

INCOME TAX (AMENDMENT) ACT, 2004



No. 21

of 2004

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An Act to amend the Income Tax Act (Cap. 52:01)

Date of Assent: 25th August, 2004

Date of Commencement: 1st July, 2004

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Income Tax (Amendment) Act, 2004, and shall be deemed to have come into force on 1st July, 2004.

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

(a) by adding at the end of paragraph (d) of the definition of the word "company" which appears therein, the following new paragraph —

Short title and commencement

Amendment of section 2 of Cap 52:01

“(e) any charitable, religious or educational institution or a trust established for public purposes;”

- (b) by substituting for the definition of the words “entertainment fee” which appear therein, the following new definition —
“entertainment fee” means any amount payable to an entertainer (including any cabaret, motion picture, radio, television or theatre artiste and any musician) or a sportsman or sportswoman, for the personal activity of such entertainer, sportsman or sportswoman, and includes any payment made to any other person in relation to such activity;”.

Amendment
of
section 32
of the Act

3. Section 32 of the Act is amended —

- (a) in subsection (3) thereof —

(i) by substituting for the words “six per cent” which appear in paragraphs (a) and (b) of that subsection, the following new words, “ten per cent”,

(ii) by substituting for the words “five per cent” which appear in paragraph (c) of that subsection, the following new words, “eight per cent”, and

- (b) in subsection (10) thereof, by substituting for the words “paragraph (a)” which appear therein, the words “subsection (9)”.

Amendment
of
section 35
of the Act

4. Section 35 of the Act is amended in subsection (1) thereof, by inserting immediately after paragraph (d) of that subsection, the following new paragraph —

“(e) any immovable property other than property referred to in paragraph (a) or (c);”.

Amendment of
section 41 of
the Act

5. Section 41 of the Act is amended by inserting at the end of subparagraph (i) of paragraph (f) of subsection (1) thereof, the following proviso —

“Provided that in respect of a motor car (which expression shall include a station wagon) used by a person other than a person whose principal business is that of hiring or leasing of motor vehicle, an allowance under subparagraph (i) shall not exceed the amount of annual allowance claimable in respect of a motor vehicle under the proviso to paragraph 5(1) of Part II of the Third Schedule.”.

Amendment of
section 47 of
the Act

6. Section 47 of the Act is amended by substituting for the proviso to subsection (1) thereof, the following new proviso —

“Provided that the amount of such assessed loss deducted shall not exceed 50 per cent of the aggregate amount of such chargeable income.”.

Amendment
of
section 62 of
the Act

7. Section 62 of the Act is amended by substituting for the provisions of that section, the following —

“Where any tax has been paid by a person under subsection (2), (3) or (4) of section 95 or section 114, the tax so paid shall be set off against the tax charged under section 59, for the tax year in respect of which such payment was made.”.

8. Section 65 of the Act is amended in subsection (2) thereof, by substituting for the words "three months of the end of that tax year" which appear therein, the following new words, "four months of the end of that tax year, or in the case of a person whose accounting period is different from that of the tax year, within four months from the end of such accounting period".

Amendment of
section 65
of the Act

9. Section 71 of the Act is amended by inserting immediately after subsection (3) thereof, the following subsection —

Amendment of
section 71
of the Act

"(4) The manager or trustee of any charitable, religious or educational institution or a trust or an association referred to in the proviso to paragraph (xxxix) or in paragraph (xl) of Part II of the Second Schedule shall, in accordance with the provisions of section 65, furnish a tax return of the gross income of such institution, trust or association, for the tax year including statements of accounts, certificates and other relevant documents in relation to the return, signed by such manager or trustee, as the case may be, and shall also furnish such evidence as may be required by the Commissioner as to the application of such income during the tax year."

10. Section 95 of the Act is amended —

Amendment of
section 95 of
the Act

(a) in subsection (3) thereof, by substituting the words "on or before the due date for furnishing of a tax return under section 65 (2) for that tax year" for the words "on or before 30th September following the end of that tax year" which appear therein; and

(b) in subsection (4) thereof by substituting the words "the due date for furnishing of a tax return under section 65(2) for that tax year" for the words, "by the 30th of September following the end of the tax year" which appear therein;

11. Section 97 of the Act is amended in subsection (3)(a) thereof, by inserting immediately after the words "tax year" which appear therein, the following new words "or where a tax return has not been furnished for the year, less than one fifth of the tax due under an assessment made under section 78(6)".

Amendment
of section 97
of the Act

12. Section 117 of the Act is amended by deleting the words "or 1st January following the end of that tax year, whichever is the later" which appear in subparagraph (i) of paragraph (a) of subsection (1) thereof.

Amendment
of section 117
of the Act

13. Section 118 of the Act is amended by substituting the words "30 days after the due date for furnishing a tax return under section 65 for that tax year" for the words "on 1st January next following the end of that tax year" appearing in subsection (4) thereof.

Amendment of
section 118 of
the Act

14. Section 138 of the Act is amended —

Amendment
of section 138
of the Act

(a) in subsection (5) thereof, by substituting for paragraph (f) of the said subsection the following —

"(f) the company has carried on business with persons other than those approved under subsection (7)";

(b) in subsection (7) thereof —

- (i) by inserting the words “or specified collective investment undertakings” immediately after the words “international financial services companies” which appear before paragraph (a) of the said subsection; and
- (ii) by adding at the end of the said subsection (7), the following new proviso —

“Provided that transactions incidental to financial operations referred to in this subsection carried on at arm’s length with connected persons resident in Botswana shall be considered as approved financial operations for the purposes of this subsection.”.

Amendment of
Part I of Second
Schedule of the
Act

15. Part I of the Second Schedule to the Act is amended by deleting paragraphs (iv) and (x) thereof.

Amendment of
Part II
of Second
Schedule
of the Act

16. Part II of the Second Schedule is amended by adding the following new paragraphs at end of paragraph (xxxviii) thereof —

“(xxxix) any income of a charitable, religious or educational institution or a trust established for public purposes:

Provided that where a person to whom this paragraph applies, carries on any business or derives any gains from disposal of any property chargeable to tax under section 35, exemption under this paragraph shall not be granted to such person unless it is proved to the satisfaction of the Commissioner that the income of that person has been applied exclusively for public purposes within that tax year or such extended period as may be allowed by the Commissioner;

(xl) any income of an association formed for the purpose of promoting social or sports amenities and not involving the acquisition of gain or the possibility of future gains to the extent that such income is applied exclusively for the purposes of such association within that tax year or such extended period as may be permitted by the Commissioner;

(xli) any amounts received by non-resident telecommunication companies on settlement of international telephone traffic under international telecommunication regulations.”.

Amendment of
Part II of
Third Schedule
of the Act

17. Part II of the Third Schedule to the Act is amended by substituting the proviso to subparagraph (1) of paragraph 5 thereof, the following new proviso —

“Provided that in respect of a motor car (which expression shall include a station wagon but not a commercial vehicle) owned or held under a lease, leaseback or similar arrangement and used for the purpose of business, by a person other than a person whose principal business is that of hiring or leasing of motor vehicles, any annual allowance shall only be claimable in respect of expenditure up to a maximum of P175,000.”.

18. Part III of the Third Schedule to the Act is amended in paragraph (1) thereof, by substituting the words "P25,000" for the words "P5,000" which appear in the proviso thereto.

Amendment of Part III of Third Schedule to the Act

19. Part V of the Third Schedule to the Act is amended by inserting at the end of paragraph 2 thereof, the following proviso —

Amendment of Part V of Third Schedule of the Act

"Provided that in the case of a motor car to which the proviso to subparagraph (1) of paragraph 5 of Part II of the Third Schedule applies, the expenditure incurred on the property for the purposes of this paragraph shall not exceed the amount of expenditure on which an annual allowance is grantable under that proviso in respect of that property."

20. Paragraph I of Part VI of the Third Schedule is amended —

Amendment of Part VI of Third Schedule of the Act

(a) by substituting the words "Part V" for the words "Part VI" which appear in subparagraph (b) of the definition of the words "allowances granted;" and

(b) by substituting for the words "paragraph 2(2)" which appear in the definition of "annual allowance" in the paragraph, the words "paragraph 1(2)".

21. The Eighth Schedule to the Act is amended in Table III thereof, by substituting for the provisions of item 7 appearing in the table, the following —

Amendment of Eighth Schedule of the Act

TABLE III

"International Financial Services Company:

- | | |
|---|--------|
| (a) Income arising from approved financial transactions with non-residents, international financial service centre companies and specified collective Investment undertakings | 15 % |
| (b) Any other income | 25 %". |

22. The Tenth Schedule to the Income Tax Act is amended —

Amendment of Tenth Schedule of the Act

(a) in paragraph 1 thereof, by substituting for subparagraph (d) thereof, the following paragraph:

"(d) any shares or units or debentures which are listed in the Botswana Stock Exchange or of a resident company which is a public company under section 130 of the Act;"

(b) in paragraph 4 thereof, by substituting the words "twenty-five" per cent for the words "fifty per cent" which appear in subparagraph (f) therein.

PASSED by the National Assembly this 22nd day of July, 2004.

A. MATLHAKU,
Clerk of the National Assembly.