

INCOME TAX (AMENDMENT) ACT, 2011

No. 8



of 2011

ARRANGEMENT OF SECTIONS

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An Act to amend the Income Tax Act.

Date of Assent: 03.05.11

Date of Commencement: 01.07.11

ENACTED by the Parliament of Botswana

1. (1) This Act may be cited as the Income Tax (Amendment) Act, 2011.
- (2) Subject to the provisions of subsection (3), this Act shall come into operation on 1st July, 2011.
- (3) Section 58 (1) (d) shall come into operation on publication.
2. The Income Tax Act, (in this Act referred to as “the Act”), is amended in section 2 by —

Short title
and
commencement

Amendment of
section 2 of
Cap. 52:01

(a) substituting for the definition of “assessment”, which appears therein, the following new definition —

““assessment” in relation to any persons means —

(i) a determination by the Commissioner General —

(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 117 (2),

(ii) an assessment under section 78 (3), or

(iii) a determination by the Commissioner General in respect of any withholding tax;”;

(b) substituting for the definition of “business”, which appears therein, the following new definition —

““business” means any business, trade, adventure or concern in the nature of trade, profession or vocation and includes the letting of any property; and in a case where a person is carrying on more than one business, all amounts accrued to that person from all businesses except from farming, mining or any disposal of property under section 35 (1), shall be deemed to have accrued from one business;”;

(c) substituting for the definition of “commercial royalty”, which appears therein, the following new definition —

““commercial royalty” means any amount payable for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films, and films or tapes for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience, or the right to commercially develop and exploit software;”;

(d) substituting for the definition of “management or consultancy fee”, which appears therein, the following new definition —

““management or consultancy fee” means any amount payable for administrative, managerial, technical or consultative services or any similar services, whether such services are of a professional nature or not, including the development or customization of software;”.

3. Section 28 of the Act is amended in subsection (2) by inserting immediately after paragraph (i), the following new paragraph —

“(j) any payment made under the Vocational Training (Reimbursement) Regulations, to the taxpayer by way of reimbursement of training costs incurred by the taxpayer.”.

4. Section 31 of the Act is amended by inserting immediately after subsection (4), the following new subsection —

“(5) The minister responsible for mines and minerals shall, before approving the transfer or assignment of a licence or minerals permit under the Mines and Minerals Act, notify the Commissioner General.”.

Amendment of section 28 of the Act

Cap. 47:04 (Sub. Leg.)

Amendment of section 31 of the Act

Cap. 66:01

5. Section 35 of the Act is amended in subsection (1) by inserting immediately after the phrase “accruing to him or her on the disposal of” the following phrase “any property, including —”.

Amendment of section 35 of the Act

6. Section 41 of the Act is amended in subsection (1) by inserting immediately after paragraph (q), the following new paragraph —

Amendment of section 41 of the Act

“(r) any training levy paid in accordance with the provisions of section 24 of the Vocational Training Act and the Vocational Training (Structured Training) Regulations.”.

Cap. 47:04 (Sub. Leg.)

7. Section 43 of the Act is amended in subsection (1) by inserting immediately after paragraph (d), the following new paragraph —

Amendment of section 43 of the Act

“(e) amounts contributed to a mine rehabilitation fund, approved by the Minister responsible for finance, and set up for the rehabilitation of a mine owned by the taxpayer.”.

8. Section 44 of the Act is amended by adding, at the end of the section, the following new proviso —

Amendment of section 44 of the Act

“Provided that nothing contained in this section shall apply to any expenditure incurred by the taxpayer in respect of which the taxpayer is entitled to reimbursement under the Vocational Training (Structured Training) Regulations.”.

Cap. 47:04 (Sub. Leg.)

9. The Act is amended by inserting, immediately after section 50 thereof, the following new section —

Insertion of section 50A

“Deduction in respect of payment of certain sums to non-residents

50A. (1) A deduction otherwise allowable for computing the chargeable income of any person for any tax year in respect of interest, commercial royalty, management or consultancy fee, or entertainment fee payable to a non-resident, shall be allowed as a deduction only in the tax year in which the withholding tax has been deducted and paid to the Commissioner General, or deducted but paid in the next tax year before the expiry of the time prescribed under section 100:

Provided that where in respect of any such sum tax has been deducted and paid in any subsequent tax year; or deducted in the previous tax year but paid in any subsequent tax year after the expiry of the time prescribed under section 100, such sum shall be allowed as a deduction in computing the chargeable income of the tax year in which such tax has been paid to the Commissioner General.

(2) Notwithstanding the provisions of subsection (1), where a deduction in respect of any sum referred to above in computing the chargeable income of the tax year 2010 or any earlier tax year in which the liability to pay such sum was incurred by the taxpayer, the taxpayer shall not be entitled to any deduction under this section in respect of such sum in computing the chargeable income of the tax year in which the withholding tax was deducted and paid by the taxpayer.”.

10. Section 58 of the Act is amended by —

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

“(1) Any person who —

- (a) being a resident company, makes any payment of dividend to a resident or a non-resident;
- (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;
- (d) makes any payment of rent, by whatever name called, to a resident or a non-resident for the use of any land or building, or both under an agreement or arrangement, except where the rent is paid by an individual and such rent is not claimed or will not be claimed as a business expenditure by such person;
- (e) makes payment on behalf of any mine rehabilitation fund referred to in section 43 (1) (e), to a person having contributed to such fund, any amount being surplus after the rehabilitation of the mine; or
- (f) makes payment of commission or brokerage for or in connection with the procurement of any goods or services,

shall deduct tax from such payment in accordance with and in the manner specified in the Seventh Schedule and shall carry out such other obligations as are imposed by that Schedule:

Provided that the provisions of paragraph (d) shall not apply where the rent paid by a person in respect of any property is less than P36 000 during any tax year; or to payment for accommodation in a hotel, motel, guesthouse or lodge:

Provided further that the provisions of paragraph (f) shall not apply where the commission paid by a person in respect to the procurement of goods or services is less than P36 000 during any tax year.”; and

(b) substituting for subsection (4), the following new subsection —

“(4) This section shall not apply to —

- (a) any payment of interest, commercial royalty or management consultancy fee;
- (b) the payment of a dividend to a non-resident, an international financial services centre company or a collective investment undertaking;
- (c) any payment of interest to a resident where the recipient of such interest is a person exempt from taxation;
- (d) any payment of interest to an IFSC company, a banking company or a financial institution receiving such interest in its ordinary course of business; and
- (e) any payment of rent where the recipient of such rent is a person exempt from taxation:

Provided that the provisions of paragraphs (a) and (b) will apply only to cases where payment is made by an international financial services centre company or a collective investment undertaking which is exempt from tax under paragraph (xvi) of Part I of the Second Schedule.”.

11. Section 59 of the Act is amended by inserting immediately after subsection (4) thereof, the following new subsection —

Amendment
of section 59
of the Act

“(4A). Where a mine rehabilitation fund referred to in section 43 (1) (e) makes a payment, to a person having contributed to such fund, of a surplus amount after rehabilitation of the mine, and a withholding tax is paid under paragraph (2) (f) of the Seventh Schedule, at a rate specified therein, this shall be a final charge to tax, and the amounts so paid shall not form part of the assessable income of such person.”

12. The Act is amended by inserting immediately after section 60 thereof, the following new section —

Insertion of
section 60A

“Taxation of
corporations
and share
holders

60A. (1) Notwithstanding the provisions of section 60, subsection (3), and any other provision of this Act, there shall be no additional company tax for the tax year ending on 30th June, 2012 and subsequent tax years.

(2) Additional company tax shall not be carried forward after the tax year ending on 30th June, 2011, except for the purposes of subsection (3).

(3) Where the accounting period of a company is other than the tax year, and —

(a) the company has unutilized carried forward additional company tax for the year ending 30th June, 2012; and the company has paid dividends on or before 30th June, 2011,

(b) the withholding tax payable on the payment of such dividends shall be set off against the additional company tax which has not been used and carried forward, and thereafter, the provisions of subsection (1) shall apply.”

13. The Act is amended by inserting immediately after section 64, the following new section in Part X —

Insertion of
section 64A

“Registration
and allotment
of Taxpayer
Identification
Number

64A. (1) Every person, if his or her taxable income, or the taxable income of any person in respect of which he or she is assessable under this Act during any tax year exceeds the maximum amount which is not chargeable to income tax, shall apply to the Commissioner General for the allotment of a Taxpayer Identification Number.

(2) The Commissioner General may allot to any other person a Taxpayer Identification Number.

(3) A person who has been issued with a Taxpayer Identification Number in accordance with subsections (1) and (2) shall quote his or her Taxpayer Identification Number in all his or her returns and in all invoices for the payment of any tax due under this Act.

(4) A person who receives any sum, income or amount from which tax has been withheld under the provisions of Division III of Part VIII shall provide his or her Taxpayer Identification Number, in writing, to the person responsible for withholding such tax.

(5) Where any sum of money has been paid to a person after tax has been deducted in accordance with the provisions of Division III of Part VIII, the person withholding tax in accordance with those provisions shall quote, the Taxpayer Identification Number of the person in all tax deduction certificates furnished to the person to whom payment was made.”.

Amendment
of section 65
of the Act

14. Section 65 of the Act is amended in subsection (6) (c) by substituting for that paragraph, the following new paragraph —

“(c) any individual the whole of whose income is remuneration subject to the provisions of the Fifth Schedule and whose taxable income is within the categories of taxpayers prescribed by the Minister under the proviso to subsection (2);”.

Amendment of
section 88 of
the Act

15. Section 88 of the Act is amended in subsection (4) by inserting immediately after paragraph (h), the following new paragraph —

“(i) a denial of issuance of a Tax Clearance Certificate under section 112A.”.

Amendment of
section 91 of
the Act

16. Section 91 of the Act is amended —

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

“(1) Any person who is aggrieved by the decision of the Commissioner General on an objection (hereinafter referred to as “the appellant”) may, by notice of appeal, appeal therefrom to the Board of Adjudicators.”;

(b) in subsection (2) —

(i) paragraph (a) by inserting immediately after the word “writing” the phrase “, in a format prescribed by the Minister;”,

(ii) paragraph (b) by substituting for that paragraph, the following new paragraph —

“(b) be served to the Commissioner General within a period of 14 days from the date of lodging the notice of appeal to the Board of adjudicators;”, and

(iii) paragraph (c) by substituting for that paragraph, the following new paragraph —

“(c) be lodged with the Board of Adjudicators within 60 days after the date of service of the notice of the Commissioner General’s decision on the objection, or within such further time as the Board of Adjudicators may for good cause allow;”;

(c) in subsection (4) by substituting for that subsection, the following new subsection —

“(4) Upon lodging a valid notice of appeal with the Board of Adjudicators, the appellant shall, within a period of 14 days from the date that he or she lodged the notice of appeal, lodge a comprehensive memorandum of appeal with the Board of Adjudicators, in a format prescribed by the Minister, and the memorandum of appeal shall not be valid unless it contains the following documents —

- (a) the tax return;
 - (b) the notice of assessment;
 - (c) the notice of objection;
 - (d) the decision of the Commissioner on —
 - (i) the tax assessment,
 - (ii) the objection,
 - (iii) a refund application,
 - (iv) a taxpayer registration, or
 - (v) any other decision as the case may be;
 - (e) the notice of appeal; and
 - (f) the statement setting out the matter in dispute between the appellant and the Commissioner General.”;
- (d) in subsection (5) by substituting for that subsection, the following new subsection —
- “(5) Upon lodging the memorandum of appeal with the Board of Adjudicators, the appellant shall serve, immediately, a copy of the memorandum of appeal to the Commissioner General.”; and
- (e) by inserting, immediately after subsection (5), the following new subsections —
- “(6) Upon receipt of the memorandum of appeal, the Commissioner General shall, within a period of 14 days or such other period as may be granted by the Board of Adjudicators, lodge a reply thereto with the Board of Adjudicators and immediately serve a copy of the reply to the appellant.
- (7) A party aggrieved by the decision of the Board of Adjudicators may appeal to the High Court in the manner provided under section 93.”.

17. Section 92 of the Act is amended —

- (a) in subsection (1) by substituting for that subsection, the following new subsection,

“(1) Upon every hearing of an appeal by the Board of Adjudicators, the Board may confirm, increase, annul or order the reduction of any assessment, or may make such other order as it deems fit.”;
- (b) in subsection (2) by —
 - (i) deleting the phrase “or the High Court” appearing immediately after the phrase “except where the Board of Adjudicators”, and
 - (ii) deleting the phrase “or the Court” appearing immediately after the phrase “when the Board of Adjudicators”;
- (c) in subsection (6) by substituting for that subsection, the following new subsection —

“(6) The sittings of the Board of Adjudicators for the hearing of any appeal shall be open to the public, save for reasons reserved by the Board of Adjudicators, the hearing may be in camera.”; and
- (d) by inserting immediately after subsection (6), the following new subsections —

“(7) The decisions of the Board of Adjudicators may, from time to time, be published.

Amendment
of section 92
of the Act

(8) The Minister may make regulations for the administration of the affairs of the Board of Adjudicators.”.

Amendment
of section 93
of the Act

18. Section 93 of the Act is amended by inserting immediately after subsection (3), the following new subsection —

“(3A) On any further appeal to which this section relates, both the Commissioner General and appellant shall bear their own costs, except where High Court is of the opinion that —

- (a) the decision of the Commissioner General on the objection was arbitrary and unreasonable; or
- (b) the grounds of appeal by the appellant were frivolous, then the Court may make such order as to costs as it deems fit.”.

Insertion of
section 93A

19. The Act is amended by inserting immediately after section 93 thereof, the following new section —

“Production
of additional
evidence

93A. (1) The appellant shall not produce before the Board of Adjudicators or the High Court new evidence, whether oral or documentary, or a new witness, other than the evidence or witness produced by the appellant during the course of proceedings before the Commissioner General, except in the following circumstances —

- (a) where the Commissioner General refused to admit evidence which ought to have been admitted;
- (b) where the appellant was prevented, by sufficient cause, from producing the evidence which he or she was called upon to produce by the Commissioner General;
- (c) where the appellant was prevented, by sufficient cause, from producing before the Commissioner General any evidence which is relevant to any ground of appeal; or
- (d) where the Commissioner General has granted the order appealed against without giving sufficient opportunity to the appellant to adduce evidence that is relevant to any ground of appeal.

(2) No evidence shall be admitted under subsection (1) unless the Board of Adjudicators or the High Court records, in writing, the reasons for the admission of the evidence and a copy of the record is given to the Commissioner General.

(3) The Board of Adjudicators or the High Court shall not take into consideration any evidence produced under subsection (1) unless the Commissioner General has been allowed to —

- (a) examine the new evidence or cross-examine the new witness produced by the appellant; and
- (b) produce any new evidence, whether oral or documentary, or a new witness in rebuttal of the new evidence or witness produced by the appellant.

(4) Nothing contained in this section shall affect the powers of the Board of Adjudicators or the High Court to direct the production of any document or the examination of any witness to enable the Board of Adjudicators or the High Court to dispose of the appeal.”.

20. Section 97 of the Act is amended in subsection (1) by substituting for that subsection, the following new subsection —

Amendment
of section 97
of the Act

“(1) Any tax not paid within the time specified in section 95 shall bear interest at the rate of one and a half per cent for each month or part of a month during which it remains unpaid, compounded monthly.”.

21. The Act is amended by inserting, immediately after section 112 thereof, the following new section —

Insertion of
section 112A

“Tax
Clearance
Certificates

112A.(1) The Minister shall have the powers to make it compulsory, by order, for any person or category of persons to produce a Tax Clearance Certificate for a tender to be awarded in accordance with the Public Procurement and Asset Disposal Act.

Cap. 42:081

(2) It shall be the duty of any person, institution or authority entrusted with the responsibility of authorising the transactions referred to in subsection (1) to authorise such transactions only after a Tax Clearance Certificate is produced by the parties to the transaction.

(3) The Commissioner General shall, within two weeks of receipt of an application for a Tax Clearance Certificate —

(a) issue the Tax Clearance Certificate if —

- (i) there is no tax liability against the taxpayer, or
- (ii) in the view of the Commissioner General, the taxpayer has made satisfactory arrangements for the payment of his or her tax liability; or

(b) deny the issue of the Tax Clearance Certificate and give reasons for such denial.”.

22. Section 117 of the Act is amended in subsection (1) by substituting for paragraph (a), the following new paragraph —

Amendment
of section 117
of the Act

“(a) interest at the rate of one and a half per cent for each month or part of a month during which it remains unpaid, compounded monthly on the amount of tax charged —”.

23. The Act is amended by inserting, immediately after section 119 thereof, the following new sections —

Insertion of
sections 119A
and 119B

“Penalties:
Failure to
comply with
provisions of
section 64A

119A.(1) Any person who fails to comply with the provisions of section 64A, before the end of the period allowed for filing tax returns under section 65 (1) or (2), shall be liable to a penalty not exceeding P10 000.

(2) The provisions of subsection (1) shall not apply where a person proves that he or she had a just cause for failing to comply with the provisions of section 64A and unless he or she is given an opportunity to be heard.

Penalties:
Failure to
comply with
provisions of
section 69

119B. (1) Any person who fails to comply with the provisions of section 69 (1) or (3), shall be liable to a penalty not exceeding P10 000.

(2) For any subsequent failure to comply with the provisions of section 69 (1) or (3), the penalty shall not exceed P20 000.

(3) The provisions of subsection (1) shall not apply where a person proves that he or she had a just cause for failing to comply with the provisions of section 69 (1) or (3) and unless he or she is given an opportunity to be heard.”.

Amendment
of Second
Schedule

- 24.** The Second Schedule to the Act is amended in Part II by —
- (a) substituting for the amount “P6 000” appearing in paragraph (xxxi), with the amount “P7 800”;
 - (b) deleting paragraph (xxxviii); and
 - (c) inserting, immediately after paragraph (xlii) the following new paragraph —
“(xliii) any investment income of a mine rehabilitation fund referred to in section 43 (1) (e).”.

Amendment
of Seventh
Schedule

- 25.** The Seventh Schedule to the Act is amended by —
- (a) substituting for the heading of the Schedule, the following heading —

“DEDUCTION OF TAX ON CERTAIN PAYMENTS”;

- (b) substituting for paragraph 2, the following new paragraph —
- “Amount to
be deducted
2. Except as provided in section 60 and subject to the provisions of section 58 (4), the amount of tax to be deducted shall be —
- (a) 15 per cent of each payment of dividend made to any person if the dividend is paid on or before 30th June, 2011 and seven and a half per cent of each payment of dividend made to any person if the dividend is paid after 30th June, 2011;
 - (b) 15 per cent of each payment of interest, commercial royalty or management or consultancy fee made to a non-resident;
 - (c) 10 per cent of each payment of entertainment fee made to a non-resident;
 - (d) 10 per cent of interest to a resident in excess of P1 950 in a quarter of a year;
 - (e) five per cent of each payment of rent referred to in section 58 (1) (d);
 - (f) 10 per cent of the amount of payment of any surplus money by a mine rehabilitation fund referred to in section 43 (1) (e); or
 - (g) 10 per cent of the amount of payment of commission or brokerage referred to in section 58 (1) (f).”;

(c) substituting for paragraph 3, the following new paragraph —
 “Liability of resident or non-resident 3. A deduction of tax under this Schedule from —
 (a) any payment of dividend made to a resident; or
 (b) income described in section 34 made to a resident or non-resident,
 shall not relieve that person from the obligation to furnish any tax return under or from any other obligations imposed by this Act.”; and

(d) inserting immediately after paragraph 8, the following new paragraph —

“Deduction of withholding tax at lower rate 9. Where the Commissioner General is satisfied that the taxable income of any person in receipt of the rent referred to in section 58 (1) (d), for any tax year, justifies the deduction of withholding tax at a lower rate or no deduction of withholding tax, the Commissioner General may, on an application for a tax certificate for the deduction of withholding tax or no deduction of withholding tax, grant the applicant the tax certificate.”.

26. The Act is amended by substituting for the Eighth Schedule, the following new Schedule —

Amendment
of Eighth
Schedule

“EIGHTH SCHEDULE

RATES OF TAX FOR 2011/2012 AND SUBSEQUENT TAX YEARS

(Section 59)

TABLE I

<i>Taxable income</i>	<i>Tax</i>
0 – 36 000	0
36 001 – 72 000	0 + 5% of excess over P36 000
72 001 – 108 000	1 800 + 12.5% of excess over P72 000
108 001 – 144 000	6 300 + 18.75% of excess over P108 000
144 001 and above	13 050 + 25% of excess over P144 000

Table I applies to resident individuals.

TABLE II

<i>Taxable income</i>	<i>Tax</i>
0 – 72 000	5% of every Pula
72 001 – 108 000	3 600 + 12.5% of excess over P72 000
108 001 – 144 000	8 100 + 18.75% of excess over P108 000
144 001 and above	14 850 + 25% of excess over P144 000

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

TABLE III

1. Resident company	Taxable income	22%
2. Non-resident company	All taxable income	30%
3. Botswana Meat Commission	All taxable income	15%
4. Pension and Provident Fund not approved by the Commissioner General	Investment income defined under section 2	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	22%".

Amendment
of Ninth
Schedule

27. The Ninth Schedule to the Act is amended —

by substituting for paragraph 1, the following new paragraph —

“1. (1) The Minister may by notice, establish a Board to be known as the Board of Adjudicators which shall have jurisdiction to hear and determine an appeal from any decision made by the Commissioner General in relation to determining a tax assessment objection, refund application, matters relating to taxpayer registration or any other matter in the course of administering the provisions of this Act.

(2) The jurisdiction of the Board of Adjudicators for purposes of this Act extends to every place within Botswana.

(3) The Board shall consist of the following members appointed by the Minister —

(a) the Chairman;

(b) three members;

(c) two alternative members to the members in ~~sub~~ subparagraph (b); and

(d) a Secretary who shall have no voting rights.

(4) The duties of the Secretary shall be to —

(a) receive appeal papers from appellants on behalf of the Board of Adjudicators;

(b) convene meetings of the Board of Adjudicators; and

(c) perform all administrative functions and may be assigned any other duties by the Chairman.

(5) A person may be appointed to be a —

- (a) Chairman, if he or she has worked as a magistrate in a court of law for a period of not less than eight years, or if he or she has worked as an attorney at law for a period of not less than eight years;
- (b) member of the Board of Adjudicators, if he or she has —
 - (i) knowledge of taxation,
 - (ii) knowledge of commercial or financial practice; or
 - (iii) more than five years experience in taxation, commercial or financial practice,
 save for persons who are employed to assess, collect and account for government revenue provided that such persons have ceased to be such employees for the past five years; and
- (c) Secretary, if he or she is a public officer discharging administrative or directive functions.

(6) For purposes of subparagraph 5 (c), “public officer” has the same meaning as in the Constitution.

(7) Where any appointment relates to a person from the Judiciary, the Minister shall consult the Chief Justice with regard to the appointment of that person to be a member of the Board.

(b) in paragraph 3, by inserting a new subparagraph (b) —

“(b) The Minister may temporarily appoint an employee from the ministry responsible for finance to assist the Board in the performance of its administrative duties.”;

(c) by substituting for paragraph 5, the following new paragraph —

“(5) The members of the Board shall receive such remuneration, in the form of a sitting allowance, travelling allowance and other allowances out of public funds as the Minister shall determine.”;

(d) in paragraph 6, by inserting immediately after subparagraph (g), the following new paragraphs —

“(gA) power to resolve any complaint or appeal by mediation, conciliation or arbitration;

(gB) power to dismiss any matter before it;

(gC) power to prepare and deliver judgments and decrees in relation to all appeals before the Board.”;

(e) by inserting, immediately after paragraph 6, the following new paragraphs —

“(7) (a) Any judgment or decree of the Board shall be enforced in the same manner as a judgment or decree of a court of law within Botswana.

(b) Where the Board pronounces a judgment or decree in favour of the appellant or Commissioner General, and where the appellant or Commissioner General wishes to execute the judgment or decree, the appellant or Commissioner General shall make an application, to the Secretary, for a writ of execution in a form prescribed by the Minister.

(8) The Board shall not be bound by the rules and procedures of the courts of law in conducting the hearing of an appeal before the Board.

(9) Any person who files any document, regarding an appeal before the Board shall pay a fee prescribed by the Minister.”.

28. The Tenth Schedule to the Act is amended by —

(a) substituting for paragraph 1, the following new paragraph —

“1. Any amount accruing to any person from the disposal of the following properties shall not be included in gross income under section 35 (1) and section 35 (2), and the provisions of this Schedule shall not apply to gains from the disposal of such property —

- (a) any property of a business, other than land and buildings thereon, in respect of which an allowance has been granted under Part II of the Third Schedule in ascertaining chargeable income for any tax year;
- (b) any property referred to in section 31;
- (c) the principal private residence of an individual who has owned the residence for the last five years prior to the date of the disposal, provided that the exemption shall not be allowed for any subsequent disposals for a period of five years from the tax year on which the exemption was allowed;
- (d) any shares, units or debentures of a resident company which have been held by the taxpayer for a period of at least one year prior to the date of disposal, if —
 - (i) the company is a public company under section 130,
 - (ii) the shares, units or debentures are actually traded on the Botswana Stock Exchange, or
 - (iii) the company has released for trading, 49 per cent or more of its equity shares on the Botswana Stock Exchange;
- (e) immovable property owned by a company the shares of which are wholly owned by one or more of the following funds, where such property is disposed of within three months of the date of acquisition by such funds of all the shares of that company —
 - (i) an approved provident fund,
 - (ii) an approved superannuation fund,
 - (iii) the Motor Vehicle Accident Fund, or a statutory life insurance fund;
- (f) any property which represents a qualifying foreign participation as defined under section 2;
- (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; or

(h) any shares in an International Financial Services Centre company.”; and

(b) deleting paragraph 1A.

29. The Twelfth Schedule to the Act is amended in paragraph (4) by deleting the following phrase from the proviso —

Amendment
of Twelfth
Schedule

“(current 25 per cent) made up of 15 per cent basic company tax rate and 10 per cent additional company tax rate.”.

PASSED by the National Assembly this 6th day of April, 2011.

B.N. DITHAPO,
Clerk of the National Assembly.