

INCOME TAX (AMENDMENT) ACT, 2006

No. 14



of 2006

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Act to amend the Income Tax Act*Date of Assent:* 30th June, 2006*Date of Commencement:* 1st July, 2006

ENACTED by the Parliament of Botswana.

Short title and
commence-
ment

1. This Act may be cited as the Income Tax (Amendment) Act, 2006 and shall come into operation on 1st July, 2006.

Amendment
of Cap. 52:01

2. The Income Tax Act (hereinafter referred to as “the Act”) is amended by substituting for the word —

- (a) “Commissioner” wherever it occurs in the Act the word “Commissioner General”; and
- (b) “Deputy Commissioner” wherever it occurs in the Act the word “Commissioner of Internal Revenue”.

Amendment
of section 2

3. Section 2 of the Act is amended —

- (a) by substituting for the definition of “employment income” the following new definition —
 ““employment income”, in relation to any person, means the gross amount, whether in cash or otherwise, accrued or deemed to have accrued to such person from employment, and includes any pensions, annuities or other benefits”;
- (b) by inserting in the correct alphabetical order the following new definitions —
 ““disposal”, for the purposes of section 35 and the Tenth Schedule, includes —
 (a) the sale, lease, exchange or relinquishment of the asset or the extinguishment of any rights in the asset;
 (b) the compulsory acquisition of the asset under any law;
 (c) the conversion by the owner of a capital asset into stock-in-trade of a business carried on by the owner; or
 (d) any transaction which has the effect of transferring or enabling the use or enjoyment of any immovable property;”
 “investment company” means a company or trust engaged in the business of investing the pooled capital of shareholders in financial instruments (including shares, debentures and units) of other companies, and the term ‘similar company’ shall be construed accordingly;
 “investment income” means income accrued by way of interest and net aggregate gains as determined under the Tenth Schedule;
 “securitization” means the process of creating a financial instrument by combining other financial assets, which are then marketed to investors;
 “special purpose vehicle” means a legal entity whose operations are limited to the acquisition, financing and selling of specific assets;”

Amendment of
section 22

4. Section 22 of the Act is amended by —

- (a) renumbering the section as subsection (1); and
- (b) inserting the following new subsection (2) —

- “(2) The proceeds of a collective investment undertaking derived in the ordinary course of its business from the sale of shares and securities shall be treated as part of its business income.”.
- 5.** Section 32 of the Act is amended by substituting for subsection (15) the following new subsection —
- “(15) For the purposes of subsection (14), “retrenchment package” means remuneration made to an employee on termination of his or her contract of employment for the purpose of reducing the size of the work force.”.
- 6.** Section 33(5) of the Act is amended by substituting for the word “ (3)” the word “ (4)”.
- 7.** Section 51 of the Act is amended by deleting subsection (4) thereof.
- 8.** Section 58 of the Act is amended —
- (a) in subsection (1) by substituting for paragraph (b) the following new paragraphs —
- “(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;”;
- (b) in subsection (4) by inserting the following new paragraphs —
- “(c) any payment of interest to a resident where the recipient of such interest is a person exempt from taxation; and
- (d) an IFSC company, a banking company or a financial institution receiving such interest in its ordinary course of business, ”.
- 9.** Section 60 of the Act is amended —
- (a) in subsection (1) by substituting for the words “Table IV” the words “Table III”;
- (b) in subsection (3) by deleting the proviso; and
- (c) by inserting immediately after subsection (3) the following new subsection —
- “(3A) No additional company tax shall be carried forward for set-off against withholding tax for more than 5 years following the tax year in which it was paid.”.
- 10.** Section 78 of the Act is amended —
- (a) by inserting immediately after subsection (2) the following new subsection —
- “(2A) Where a person, other than a company, has the option to furnish a tax return in terms of section 65 (2), the person may estimate the tax payable for the current tax year for the purpose of making a lump sum payment of tax for that tax year as provided in section 95 (5).”;
- (b) in subsection (3) by substituting for the word “(3)” the word “(4)”.
- 11.** Section 95 of the Act is amended —
- (a) by inserting immediately after subsection (2), the following new subsection —

Amendment of section 32

Amendment of section 33

Amendment of section 51

Amendment of section 58

Amendment of section 60

Amendment of section 78

Amendment of section 95

“(2A) Persons to whom section 65 (2) applies shall also have an option to pay the tax in monthly instalments on condition that the proportion of the tax paid would not be less than one third of the tax payable in the case of payment by quarterly instalments.”; and . . .

- (b) by inserting immediately after subsection (4), the following new subsection —

“(5) Notwithstanding subsections (2), (3) and (4), where a person, not being a company, has tax payable as estimated under section 78 (7A) in any tax year, that person may pay such tax in one lump sum by the due date of the furnishing of a tax return under section 65 (2) for that tax year.”.

Amendment of section 111

- 12.** Section 111 of the Act is amended in subsection (1) by —

- (a) substituting for the full stop at the end of the subsection, a comma; and
 (b) inserting immediately after the word “Fund”, at the end of the subsection, the words “and the amount of the excess will also include any amount of interest paid in excess.”.

Repeal of sections 113, 114 and 115

- 13.** The Act is amended by the repeal of sections 113, 114 and 115.

Amendment of section 117

- 14.** Section 117 of the Act is amended in subsection (1) by inserting immediately after the words “tax return” the words “including a withholding tax return”.

Amendment of section 118

- 15.** Section 118 of the Act is amended in subsection (7) —

- (a) in paragraph (i) by substituting for the words “a non resident” the words “any person”; and
 (b) by inserting the following new paragraph —
 “(m) fails to deliver to any contractor a certificate of tax deducted within the time prescribed in the Sixth Schedule.”.

Amendment of section 122

- 16.** Section 122 of the Act is amended in paragraph (e) by substituting for the word “138” the word “144”.

Amendment of section 126

- 17.** Section 126 of the Act is amended —

- (a) in paragraph (a) by substituting for the words “a non-resident” the words “any person”; and
 (b) by inserting the following new paragraph —
 “(d) fails to deliver to any contractor a certificate of tax deducted within the time prescribed in the Sixth Schedule.”.

Amendment of section 143

- 18.** Section 143 of the Act is amended by substituting for the words “On Botswana Government Service” the words “On the Service of the Botswana Unified Revenue Service”.

Amendment of section 144

- 19.** Section 144 of the Act is amended by substituting for the word “seven” the word “eight” wherever it occurs in subsections (1), (2) and (3).

Amendment of Second Schedule

- 20.** The Second Schedule to the Act is amended —

- (a) in Part I by inserting immediately after paragraph (xvii) the following new paragraph —
 “(xviii) any special purpose vehicle formed by the Government for securitization of public assets.”;

(b) in Part II —

- (i) by substituting the words “P2, 500” in paragraph (xxxi) thereof, for the words “P6, 000”; and
- (ii) by inserting immediately after paragraph (xli) the following new paragraph —
“(xlii) any amount of dividend distributed by a special purpose vehicle formed by the Government for the securitization of public assets.”.

21. The Fourth Schedule to the Act is amended in paragraph 3 (1) of Part II by substituting for the words “within six years after the end of that” the words “during the current”.

Amendment
of Fourth
Schedule

22. The Fifth Schedule to the Act is amended in the proviso to paragraph 3 (3) by deleting the words “or P9 000, whichever is less”.

Amendment
of Fifth
Schedule

23. The Sixth Schedule to the Act is amended —

- (a) by deleting the words “NON - RESIDENTS” which appear at the end of the heading of the Schedule; and
- (b) in paragraph 5 by substituting for the words “within 15 days” the words “by the due date of payment of withholding tax under section 99”.

Amendment
of Sixth
Schedule

24. The Seventh Schedule to the Act is amended in paragraph 2 by inserting immediately after subparagraph (c) the following new paragraph —
“(d) 10 per cent of interest to a resident in excess of P1,500 in a quarter of a year.”.

Amendment
of Seventh
Schedule

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

Amendment of
Eighth Schedule

“EIGHTH SCHEDULE

RATES OF TAX FOR 2006/2007 AND SUBSEQUENT YEARS (Section 59)

TABLE I

<i>Taxable Income</i>	<i>Tax</i>
0 - 30 000	0
30 000 - 60 000	0 + 5% of the excess over P30 000
60 000 - 90 000	1 500 + 12.5% of excess over P60 000
90 000 - 120 000	5 250 + 18.75% of excess over P90 000
120 000 and above	10 875 + 25% of excess over P120 000

Table I applies to resident individuals.

TABLE II

<i>Taxable Income</i>	<i>Tax</i>
0 - 60 000	5% of every Pula
60 000 - 90 000	3000 + 12.5% of excess over P60 000

90 000 – 120 000
Over 120 000

6750 + 18.75% of excess over P90 000
12375 + 25% of excess over P120 000

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

TABLE III

1. Resident company	Basic company tax	15%
	Additional company tax	10%
2. Non-resident company	All taxable income	25%
3. Botswana Meat Commission	All taxable income	15%
4. Pension and Provident Fund not approved by the Commissioner General	Investment income as defined in terms of section 51 (3)	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		25%

TABLE IV

<i>Taxable Income</i>	<i>Tax</i>
0 – 15 000	0
15 000 – 60 000	0 + 5 % of the excess over 15 000
60 000 – 90 000	2250 + 12.5% of the excess over P30 000
90 000 – 120 000	6000 + 18.75% of excess over P60 000
Over 120 000	11625 + 25% of excess over P120 000

Table IV applies to net aggregate gains of individuals.”.

Amendment of
Tenth
Schedule

26. The Tenth Schedule to the Act is amended —

(a) in paragraph 1 by —

(i) substituting for subparagraph (c) the following paragraph —
“(c) the principal private residence of any individual who is the owner of such residence:

Provided that —

(i) proceeds derived from the disposal of a principal private residence, shall only be exempt from tax if the proceeds from the gains of the disposal are re-invested in a property used for residential purposes within a period of 24 months of the disposal thereof;
or

- (ii) if the proceeds are not so re-invested in residential property, the exemption shall be granted only in respect of the disposal of the first principal private residence.”;
- (ii) substituting for subparagraph (d) the following paragraph —
“(d) subject to paragraph 1A, any shares or units in or debentures of a resident company which is a public company under section 130 of the Act, or any shares, units or debentures that are actually traded on the Botswana Stock Exchange:
Provided that the exemption granted under this paragraph shall exclude proceeds of sale of shares or units in or debentures of a company undertaken by any investment company or similar company or any other company for the purpose of earning profits in the ordinary course of business;”;
- (iii) inserting, immediately after subparagraph (f), the following new subparagraphs —
“(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;
(h) any shares in an International Financial Services Centre company.”;
- (iv) inserting, immediately after paragraph 1, the following new paragraph —
“1A. A company that has released for trading 49 per cent or more of its equity shares on the Botswana Stock Exchange shall have the entire stock of its equity shares eligible for exemption.”;
- (b) in paragraph 4 by substituting for subparagraph (e) the following paragraph —
“(e) if the property disposed of is immovable property, the deduction ascertained in accordance with paragraph 8 hereof:
Provided that a sale of shares of a company owning immovable property as the dominant underlying asset of the company shall be deemed to be a sale of the immovable property.”;

PASSED by the National Assembly this 30th day of June, 2006.

A. MATI HAKU,
Clerk of the National Assembly.

VALUE ADDED TAX (AMENDMENT) ACT, 2006

No. 15



of 2006

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Amendment of Cap. 50:03
3. Amendment of section 8 of the Act
4. Amendment of section 9 of the Act
5. Amendment of section 18 of the Act
6. Amendment of section 19 of the Act
7. Amendment of section 44 of the Act
8. Amendment of section 62 of the Act
9. Amendment of First Schedule to the Act
10. Amendment of Second Schedule to the Act

An Act to amend the Value Added Tax Act*Date of assent:* 30th June, 2006*Date of Commencement:* 1st July, 2006

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Value Added Tax (Amendment) Act, 2006 and shall come into operation on 1st July, 2006.

Short title and commencement

2. The Value Added Tax Act (in this Act referred to as "the Act") is amended in section 2 thereof —

Amendment of Cap. 50:03

(a) by inserting in the correct alphabetical order the following new definition —

““Commissioner General” means the Commissioner of the Revenue Service appointed under section 22(1) of the Botswana Unified Revenue Service Act;”;

Cap. 53:03

(b) by substituting for the word “Director” wherever it occurs in the Act, the words “Commissioner General”;

(c) in the definition of “input tax” by inserting immediately after paragraph (b) the following new paragraphs —

“(c) transfer duty required to be paid under the Transfer Duty Act; and

Cap. 53:01

(d) any tax deemed to have been paid for purposes of section 19(1), which shall be an amount equal to the tax fraction of the lesser of any consideration in money or the fair market value of the supply (not being a taxable supply) to the registered person by way of sale of any second hand goods situated in Botswana by a resident.”.

Amendment
of section 8 of
the Act

3. Section 8 of the Act is amended by —

- (a) substituting for subsection (4) the following subsection —
“(4) Subject to subsection (18), a supply of goods under a credit agreement occurs when the goods are delivered or the time any payment for the supply is received, whichever is earlier.”;
- (b) inserting immediately after subsection (16) the following new subsections —
“(17) Notwithstanding the provisions of this section, a supply of immovable property occurs when the transfer deed is registered with the Registrar of Deeds or when any payment is received, whichever occurs earlier.
(18) A supply of —
(a) an electrical connection under the Botswana Power Corporation’s Rural Electrification Scheme; or
(b) housing by the Botswana Housing Corporation under the Tenant Purchase Scheme, pursuant to a hire-purchase agreement, occurs as each payment is due or is made under that agreement, whichever is earlier.”.

Amendment
of section 9 of
the Act

4. Section 9 of the Act is amended by inserting immediately after subsection (19) the following new subsection —

“(20) The value of a supply of an electrical connection or a supply of housing referred to under section 8 (18) is an amount equal to the instalment due or paid under the scheme.”

Amendment
of section 18
of the Act

5. Section 18 of the Act is amended in subsection (11) by substituting for paragraph (a) the following paragraph —

“(a) a taxable supply of any goods on hand, including capital goods and goods that were acquired before the commencement of this Act, unless input tax under section 20 (2) was denied; and”.

Amendment
of section 19
of the Act

6. Section 19 of the Act is amended —

- (a) in subsection (1) by substituting for paragraph (a) the following paragraph —
“(a) subject to this section and section 20, the total amount of input tax —
(i) payable in respect of taxable supplies made to the person during the tax period;
(ii) paid in respect of any import of goods by the person during the tax period in the course of furtherance of a taxable activity carried on by the person; and
(iii) allowed under section 21 for the tax period, and”;
- (b) by substituting for paragraph (f) the following paragraph —
“(f) subject to paragraphs (g), (h), and (i), an amount equal to the tax fraction of the lesser of —
(i) the amount paid for, or
(ii) the fair market value, including tax, of second-hand goods acquired in Botswana during the tax period by a registered person from a person (registered or not registered) in a transaction not subject to tax if the goods are taxable at a positive rate under this Act and are acquired for the purpose of making taxable supplies, or

- (iii) shall not exceed the amount of transfer duty which was or would have been payable in terms of this paragraph for second hand goods contemplated in paragraph (c) of the definition of input tax in section 2;”;
- (c) by inserting immediately after subsection (1) the following new subsection —
 - “(1A.) Notwithstanding the provisions of paragraph (a) of subsection (1), a claim for input tax credit can be filed —
 - (a) for a person whose tax period under section 25 or under the regulations issued under that section is a period of one month, up to the next three tax periods;
 - (b) for a person whose tax period under section 25 or under the regulations issued under that section is a period of two months, during the next tax period, and
 - (c) for a person who has paid tax in respect of any imports of goods, in the next tax period.”

7. Section 44 of the Act is amended —

- (a) in subsection (1) by substituting for paragraph (a) the following paragraph —
 - “(a) in the case of a company, other than a company in liquidation —
 - (i) where the company is an incorporated company, any director or person that has authority over the disbursement of corporate funds or disposal of corporate assets,
 - (ii) where the company is an incorporated company that has a public officer in addition to the person under subparagraph (i), that public officer,
 - (iii) in the case of an unincorporated association or body, a member of the committee or management responsible for accounting for the receipt and payment of moneys of the association or body; or
 - (iv) in any other case, a person who is responsible for accounting for the receipt and payment of moneys or funds on behalf of the company;”
- (b) in subsection (3) by substituting for the words “subsection (5)” the words “subsections (5) and (5A)”;
- (c) by inserting at the beginning of the subsection (5) the words “Subject to subsection (5A);
- (d) by inserting immediately after subsection (5) the following new subsection —
 - “(5A) Notwithstanding subsection (5), a person who was a director of the company at the time of the commission of any act referred to in subsection (5) shall be liable, jointly and severally, for any tax payable by the company unless that person proves, to the satisfaction of the Commissioner General, that the failure by the company to pay the tax was not due to any negligence on his or her part.”

Amendment
of section 44
of the Act

Amendment
of section 62
of the Act

8. Section 62 of the Act is amended by —

(a) substituting for subsection (4) the following subsection —

“(4) A person dissatisfied with a decision of the Commissioner General under subsection (1) or (5) may appeal against such decision only in accordance with the provisions of Part VIII.”;

(b) inserting immediately after subsection (4) the following new subsections —

“(5) After first consulting the accounting officer for purposes of the Finance and Audit Act, the Commissioner General may, if he is satisfied that the same is irrecoverable, remit any amount of tax, not exceeding P50,000, unpaid by any person in respect of any tax year.

(6) The Minister may remit wholly or in part any tax payable by any person where he is satisfied that it is just and equitable to do so, or where he is satisfied that such tax is irrecoverable.”.

Cap. 54:01

Amendment
of First
Schedule to
the Act

9. The First Schedule to the Act is amended in paragraph 2 by inserting immediately after subparagraph (s) the following new subparagraphs —

“(t) a supply of —

(i) millet grain,

(ii) millet meal,

(iii) wheat grain,

(iv) maize cobs,

(v) flour,

(vi) sugar, and

(vii) setswana beans

in their natural state and not mixed with other products, to the extent provided in the regulations;

(u) a supply of pesticides specified under Customs Tariff Heading 38:08;

(v) a supply of fertilizers specified under Customs Tariff chapter 31:01-31:05;

(w) a supply of tractors specified under Customs Tariff Heading 8701.90 when acquired for farming by a person operating a farming business, to the extent provided in the regulations.”

Amendment
of Second
Schedule to
the Act

10. The Second Schedule to the Act is amended in paragraph 2 by inserting immediately after subparagraph (f) the following new subparagraphs —

“(g) a supply of domestic passenger transportation by road or rail, other than the transportation of tourists, to the extent provided in the regulations;

(h) cash grants made by or received from the State, to the extent provided in the regulations;

(i) a supply of condoms; and

(j) donations”.

PASSED by the National Assembly this 30th day of June, 2006.

A. MATLHAKU,
Clerk of the National Assembly.