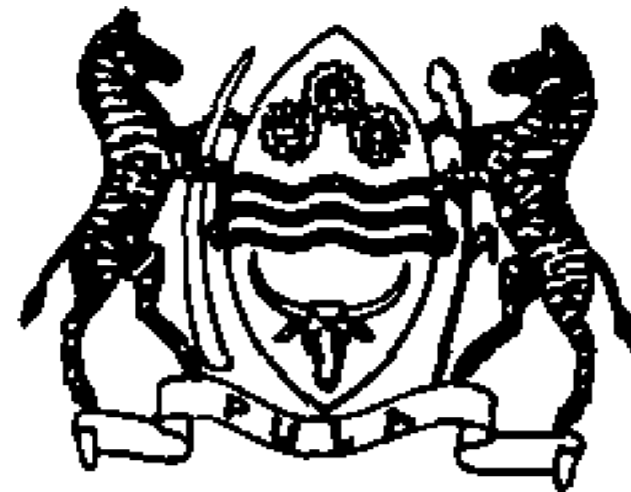


INCOME TAX (AMENDMENT) ACT, 1988

No. 15



of 1988

ARRANGEMENT OF SECTIONS

SECTION

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2. Amendment of section 2 of Cap. 52:01
3. Amendment of section 31 of the principal Act
4. Amendment of section 34 of the principal Act
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6. Amendment of section 39 of the principal Act
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9. Amendment of section 46 of the principal Act
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11. Amendment of section 51A of the principal Act
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15. Amendment of the Seventh Schedule of the principal Act.
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17. Substitution of the Twelfth Schedule of the principal Act

An Act to amend the Income Tax Act

Date of Assent: 21.10.88.

Date of Commencement: 28.10.88.

ENACTED by the Parliament of Botswana.

1. (1) This Act may be cited as the Income Tax (Amendment) Act, 1988 Short title

“(2) Sections 5, 9, 12, 14, 16 and 17 of this Act shall be deemed to have come into force on 1st July, 1987 ”

2. Section 2 of the Income Tax Act (hereinafter referred to as the principal Act) is hereby amended — Amendment of section 2 of Cap. 52:01

(a) by the interpolation in the definition of the words “approved superannuation fund” of the words “in section

39(1)(o)” before the words “means a superannuation fund” appearing therein; and

(b) by the addition immediately after the definition of “approved superannuation fund” of the following new definition —

“approved superannuation fund” shall, except in section 39(1)(o) mean a permanent fund or a scheme which provides for the establishment and administration of such scheme exclusively by an insurer and in either case bona fide established for the purpose of providing such pensions, annuities or other benefits as may be prescribed by the Minister.

Amendment
of section 31
of the
principal Act

3. Section 31 of the principal Act is hereby amended by the substitution for subsection (7) thereof of the following new subsection —

“(7) Where in any tax year approved service gratuity accrues to a citizen whether during the course of or on termination of his employment the whole of such gratuity shall be excluded from the gross income of such person if it is directly invested on his behalf in an approved pension fund or approved retirement annuity fund or scheme and where it is not so invested three quarters only of such gratuity shall be so excluded and the remaining one quarter of such gratuity shall be deemed to have accrued in three successive equal annual instalments the last of such instalments being deemed to have accrued on the date on which the whole amount became payable.”

Provided that the employee is not —

- (a) a relative of the employer where the employer is an individual;
- (b) a relative of one or more of the partners where the employer is a partnership; or
- (c) a participator within the meaning in section 126, or a relative or nominee of such a participator of the company where the employer is a close company,

unless the Commissioner is satisfied that it is a bona-fide arm’s length payment.”

Amendment
of section 34
of the
principal Act
Substitu-
tion of
section 38A
of the
principal Act

4. Subsection (3) of section 34 of the principal Act is repealed with effect from 1st July, 1987.

5. The principal Act is hereby amended by the substitution for section 38A thereof of the following new section —

“38A Notwithstanding the other provisions of this Part, the gross income of any person under section 34(1) shall be chargeable income under this Part.”

6. (1) Subsection (1) of section 39 of the principal Act is hereby amended by substituting for paragraph (d) thereof the following new paragraph —

Amendment
of section 39
of the
principal A

“(d) Where such person is an employer, any amount contributed by him for the tax year ending on 30th June, 1988, to any approved benefit fund or approved superannuation fund established for the benefit of his employees or, for any tax year commencing on or after 1st July, 1988, to an approved benefit fund, an approved pension fund or an approved retirement annuity fund or scheme established for the benefit of his employees:

Provided that —

- (i) in respect of any lump sum contribution, the Commissioner may determine that such amount shall be deducted in a number of successive equal annual deductions, the first such deduction being allowed in the tax year in which such contribution was made; and
- (ii) in respect of an annual contribution of a recurrent nature made in any tax year commencing on or after the 1st of July, 1987, the deduction allowable shall not exceed twenty percent or P6000, whichever is less, of the employment income which accrued from that employer to each employee who was a member of the fund in that tax year:

Providing that where the contribution made in respect of any one employee for the tax year ending on 30th June, 1988, exceeded P6000, so much of such contribution as does not exceed ten per cent of the employment income of that employee shall be deductible from his assessable income.”

(2) the substitution for paragraph (o) thereof of the following new paragraph —

“(o) contribution not exceeding P1500, made in the year ending on 30th June, 1988 and claimed for that year, by an employer to an approved superannuation fund.”

7. Section 41 of the principal Act is hereby amended by —

Amendment
of section 41
of the
principal Act

- (a) the interpolation after the words “for any tax year”, appearing in line two of subsection (1) thereof, of the words “ending on or before 30th June, 1988; and
- (b) by the addition thereto of the following new subsection as subsection (3) thereof —

“(3) In ascertaining the chargeable income of any person carrying on business for any tax year commencing on or after 1st July, 1988, there shall be deducted from his assessable business income an amount equal to two hundred per cent of any expenditure incurred by him during that tax

year on training approved by the Commissioner in accordance with such rules as the Minister may from time to time prescribe”.

Addition
of a new
section 43B
to the
principal Act

8. The principal Act is hereby amended by the addition thereto of the following new section as section 43B—

“43B Where in any tax year commencing on or after 1st July, 1987, an assessed loss is incurred by any person in carrying on a business of farming, he may set off all or part of such loss against his farming chargeable income in the two years preceding the year in which the loss was incurred, commencing with the year immediately preceding such loss.

Amendment
of section 46
of the
principal Act

9. The principal Act is hereby amended by the substitution for subsection (1) of section 46 thereof of the following new subsection —

“46(1) Subject to the provisions of this Part, the taxable income of any person for any tax year shall be the aggregate of his chargeable income from all sources other than the chargeable income under section 38A and the amount of his net aggregate gains ascertained under the Twelfth Schedule for the tax year, less—

- (i) in the case of an individual any deductions he may be entitled to under sections 50 and 51; and
- (ii) in the case of a resident company any deduction to which it may be entitled under section 51A.

Amendment
of section 50
of the
principal Act

10. The principal Act is amended by the addition of the following new section as section 50 thereof —

“50.(1) A resident individual shall, from the tax year commencing on 1st July, 1987, be entitled to deduct from his chargeable income other than his investment income, an amount not exceeding fifteen percent of such income or P6000 whichever is less in respect of contributions made by him to an approved pension fund or to an approved retirement annuity fund or scheme which amount shall for the tax year ending on 30th June, 1988 include any sum deducted under paragraph (o) of section 39:

“Providing that —

- (i) this section shall not apply to an employee who, not being a citizen of Botswana, is entitled on the termination of his contract to a bonus or gratuity which is exempt from tax under paragraph (XVIII) of Part 2 of the Second Schedule;
- (ii) the contributions made and which are claimed as a deduction were made wholly out of income accrued from a source situated in or deemed to be situated in Botswana.”

(2) "Investment income" shall for the purposes of this section mean —

- (i) income accrued by way of interest or dividend other than an amount deemed to have been distributed as dividend to a participator under section 126(a); and
- (ii) net aggregate gains as determined under the Twelfth Schedule."

11. Subsection (2) of section 51A of the principal Act is hereby amended by the substitution for subparagraph (ii) of paragraph (a) thereof of the following new subparagraph —

Amendment
of section 51
of the
principal Act

"(ii) any person specified in Part I of the Second Schedule as being exempt from tax, so however, that this subsection shall not apply to an approved benefit fund or superannuation fund in respect of any tax year commencing on or after 1st July, 1988."

12. The principal Act is hereby amended by the substitution for subsection (1) of section 59 thereof of the following new subsection —

Amendment
of section 59
of the
principal Act

"59(1) Subject to this Part, tax shall be charged on the taxable income for each tax year at the relevant rates specified in the Tenth Schedule:

Provided that in the case of an individual the tax payable on the amount of his net aggregate gain shall be calculated in accordance with Table VI of the Tenth Schedule."

13. Paragraph 2 of Part II of the First Schedule is hereby amended by the deletion, with effect from 1st July, 1982, of the words "other than a company" appearing in the proviso to subparagraph (a) thereof.

Amendment
of First
Schedule
of the
principal
Act

14. The Third Schedule of the principal Act is hereby amended by the substitution for paragraph 3 of Part VI thereof of the following new paragraph —

Amendment
of the
Third
Schedule
of the
principal
Act

"3. Subject to subparagraph (2) hereof, where the disposal value of the property referred to in paragraph (1) disposed of in any tax year exceeds the difference between —

- (a) the expenditure by that person on that property; and
- (b) the allowances granted in respect thereof, the amount of such excess (referred to in this Act as a "balancing charge") shall be included in the gross income of such person for that tax year.

Provided that where the property disposed of is a property to which the Twelfth Schedule applies the balancing charge shall be limited to so much of the said difference as does not exceed the sum of the allowances granted in respect of the said property."

“Amendment of the Seventh Schedule of the principal Act

15. Paragraph 3(3) of the Seventh Schedule of the principal Act is hereby amended by the substitution for the letter and figure “P1500” appearing therein of the words and figures “fifteen percent of the employee’s remuneration or P6000, whichever is less”

Amendment of the Tenth Schedule of the principal Act

16. The Tenth Schedule of the principal Act is hereby amended by the addition thereto of the following new table as Table “VI” —

TENTH SCHEDULE

“TABLE VI

<i>Taxable Income</i> P		<i>Tax Payable</i> P	
<i>More than</i>	<i>“but” not exceeding</i>		
0	5000	0	0
5000	10000	5% of excess over	5000
10000	15000	250 + 10% of excess over	10000
15000	20000	750 + 15% of excess over	15000
20000	25000	1500 + 20% of excess over	20000
25000	30000	2500 + 25% of excess over	25000
30000	35000	3750 + 30% of excess over	30000
35000	40000	5250 + 35% of excess over	35000
40000	45000	7000 + 40% of excess over	40000
45000	50000	9000 + 45% of excess over	45000
over	50000	11250 + 50% of excess over	50000

Applicable to any person other than a company in respect of his net aggregate gain.”

Substitution of the Twelfth Schedule of the principal Act

17. The principal Act is hereby amended by the substitution for the Twelfth Schedule thereof of the following new Schedule —

“TWELFTH SCHEDULE

1. (1) Any amount accruing to any person from the disposal of the following properties shall not be included in gross income under section 34 (1) 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 30;
- (c) the principal private residence of any individual who is the owner of such residence;
- (d) any shares in or debentures of a company which has been —
 - (i) recognized by the Commissioner as a public company under section 125 (2) (a), (c), (d) or (f); or

- (ii) designated by the Minister, by means of an order made by statutory instrument, to be a company in respect of which any gain derived by any person from the disposal of its shares or debentures is exempt from the provisions of section 34 (1).

2. Subject to the provisions of paragraph 3, 4, and 5, in ascertaining the gain of any person in any tax year on disposal of any property to which section 34 (1) applies, there shall, upon due claim and subject to such evidence as the Commissioner may require, be deducted from the amount included in the chargeable income of such person under section 38A —

- (a) the cost of acquiring the property disposed of including any expenditure wholly, exclusively and necessarily incurred for the purposes of the acquisition;
- (b) the cost of any improvements to the property effected by the person disposing of it or if any improvements were effected or to be effected by any other person under an agreement, the amount in respect of such improvements which was included under section 33 (1) (c) in the gross income of the person disposing of such property;
- (c) any expenditure wholly, exclusively and necessarily incurred for the disposal;
- (d) if a leasehold property is disposed of by a lessee, any expenditure, including any premium paid, incurred by the lessee in obtaining the leasehold, the cost of and improvements effected to the property by him or any amount paid by him of the required improvements under the terms of the lease and any expenditure wholly, exclusively and necessarily incurred by him in disposing of the property:

Provided that no allowance shall be made under this subparagraph in respect of —

- (i) any expenditure or any proportion thereof if for the same or any other tax year an allowance is or can be made in respect of it under section 39 (1) (g) (i) or section 13 (1) (k) of the previous Act, prior to this amendment, to the extent to which such amounts have not been included in the gross income of such person under section 28 (2) (c) (iii) for the tax year; and
- (ii) any premia allowed as a deduction under section 39 (1) (f);
- (e) if the property disposed of is an immovable property; the deduction ascertained in accordance with paragraph 6 hereof.
- “(f) in the case of any property other than property referred to in sub-paragraph (e), fifty percent of the difference between the chargeable income accruing from such disposal under section 38A and the total of any other deduction allowable under this paragraph.”

3. (1) Subject to subparagraph (2), where any property disposed of by any person was acquired by him by way of gift or inheritance, the cost of acquisition of the property shall be —

- (a) where the property was acquired before 1st July, 1982, the market value as at 1st July, 1982; and
- (b) where the property was acquired after 1st July, 1982, the market value as at the date of acquisition.

(2) In the determination of market value for the purposes of subparagraph (1) account may be taken of any expenses incurred and taxes or duties paid in respect of any gift or inheritance, but excluding, in the case of inheritance succession duty and the proportion of estate duty (if any) attributable to the property disposed of.

4. (1) Subject to the provisions of subparagraph (2) where an amount accruing to any person on the disposal of a property is in respect of an immovable property acquired by such person before 1st July, 1982 there shall be added to the cost of acquisition and the cost of any improvements effected thereto before that date whether by the person making the disposal or any other person under agreement, an amount compounded at the rate of 10% of such cost for every twelve months from the date on which the property was acquired or the improvements thereto were affected, as the case may be, up to 30th June, 1982.

(2) Where a loss is incurred by a person on the disposal of a property by virtue of the application of the provisions of subparagraph (1), such loss shall be reduced by so much of the amount which has been added as a result of which a loss has been incurred.

5. For the purposes of paragraph 6 herein, the cost to any person of immovable property disposed of by him shall,

- (a) where the property is a property acquired by him before 1st July, 1982, be the cost as ascertained under the provisions of paragraph 4 above as at 1st July, 1982;
- (b) where the property was acquired by him after 1st July, 1982, be the actual cost of acquisition; and
- (c) where property was acquired by way of gift or inheritance, be the cost as ascertained under paragraph 3.

6. (1) The deduction referred to in paragraph 2 (e) shall be ascertained by —

- (a) applying the percentage difference between the cost of living index at the date of acquisition of the property or 1st July, 1982, whichever is later, and the cost of living index at the date of disposal to the cost of the property as ascertained under paragraph 5; and
- (b) by applying the percentage difference between the cost of living index as at the date, after 1st July, 1982, when any improvements were completed to the property and the cost

of living index at the date of disposal of the property to the cost of the said improvements.

(2) The cost of living index for any day shall be the national cost of living index for the month in which it occurs.

(3) The national cost of living index shall be prescribed for the purposes of this Schedule by the Minister.

7. Where the property disposed of is a business sold as a going concern the person disposing of the business shall furnish the Commissioner with a breakdown of the price at which the property was disposed of showing the value apportioned to each asset and the net aggregate gain or loss of such person shall be ascertained by ascertaining the gain or loss on each such asset.

8. Where any property disposed of by any person in accordance with the provisions of paragraph 2 consists of bonus, shares, debentures, securities or any other property falling to be treated as a dividend under this Act, the cost of acquisition of such property shall be the amount included in the assessable income of such person as dividend under section 2.

9. Where an amount accruing to any person on the disposal of a property is in respect of a farming property, there shall, in addition to such allowance as may be allowed under paragraph 1, be deducted from such amount so much of the aggregate of any assessed loss (other than deductions of expenditure of a capital nature allowed under Part IV of the Third Schedule which have been included in such loss) in the tax year in which the property was disposed of and the five preceding tax years in relation to his business of farming which has not been deducted or fully deducted under sections 43, 43A or 43B in ascertaining chargeable income under section 38 (1).

10. (1) The net aggregate gain of any person for any tax year shall be the amount by which the aggregate amount of gains exceeds the aggregate amount of any losses for that year:

Provided that if the aggregate amount of losses incurred in any tax year exceeds the aggregate amount of gains in that year, such excess loss shall be deducted from the excess of aggregate gains over aggregate losses, if any, accruing in the next succeeding tax year.

(2) For the purposes of this paragraph "loss" means the amount by which the total deductions under this Schedule exceeds the chargeable income under section 38A.

11. Where in ascertaining the gain accruing to or the loss incurred by any person the Commissioner is not satisfied that the value of the property at the date of acquisition or the date of disposal as declared by that person is a true and accurate value, he may substitute the market value of the said property at the relevant time as ascertained by him for such declared value.

12. (1) In respect of any tax year commencing on or after 1st July, 1988, where any person reinvests the whole of his original investment in and all or part of the gain from the disposal of any immovable property of a business, within a year of his disposal of that property, in another immovable property for his business or in any of the investments set out in subparagraph (3) hereof he may, upon a claim made by him and subject to such evidence as the Commissioner may require, be permitted to treat so much of the gain so reinvested as a gain accruing only upon the disposal of the property in which it was reinvested:

Provided that so much of his original gain as was not reinvested shall be taken into account in ascertaining the net aggregate gain or loss of that person under paragraph 8 in respect of the tax year in which it accrued to him.

(2) A claim under subparagraph (1) shall not be valid unless it is made within twelve months of the date of the disposal of the first-mentioned property.

(3) The investments referred to in sub-paragraph (1) hereof are investments in any financial Institution registered under the Financial Institutions Act, any public or private company approved for the purposes of this paragraph by the Minister or in any investment prescribed hereunder by the Minister.

PASSED by the National Assembly this 12th day of August, 1988.

C.G. MOKOBI,
Clerk of the National Assembly.