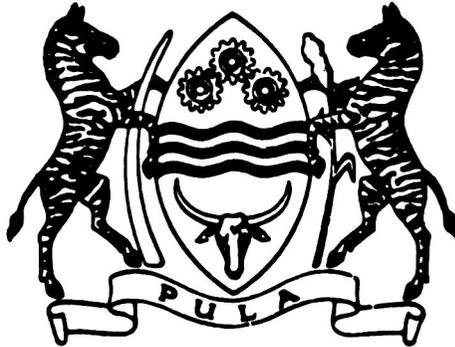


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Bill No. 19 of 1985

INCOME TAX (AMENDMENT) BILL, 1985
(Published on 5th July, 1985)

MEMORANDUM

A draft of the above Bill, which it is proposed to present to the National Assembly, is set out below.

2. The object of the Bill is to amend the Income Tax Act (Cap. 52:01) in order to effect a few minor changes.

3. With the amendment effected to section 5 of the Income Tax Act by section 3 of the Income Tax (Amendment) Act, 1982 (No. 28 of 1982) it would seem that the Commissioner of Taxes is precluded from using any information obtained in the course of his administration of the Income Tax Act for the purpose of administering any other fiscal law administered by him, for example the Capital Transfer Tax Act recently enacted by Parliament.

4. Clause 2 therefore proposes that section 5 should be amended to make it clear that the Commissioner is entitled to use any information obtained in the course of administering one fiscal law for the purpose of another fiscal law administered by him.

5. Under the existing law a resident married woman whose husband is resident abroad is treated as an unmarried person under section 13 and as such she is not entitled to the allowances and deductions to which a married person is entitled. Clause 3 proposes that section 13 should be amended to provide that a resident married woman whose husband is resident abroad should have the same allowances and deductions to which a married person is entitled.

6. Clause 3A introduces a new provision by the insertion of section 13A in the Income Tax Act. At present the taxable income of a husband and wife is charged in the name of the husband. The new section now proposes to give a husband and wife the option to elect the spouse under whose name tax should be charged. Such election will be binding on the parties for the tax year in which the option is exercised and for the next five succeeding tax years.

7. Clause 3B amends section 34. It provides that 60 per cent of any amount paid to any person under a life insurance policy within five years from the issue of the policy should be charged to tax. This is to prevent any person from defeating the purpose of the amendment to section 50 of the Income Tax Act effected by section 7 (b) of the Income Tax (Amendment) Act, 1984 (Act No. 18 of 1984).

8. Clause 4 amends section 46 by providing that in calculating the taxable income of every resident individual a standard allowance of P500 is to be deducted from the chargeable income of such individual. This allowance is in lieu of the allowance to which any individual is entitled under sections 48, 49 and 50. If, however, the amount of allowance and

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deductions to which any individual is entitled under sections 48, 49 and 50 exceeds the amount of the standard allowance, in which case, the Commissioner will, in assessing the tax payable by such individual, allow him the full allowance and deductions to which he would have been entitled under those three sections taking into account the deduction of the standard allowance.

9. Clause 5 is new. It provides that a person shall not be liable to furnish a tax return for any tax year in which his chargeable income does not exceed P11 500 in the case of a married person and P9 500 in the case of a single person. The concession does not apply to an employee whose gross income includes any amount in respect of which tax is not deductible under the Seventh Schedule. This provision is also inapplicable if the Commissioner of Taxes notifies a tax payer that he should furnish a tax return or if a tax payer himself notifies the Commissioner that his tax liability should be determined by an assessment.

10. Clause 6 amends section 82 to allow the Commissioner the right to make an original or additional assessment within a further period of four years after the end of the four years specified for making a return if he is satisfied that there has been an evasion of tax due to misrepresentation or the failure to furnish a tax return.

11. Clause 7 proposes to amend section 86 to give the tax payer who submits his tax return within the sixty day limit specified in the section but gives no formal notice of objection an extended period beyond the sixty days to enable him to lodge his objection.

12. Clause 8 amends section 103 by providing that any tax due and payable by a married person may be recoverable from the assets of the other spouse.

13. Clause 9 amends Part II of the First Schedule by providing, among other things, a new method for valuing stock where the Table containing amounts of standard value of stock is amended by either including or deleting livestock from any class of livestock listed in the Table.

14. The amendments effected to the Seventh Schedule by clause 10 are consequential necessitated by the proposed amendment to section 46.

P.S. MMUSI,
*Vice-President and Minister of
Finance and Development Planning.*

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Amendment of section 5 of Cap. 52:01
3. Amendment of section 13 of principal Act
- 3A. Insertion of section 13A in principal Act
- 3B. Amendment of section 34 of principal Act
4. Amendment of section 46 of principal Act
5. Insertion of sections 64A and 64B in principal Act
6. Amendment of section 82 of principal Act
7. Amendment of section 86 of principal Act
8. Amendment of section 103 of principal Act
9. Amendment of Part II of First Schedule to principal Act
10. Amendment of Seventh Schedule to principal Act

A BILL

—entitled—

An act to amend the Income Tax Act*Date of Assent:**Date of Commencement:*

ENACTED by the Parliament of Botswana.

1. (1) This Act may be cited as the Income Tax (Amendment) Act, 1985. Short title and commencement

(2) Subject to the provisions of subsection (3), this Act shall be deemed to have come into operation on 1st July, 1985.

(3) Section 3B shall be deemed to have come into operation on 1st July, 1984.

2. Section 5 of the Income Tax Act (in this Act referred to as the "principal Act") is hereby amended in subsection (3) thereof — Amendment of section 5 of Cap. 52:01

(a) by substituting for the full stop appearing at the end of paragraph (g) therein, a comma; and

(b) by adding at the end of the said paragraph (g) the following —

"and any information obtained by the Commissioner in the performance of his duties under this Act may be used by him for the purposes of any other fiscal law administered by him."

3. Section 13 of the principal Act is hereby amended by substituting for the provisions of that section, the following new provisions — Amendment of section 13 of principal Act

"(1) Any amount accrued to a married woman, including any amount deemed under section 14, 15 or 16 to have so accrued, shall be deemed to have accrued to her husband and shall be included in his gross income.

(2) Subsection (1) shall not apply to any amount accrued —

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- (a) to a woman after the death of her husband or her divorce or separation from him; or
- (b) to a married woman who is a resident and her husband is a non-resident.”.

Insertion of section 13A in principal Act

3A. The principal Act is hereby amended by inserting immediately after section 13 thereof the following new section —

“Election of wife by spouses as person in whose name tax is to be charged **13A.** (1) Subject to the provisions of this section, where a married woman and her husband are both residents, they may jointly elect that their taxable income derived from the aggregate of their gross income shall be charged to tax in the name of the woman and in the same amount as would have been charged on the husband.

(2) An election under this section must be made in such form and manner as may be prescribed and must be made not later than three months before the end of any tax year.

(3) An election under this section for any tax year shall be binding on the parties for that tax year and for the next five succeeding tax years.

(4) Notwithstanding the preceding provisions of this section the Commissioner may if at any time he is satisfied that an election made under this section is prejudicial to the assessment and collection of tax, disregard such election and shall accordingly inform the parties in writing.”.

Amendment of section 34 of principal Act

3B. Section 34 of the principal Act is hereby amended in subsection (2) thereof —

- (a) by deleting the word “and” which appears at the end of paragraph (i) of the proviso to the said subsections (2);
- (b) by substituting for the full stop which appears at the end of the subsection, a semicolon, and the word “and”; and
- (c) by adding at the end of paragraph (ii) of the proviso to the subsection the following new proviso —

“(iii) where a payment under a life insurance policy is made within five years from the commencement date of the insurance, as a result of the occurrence of an act, other than death, giving rise to benefits under the policy, six-tenth of the amount paid or payable shall be included in the gross income of that person.”.

Amendment of section 46 of principal Act

4. Section 46 of the principal Act is hereby amended —

- (a) by inserting immediately after subsection (1) (c) thereof the following new subsection —

“(1) (A) Notwithstanding the provisions of subsection (1) (a), in ascertaining the taxable income of a person who is an individual, there shall be deducted from the aggregate of his chargeable income an amount of P500 (in this section

referred to as "standard allowance") in lieu of any allowance and deductions (in this section referred to as the "normal allowance") to which he is entitled under sections 48, 49 and 50:

Provided that a person furnishing a tax return may, at the time of furnishing such return, elect either the standard allowance or normal allowance as the allowance which should be deducted from the aggregate of his chargeable income in ascertaining his taxable income.";

(b) in subsection (3) thereof by inserting immediately before the words "No person" which appear therein, the words "Subject to section 64A".

5. The principal Act is amended by inserting immediately after section 64 thereof the following new sections —

Insertion of sections 64A and 64B in principal Act

"Relief from liability to furnish tax returns in special cases

64A. (1) Notwithstanding section 64, an employee shall not be liable to furnish a tax return for any tax year in respect of which his chargeable income does not exceed —

- (a) in the case of a married person, P11 500; and
- (b) in the case of unmarried person, P9 500.

Non-application of section 64A

64B. The provisions of section 64A shall not apply to an employee in the following cases —

- (a) where in any tax year his gross income includes any amount in respect of which tax is not deductible under the Seventh Schedule;
- (b) if he is notified by the Commissioner that he is required to furnish a tax return under section 66 for that tax year; or
- (c) if he notifies the Commissioner that his tax liability should be determined on assessment and furnishes a tax return for that purpose."

6. Section 82 of the principal Act is hereby amended by substituting for subsection (1) thereof the following new subsections —

Amendment of section 82 of principal Act

"(1) Subject to the provisions of this section, an assessment may be made in relation to any person under this Act at any time prior to the expiry of four years after the end of the tax year to which it relates.

(1A) An assessment may be made at any time prior to the expiry of four years from the end of the four years specified in subsection (1) if the Commissioner is satisfied that an amount which was subject to tax and should have been assessed under subsection (1) has not been assessed because the person in relation to whom an assessment should have been made under the said subsection (1) —

- (a) has misrepresented certain material facts or neglected or failed to disclose such facts;

- (b) has failed to furnish a tax return; or
- (c) has furnished an incorrect tax return.

(1B) Where a person in relation to whom an assessment should have been made under subsection (1) is deceased, such assessment may only be made within three years after the end of such tax year.

(1C) Where any fraud or wilful default has been committed in connexion with tax for any tax year by or on behalf of any person, and —

- (a) such person is an individual who is alive at the time the assessment is made, or a person other than an individual, an assessment in relation to such tax year may be made at any time; or
- (b) such person is deceased, subject to subsection (2), an assessment may only be made in respect of the tax year in which he died and the five immediately preceding tax years.”.

Amendment of section 86 of principal Act

7. Section 86 of the principal Act is hereby amended in subsection (5) thereof —

- (a) by deleting the word “or” which appears at the end of paragraph (a);
- (b) by substituting for the colon which appears immediately before the proviso to the subsection, a semicolon and the word “or”; and
- (c) by inserting immediately before the proviso, the following new paragraph —
“(c) lodged with him within such further period as he shall specify if a tax return was furnished to him within the sixty day period prescribed by subsection (1):”.

Amendment of section 103 of principal Act

8. Subsection (1) of section 103 of the principal Act is hereby amended by substituting for that subsection the following new subsection —

“(1) Any tax due and payable by a married person may be recovered from the assets of the other spouse.”.

Amendment of Part II of First Schedule to principal Act

9. Part II of the First Schedule to the principal Act is hereby amended —

- (a) in paragraph 1 thereof by substituting for the full stop which appears at the end of the paragraph, a colon, and by adding at the end of the said paragraph the following proviso —

“Provided that horses, donkeys and mules used as working animals or held for purposes other than for the business of farming shall not be included in the value of stock held.”;

- (b) in paragraph 3 thereof —
 - (i) by deleting the words “not being livestock acquired by purchase for breeding purposes” which appear in subparagraph (1),

- (ii) by substituting for subparagraph (2) therein, the following new subparagraph —
 - “(2) The exercise of an option by a farmer under subparagraph (1) in respect of any class of livestock specified in the Table containing the amounts of standard value for livestock for any tax year shall be binding upon such farmer in that tax year and every subsequent tax year in respect of which that livestock is specified in the Table.”,
- (iii) by inserting immediately after subparagraph (2) the following new subparagraph —
 - “(2A) Where the Table containing the amounts of standard value for any particular class of livestock is amended in any tax year —
 - (a) by including any class of livestock not included in the previous year, any farmer having such livestock may, at the end of that tax year, exercise a further option in accordance with the provisions of subparagraph (1) and the exercise of such option shall be binding on him in accordance with the provisions of subparagraph (2); and
 - (b) by excluding any class of livestock included in the previous year, any option exercised by any farmer in respect of such livestock before its removal from the Table shall lapse and the value of such stock held by the farmer at the end of that tax year shall be ascertained —
 - (i) in the case of livestock acquired by purchase in accordance with either the provisions of subparagraph (1) (a) (i) or (ii), as the farmer may choose to adopt and whichever method adopted by him shall be binding on him in accordance with the provisions of subparagraph (2), and
 - (ii) in the case of livestock acquired otherwise than by purchase, in accordance with the provisions of subparagraph (1) (b) (i).”;
- (c) by substituting for paragraph 4 thereof, the following new paragraph —
 - “4. Notwithstanding the provisions of paragraph 2 (a), any farmer referred to in the said paragraph, whose livestock is affected by any amendment made in any tax year to the Table shall revalue the livestock held by him at the beginning of that tax year by adopting the same method which he used in valuing his stock at the end of that tax year.”.

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Amendment
of Seventh
Schedule
to principal
Act

- 10. The Seventh Schedule is hereby amended —**
- (a) in paragraph 3 (3) thereof —**
- (i) by substituting for the words “an employees’s” which appear therein, the words “a resident employee’s”,
 - (ii) by substituting for the words “made at” which appear therein, the words, “based on”;
- (b) in paragraph 4 thereof —**
- (i) by deleting the word “and” which appears at the end of subparagraph (2) (a),
 - (ii) by substituting for the full stop which appears at the end of subparagraph (2) (b), a semicolon and the word “and”, and
 - (iii) by adding at the end of the said subparagraph (2) (b), the following —
“(c) the standard allowance deductible under section 46 (1) (A).”, and
 - (iv) by inserting immediately before the words “Tax shall be” appearing in subparagraph (3), the words “In the case of a resident individual,”.

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