

# INCOME TAX (AMENDMENT) ACT, 2003

No. 8



of 2004

## ARRANGEMENT OF SECTIONS

### SECTION

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### **An Act to amend the Income Tax Act**

*Date of Assent:* 20th February, 2004.

*Date of Commencement:* 1st July, 2003.

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Income Tax (Amendment) Act, 2003 and shall be deemed to have come into force on 1st July, 2003.

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

(a) inserting, in its correct alphabetical order, the following new definition —

"bank" has the same meaning as in the Banking Act;"

(b) substituting, for the words "sub-paragraph (v)" which appear in paragraph (a)(iv) of the definition of "resident in Botswana", the words "sub-paragraph (iii)"

(c) substituting, for the words "sub-paragraphs (iv) and (v) of paragraph (a)" which appear in paragraph (c) (ii)(bb) of the definition of "resident in Botswana", the words "sub-paragraphs (ii) and (iii) of paragraph (a); and

Short title and commencement  
Amendment of section 2 of Cap. 52:01

Cap. 46:04

Amendment  
of section 41  
of the Act

- (d) deleting the definition of "retirement annuity insurance".
3. Section 41 of the Act is amended in subsection (1) thereof by —
- (a) inserting, immediately after paragraph (i), the following new paragraph (j) —
- "(j) any provision for bad or doubtful debts, in the case of a bank, not exceeding an amount as may be prescribed by the Minister:

Provided that the provision had been made in the accounts of such bank for the relevant tax year or accounting period, as the case may be; "

- (b) renumbering paragraphs (j), (k), (l), (m), (n), and (o) as paragraphs (k), (l), (m), (n), (o) and (p); and
- (c) inserting, immediately after paragraph (p), the following new paragraph —
- "(q) any amount of value added tax included in any expenditure, other than an expenditure to which the Third Schedule applies, to the extent that an input tax credit is not allowed in terms of the Value Added Tax Act."

Cap. 50:03

Amendment  
of section 57  
of the Act

4. Section 57 of the Act is amended by substituting, for the proviso thereto, the following new proviso —

"Provided that this section shall not apply to —

- (a) contracts with a value of less than P2 000 000 being executed by construction companies which have been classified as falling under categories OC, A and B by the Public Procurement and Asset Disposal Board in terms of section 121 of the Public Procurement and Asset Disposal Act; and
- (b) contracts exclusively for design, engineering, surveying work, and other related professional services."

Cap. 42:08

Amendment  
of section 60  
of the Act

5. Section 60 of the Act is amended by deleting subsection (5) thereof.

Amendment of  
section 61 of  
the Act

6. The Act is amended by substituting, for section 61 thereof, the following new section —

"Credit for tax  
deducted at  
source

61. Where under Division III of Part VIII any tax has been deducted from any amount accrued to any person, the tax so deducted shall be set off against the tax charged under section 59 for the tax year in which such amounts accrued or are deemed to have accrued:

Provided that any tax deducted from —

- (a) dividends payable to a resident or non-resident; or
- (b) interest, commercial royalty, entertainment fee or management or consultancy fee, payable to a non-resident which is a final charge under this Act shall not be deducted from any tax charged under section 59."

Amendment  
of section 88  
of the Act

7. Section 88 of the Act is amended by —
- (a) substituting, for the proviso to subsection (1) thereof, the following new proviso —
- "Provided that no objection shall be considered unless —

- (a) a tax return for the tax year to which the assessment relates has been furnished; and
- (b) tax due on the taxable income declared has been paid.”; and
- (b) substituting, for the proviso to subsection (5) thereof, the following new proviso —
- “Provided that the Commissioner shall not consider an objection to an assessment in terms of this subsection unless he is satisfied that reasonable cause has been shown for the delay in lodging the objection or furnishing the tax return, as the case may be, and tax due on the tax return furnished has been paid.”
8. Section 108 of the Act is amended by inserting therein, the following new subsection —
- “(2) If the representative taxpayer referred to in subsection (1) was representing a company, every person who was a director of the company at the time of the commission of the acts referred to in that subsection or thereafter shall also be liable, jointly and severally, for any tax payable by the company unless he proves, to the satisfaction of the Commissioner, that the failure of the representative to pay the tax was not due to any negligence on his part.”
9. Section 112 of the Act is amended by substituting, for the words “P 5 000” which appear in subsection (3) thereof, the words “P25 000”.
10. Section 117 of the Act is amended by substituting, for the words “P500” which appear in subsection (2) thereof, the words “P2 000”.
11. Section 138 of the Act is amended by —
- (a) 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 47 of the Bank of Botswana Act, or is exempted from the requirements by Regulations made under section 46 of that Act”; and
- (b) inserting, immediately after paragraph (f) of subsection (5) thereof, the following new paragraph —
- “(g) recommendation for revocation of the tax certificate has been made by the Bank of Botswana under section 49 of the Bank of Botswana Act.”
12. Section 141 is amended by deleting therefrom, the definition of “bank” which appears in subsection (3) thereof.
13. The Act is amended by substituting, for the words “non-citizens” which appear in paragraph (xxxviii) of Part II of the Second Schedule thereto, the words “non-residents”.

Amendment  
of section 108  
of the Act

Amendment  
of section 112  
of the Act

Amendment  
of section 116  
of the Act

Amendment  
of section 138  
of the Act

Cap. 55:01

Cap. 55:01

Amendment  
of section 141  
of the Act

Amendment  
of Second  
Schedule to  
the Act

Amendment of  
Third Schedule  
to the Act

**14.** The Act is amended by substituting, for the definition of “expenditure” which appears in paragraph 1 of Part VI of the Third Schedule thereto, the following new definition —

““expenditure” means expenditure of a capital nature but does not include any amount of value added tax allowable as an input tax credit under the Value Added Tax Act”.

Cap. 50:03

**PASSED** by the National Assembly this 8th day of December, 2003.

**A. MATLHAKU,**  
*Clerk of the National Assembly.*