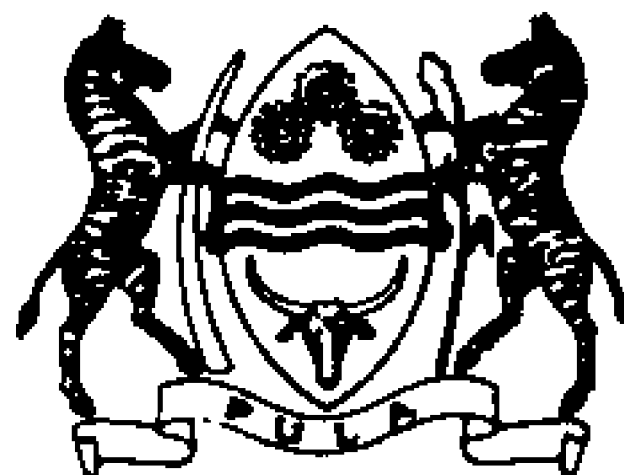


INCOME TAX (AMENDMENT) ACT, 1990

No. 12



of 1990

ARRANGEMENT OF SECTIONS

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An Act to amend the Income Tax Act

Date of Assent: 11th July, 1990.

Date of Commencement: 1st July, 1990.

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Income Tax (Amendment) Act, 1990, and shall come into operation or be deemed to have come into operation on the 1st. July, 1990.

Short title
and commen-
cement

Amendment of
section 2
Cap 52:01

2. The definition of "dividend" in section 2 of the Income Tax Act, hereinafter referred to as the Act, is amended by —

- (a) inserting immediately after the word "amount" which appears in the first line thereof, the words "other than an amount representing a return of capital"; and
- (b) deleting paragraph (a) thereof.

Insertion of
new section
28A

3. The Act is amended by inserting immediately after section 28 thereof the following new section 28A —

Farming,
optional
liability 28A(1). Subject to subsection (2), any amount accrued from farming operations carried on in a tax year by a resident individual which involve the rearing for slaughter of cattle, sheep or goats or dryland farming, or both rearing for slaughter of cattle, sheep or goats and dryland farming, shall not form part of such individual's gross income for that tax year, if —

- (a) in respect of livestock farming operations the total number of livestock at any time during the tax year consisted of not more than 300 cattle, or the equivalent in whole or in part of sheep or goats, on the basis that six sheep or goats are equivalent to one head of cattle; and
- (b) in respect of dryland farming, the total extent of the land involved in such farming operations did not exceed 100 hectares at any time during the tax year.

(2) Any resident individual to whom subsection (1) applies in respect of any tax year, may, within six months after the end of such tax year, by notice in writing to the Commissioner, elect to have such farming operations included together with other sources of gross income for that and all succeeding tax years: Provided that once such election is made it shall be irrevocable.

(3) For the removal of doubt, and without prejudice to the natural meaning of the words, it is hereby declared that the rearing of cattle for slaughter does not include the rearing of dairy cattle, stud farming, poultry farming, pig farming or the rearing of sheep for wool or pelts, and dry land farming does not include irrigated agriculture or horticulture."

Amendment of
section 31

4. Section 31 of the Act, is amended —

- (a) in the marginal note, by substituting for the words and comma "Dividends, interest" the word "Interest";
- (b) in subsection (1)(b), by deleting the words "dividend or" and the words "or in any country in the Rand Monetary Area";
- (c) in subsection (1)(c), by deleting the words "dividend or"; and
- (d) by deleting subsection (3) thereof.

Amendment of
section 33

5. Section 33 of the Act is amended by renumbering subsections (2) and (3) as subsections (3) and (4) thereof, and inserting the following new subsection (2) —

"(2) Except as otherwise provided in the Twelfth Schedule, the gross income of any person for any tax year shall, in relation to a company which is being wound up or liquidated, include any amount, whether in cash or otherwise, distributed, other than an amount representing a return of capital."

6. (1) The Act is amended by substituting for section 38 the following new section —

Substitution of
new section 38

“Income from disposal of property of business 38. Notwithstanding the other provisions of this Part, the gross income of any person under section 33(1) shall be chargeable income under this Part.”.

(2) The amendment effected by section 5 of the Income Tax (Amendment) Act, 1988 is hereby revoked.

7. (1) The Act is amended by inserting immediately after section 47 the following new section 47A —

Insertion of
new section
47A

“Set-off farming losses 47A. 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.”.

(2) The amendment effected by section 8 of the Income Tax (Amendment) Act, 1988 is hereby revoked.

8. (1) The Act is amended by substituting for section 50 the following new section —

Substitution of
new section
50

“Taxable income, general 50 (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 chargeable income under section 38) and the amount of his net aggregate gains ascertained under the Twelfth Schedule for the tax year, less, in the case of a resident individual, any deductions he may be entitled to under subsection (2).

(2). In the case of a resident individual, the taxable income as ascertained in respect of any other person under subsection (1) shall be subject to the deduction of fifteen percent of his chargeable income, other than his investment income, or P6 000, whichever is the lesser, in respect of contributions made by him to an approved superannuation fund for that tax year:

Provided 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 II of the Second Schedule;

(ii) the contributions made and which are claimed as deductions, were made wholly out of income accrued from a source situated in or deemed to be situated in Botswana.

(3) “Investment income” shall, for the purposes of this section, mean —

- (i) income accrued by way of interest; and
- (ii) net aggregate gains as determined under the Twelfth Schedule.

(4) No person shall be entitled to any deduction under this Part except upon due claim and subject to such evidence as the Commissioner may require.”.

(2) The amendments effected by sections 9 and 10 of the Income Tax (Amendment) Act, 1988 are hereby revoked.

Deletion of
sections 51
and 52
Amendment of
section 59

9. The Act is amended by deleting therefrom sections 51 and 52.

10. Section 59 of the Act is amended by substituting for subsection (3) the following new subsection —

“(3). The Commissioner may direct that this section shall not apply to any payment of interest to a non-resident, if he is satisfied that, by reason of the small amount of the payment or any other special circumstances, it is reasonable to so direct.”.

Substitution
of new
section 60

11. The Act is amended by substituting for section 60 the following new section —

“Rate of tax: 60 (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 gains shall be calculated in accordance with Table V of the Tenth Schedule.

(2) Where any interest, commercial royalty, entertainment fee, or management or consultancy fee accrues from Botswana to a non-resident, tax shall be charged for each tax year at the rates specified in paragraph 2 of the Ninth Schedule.”.

Substitution of
new section 61

12. The Act is amended by substituting for section 61 the following new section —

“Set-off
against
additional
company
tax

61 (1). Where a resident company has paid to the Commissioner the tax deducted under the Ninth Schedule from dividends, referred to in section 59 (1) (a), and such company is also liable for additional company tax as provided in Table IV of the Tenth Schedule, the amount of tax so deducted under the Ninth Schedule shall be set off against the additional company tax payable for that year.

(2) Where additional company tax payable in accordance with Table IV of the Tenth Schedule for any tax year exceeds the amount of tax deducted from dividends as referred to in section 59 (1) (a), and the tax so deducted is paid to the Commissioner, the excess may be carried over to the next tax year as a set-off to such extent as is required to equate, if possible, the tax so deducted with the additional company tax due under Part IV of the Tenth Schedule:

Provided that, whilst any part of such excess remains, it may be carried over to the next succeeding tax year as a set-off to be utilised in the same manner and to the same extent as in this subsection, and so on from year to year as may be required.

(3) Notwithstanding subsections (1) and (2) and any other provision of this Act, the liability to tax of any company carrying on business under an agreement with the Government in terms of section 55 of this Act, or any other agreement or the liability to tax of any other person which is determined by such agreement, shall be in terms of the law in force at the time such agreement was signed, and such law shall be applicable for the duration of the agreement, unless the Government and the parties thereto agree otherwise.”.

13. Section 63 of the Act is amended by inserting immediately after the word “tax” which appears in the first line thereof the words and brackets “(other than in respect of dividends under section 59)”.

Amendment of section 63

14. Section 67(5) of the Act is amended by substituting for paragraph (b) thereof the following new paragraph —

Amendment of section 67

“(b) any resident individual in respect of whose taxable income for any tax year there is no liability to tax;”.

15. Section 71 of the Act is amended by adding at the end thereof the following new subsection —

Amendment of section 71

“(3) Notwithstanding the provisions of subsection (1), the Commissioner may, by notice in writing, require any person to furnish annually, or at such intervals as the Commissioner may determine, any information that the Commissioner considers necessary to enable him to fulfil his duties under this Act.”.

16. The Act is amended by adding immediately after section 132 the following new section —

Addition of new section 132A

“Small companies 132A (1) For the purposes of this section a small company means a resident private company whose gross income does not exceed P 300 000 in any tax year.

(2). In respect of any such tax year the shareholders of a small company may elect unanimously, and so notify the Commissioner in writing, within six months after the end of that tax year, that they be treated for tax purposes as a business carried on in partnership:

Provided that, where all the shares are beneficially owned by a single resident individual, he may elect to be treated for tax purposes as an individual carrying on business.

(3) Where a valid election is made under subsection (2), it shall apply to that and the next two subsequent tax years, unless the company is not, or ceases to be, eligible for treatment as a small company for any of those tax years.

(4) Where, in any tax year, a company is treated as a partnership under this section, the chargeable income of the

company shall be apportioned among the shareholders in the proportions in which they own the equity capital, and such apportioned shares of income shall be included in the chargeable income of such shareholders:

Provided that, if the business for any tax year results in a loss, the assessed loss shall be apportioned among the shareholders in like manner.

(5) Notwithstanding the provisions of subsection (4), the shareholders may elect unanimously and apply in writing to the Commissioner for a different basis of apportionment and, subject to subsection (6), the Commissioner may vary the basis of assessment under subsection (4) and adopt a procedure he considers reasonable in respect of the apportionment of the tax withheld from dividends under the Ninth Schedule.

(6) The Commissioner may reject an election under subsection (2) or an application under subsection (5) if he is satisfied that the election or application, as the case may be, is made in pursuance of a tax avoidance scheme.”.

Amendment of
section 134

17. Section 134 of the Act is amended —

- (a) in subsection (1), by substituting for the words “dividend distributed to the participator and accrued to him as gross income under section 31(1) for that tax year” which appear immediately before the proviso, the words “gross income for that tax year accrued to the participator from business in accordance with section 27 (1)”;
- and
- (b) in subsection (2), by substituting for the words “a dividend” the words “gross income from business of the participator”.

Deletion of
section 135

18. The Act is amended by deleting therefrom section 135.

Amendment of
section 136

19. Section 136 of the Act is amended by adding at the end thereof the following new subsection —

“(5). The provisions of this section shall not apply to transactions between companies which are participators of each other.”.

Amendment of
First Schedule

20. The First Schedule to the Act is amended by substituting for the Table at the end thereof the following new Table —

“TABLE

Class of Livestock

Standard Value (for and after tax year 1990/1991)

Cattle

Fully grown animals	P430
Tollies and heifers	P230
Calves	P 90

Sheep and Goats

Grown animals
Kids

P 45
P 10

21. The principal Act is amended by substituting for the Second Schedule thereto the following Schedule —

Amendment
of Second
Schedule

“SECOND SCHEDULE (sections 36 and 55)

PART I Persons Exempted

The following persons shall be exempt from tax for any tax year —

- (i) any local authority;
- (ii) Bank of Botswana;
- (iii) Botswana Agricultural Marketing Board;
- (iv) Botswana Housing Corporation;
- (v) Botswana Power Corporation;
- (vi) National Development Bank;
- (vii) Water Utilities Corporation;
- (viii) any organization in respect of which an order has been made under section 4 of the Diplomatic Immunities and Privileges Act;
- (ix) any religious, charitable or educational institution of a public character;
- (x) any approved benefit fund, approved provident fund or approved super annuation fund;
- (xi) any building society;
- (xii) any institution which is, in the opinion of the Commissioner, a mutual savings bank or a mutual loan association;
- (xiii) any trade union or employees' association registered under the Trade Unions and Employers' Organizations Act;
- (xiv) any association of employers established for a purpose approved by the Minister;
- (xv) any association of individuals formed for the purpose of promoting social or sporting amenities, not involving the acquisition of gain, or the possibility of future gain, by its individual members;
- (xvi) any political party listed in the Schedule to the Societies Act;
- (xvii) Botswana Telecommunications Corporation;
- (xviii) Sechaba Investment Trust Company;
- (xix) the Motor Vehicle Insurance Fund, as from its date of inception;
- (xx) Southern African Centre for Ivory Marketing.

PART II Classes of Gross Income Exempted

The following classes of amounts included in gross income shall be exempt from tax to the extent indicated —

- (i) the official emoluments and allowances of the President;
- (ii) the official salaries and emoluments payable in respect of their offices to —

- (a) heads of diplomatic missions and consulates accredited to Botswana;
and
- (b) members of the staffs of such missions and consulates who are resident in Botswana solely for the purpose of carrying out duties as members of such missions;
- (iii) the official salary and emoluments of an official of any organization in respect of whom an order has been made under section 4 of the Diplomatic Immunities and Privileges Act;
- (iv) allowances exempted under the National Assembly (Salaries and Allowances) Act;
- (v) allowances exempted under the House of Chiefs (Salaries and Allowances) Act;
- (vi) allowances and gratuities exempted under the Judges (Miscellaneous Provisions) Act;
- (vii) any amount accrued to a public servant, teacher or consultant to the Government as director of any company other than his principal employer, where such amount is paid to his principal employer or to the Government;
- (viii) any amount accrued to a public servant or teacher as a foreign service allowance while serving outside Botswana in a diplomatic mission of Botswana;
- (ix) war pensions or gratuities;
- (x) interest payable by the Botswana Savings Bank, including interest on Botswana Savings Bank Certificates;
- (xi) interest on national development bonds exempted under the National Development Bank Act;
- (xii) interest on bonds exempted under the Development Loan (Botswana Registered Bonds) Act;
- (xiii) any amount accrued to the government of any other country or to any non-resident institution or company by way of interest on any loan, to the extent to which the Minister is satisfied that the exemption of such amount is in the public interest;
- (xiv) any amount payable as interest on any subscription share issued by any building society resident in Botswana;
- (xv) payments to members by any co-operative thrift and loan society;
- (xvi) payments by way of sickness or accident benefits to any person, or to his dependants or heirs, by any approved benefit fund, a trade union, or under a policy of insurance covering sickness or accident;
- (xvii) amounts received by way of periodical payments in the nature of maintenance or alimony by a woman from her husband or former husband:
 Provided that no exemption shall apply under this item where, for the purpose of making such payments, the husband or former husband has divested himself of any assets which produce gross income, or divested from himself amounts which would otherwise have been taken into account in ascertaining his taxable income;
- (xviii) any amount payable to an employee, not being a citizen of Botswana, upon the bona fide termination of his employment where such payment is made by the employer —

- (a) pursuant to the terms of a written contract of employment; or
 - (b) by reason of any law in force in Botswana,
- by way of bonus or gratuity to the extent to which, in the opinion of the Commissioner the payment is reasonable in amount having regard to —
- (1) the period of the employment;
 - (2) the nature of the employment;
 - (3) the salary payable to the employee; and
 - (4) the measure of retirement benefits generally prevailing at that time;
- (xix) any amounts accrued from a business or employment carried on in Botswana by a citizen of any other country or by a company registered under any law in force in any other country, where such business or employment is carried on in Botswana under an agreement with the Government for the provision of technical assistance to the Government, to the extent to which the Minister may, by notice in writing to the Commissioner, declare such amounts to be exempted from tax;
 - (xx) any amount payable by way of interest —
 - (a) by Bamangwato Concessions Limited or BCL (Sales) Limited; or
 - (b) by Botswana RST Limited, to the extent that such interest is in respect of moneys borrowed by the company and made available to Bamangwato Concessions Limited for the purposes of its mining operations or exploration in Botswana, to any non-resident who does not carry on business in Botswana through a permanent establishment situate therein where such interest is interest to which Clause 112(C) or 11(F) of the Schedule to the Selibe-Phikwe Tax Agreement Ratification Act, 1970 applies;
 - (xxi) any amount accrued from an employment carried on by a non-resident aboard an aircraft or road or rail vehicle in the course of the operation of an international transport service by a non-resident;
 - (xxii) any amount payable as a pension under the Overseas Officers' Pensions Agreement (Implementation) Act, 1976;
 - (xxiii) any amount received by way of a scholarship or bursary for the purposes of education and maintenance during such education;
 - (xxiv) any amount exempted under an agreement entered into under sections 54 or 55;
 - (xxv) any amount paid to the Commissioner out of the Productive Employment Development Fund as tax payable by any person for any tax year;
 - (xxvi) terminal allowances payable to Councillors of City Councils, District Councils and Town Councils and members of Township Authorities, land boards and subordinate land boards;
 - (xxvii) where under any law in force in Botswana an employee is permitted to commute a portion of his pension, such commuted lump sum payment received by him;
 - (xxviii) in the case of any person other than a person subject to paragraph (xxvii), who, being entitled to a pension or annuity on retirement, elects to receive a part of such pension or annuity as a commuted lump sum, an actuarially calculated sum representing a commutation of not more than one quarter of his full entitlement at the date of his retirement;
 - (xxix) in the case of any person other than a person referred to in paragraphs (xxvii) and (xxviii) who is entitled bona fide to an annual pension or

annuity of not more than five hundred Pula, an actuarially calculated sum representing the commutation of that pension or annuity;

(xxx) the investment income, as defined in section 50 (3) with effect from 1st July, 1990, of a statutory life insurance fund; and

(xxxi) any amount payable as interest accrued in any year to any resident individual from any banking institution or building society in Botswana, up to a limit of P1 000.”.

Amendment of
Third Schedule

22. The Third Schedule to the Act is amended —

(a) in Part II thereof by substituting a colon for the full stop at the end of paragraph 6 (1) (b) thereof and by adding the following proviso —

“Provided that in respect of a motor car (which expression may include a station wagon but not a commercial vehicle) owned by a person or held by him under a lease, leaseback or similar arrangement and used for the purpose of his business, any annual allowance shall only be claimable in respect of expenditure up to a maximum of P100 000.”;

(b) in Part IV thereof, by substituting a colon for the full stop at the end of paragraph 4 and adding the following proviso —

“Provided that the provisions of this paragraph shall not apply in respect of a car owned by a person or held by him under a lease or lease-back arrangement.”.

Amendment
of Ninth
Schedule

23. The Ninth Schedule to the Act is amended by renumbering paragraph 2 as subparagraph (1) thereof, and by adding the following subparagraph (2) —

“(2) The provisions of item (b) in subparagraph (1) shall not apply in respect of a payment of dividend made to a resident public company, or to a company whose shares are quoted on a recognized stock exchange by another resident company which is an associated company, as defined in this Act, of the first-mentioned company, or vice-versa.”.

Replacement
of Tenth
Schedule

24. The Act is amended by substituting for the Tenth Schedule thereof the following new Schedule —

“TENTH SCHEDULE (Section 60)

TABLE I

<i>Taxable Income</i> (In Pula)		<i>Tax</i> (In Pula)
<i>More Than</i>	<i>But not Exceeding</i>	
0	9 000	0
9 000	20 000	0 + 5% of excess over 9 000

20 000	30 000	550 + 10% of excess over 20 000
30 000	40 000	1 550 + 20% of excess over 30 000
40 000	50 000	3 550 + 30% of excess over 40 000
over 50 000		6 550 + 40% of excess over 50 000

Table I applies to resident individuals.

TABLE II

<i>Taxable Income</i> (In Pula)		<i>Tax</i> (In Pula)
<i>More Than</i>	<i>But not Exceeding</i>	
0	30 000	20% of every Pula
30 000	42 000	6 000 + 30% of excess over 30 000
over 42 000		9 600 + 40% of excess over 42 000

Table II applies to non-resident individuals.

TABLE III

<i>Taxable Income</i> (In Pula)		<i>Tax</i> (In Pula)
<i>More Than</i>	<i>But not Exceeding</i>	
0	6 000	2,5% of every Pula
6 000	10 000	150 + 5% of excess over 6 000
10 000	20 000	350 + 10% of excess over 10 000
20 000	30 000	1 350 + 20% of excess over 20 000
30 000	40 000	3 350 + 30% of excess over 30 000
over 40 000		6 350 + 40% of excess over 40 000

Table III applies to —

- (1) a trust falling under section 14 (2);
- (2) the estate of a deceased person falling under section 17 (1).

TABLE IV

1. Resident company —	
(a) company tax	all taxable income 30%
(b) additional company tax	all taxable income 10%
2. Non-resident company	all taxable income 40%
3. Botswana Meat Commission	all taxable income 40%
4. Pension and provident fund	investment income as
not approved by the Commissioner	defined in section 50 (3) 7,5%

TABLE V

<i>Taxable Income</i> (In Pula)		<i>Tax</i> (In Pula)
<i>More Than</i>	<i>But not Exceeding</i>	
0	5 000	0
5 000	15 000	0 + 5% of excess over 5 000
15 000	25 000	500 + 10% of excess over 15 000
25 000	35 000	1 500 + 20% of excess over 25 000
35 000	45 000	3 500 + 30% of excess over 35 000
over 45 000		6 500 + 40% of excess over 45 000

Table V applies to any person other than a company in respect of the net aggregate gains of such person.

PASSED by the National Assembly this 2nd day of July, 1990.

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