

INCOME TAX (AMENDMENT) (NO.2) BILL, 2022

MEMORANDUM

The object of the Income Tax (Amendment) Bill, 2022 is to amend the Income Tax Act, 2015 (Act 896) to revise the rates of income tax for individuals and introduce an additional income tax bracket, introduce a withholding tax rate on the realisation of assets and liabilities and on winnings from lottery, unify the loss carried forward provisions and revise the treatment of foreign exchange losses and increase the optional rate for individuals on the gain from the realisation of an investment asset, revise the upper limits for the quantification of motor vehicle benefits and increase the concessional income tax rates.

The individual personal income tax bands have been reviewed to accommodate the minimum wage for 2023 as the basic tax free income and an additional band at thirty-five percent as part of the high net worth taxation policy. The upper limits for quantification of motor vehicle benefits have not been revised since 2015. Government has revised these upper limits to account for inflation.

Compliance with the requirements for payment of tax on realisation of assets and liabilities is being made more efficient with the introduction of a return to be submitted within thirty days of the realisation and a withholding tax. The optional tax rate for individuals on the gain from realisations has also been increased. The rate for income from gifts will also be increased as a consequential amendment.

The loss carried forward provisions are being unified at five percent while the treatment of foreign exchange gains is being restricted to actual losses. Foreign exchange losses relating to capital expenditure is also to be capitalised.

The income tax rates for temporary concessions are being reviewed upwards with the intent to gradually phase them out.

These amendments are considered necessary to support the growing economy and will lead to a revenue yield of approximately one billion two hundred and ninety million Ghana Cedis.

Clause 1 amends Act 896 by introducing a new section 2A to require a person to compute and pay tax on a minimum chargeable income of five percent of total income.

Clause 2 amends section 6 of Act 896 by adding winnings from lottery to the items to be included in the calculation of the amount specified for a year of assessment.

Clause 3 amends section 17 of Act 896 to provide for a person who is ascertaining the income of that person or of another person from a business for a year of assessment to deduct an unrelieved loss of the person for any of the previous five years of assessment from the business.

Clause 4 amends section 25 of Act 896 to provide for the deduction of any foreign currency exchange loss other than a loss that is capital in nature, incurred in the production of income during the period in respect of a debt claim, debt obligation or foreign currency holding of that person for the purposes of ascertaining the income of a person for a basis period.

Clause 5 amends Act 896 by introducing a new section 39A to provide for the submission of return for gains on realisation of assets and liabilities.

Clause 6 amends section 94 of Act 896 to exempt from income tax for 2023, a withdrawal from a provident fund or personal pension scheme before the retirement age by an employee due to loss of permanent employment or a self-employed person from the savings account provided under paragraph (a) of subsection (2) of section 109 of the National Pensions Act, 2008 (Act 766).

Clause 7 amends Act 896 by introducing a new section 100A to provide for lottery operations.

Clause 8 amends section 115 of Act 896 to provide for a resident person to withhold tax at the rate specified in paragraph 8 of the First Schedule, where that person pays a dividend, winning from lottery, interest, natural resource payment, rent or royalty to another person or pays consideration to another person in respect of the realisation of asset or liability and the payment has a source in the country.

Clause 9 amends Act 896 by introducing a new section 116A to provide for a resident person to withhold tax on the gross amount of the payment at the rate specified in paragraph 8 of the First Schedule.

Clause 10 amends section 119 of Act 896 by substituting paragraph (f) of subsection (1) with winnings from lottery. The rationale for the amendment is to introduce a withholding tax on winnings from lottery.

Clause 11 amends Act 896 by substituting section 128 with a new provision. The rationale for the amendment is to provide clarity on persons in a controlled relationship.

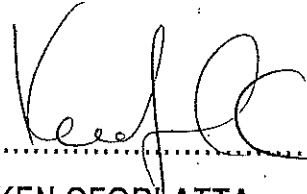
Clause 12 amends section 133 of Act 896 by introducing new definitions for "betting", "game of chance", "gaming", "lottery" and "stake".

Clause 13 amends the First Schedule to the Act by substituting paragraph 1 with a new paragraph. The rationale for the amendment is to revise the income tax brackets provided for in the paragraph and introduce an additional income tax bracket with a tax rate of thirty-five per cent. The *clause* further amends subparagraph (1) of paragraph 3 to provide for the chargeable income of a company and income from goods and services provided to the domestic market by a free zone enterprise after the concessionary period other than a company principally engaged in the hotel industry for a year of assessment to be taxed at the rate of twenty-five per cent.

The *clause* further amends paragraph 7 by introducing a new paragraph 7A to provide for the rate of tax on income from lottery operations.

The *clause* further introduces new sub paragraphs to provide for the rates of tax in the case of winnings from lottery which is to be ten per cent on gross winnings at the end of each game, in the case of realisation of an asset or liability by a resident person, three per cent of the consideration received and in the case of realisation of an asset or liability by a non-resident person ten per cent of the consideration received.

Clause 14 amends the Fourth Schedule to the Act by substituting the table specified in paragraph 1 with a new table. The rationale for the amendment is to review the upper limits for the motor vehicle benefits specified in the table.



KEN OFORI-ATTA

Minister responsible for Finance

Date: 14TH DECEMBER, 2022

INCOME TAX (AMENDMENT) (NO.2) BILL, 2022

ARRANGEMENT OF SECTIONS

Section

1. Section 2A inserted
2. Section 6 of Act 896 amended
3. Section 17 of Act 896 amended
4. Section 25 of Act 896 amended
5. Section 39A inserted
6. Section 94 of Act 896 amended
7. Section 100A inserted
8. Section 115 of Act 896 amended
9. Section 116A inserted
10. Section 119 of Act 896 amended
11. Section 128 of Act 896 amended
12. Section 133 of Act 896 amended
13. First Schedule to Act 896 amended
14. Fourth Schedule to Act 896 amended

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BILL

ENTITLED

INCOME TAX (AMENDMENT) (NO.2) ACT, 2022

AN ACT to amend the Income Tax Act, 2015 (Act 896) to revise the rates of income tax for individuals and introduce an additional income tax bracket; introduce a withholding tax rate on the realisation of assets and liabilities and on winnings from lottery; revise the treatment of foreign exchange losses; revise the upper limits for the quantification of motor vehicle benefits and provide for related matters.

Passed by Parliament and assented to by the President:

Section 2A inserted

1. The Income Tax Act, 2015 (Act 896), referred to in this Act as the "principal enactment", is amended by the insertion after section 2, of

"Minimum chargeable income

2A. (1) Despite section 2, a person may be required to compute and pay tax on a minimum chargeable income of five per cent of turnover where the person has been declaring losses for the previous five years of assessment total income.

(2) Subsection (1) does not apply to a person

(a) within the first five years of commencement of operations;
or

(b) engaged in farming."

Section 6 of Act 896 amended

2. The principal enactment is amended in section 6 by the addition after subparagraph (vi) of paragraph (a) of subsection (2), of

“(vii) winnings from lottery.”.

Section 17 of Act 896 amended

3. The principal enactment is amended in section 17 by the substitution for subsection (1), of

“(1) A person who is ascertaining the income of that person or of another person from a business for a year of assessment shall deduct an unrelieved loss of the person for any of the previous five years of assessment from the business.”.

Section 25 of Act 896 amended

4. The principal enactment is amended in section 25 by the addition after subsection (3), of

“(4) For the purposes of ascertaining the income of a person for a basis period from any business, there shall be deducted any foreign currency exchange loss, other than a loss that is capital in nature, incurred in the production of income during the period in respect of a

- (a) debt claim,
- (b) debt obligation, or
- (c) foreign currency holding

of that person.

(5) A foreign exchange loss of a capital nature may be capitalised and capital allowance may be granted under section 14 in respect of the foreign exchange loss.

(6) An unrealised foreign exchange loss shall not be allowed as a deduction.

(7) A foreign exchange loss arising from a transaction between two resident persons shall not be allowed as a deduction.”.

Section 39A inserted

5. The principal enactment is amended by the insertion after section 39, of

“Submission of return for gains on realisation of assets and liabilities

39A. A person who realises an asset or a liability shall, within thirty days after the realisation of the asset or liability, submit to the Commissioner-General a return in the form determined by the Commissioner-General.”.

Section 94 of Act 896 amended

6. The principal enactment is amended in section 94 by the substitution for subsection (4), of

“(4) A withdrawal from a provident fund or personal pension scheme before the statutory retirement age by

- (a) an employee due to loss of permanent employment, or
- (b) a self-employed person from the personal savings account provided for under paragraph (a) of subsection (2) of section 109 of the National Pensions Act, 2008 (Act 766)

due to the Novel Coronavirus (COVID-19) pandemic or the current economic hardship is exempt from income tax for 2023.”.

Section 100A inserted

7. The principal enactment is amended by the insertion after section 100, of

“Division VI: Lottery Operations

100A. (1) The gains and profit of a person engaged in a lottery operation for a year of assessment shall be the total amount staked or wagered.

(2) For purposes of section 2, the chargeable income of a person from a lottery operation is the gross gaming revenue.

(3) For purposes of subsection (2), gross gaming revenue is the total amount staked or wagered less prizes or winnings paid or payable.

(4) Where a person has chargeable income other than income from a lottery operation, the person shall be charged separately in accordance with section 1."

Section 115 of Act 896 amended

8. The principal enactment is amended in section 115 by the substitution for subsection (1), of

"(1) Subject to subsection (2), a resident person shall withhold tax at the rate specified in paragraph 8 of the First Schedule where that person pays

- (a) any dividend, winnings from lottery, interest, natural resource payment, rent or royalty to another person, or
- (b) consideration to another person in respect of the realisation of an asset or a liability,

and the payment has a source in the country."

Section 116A inserted

9. The principal enactment is amended by the insertion after section 116, of

"Withholding from consideration on realisation of assets and liabilities

116A. Where a resident person, other than an individual, pays consideration to another person with respect to the realisation of an asset or a liability which does not fall under section 115, the resident person shall withhold tax on the gross amount of the payment at the rate specified in paragraph 8 of the First Schedule."

Section 119 of Act 896 amended

10. The principal enactment is amended in section 119 by the substitution for paragraph (f) of subsection (1), of

"(f) winnings from lottery".

Section 128 of Act 896 amended

11. The principal enactment is amended by the substitution for section 128, of

"Persons in a controlled relationship

128. (1) For the purposes of this Act, two or more persons are in a controlled relationship where the relationship between the persons is

- (a) that of an individual and a relative of the individual;
- (b) that of partners in the same partnership;
- (c) that of an entity and an associate of the entity;
- (d) that of a settlor, trustee and beneficiary; or
- (e) in a case not covered by paragraphs (a) to (d), such that a person, not being an employee, acts in accordance with the direction, request, suggestion or wish of another person whether or not the person is in a business relationship and whether or not the direction, request, suggestion or wish is communicated to that other person.

(2) A person is an associate of an entity where

- (a) the person participates, directly or through one or more interposed entities, in the management or control of the entity; or

- (b) the management or control of the person and the entity is, directly or through one or more interposed entities, exercised by the same persons.”.

Section 133 of Act 896 amended

12. The principal enactment is amended in section 133 by

- (a) the insertion after “associate”, of

““betting” means an arrangement that involves risking money or any other valuable thing in an event which has an uncertain result;”;

- (b) the insertion after “gain”, of

““game of chance” includes a game other than lotto in which participants, in anticipation of winning a reward on the results of the game which depend on luck and which cannot be determined before the end of game, pay money for the right to participate in the game;

“gaming” means playing a game, whether of skill or chance or partly of skill and partly of chance for stakes hazarded by the players but does not include lotto;

- (c) the insertion after “lease”, of

““lottery” means a scheme whereby rights are sold to take part in a draw by lot for a prize including betting, gaming and any game of chance;”;

- (d) the insertion after “small scale mining”, of

““stake” includes a payment or benefit in kind accrued for the right to take part in any lottery operation;”.

First Schedule to Act 896 amended

13. The principal enactment is amended in the First Schedule by

(a) the substitution for paragraph 1, of

“Rates of income tax for individuals

1. (1) Subject to subparagraph (3) and the Second Schedule, the chargeable income of a resident individual for a year of assessment is taxed at the following rates:

NO.	CHARGEABLE INCOME	RATE OF TAX
1.	First GH¢ 4,824	Nil
2.	Next GH¢ 1,320	5 per cent
3.	Next GH¢ 1,560	10 per cent
4.	Next GH¢ 36,000	17.5 per cent
5.	Next GH¢ 196,740	25 per cent
6.	Next GH¢ 359,556	30 per cent
7.	Exceeding GH¢ 600,000	35 per cent

(2) Subject to subparagraph (3), the chargeable income of a non-resident individual for a year of assessment is taxed at the rate of twenty-five per cent.

(3) Where the chargeable income of an individual includes a gain from the realisation of an investment asset, less any loss from the realisation of an investment asset not charged elsewhere, the individual may elect that the

gain from the realisation of the investment asset, less any loss from the realisation of that asset is taxed at the rate of twenty-five per cent.

(4) Where an individual receives a gift other than a gift received in respect of business or employment, the individual may elect to pay tax at the rate of twenty-five per cent.

(5) The remainder of the chargeable income of the individual is taxed at the rate referred to in subparagraph (1) or (2) as the case requires.”;

(b) the substitution for subparagraph (1) of paragraph 3, of

“(1) The chargeable income of a company and income from goods and services provided to the domestic market by a free zone enterprise after the concessionary period other than a company principally engaged in the hotel industry for a year of assessment is taxed at the rate of twenty-five per cent.”;

(c) the substitution for paragraph 7, of

“Rate of tax on persons entitled to concessions in the Sixth Schedule

7. The income of a person entitled to a concession in the Sixth Schedule is subject to tax at the rate of five per cent of chargeable income.”;

(d) the insertion after paragraph 7, of

“Rate of tax on income from lottery operations

7A. The income of a person from lottery operations is twenty per cent on the gross gaming revenue.”;

(e) the addition after paragraph 8(1)(b)(ix), of

“(x) in the case of winnings from lottery, ten per cent on gross winnings at the end of each game;

- (xi) in the case of realisation of an asset or a liability by a resident person, three per cent of the consideration received; and
- (xii) in the case of realisation of an asset or a liability by a non-resident person, ten per cent of the consideration received.”;

(f) the addition after paragraph 8(1)(c)(ix), of

- “(x) in the case of realisation of an asset or a liability by a resident person, three per cent of the consideration received; and
- (xi) in the case of realisation of an asset or a liability by a non-resident person, ten per cent of the consideration received.”; and

(g) the addition after paragraph 8(1)(c), of

“(d) a payment to which section 116A applies.”.

Fourth Schedule to Act 896 amended

14. The principal enactment is amended in the Fourth Schedule by the substitution for the table in paragraph 1, of

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NO.	BENEFIT	RATE
1.	Driver and vehicle with fuel	12.5 per cent of the total cash emoluments of the person up to a maximum of GH¢1,500.00 per month

2.	Vehicle with fuel	10 per cent of the total cash emoluments of the person up to a maximum of GH¢1,250.00 per month
3.	Vehicle only	5 per cent of the total cash emoluments of the person up to a maximum of GH¢625.00 per month
4.	Fuel only	5 per cent of the total cash emoluments of the person up to a maximum of GH¢625.00 per month