

DGN 7 (Departmental Guidance Note)
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Departmental Guidance Note on Deductions from chargeable income for Donations made to Educational Institutions and Sports Bodies (Section 51(2)* of the Income Tax Act 1995)

1. INTRODUCTION

1.1. The purpose of this DGN

The purpose of this DGN is to explain the provisions and procedure relating to the deduction from chargeable income for donations made to approved educational institutions and sports bodies. The purpose of this deduction was explained by the Minister in his budget speech as follows:

“the government has also decided that donations to approved sports and educational institutions will be tax deductible. The latter is in line with the Government Paper No. 2 of 1994 on the Revised National Policy on Education. These proposed changes should encourage the private sector to participate fully in the development of sports and human resources”.

In consultation with the Ministry of Education and Director of Sports within the Ministry of Labour and Home Affairs, the Department of Taxes has brought out this Guidance Note for effective implementation of this provision so that the purpose for which this enactment was made is properly served.

The terms of this note do not bind the Commissioner nor do they restrict the taxpayers' rights of objection and appeal as provided by the Income Tax Act 1995 as amended from time to time.

1.2. Relevant provision of law

The relevant provision of law is sub-section (2) of section 51* of the Income Tax Act 1995 which reads as under-

* *All references to the provisions of the Income Tax Act are based on the latest edition of Laws of Botswana published in 2002.*

“Where a person makes a donation to-

- (i) any educational institution recommended by the Ministry of Education; or
- (ii) any sports clubs or sports associations recommended by the Ministry responsible for sports,

and approved by the Commissioner, the taxable income ascertained in respect of that person under subsection (1) shall be subject to the deduction of not less than P. 1000 of the aggregate value in money's worth of donations made by him;

Provided that such deduction does not exceed 20 percent of that person's aggregate chargeable income for that tax year.”

2. THE SALIENT FEATURES

The salient features of this provision are –

- (i) The deduction is available to any person whether individual, company, trust or partnership in respect of donations made to an educational institution or a sports club or sports association approved by the Commissioner. [For Tax years 1997-98 and 1998-99, the deduction was available only to a resident individual. After the deletion of words “resident individual” in sub-section (1), by Income Tax (Amendment) Act 1999, other persons are also eligible for the deduction.]
- (ii) The minimum amount of donation should be of a value of not less than P. 1000 in money's worth and the maximum amount of deduction under the sub-section shall not exceed 20% of chargeable income of that person for that tax year.
- (iii) The donation should be to an educational institution or to a sports club or sports association which has been approved by the Commissioner of Taxes. The Commissioner of Taxes shall approve an educational institution or sports body only on recommendation by the Ministry in charge of education or sports as the case may be.

3. PROCEDURE FOR APPROVAL

3.1 Eligible Institutions :

3.1.1 Educational Institutions

It has been decided in consultation with the Ministry of Education that the educational institution eligible for approval should be –

- (a) a school as defined in the Education Act (CAP 58:01). It must either be included in the schedule to the Education Act or registered under Section 13 of that Act or regulations issued there under. It may be noted that any institution owned and maintained by a religious institution for the purpose of training persons for the ordained ministry or for admission to a religious order under the directions of or associated with such religious society unless it is covered by a proviso to the definition of 'school' will not be recognized as educational institution.
- (b) University established under the laws of Botswana.
- © A Vocational Education and Training institution recommended by Department of Vocational Training and Education in the Ministry of Education.

In the case of private schools, apart from being registered under the Education Act, they should either be registered under the Societies Act or have been issued a certificate of exemption from registration under the Societies Act (Chapter 18:01) or owned by societies which are registered or which have been issued certificate of exemption under the Societies Act.

3.1.2 Sports bodies

In the case of sports clubs and sports associations, in consultation with the Department of Sports and Receptions, Ministry of Labour and Home Affairs, it has been decided that those sports clubs and associations which are members of the National Sports Council established under the Botswana National Sports Council Act (CAP 60:01) or have been recognized as members under section 7(5) of the said Act or Statutory Instruments issued under the said Act may apply for approval under section 51(2).

** All references to the provisions of the Income Tax Act are based on the latest edition of Laws of Botswana published in 2002.*

3.2 Application for approval:

Any educational institution or a sports club or sports association which fulfils the conditions given in para 3.1 above can make an application to the Commissioner of Taxes in the prescribed Form ITA 62 after fulfilling all the requirements as mentioned below.

3.2 Requirements to be fulfilled

The following requirements are to be fulfilled for the purpose of approval under section 51(2):

- (i) an application in Form ITA 62 should be filed with respective Departments/Ministries in the case of educational institutions, sports clubs and sports associations and after obtaining their recommendations, to the Commissioner of Taxes
- (ii) The following are to be attached to this application Form ITA62:
 - a. The deed under which the educational institution, sports club or association was formed;
 - b. The certificate of registration under the Schools Act, Botswana National Sports Council Act and Societies Act wherever applicable;
 - c. Copies of the latest profit and loss account, balance sheet certified by a member of the Botswana Institute of Accountants or an accountant approved by the Commissioner under the Act; and
 - d. The details of members of the managing committee or Board, with their names and addresses.

4. VALIDITY OF APPROVAL

The period of validity of certificate will be three years and may be renewed on application by the educational institution or sports club/association concerned. Where an approval has already been granted by the Commissioner, it will be valid for the period till 30.06.2002 after which an application for renewal has to be filed with the Commissioner. The renewal application which will be in the same form as the application for registration and contains the same particulars (incorporating changes, if any) as furnished in the first application.

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5. DONATION RECEIPTS

5.1 Receipts to be issued by the approved institutions

Deduction under section 51(2) will be allowed only on the receipt for donations made which should be enclosed to the tax return of the person claiming the deduction. The educational institution or sports club or association shall therefore issue a receipt to the donor for the amount received in all cases and shall retain their copy of the receipt for verification by the Commissioner of Taxes, if the necessity arises.

5.2 Details to be incorporated in the receipt

The receipt for donations issued by the educational institution, sports clubs or associations should contain the name and address of the institution, its registration number under the relevant Act governing the registration of the institution, club or association as the case may be. It must contain the date of receipt, full name and address of the donor and the amount of donation received in Pula terms. The reference number of the certificate of approval received from the Commissioner with date and the period of validity of the approval should also be stated or stamped in the receipt.

6. Donations in both cash and kind eligible for deduction

Under section 51(2), donations in money's worth of the aggregate value of not less than P. 1 000 will be eligible for deduction. Thus donations in kind will also be eligible for deduction provided they have value in monetary terms.

7. Method of valuation of donations in kind

The educational institution, sports club or association should, in the case of donations other than cash, furnish the full details of the donations and their valuation. In the case of assets of business, the value will be the cost of the asset as reduced by annual allowance allowed under the Act. In the case of non-business assets, the value would be the one for which the asset can reasonably be expected to be sold in the open market. The Department would require a certificate from a valuer in case of donations of financial assets and precious and semi precious items.

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8. The donation of P 1000 or more must be made within a tax year

The deduction is for donations made in the tax year only. In a tax year, the donations made should be a minimum of P. 1000. The taxpayer may make donations to more than one institution/club/association each less than P. 1000 but the total amount of donations made should be P. 1000 or more. If a taxpayer makes donations of P. 500 to institution A ; P. 300 to club B and P. 200 to association C during a particular tax year, he would be entitled to a deduction of P. 1000 subject to the overall limit that the amount of deduction shall not exceed 20% of his chargeable income for the relevant tax year.

9. The aggregate chargeable income for the purpose of section 51(2)

The aggregate chargeable income for the purpose of this purpose is the aggregate of chargeable income from all sources other than the chargeable income from disposal gains and net gains from disposal of assets. The losses under Section 46 and 47 are to be set off before the aggregate chargeable income is determined.

10. Allowability of deduction in cases of partnerships

Under section 21, the amount equal to the proportion of partnership chargeable income of that tax year, shall be included in the chargeable income of the partner. The partnership chargeable income has been defined as "gross income of the partnership calculated as if the partnership were a person chargeable to tax less any amounts that would be exempt under Part V and all deductions that would be allowed to such person under Part VI in respect of such gross income". Since partnership chargeable income is the one determined before application of Part VII, the deduction for donations shall be allowed only in the case of the partners in proportion to their shares in the partnership. The donation made by the partnership should be not less than P. 1000. For the purpose of maximum deduction, it shall not exceed 20% of the aggregate chargeable income of the partner for the relevant tax year. Though section 51(2) provides for allowance for donation in the case of a person making the donation and though the partnership is a person under the Act, it would still be permissible to allow deduction in the case of partners as under General law, partnership has no separate legal existence other than its partners.

11. Where the accounting year of a person is different from the year ending 30th June 2002 i.e., the tax year, will the deduction be made in relation to donations made during the accounting year or tax year?

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Section 25 states that where any person regularly makes up the accounts of his business for a period other than the tax year, his taxable income shall be calculated with reference to such accounts for a period of 12 months ending within that tax year. Since section 51(2) is part of calculation of taxable income, the deduction under section 51(2) in such a case shall be allowed with reference to donations made by the person within the accounting year and debited in the profit and loss account. (To be added back in the income computation statement and deducted in accordance with section 51(2) in the computation statement).

12. Assistance available

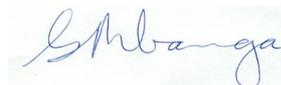
In need of any clarification, please contact the offices of the Commissioner of Taxes at the addresses and phone numbers given below:

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