INCOME TAX (AMENDMENT) ACT, 1996

No. 11 **of 1996**

ARRANGEMENT OF SECTIONS

SECTION

An Act to amend the Income Tax Act (No.12) of 1995

Date of Assent: 24th July, 1996.

Date of commencement: 02/8/96.

ENACTED by the Parliament of Botswana.

Short title and commencement

1. (1) This Act may be cited as the Income Tax (Amendment) Act, 1996 and shall be deemed to have come into effect on 1st July, 1995.

Amendment of section 51 of the Act

2. Section 51 of the Act is amended by substituting, therefor, the following new section —

"Development Approval orders and additional tax relief

51(1) The Minister may make an Order, to be known as a development approval order, prescribing —

(*a*) any business which proposes to carry out a project which would be beneficial to the economy of Botswana or to the economic advancement of the citizens of Botswana as a business which may be granted additional tax relief;

(*b*) any business activity which would be beneficial to the economy of Botswana or to the economic advancement of the citizens of Botswana as an activity which, if carried out by any business, will entitle that business to the grant of additional tax relief;

(*c*) the type of development project or activity in respect of which additional tax relief may be granted;

(*d*) the area in which any such development project or activity is to be carried out; or

(*e*) the types and rates of additional tax relief which may be granted in respect of any such development project or activity.

(2) Notwithstanding any other provision of this Act, the Minister may, in any development approval order, prescribe that such additional amount as he may determine shall be deducted in ascertaining the chargeable income of the business insofar as it is derived from the development project or activity and such deduction may relate to any expenditure incurred by the business in relation to the development project or activity, including any expenditure to which Part VI applies.

(3) A business which wishes to be granted additional tax relief in respect of development project or in respect of any activity under this section shall apply on such form as may be prescribed or approved by the Minister, and shall submit such application to the Permanent Secretary of the Ministry responsible for finance.

(4) In considering any application made under subsection (3), the Minister shall have regard to —

(*a*) the number of Botswana citizens who will be employed in relation to the project or activity and the capacities in which they will be employed;

(*b*) any facilities proposed for the training and imparting of skills to Botswana citizens;

(*c*) any provisions made for the eventual replacement of non-resident employees by Botswana citizens;

(*d*) any provision made for participation by Botswana citizens in the management of the business;

(*e*) the degree of investment in the business of capital owned by Botswana citizens;

(*f*) the area in which the proposed development project or activity will be carried on; and

(*g*) any effect which the proposed project or activity might be expected to have —

(i) on stimulating the development of other economic, industrial or commercial activities in Botswana, whether of the business or otherwise, or

(ii) in reducing the price in Botswana of consumer goods or services.

(5) Where the Minister is satisfied that the proposed project or activity would be beneficial to the development of the economy of Botswana or to the economic advancement of its citizens, he may issue a development approval order in respect of such business or business activity.

(6) A development approval order may be issued subject to such conditions and for such period of time as the Minister deems fit.

(7) The Minister may, at any time, by a further order, amend or revoke a development approval order if he is satisfied that —

(*a*) a business has failed substantially to carry out the development project or activity specified in the order; or

(*b*) there has been a substantial breach of any conditions specified in the order, but no such order of amend ment or revocation shall be made until the business has, by notice in writing, been given the opportunity to rectify that failure or breach, or to show cause within such time as may be specified, not being less than 30 days from the date of such notice, why the development approval order should not be amended or revoked.

(8) Any person who is aggrieved by the proposed amendment or revocation of a development approval order may appeal to a magistrate's court presided over by a Magistrate Grade I or above, on the grounds that it has carried out the development or activity specified in the order, or that it is not in breach of any condition of the order; and if such appeal is upheld the proposed amendment or revocation of the development approval order shall not proceed.

(9) A business to which a development approval order relates shall be entitled to the relief specified in the order where the Commissioner is satisfied that the development project or activity to which the order relates has been carried out.

(10) Where, under subsection (7), the Minister has, by further order, amended or revoked a development approval order relating to a development project or activity carried on by any business, such adjustment shall be made in respect of the liability to the tax of such business for any tax year as is necessary to give effect to that further order.

(11) A development approval order or further order made under this section shall be laid before the National Assembly as soon as possible after it is made, and shall not take effect until one month thereafter, provided that it is not sooner disapproved by resolution of the National Assembly, but upon taking effect, it shall come into operation or be deemed to have come into operation from the date specified in the order or further order.

(12) Where a development approval order made in respect of any business activity has been approved by the National Assembly and has come into operation in accordance with the provisions of subsection (11), then any subsequent development approval order made by the Minister in respect of a business activity which carries on such business activity as that approved by the National Assembly shall not be laid before the National Assembly."

Amendment of section 132 of the Act

3. Section 132 of the Act is amended by substituting, for subsection (1) thereof, the following new subsection —

"(1) Where any amount paid by a close company in any tax year to or for a participator, or to a relative or nominee of such participator is —

(*a*) a gratuity in respect of employment;

(*b*) the cost of any passage or other benefit or advantage granted in respect of that participator's employment which has not been included in his gross income under section 31;

(*c*) the cost of any other passage, travel or entertainment which, in the opinion of the Commissioner, has not been incurred by the company wholly, exclusively and necessarily in the production of its assessable income; or

(*d*) a loan made to the participator, relative or nominee out of amounts available for distribution to share holders, including distribution from reserves, either free of interest or on conditions which, in the opinion of the Commissioner, are not characteristic of a transaction between independent persons dealing at arms length,

such amount shall, notwithstanding any provision to the contrary in this Act, be treated as dividend income for that tax year accrued to the participator:

Provided that the amount shall not be so treated if the Commissioner is satisfied that it is the cost of a passage such as is referred to in paragraph (*b*) paid to a participator not more than once in every two years during his residence in Botswana and does not exceed the reasonable cost of direct travel between Botswana and the participator's country of permanent residence."

Amendment of the Second Schedule to the Act

4. The Second Schedule to the Act is amended in Part II thereof by inserting, therein, immediately after paragraph (xxxii) thereof, the following new paragraph —

"(xxxiii) any amount paid as a subsidy or a grant to any person from the Productive Employment Development Fund under the Financial Assistance Scheme."

5. The Eighth Schedule to the Act is amended in Table IV by deleting, therefrom, paragraph 1 (*a*). Amendment of Eighth Schedule to the Act

PASSED by the National Assembly this 11th day of July, 1996.

C.T. MOMPEI,
Clerk of the National Assembly.