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An Act to amend the Income Tax Act

Date of Assent: 30th June, 2006

Date of Commencement: 1st July, 2006

ENACTED by the Parliament of Botswana.

Short title and commencement

1. This Act may be cited as the Income Tax (Amendment) Act, 2006 and shall come into operation on 1st July, 2006.

Amendment of Cap. 52:01

2. The Income Tax Act (hereinafter referred to as “the Act”) is amended by substituting for the word —

(a) “Commissioner” wherever it occurs in the Act the word “Commissioner General”; and

(b) “Deputy Commissioner” wherever it occurs in the Act the word “Commissioner of Internal Revenue”.

Amendment of section 2

3. Section 2 of the Act is amended —

(a) by substituting for the definition of “employment income” the following new definition —

““employment income”, in relation to any person, means the gross amount, whether in cash or otherwise, accrued or deemed to have accrued to such person from employment, and includes any pensions, annuities or other benefits”;

(b) by inserting in the correct alphabetical order the following new definitions —

““disposal”, for the purposes of section 35 and the Tenth Schedule, includes —

(a) the sale, lease, exchange or relinquishment of the asset or the extinguishment of any rights in the asset;

(b) the compulsory acquisition of the asset under any law;

(c) the conversion by the owner of a capital asset into stock-in-trade of a business carried on by the owner; or

(d) any transaction which has the effect of transferring or enabling the use or enjoyment of any immovable property;”

“investment company” means a company or trust engaged in the business of investing the pooled capital of shareholders in financial instruments (including shares, debentures and units) of other companies, and the term ‘similar company’ shall be construed accordingly;

“investment income” means income accrued by way of interest and net aggregate gains as determined under the Tenth Schedule;

“securitization” means the process of creating a financial instrument by combining other financial assets, which are then marketed to investors;

“special purpose vehicle” means a legal entity whose operations are limited to the acquisition, financing and selling of specific assets;”.

Amendment of section 22

4. Section 22 of the Act is amended by —

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

(b) inserting the following new subsection (2) —

“(2) The proceeds of a collective investment undertaking derived in the ordinary course of its business from the sale of shares and securities shall be treated as part of its business income.”

5. Section 32 of the Act is amended by substituting for subsection (15) the following new subsection —

Amendment of
section 32

“(15) For the purposes of subsection (14), “retrenchment package” means remuneration made to an employee on termination of his or her contract of employment for the purpose of reducing the size of the work force.”

6. Section 33(5) of the Act is amended by substituting for the word “(3)” the word “(4)”.

Amendment of
section 33

7. Section 51 of the Act is amended by deleting subsection (4) thereof.

Amendment of
section 51

8. Section 58 of the Act is amended —

Amendment of
section 58

(a) in subsection (1) by substituting for paragraph (b) the following new paragraphs —

“(b) makes any payment of interest to a resident or a non-resident;
(c) makes any payment of commercial royalty, entertainment fee, or management or consultancy fee to a non-resident,”;

(b) in subsection (4) by inserting the following new paragraphs —
“(c) any payment of interest to a resident where the recipient of such interest is a person exempt from taxation; and

(d) an IFSC company, a banking company or a financial institution receiving such interest in its ordinary course of business,”.

9. Section 60 of the Act is amended —

(a) in subsection (1) by substituting for the words “Table IV” the words “Table III”;

Amendment
of section 60

(b) in subsection (3) by deleting the proviso; and

(c) by inserting immediately after subsection (3) the following new subsection —

“(3A) No additional company tax shall be carried forward for set-off against withholding tax for more than 5 years following the tax year in which it was paid.”.

10. Section 78 of the Act is amended —

Amendment of
section 78

(a) by inserting immediately after subsection (2) the following new subsection —

“(2A) Where a person, other than a company, has the option to furnish a tax return in terms of section 65 (2), the person may estimate the tax payable for the current tax year for the purpose of making a lump sum payment of tax for that tax year as provided in section 95 (5).”;

(b) in subsection (3) by substituting for the word “(3)” the word “(4)”.

11. Section 95 of the Act is amended —

Amendment of
section 95

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

- “(2A) Persons to whom section 65 (2) applies shall also have an option to pay the tax in monthly instalments on condition that the proportion of the tax paid would not be less than one third of the tax payable in the case of payment by quarterly instalments.”; and
- (b) by inserting immediately after subsection (4), the following new subsection —
- “(5) Notwithstanding subsections (2), (3) and (4), where a person, not being a company, has tax payable as estimated under section 78 (2A) in any tax year, that person may pay such tax in one lump sum by the due date of the furnishing of a tax return under section 65 (2) for that tax year.”.
- Amendment of section 111
- 12.** Section 111 of the Act is amended in subsection (1) by —
- (a) substituting for the full stop at the end of the subsection, a comma; and
- (b) inserting immediately after the word “Fund”, at the end of the subsection, the words “and the amount of the excess will also include any amount of interest paid in excess.”.
- Repeal of sections 113, 114 and 115
- 13.** The Act is amended by the repeal of sections 113, 114 and 115.
- Amendment of section 117
- 14.** Section 117 of the Act is amended in subsection (1) by inserting immediately after the words “tax return” the words “including a withholding tax return”.
- Amendment of section 118
- 15.** Section 118 of the Act is amended in subsection (7) —
- (a) in paragraph (i) by substituting for the words “a non resident” the words “any person”; and
- (b) by inserting the following new paragraph —
- “(m) fails to deliver to any contractor a certificate of tax deducted within the time prescribed in the Sixth Schedule.”.
- Amendment of section 122
- 16.** Section 122 of the Act is amended in paragraph (e) by substituting for the word “138” the word “144”.
- Amendment of section 126
- 17.** Section 126 of the Act is amended —
- (a) in paragraph (a) by substituting for the words “a non-resident” the words “any person”; and
- (b) by inserting the following new paragraph —
- “(d) fails to deliver to any contractor a certificate of tax deducted within the time prescribed in the Sixth Schedule.”.
- Amendment of section 143
- 18.** Section 143 of the Act is amended by substituting for the words “On Botswana Government Service” the words “On the Service of the Botswana Unified Revenue Service”.
- Amendment of section 144
- 19.** Section 144 of the Act is amended by substituting for the word “seven” the word “eight” wherever it occurs in subsections (1), (2) and (3).
- Amendment of Second Schedule
- 20.** The Second Schedule to the Act is amended —
- (a) in Part I by inserting immediately after paragraph (xvii) the following new paragraph —
- “(xviii) any special purpose vehicle formed by the government for securitization of public assets.”;

- (b) in Part II —
- (i) by substituting the words “P2, 500” in paragraph (xxxi) thereof, for the words “P6, 000”; and
 - (ii) by inserting immediately after paragraph (xli) the following new paragraph —
“(xlii) any amount of dividend distributed by a special purpose vehicle formed by the government for the securitization of public assets.”.

21. The Fourth Schedule to the Act is amended in paragraph 3 (1) of Part II by substituting for the words “within six years after the end of that” the words “during the current”. Amendment of Fourth Schedule

22. The Fifth Schedule to the Act is amended in the proviso to paragraph 3 (3) by deleting the words “or P9 000, whichever is less”. Amendment of Fifth Schedule

23. The Sixth Schedule to the Act is amended — Amendment of Sixth Schedule

- (a) by deleting the words “NON - RESIDENTS” which appear at the end of the heading of the Schedule; and

- (b) in paragraph 5 by substituting for the words “within 15 days” the words “by the due date of payment of withholding tax under section 99”.

24. The Seventh Schedule to the Act is amended in paragraph 2 by inserting immediately after subparagraph (c) the following new paragraph — Amendment of Seventh Schedule

“(d) 10 per cent of interest to a resident in excess of P1,500 in a quarter of a year.”.

25. The Act is amended by substituting for the Eighth Schedule the following new Schedule — Amendment of Eighth Schedule

“EIGHTH SCHEDULE

RATES OF TAX FOR 2006/2007 AND SUBSEQUENT YEARS (Section 59)

TABLE I

| <i>Taxable Income</i> | <i>Tax</i> |
|-----------------------|---------------------------------------|
| 0 - 30 000 | 0 |
| 30 000 - 60 000 | 0 + 5% of the excess over P30 000 |
| 60 000 - 90 000 | 1 500 + 12.5% of excess over P60 000 |
| 90 000 - 120 000 | 5 250 + 18.75% of excess over P90 000 |
| 120 000 and above | 10 875 + 25% of excess over P120 000 |

Table I applies to resident individuals.

TABLE II

| <i>Taxable Income</i> | <i>Tax</i> |
|-----------------------|-------------------------------------|
| 0 - 60 000 | 5% of every Pula |
| 60 000 - 90 000 | 3000 + 12.5% of excess over P60 000 |

90 000 – 120 000

6750 + 18.75% of excess over P90 000

Over 120 000

12375 + 25% of excess over P120 000

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

TABLE III

| | | |
|--|---|------|
| 1. Resident company | Basic company tax | 15% |
| | Additional company tax | 10% |
| 2. Non-resident company | All taxable income | 25% |
| 3. Botswana Meat Commission | All taxable income | 15% |
| 4. Pension and Provident Fund not approved by the Commissioner General | Investment income as defined in terms of section 51 (3) | 7.5% |
| 5. Dividends accruing outside Botswana | Gross income | 15% |
| 6. Persons not included in paragraphs 1 – 5 above | Taxable income | 25% |
| 7. International Financial Services Centre Company — | | |
| (a) Income arising from approved financial transactions with non-residents, International Financial Services Centre Companies and Specified Collective Investment Undertakings | | 15% |
| (b) All other income | | 25% |

TABLE IV

| <i>Taxable Income</i> | <i>Tax</i> |
|-----------------------|---|
| 0 – 15 000 | 0 |
| 15 000 – 60 000 | 0 + 5 % of the excess over 15 000 |
| 60 000 – 90 000 | 2250 + 12.5% of the excess over P30 000 |
| 90 000 – 120 000 | 6000+ 18.75% of excess over P60 000 |
| Over 120 000 | 11625 + 25% of excess over P120 000 |

Table IV applies to net aggregate gains of individuals.”.

Amendment of
Tenth
Schedule

26. The Tenth Schedule to the Act is amended —

(a) in paragraph 1 by —

(i) substituting for subparagraph (c) the following paragraph —

“(c) the principal private residence of any individual who is the owner of such residence:

Provided that —

(i) proceeds derived from the disposal of a principal private residence, shall only be exempt from tax if the proceeds from the gains of the disposal are re-invested in a property used for residential purposes within a period of 24 months of the disposal thereof;
or

- (ii) if the proceeds are not so re-invested in residential property, the exemption shall be granted only in respect of the disposal of the first principal private residence.”;
- (ii) substituting for subparagraph (d) the following paragraph —
“(d) subject to paragraph 1A, any shares or units in or debentures of a resident company which is a public company under section 130 of the Act, or any shares, units or debentures that are actually traded on the Botswana Stock Exchange:
Provided that the exemption granted under this paragraph shall exclude proceeds of sale of shares or units in or debentures of a company undertaken by any investment company or similar company or any other company for the purpose of earning profits in the ordinary course of business;”;
- (iii) inserting, immediately after subparagraph (f), the following new subparagraphs —
“(g) any bonds and debentures issued by the Government of Botswana, Bank of Botswana, a statutory body and special purpose vehicles formed by the Government of Botswana for the securitization of public debt;
(h) any shares in an International Financial Services Centre company.”;
- (iv) inserting, immediately after paragraph 1, the following new paragraph —
“1A. A company that has released for trading 49 per cent or more of its equity shares on the Botswana Stock Exchange shall have the entire stock of its equity shares eligible for exemption.”;
- (b) in paragraph 4 by substituting for subparagraph (e) the following paragraph —
“(e) if the property disposed of is immovable property, the deduction ascertained in accordance with paragraph 8 hereof:
Provided that a sale of shares of a company owning immovable property as the dominant underlying asset of the company shall be deemed to be a sale of the immovable property;”.

PASSED by the National Assembly this 30th day of June, 2006.

A. MATLHAKU,
Clerk of the National Assembly.