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INCOME TAX (AMENDMENT) ACT, 1987

No. 7



of 1987

ARRANGEMENT OF SECTIONS

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An Act to amend the Income Tax Act

Date of Assent: 29th June, 1987.

Date of Commencement: 30th June, 1987.

ENACTED by the Parliament of Botswana.

1. (1) This Act may be cited as the Income Tax (Amendment) Act, 1987.

Short title
and
commence-
ment

(2) The provisions of this Act, other than those in subsections (1) and (3) of section 5 thereof, shall apply to tax years commencing on or after 1st July, 1987.

Amendment
of section
2 of the
principal
Act

2. Paragraph (b) of the definition of "married person" in section 2 of the principal Act is amended —

- (a) by the substitution for the words "throughout the tax year" of the words "during any part of the tax year"; and
- (b) by the substitution for the word "last" of the word "first".

Cessation
of
application
of section 13
of the
principal
Act

3. Section 13 of the Income Tax Act (hereinafter referred to as the principal Act) shall cease to apply to a married woman in respect of any amount accrued or deemed to have accrued to her after the 30th of June, 1987.

Cessation of
application
of section
13A of the
principal
Act

4. Notwithstanding the provisions of subsection (3) thereof, section 13A of the principal Act shall cease to apply in relation to the taxable income of married woman and her husband, accruing or deemed to have accrued in any year commencing after the 30th of June, 1987.

Amendment
of section 31
of the
principal Act

5. Section 31 of the principal Act is hereby amended —

- (1) by the addition to subsection (2) thereof of the following new paragraph as paragraph (c) and this paragraph shall be deemed to have come into effect on 1st July, 1986 —

"(c) any severance payment made under section 28 of the Employment Act".

- (2) by the substitution for paragraph (i) of subsection (3) thereof of the following new paragraph —

"(i) in the case of any quarters or residence provided during any tax year for an employee whose employment income, excluding the value of the quarters or residences, for that year does not exceed that portion of the taxable income upon which in terms of section 59 no tax is leviable, the value of the quarters or residence shall be deemed to be nil".

- (3) by the deletion of subsection (7) thereof and by the addition thereto of the following new subsections as subsections (7) and (8) respectively which subsections shall be deemed to have come into effect on 1st July, 1986 —

"31(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 excess over one quarter of that amount shall not be included in gross income and the part of that amount included in gross income 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 due and 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 arms- length payment.

(8) "Approved Service Gratuity" means a payment made to an employee in accordance with the written conditions of employment, approved by the Commissioner, which conditions shall include provisions that —

- (i) the conditions must apply to all permanent employees of the employer to whom no retirement benefit accrues under any retirement benefit scheme established by their employer whether such scheme has been approved under the Act or not;
- (ii) the payment is to be in recognition of a period of continuous employment of not less than 5 years;
- (iii) a payment made in the course of the employment may be made only at the end of a period of continuous employment of five years or a multiple of five years;
- (iv) a payment made shall not exceed five weeks pay for each year of service at the rate of pay applicable to the last year of service in respect of which the payment is made;
- (v) a payment made on cessation of employment may be made in respect of any residual period of service of less than five years provided that the employee has served in the employment for a continuous period of not less than five years;
- (vi) a period of service may be recognized by a payment of gratuity once only;
- (vii) the total gratuity up to the time any payment is made must not exceed two years pay at the rate current when the payment is due; and
- (viii) any changes in the conditions shall only apply upon approval by the Commissioner;

Provided that where the Commissioner is of the opinion that there is good reason for so doing he may approve conditions which do not comply with these requirements in all respects."

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Amendment of subsection (1) of section 39 of the principal Act

6. Subsection (1) of section 39 of the principal Act is hereby amended —

(a) by the addition of the following new paragraph thereto —

“(o) contributions, not exceeding a sum of P1 500, in the year in which the deduction is claimed, by an employee to an approved superannuation fund.”

(b) by the deletion of the word “and” appearing at the end of the paragraph (m) and the addition of the word “and” after paragraph (n) thereof.

Amendment of section 43A of the principal Act

7. Subsection (1) of section 43A is hereby amended by the addition thereto of the following proviso before the proviso already in that subsection —

“Providing that a party to a marriage may also with the consent of the other party to such marriage elect that all or part of such loss shall be deducted in ascertaining the chargeable income in that year of such other party to the marriage.”

Amendment of section 46 of the principal Act

8. Section 46 of the principal Act is amended —

(a) by the substitution for paragraph (a) of subsection (1) thereof of the following new paragraph —

“(a) where that person is an individual, the aggregate of his chargeable income from all sources for that tax year less any deduction to which he is entitled under section 51”.

(b) by the deletion of subsections (1) A and (2) thereof;

(c) by the substitution for subsection (3) thereof of the following new subsection —

“(3) 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”.

Cessation of the application of sections 47, 48, 49 and 50 of the principal Act

9. Sections 47, 48, 49 and 50 of the principal Act shall cease to apply in respect of any tax year commencing on or after the 1st of July, 1987.

Amendment of section 59 of the principal Act

10. Section 59 of the principal Act is hereby amended —

(a) by the substitution for subsection (1) thereof of the following new subsection —

“(1) Subject to this Act, tax shall be charged on the taxable income for each tax year at the relevant rates specified for that tax year in the Tenth Schedule”.

(b) by renumbering subsection (2) as subsection (4) and adding the following two new subsections as subsections (2) and (3).

“(2) Notwithstanding the provisions of subsection (1), where in respect of a resident individual who is or was a party to a marriage in any tax year the amount of the tax

chargeable on him for that year under Table I of the Tenth Schedule exceeds the amount of the tax that would be chargeable if the taxable incomes of both parties to the marriage were added together and charged to tax under Table II of the said Schedule as his income, the tax chargeable on him for that tax year shall be reduced by the difference."

(3) Notwithstanding the provisions of subsection (1) where for any part of a tax year a resident individual is a married person only by reason of paragraph (b) of the definition of that term in section 2, tax shall be charged under Table II of the Tenth Schedule on the taxable income of that individual for that year."

11. Section 60 of the principal Act shall cease to apply in respect of any tax year commencing on or after the 1st July, 1987.

Cessation
of the
application
of section
60 of the
principal
Act

12. Subsection (4), (5) and (6) of section 60A of the principal Act shall cease to apply in respect of any tax year commencing on or after the 1st of July, 1987.

Amendment
of section
60A of the
principal
Act

13. Section 64 of the principal Act is hereby amended —

(a) by the substitution for subsection (1) thereof of the following new subsection —

Substitution
of subsection
(5) of
section
64 of the
principal
Act

"(1) Subject to section 76 every person shall furnish a return in the prescribed form of his gross income (hereinafter referred to as a "tax return") in respect of any tax year, either personally or in a representative capacity, within two months after the end of that tax year, and such form shall be signed by him or by an agent authorised by him on his behalf."

(b) by the substitution of the following new subsection for subsection (5) thereof —

"(5) Notwithstanding the provisions of subsection (1), the following persons shall not unless specifically requested by the Commissioner be required to furnish a tax return —

- (a) any person who has been informed in writing or by any general notification that a tax return is not required for the tax year;
- (b) any resident individual whose taxable income for any tax year does not exceed P5 000;
- (c) any individual the whole of whose income is remuneration subject to the provisions of the Seventh Schedule;

- (d) a person whose gross income accrued or is deemed to have accrued from sources situated or deemed to be situated in Botswana to a non-resident for any tax year and consists only of amounts to which section 32 (1) relates and tax is deducted from the payment of all such amounts under section 58 and in accordance with the Ninth Schedule;”.

Cessation
of
application
of sections
64A and 64B
of the
principal
Act

14. Section 64 A and 64 B of the principal Act shall cease to apply in respect of any tax year commencing on or after the 1st of July, 1987.

Amendment
of section
103 of the
principal
Act

15. Section 103 of the principal Act is hereby amended by the substitution for subsection (1) thereof of the following new subsection—

“(1) No tax due and payable by a married person may be recovered from the assets of the other spouse unless the Commissioner is satisfied that there has been a transfer of assets from the spouse liable to tax to the other and that such transfer was intended to avoid the recovery of the tax due.”

Amendment
of section
109 of the
principal
Act

16. Subsection (2) of section 109 of the principal Act shall cease to apply in respect of any tax year commencing on or after the 1st of July, 1987.

Addition of
new
section 134
to the
principal Act

17. The principal Act is hereby amended by the addition thereto of the following new section —

“134 Where under this Act or the previous Act gross income from any source accruing to a party to a marriage has been deemed to accrue to the other party to the marriage any assessable income arising to or assessed loss carried forward by that other party from that source or any right of election exercised or allowance granted in respect of that income shall be deemed to have arisen to, been carried forward by, been exercised by or granted to the first mentioned party and the like consequences shall follow and rights accrue to that party as would have followed and accrued to the other party with regard to the said assessable income, assessed loss, election or allowance granted.”.

Amendment
of the
Seventh
Schedule
of the
principal
Act

18. The Seventh Schedule of the principal Act is hereby amended by—

- (a) the substitution for the figure “1 200” appearing in subparagraph (3) of paragraph 3 thereof of the figure “1 500”;
- (b) the substitution for subparagraph (2) of paragraph 4 thereof of the following new sub-paragraph —

- “(2) The tax to be deducted in accordance with the tables prescribed under this paragraph shall take into account the rates of tax payable under section 59;”
- (c) the substitution for subparagraph (3) of paragraph 4 thereof of the following new subparagraph —
- “(3) in the case of a resident individual tax shall be deducted by a reference to Tax Table I of the Tenth Schedule unless the employee furnishes to the employer a declaration in the prescribed form that he or she is a married person whose spouse has no taxable income.”
- (d) the deletion in subparagraph (5) of paragraph 4 of the words “or personal allowances deductible” appearing therein.

19. The principal Act is hereby amended by the addition of the following new Part VII to the Tenth Schedule thereto —

Amendment
of the
Tenth
Schedule
of the
principal Act

“PART VII

Rate of Tax 1987/88 and Subsequent tax years

TABLE I

Taxable Income (Pula)		Tax (Pula)
More than but not exceeding		
0	5000	0
5000	6000	5% of every P1
6000	8000	50 + 10% of excess over 6000
8000	11000	250 + 15% of excess over 8000
11000	15000	700 + 20% of excess over 11000
15000	20000	1500 + 25% of excess over 15000
20000	25000	2750 + 30% of excess over 20000
25000	30000	4250 + 35% of excess over 25000
30000	35000	6000 + 40% of excess over 30000
35000	40000	8000 + 45% of excess over 35000
Over	40000	10250 + 50% of excess over 40000

Table I applies to (1) a resident unmarried individual, and
(2) a resident married individual whose spouse has taxable income

A.26**TABLE II**

Taxable Income (Pula)		Tax (Pula)
More than but not exceeding		
0	5000	0
5000	8000	5% of every P1
8000	11000	150 + 10% of excess over 8000
11000	15000	450 + 15% of excess over 11000
15000	19000	1050 + 20% of excess over 15000
19000	24000	1850 + 25% of excess over 19000
24000	29000	3100 + 30% of excess over 24000
29000	34000	4600 + 35% of excess over 29000
34000	39000	6350 + 40% of excess over 34000
39000	44000	8350 + 45% of excess over 39000
Over	44000	10600 + 50% of excess over 44000

Table II applies to a resident married individual whose spouse does not have taxable income and to persons referred to in subsections (2) and (3) of section 59.

TABLE III

Taxable Income (Pula)		Tax (Pula)
More than but not exceeding		
0	15000	20% of every P1
15000	20000	3000 + 25% of excess over 15000
20000	25000	4250 + 30% of excess over 20000
25000	30000	5750 + 35% of excess over 25000
30000	35000	7500 + 40% of excess over 30000
35000	40000	9500 + 45% of excess over 35000
Over	40000	11750 + 50% of excess over 40000

Table III is applicable to non-resident individuals.

TABLE IV

Taxable Income (Pula)		Tax (Pula)
More than but not exceeding		
0	1000	5% of every P1
1000	3000	50 + 10% of excess over 1000
3000	6000	250 + 15% of excess over 3000
6000	10000	700 + 20% of excess over 6000
10000	15000	1500 + 25% of excess over 10000
15000	20000	2750 + 30% of excess over 15000
20000	25000	4250 + 35% of excess over 20000
25000	30000	6000 + 40% of excess over 25000
30000	35000	8000 + 45% of excess over 30000
Over	35000	10250 + 50% of excess over 35000

Table IV is applicable to

- (1) a trust falling under section 15 (2)
- (2) the estate of a deceased person falling under section 18 (1).

TABLE V

1. Resident company	all taxable income 40%
2. Non-resident company	all taxable income 40%
3. Branch of non-resident company	profits tax 15%
4. Botswana Meat Commission	all taxable income 40%

PASSED by the National Assembly this 23rd day of June, 1987.

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