

# INCOME TAX (AMENDMENT) ACT, 2000

No. 11



of 2000

## ARRANGEMENT OF SECTIONS

### SECTION

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**An Act to amend the Income Tax Act (No. 12 of 1995).**

*Date of Assent:* 29.09.2000.

*Date of Commencement:* 1.07.2000.

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Income Tax (Amendment) Act, 2000, and shall come into effect on 1st July, 2000.

2. The Income Tax Act (in this Act referred to as "the Act") is amended in section 2 thereof by —

(a) inserting in their correct alphabetical order, the following new definitions —

“‘connected persons’ means —

(a) at least two companies where either of the companies has control directly or indirectly, of the other, or if both companies are controlled, directly or indirectly, by the same person or persons; and

(b) any person if that person has control of a company or if the person or persons connected to that person together have control of the company; and

‘control’ means where a person exercises, is able to exercise or is entitled to acquire control whether directly or indirectly, over the company’s affairs and in particular if the person possesses or is entitled to acquire —

Short title and commencement

Amendment of section 2 of Act No. 12 of 1995

- (i) the greater part of the share capital of or voting rights in the company,
- (ii) such part of the share capital that would entitle them to the greater part of the distribution of all the income of the company, or
- (iii) such rights as would entitle the person to the greater part of the assets of the company upon winding up, or in any circumstances.”;

“specified collective investment undertaking” means a collective investment undertaking which —

- (a) is managed by an international financial services company;
- (b) except to the extent that the units are held by the undertaking itself, an international financial services centre, company, or another specified collective investment undertaking, is an undertaking, none of whose unit holders are resident in Botswana.”;

- (b) by adding the following new proviso to the definition of the words “associated company” —

“Provided that the definition shall not apply to an international financial services company holding shares in a company resident in Botswana.”; and

- (c) by deleting the definition of “qualifying foreign branch” therefrom.

**Amendment of section 11 of the Act**

- 3. The Income Tax Act is amended in section 11 by inserting immediately after paragraph 11 (i) thereof the following proviso — “provided that paragraph (i) shall not apply to foreign investment income of non citizens resident in Botswana.”

**Amendment of section 31 of the Act**

- 4. Section 31 of the Act is amended —

- (a) in subsection (7) thereof —

- (i) by substituting for the word “employee” which appears in line eight of the said subsection, the word “Commissioner”;
- and

- (ii) by inserting, immediately before the proviso to the subsection, the following proviso —

“(i) Provided that the exercise of the option by the Commissioner would reduce the tax liability of the employee, and”;

- (ii) by renumbering the proviso as proviso “(ii)” and inserting the word “further” immediately after the word “Provided”;

- (b) in subsection (10) thereof —

- (i) by substituting for the word “employee” which appears therein the word “Commissioner” ; and

- (ii) by adding at the end of the subsection the following proviso — “Provided that the exercise of the option by the Commissioner would reduce the tax liability of the employee”;

- (c) in subsection (11) thereof —
  - (i) by substituting for the word “employee” which appears at the end of the subsection, the word “Commissioner”; and
  - (ii) by adding at the end of this subsection, the following two provisos —
    - “Provided that the exercise of the option by the Commissioner would reduce the tax liability of the employee; and
    - (iii) Provided further that one third of the bonus or gratuity mentioned herein shall only be excluded from the gross income of a non citizen employee if in the opinion of the Commissioner the payment is reasonable in the circumstances having regard to —
      - (a) the period of the employment;
      - (b) the nature of the employment;
      - (c) the salary payable to the employee; and
      - (d) the measure of retirement benefits generally prevailing at that time”; and
  - (d) in subsection (12) thereof by substituting for the word “employee” appearing at the end thereof the word “Commissioner.”; and by inserting the following proviso at the end thereof —
    - “Provided that the exercise of the option by the Commissioner would reduce the tax liability of the employee.”;
  - (e) in subsection (14) thereof —
    - (i) by substituting for the word “taxpayer” which appears therein, the word “Commissioner”; and
    - (ii) by adding at the end of the said subsection, the following proviso —
      - “Provided that the exercise of the option would reduce the tax liability of the employee”; and
  - (f) by inserting immediately after subsection (15) thereof, the following new subsection (16) —
    - “(16)Where an employee receives a lump sum payment after reinstatement following a dismissal or suspension from duty with reduced or without pay, such lump sum payment shall be spread back over the period in which such income was earned or would have been paid.”
- 5. The Act is amended in section 32 by —
  - (a) inserting immediately after subsection (1) the following new subsection (2) —
    - “(2) Subsection (1) shall not apply to any interest, commercial royalty or management and consulting fees accrued or deemed to have accrued to a non-resident where the payment is made by an international financial services centre company or a specified collective investment undertaking.”; and

Amendment of  
section 32 of  
the Act

Amendment  
of section 96  
of the Act

(b) renumbering subsections (2), (3), and (4) as subsections (3), (4) and (5).

6. Section 96 of the Act is amended by inserting immediately after subsection (1) thereof, the following subsection (2) —

“(2) The Commissioner may remit the interest charged, if the interest so charged is due to a mistake committed by the Department of Taxes.”

Amendment  
of section 137  
of the Act

7. Section 137 of the Act is amended —

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

“(4) A certificate issued in accordance with subsection (2) shall be granted to a person who agrees, in writing, with the Bank that he shall comply with the reporting requirements stipulated under section 42D of the Bank of Botswana Act, or is exempted from the requirements by Regulations made under section 42C of the Act.”; and

(b) in subsection (6), by substituting therefor, the following new subsection —

“(6) For the purposes of subsection (5) —

(i) ownership of a company shall be deemed to have changed if the beneficial ownership of one quarter or more of its share capital or one quarter or more of the voting rights affecting the day to day management of its business shall have changed hands in comparison with the date on which the certificate is granted, and

(ii) the holding of shares in a company resident in Botswana shall not constitute the carrying on of business with persons resident in Botswana.”

Amendment of  
section 138 of  
the Act

8. Section 138 of the Act is amended by deleting the proviso thereof.

Amendment of  
section 140 of  
the Act

9. Section 140 of the Act is amended in subsection (3) by deleting the definitions of the words “connected persons” and “control” therefrom.

Amendment  
of the Second  
Schedule to  
the Act

10. The Second Schedule to the Act is hereby amended —

(a) in Part I by —

(i) substituting for paragraph (xvi) thereof the following new paragraph —

“(xvi) any specified collective investment undertaking.”

(ii) inserting immediately after paragraph (xvi) the following new paragraph —

“(xvii) any international financial organisation to which Botswana is a member under the International Financial Organisations Act.”; and

- (b) in Part II by —
- (i) substituting for paragraph (xxxv) thereof the following new paragraph —  
“(xxxv) salaries, emoluments, obligations, securities, dividends or any other cash or non cash benefits received by the employees of international financial organisation to which Botswana is a member.”; and
  - (ii) deleting paragraph (xxxvii) therefrom.

**PASSED** by the National Assembly this 3rd day of August, 2000.

**C.T. MOMPEI,**  
*Clerk of the National Assembly.*