

# INCOME TAX (AMENDMENT) ACT, 2001

No. 9



of 2001

## ARRANGEMENT OF SECTIONS

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

*Date of Assent:* 7th August, 2001.

*Date of Commencement:* 1st July, 2001.

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Income Tax (Amendment) Act, 2001 and shall be deemed to have come into operation on 1st July, 2001.

2. Section 2 of the Income Tax Act (in this Act referred to as “the Act”) is amended in the definition of—

Short title and commencement

Amendment of section 2 of Act No. 12 of 1995

“assessed loss”, by inserting the words “or the loss assessed under section 77 (1B)” immediately after the words “section 81”; and

(a) “assessment”, by substituting for that definition the following new definition —

(b) “assessment” in relation to any person means —

(i) a determination by the Commissioner —

(a) of the amount of taxable income upon which tax is chargeable;

(b) of the amount of any loss allowable as a deduction in any subsequent tax year; or

(c) that no tax is chargeable,

and includes an additional assessment, a reduced assessment, a provisional assessment or a penalty imposed under section 116(2); or

(ii) an assessment under section 77(1B).”

3. Section 31(4) of the Act is amended by substituting, for the word “considerseasonable” the words “consider reasonable”.

4. Section 35(2)(b) of the Act is amended by inserting, immediately after the words “an agreement or contract” appearing at the beginning of the subsection, the words “for the payment of a commercial royalty or,”

5. Section 40 of the Act is amended in paragraph (d) (ii) by deleting, therefrom, the words “or P 9000, whichever is less,”.

6. Section 50 of the Act is amended in subsection (2) by deleting, therefrom, the words “or P 9000, whichever is the lesser”.

7. Section 56 of the Act is amended by substituting for that section the following new section —

56 Every person who makes any payment to any person under a contract relating to construction operations shall deduct tax from such payment in accordance with and in the manner specified in the Sixth Schedule and shall carry out such other obligations as are imposed by that Schedule:

Provided that this section shall not apply to contracts with a value of less than P2,000,000 being executed by construction companies which fall under categories OC, A and B of the Central Tender Board”.

8. Section 58 of the Act is amended —

(a) in subsection (4), by substituting for the words “section 57 (5)” the words “section 57(4)”; and

(b) in subsection (5), by substituting for the words “table IV paragraph 6” the words “table III paragraph 7”.

9. Section 64 of the Act is amended —

(a) in subsection (1), by substituting for the words “two months” the words “three months”; and

(b) by inserting immediately after subsection (1), the following new subsection —

Amendment  
of section 31  
of the Act  
Amendment  
of section 35  
of the Act

Amendment  
of section 40  
of the Act  
Amendment  
of section 50  
of the Act  
Amendment  
of section 56  
of the Act

“Deduction  
of tax due  
under certain  
contracts

Amendment  
of section 58  
of the Act

Amendment  
of section 64  
of the Act

“(1A) Subject to section 76, every person shall furnish a return of the gross income and such other particulars as may be required in the return, computation of taxable income and tax payable as well as payments made thereof, in the prescribed form, in respect of any tax year in accordance with the provisions of this Act, either personally or in a representative capacity within three months of the end of that tax year, and such form and other documents shall be signed by the person or by an agent authorized by such person:

Provided that the provisions of this subsection shall become applicable to taxpayers or to categories of taxpayers from such dates as the Minister, by order, may determine:

Provided further that upon the application of this subsection to a taxpayer, the provisions of subsection (1) shall cease to apply to such taxpayer.”;

10. Section 65 of the Act is amended by inserting immediately after the word “person” appearing at the beginning of the third line thereof, the words “other than the person to whom section 64(1A) applies.”

Amendment  
of section 65  
of the Act

11. Section 76 of the Act is amended by substituting for that section the following new section —

Amendment  
of section 76  
of the Act

“76. Where under this Act any return is required to be furnished by any person within a specified period, such person may, on just cause, request for an extension of the period in which such return is to be furnished, and the Commissioner may, by notice in writing served on that person, extend the period in which the return is to be furnished.”

12. Section 77 of the Act is amended —

Amendment  
of section 77  
of the Act

(a) in subsection (1), by substituting for the said subsection the following new subsection —

“(1) Where a person is required to furnish a tax return in terms of sections 64(1) and 66, the Commissioner shall proceed to assess the person chargeable with tax as expeditiously as possible after the time allowed for such person or as extended under section 76.”;

(b) by inserting immediately after subsection (1) the following new subsections —

“(1A) Where a person is required to furnish a tax return in terms of section 64(1A), the person shall estimate the tax payable for the current tax year for the purpose of making the quarterly payments as provided for under section 94(2) for that tax year.

(1B) Subject to subsection (3), the return furnished in terms of section 64(1A) shall be the assessment of taxable income or assessed loss, and the tax payable on the basis of the return shall be the assessed tax of that person for the tax year.”

(c) in subsection (2), by —

(i) substituting for the said subsection the following new subsection —

“(2) Where a person has delivered a tax return in terms of section 64(1), the Commissioner may accept such return and make an assessment in accordance therewith.”; and —

(ii) inserting, immediately after subsection (2), the following new subsection —

“(2A) Where a person has delivered a tax return in terms of section 64(1A) the Commissioner may accept such return and the assessment made by the person of that person’s taxable income or assessed loss and the tax payable in terms of subsection(1B), if the tax thereon is duly paid in full in terms of the provisions of section 94.”; and

(d) in subsection (3), by inserting immediately after paragraph (b) the following new paragraph —

“(c) a person fails to pay the tax for any tax year under sections 94 (2) and (3) in full, within the specified period.”.

13. Section 87 of the Act is amended in subsection (4), by inserting immediately after paragraph (g), the following new paragraph —

“(h) determination by the Commissioner of the amount of capital losses on disposal of assets.”

14. Section 94 of the Act is amended by —

(a) renumbering the said section as subsection (1); and

(b) inserting immediately after subsection (1) the following new subsections —

“(2) Every person to whom section 64 (1A) applies shall pay the tax as estimated under section 77(1A) in any tax year, in four equal instalments, the first of which shall commence on or before the end of the three month period as from the commencement of that tax year or where the commencement of the accounting year in respect of that tax year is earlier than the commencement of that tax year, three months from the commencement of that accounting year, and thereafter on or before the end of three months from the end of the period of the first quarterly payment in either case until the fourth quarterly payment:

Provided that during a transition period of two years as from 1st July, 2001, the Commissioner may vary the dates for payment of the quarterly instalments.

(3) The balance of the tax payable for any tax year in accordance with the return furnished under section 64(1A), including the interest payable under section 96(2), shall be paid on or before 30th September following the end of that tax year or such extended period as allowed by the Commissioner in terms of section 76.

(4) Notwithstanding subsection (3), where a person, other than a company designated under section 112, has tax payable as estimated under section 77 (1A) in any tax year, that is less than P50 000, the person may either pay such tax in quarterly instalments or pay the lump sum in one instalment by the 30th of September following the end of the tax year.”

15. Section 96 of the Act is amended by inserting immediately after subsection (2) the following new subsection —

Amendment  
of section 96  
of the Act

“(3) Where for any tax year —

- (a) the amount of each quarterly payment made by any person in accordance with section 94(2) is less than one-fifth of the tax due on the return for that tax year; or
- (b) the final payment made by any person is less than the balance of tax due in accordance with section 94(3), that person shall be liable to bear interest calculated at the rate of one and a half percent for each month or part of the month during which the tax payable remains unpaid.”

16. Section 103 of the Act is amended by inserting immediately after subsection (4) the following new subsections —

Amendment  
of section 103  
of the Act

“(5) Where the Commissioner has reason to believe that any person owing money or, upon assessment, might owe monies to the Commissioner, or might transfer assets to avoid payment of such monies to the Commissioner, the Commissioner may, by notice in writing served on the person, require that person to pay the amounts owing or furnish security for the amount that might be owed within the time specified in the notice, failing which the Commissioner may provisionally attach the assets of the person.

(6) Any transfer of assets made after a notice served on the person concerned in terms of subsection (5) shall be void.

(7) A copy of the notice of provisional attachment served on any person in terms of subsection (5) shall be given to the authorities responsible for effecting the transfer or release of the assets in question.

(8) A notice served in terms of subsection(5) shall be valid for a period of six months from the date of issue and shall be renewable every six months for a period not exceeding two years.

(9) If a person against whom a notice is issued in terms of this section furnishes adequate security to the satisfaction of the Commissioner, the Commissioner shall withdraw the notice of provisional attachment.”

17. Section 110 of the Act is amended by inserting immediately after subsection (2) the following new subsections —

Amendment  
of section 110  
of the Act

“(3). Subject to the provisions of subsection (4), where, for any tax year commencing on or after 1<sup>st</sup> July 2001, any person is entitled to a refund of excess tax in terms of subsection (1) of this section, and where the amount has not already been refunded by the Commissioner —

- (a) if such refund arises in consequence of the reduction of the amount of an assessment on a determination given on an objection filed under section 87 or an appeal lodged under section 90, and where such amount has not been refunded by the Commissioner to that person before the end of six months from the date of such determination; or

- (b) in any other case, within a period of six months from the date on which an application in writing was received by the Commissioner for such refund, or from the date on which the tax return, with full details as required under this Act, was filed with the Commissioner in relation to such refund, that person shall be entitled to receive interest on the amount of the refund due, calculated at the rate of one percent for each month or part thereof, for which such amount remains unpaid after the period of six months referred to in paragraphs (a) and (b).

(4) Subsection (3) shall not apply to any amount of tax paid in excess as a result of deduction of assessed loss under sections 46 and 47 in respect of farming.”

Amendment  
of section 112  
of the Act

18. Section 112 of the Act is amended by inserting immediately after subsection (3) the following new subsection —

“(4) The provisions of this section shall not apply to a person to whom section 64(1A) applies.”

Amendment  
of section 113  
of the Act

19. Section 113 of the Act is amended by inserting immediately after subsection (5) the following new subsection —

“(6) The provisions of this section shall not apply to a person to whom section 64(1A) applies.”

Amendment  
of section 114  
of the Act

20. Section 114 of the Act is amended by inserting immediately after subsection (7) the following new subsection —

“(8) The provisions of this section shall not apply to a person to whom section 64(1A) applies.”

Amendment  
of section 129  
of the Act

21. Section 129 of the Act is amended in subsection (5), by inserting the words “In this section,” before the word “Control” appearing therein at the beginning of the subsection.

Amendment  
of section 137  
of the Act

22. Section 137 of the Act is amended —

- (a) in subsections (4) and (5) by substituting for the words “Bank of Botswana” the word “Banking”; and  
(b) by substituting for the phrase “Cap.55.01” appearing as a side note therein,

the phrase “No. 13 of 1995”.

Amendment  
of section 138  
of the Act

23. Section 138 of the Act is amended by substituting for the words “section 9(1)” the words “section 9”.

Amendment  
of Second  
Schedule  
to the Act

24. The Second Schedule to the Act is amended in Part II by —

- (a) renumbering paragraph (xxxiii) as (xxxiv);  
(b) renumbering paragraphs (xxxiv) - (xxxv) as (xxxvi) - (xxxvii);  
and  
(c) inserting immediately after paragraph (xxxvii) the following new paragraph —

“(xxxviii) commercial royalty payments accruing to non-citizens in respect of leasing of aircraft.”

Amendment of  
Sixth Schedule  
to the Act

25. The Sixth Schedule to the Act is amended —

- (a) in paragraph 1 (c), by deleting the words “non-resident.”

- (b) in paragraph 3 —
- (a) in subparagraph (1) by substituting for the words “20 percent of so much of the payment as is not shown to represent the direct cost to any other person of materials used or to be used in carrying out the construction operations to which the contracts relates,” appearing therein, the words “3 percent of the total amount payable under the contract”;
- (b) in subparagraph (2) by substituting for the said subparagraph, the following new subparagraph —  
“(2) Any person responsible for deducting tax from payments made to a subcontractor under this Schedule may apply to the Commissioner in the prescribed form, specifying the amount payable to the subcontractor, and the Commissioner may direct that the person responsible for making payments to the applicant under this Schedule, deduct tax on only so much of the amount as reduced by the payments to be made by the applicant to the subcontractor as furnished in the application made by him.”
- (c) by inserting, immediately after subparagraph (2), the following new subparagraphs —  
“(3) Upon an application by any person, affected by the provisions of this Schedule, the Commissioner may, if satisfied that the person has complied with his obligations under the Act, issue a tax certificate to the taxpayer for purposes of tax to be deducted under this Schedule, and a copy of the certificate shall be issued to the person responsible for deducting tax from the payments to the applicant.  
(4) The tax certificate issued in terms of subparagraph (3) may either vary the amount of tax to be deducted under this Schedule or direct that no tax need be deducted from payments to which this Schedule applies and such certificate shall be valid only for the duration of the contract in respect of which it has been issued.”  
(5) Any exclusion in terms of paragraph (3)(3) and (4) shall not relieve any person from any other obligation or tax payment imposed on him by this Act.”; and
- (d) in paragraph 4, by substituting for that paragraph the following new paragraph —  
“(4) *Liability under* this Act No deduction of tax under this Schedule from any payment made to any person shall relieve that person from the obligations to furnish any tax return under or from any other obligations imposed by this Act.”.

26. The Eighth Schedule to the Act is amended by replacing the rates of tax contained in Tables I, II and IV as follows —

Amendment  
of Eighth  
Schedule  
to the Act

**“RATES OF TAX FOR 2001/2002 AND SUBSEQUENT TAX YEARS**

**TABLE I**

<i>Taxable Income</i>	<i>Tax</i>
0 - 25 000	0
25 000 - 43 750	0 + 5% of excess over 25 000
43 750 - 62 500	937.50 + 10% of excess over 43 750
62 500 - 81 250	2 812.50 + 15 % of excess over 62 500
81 250 - 100 000	5 625.00 + 20% of excess over 81 250
Over 100 000	9 375.00 + 25% of excess over 100 000

Table I applies to resident individuals.

**TABLE II**

<i>Taxable Income</i>	<i>Tax</i>
0 - 43 750	5% of every Pula
43 750 - 62 500	2 187.50 + 10% of excess over 43 750
62 500 - 81250	4 062.50 + 15% of excess over 62 500
81 250 - 100 000	6 875.50 + 20% of excess over 81 250
over 100 000	10 625.00 + 25% of excess over 100 000

Table II applies to non-resident individuals, trusts falling under section 14 (2) and estate of deceased persons.

**TABLE IV**

<i>Taxable Income</i>	<i>Tax</i>
0 - 12 500	0
12 500 - 43 750	0 + 5% of excess over 12 500
43 750 - 62 500	1 562.50 + 10% of excess over 43 750
62 500 - 81 250	3 437.50 + 15 % of excess over 62 500
81 250 - 100 000	6 250 + 20% of excess over 81 250
Over 100 000	10 000. 00 + 25% of excess over 100 000

Table IV applies to net aggregate gains of individuals.”

27. The Twelfth Schedule to the Act is amended —

Amendment of  
Twelfth  
Schedule  
to the Act

(a) in paragraph (4), by inserting immediately after the words “mining profits” the words “, other than profits from diamond mining.”;

(b) in paragraph 11, by substituting for subparagraph (1) the following new subparagraph —

(1) The provisions of this Schedule, with exception to diamond mining, shall not be subject to negotiations under section 53 or any other section of the Act; and

(c) by deleting paragraph 12 therefrom.

PASSED by the National Assembly this 6th day of July, 2001.

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