, 1991.

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