



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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No. 1375

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 209

1996

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 12 of 1996: Income Tax Amendment Act, 1996.

EXPLANATORY NOTE:

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- _____ Words underlined with solid line indicate insertions in existing enactments.
- [] Words in bold type in square brackets indicate omissions from existing enactments.
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ACT

To amend the Income Tax Act, 1981, so as to assign to the Minister of Finance the responsibility for carrying out the provisions of the Act; to further regulate the special deduction granted in respect of registered manufacturers; to grant an exemption from tax in respect of the receipts and accruals of certain foreign organizations or institutions which provide aid in particular fields to Namibia; to provide that any proceeds derived from a provident fund upon its dissolution shall be taxable; to withdraw the allowance of a certain deduction granted to sole breadwinners; to substitute, delete or insert certain definitions; to make certain textual alterations and to delete or substitute certain obsolete expressions; to increase the penalty for failure by an employer to pay employees' tax; to introduce new rates of taxes; to fix a later date from which the increased interest rates introduced by the Income Tax Amendment Act, 1995 shall become of effect; to provide that interest may accumulate and be recovered in an amount exceeding the principal debt; to amend the Income Tax Amendment Act, 1995 so as to further regulate the commencement of certain amendments effected by that Act; and to provide for incidental matters.

(Signed by the President on 26 July 1996)

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

Amendment of section 1 of Act 24 of 1981, as amended by section 1 of Proclamation AG. 10 of 1985, section 1 of Act 8 of 1987, section 1 of Act 1 of 1989, section 24 of Act 3 of 1991, section 1 of Act 8 of 1991, section 1 of Act 12 of 1991, section 1 of Act 25 of 1992, section 1 of Act 10 of 1993, section 1 of Act 17 of 1994 and section 1 of Act 22 of 1995.

1. Section 1 of the Income Tax Act, 1981 (hereafter referred to as the principal Act) is amended -

- (a) by the substitution for paragraph (g) of the definition of "gross income" of the following paragraph:

- "(g) subject to the provisions of section 16A, the value during the year of assessment of any benefit or advantage granted in respect of employment as determined by the [Permanent Secretary: Finance] Minister;"
- (b) by the substitution for the definition of "Master" of the following definition:
- "'Master' means the Master or a Deputy Master of the High Court of Namibia appointed under section 2 of the Administration of Estates Act, 1965 (Act 66 of 1965);"
- (c) by the deletion of the definition of "Permanent Secretary";
- (d) by the insertion of the following definition after the definition of "provident fund":
- "'regional council' means a regional council established under section 2 of the Regional Councils Act, 1992 (Act 22 of 1992);" and
- (e) by the substitution for the definition of "taxable income" of the following definition:
- "'taxable income' means the amount remaining after deducting from the income of a person all the amounts allowed under Part I of Chapter II to be deducted from or set off against such income [including, where applicable, the amount of the special abatement allowed by section 5B];"

Substitution of section 2 of Act 24 of 1981.

2. The following section is substituted for section 2 of the principal Act:

"Administration of the Act

2. The [Permanent Secretary] Minister shall be responsible for carrying out the provisions of this Act."

Amendment of section 5 of Act 24 of 1981, as amended by section 1 of Proclamation AG. 25 of 1989, section 24 of Act 3 of 1991, section 2 of Act 25 of 1992, section 2 of Act 10 of 1993, section 2 of Act 17 of 1994 and section 2 of Act 22 of 1995.

3. Section 5 of the principal Act is amended by the substitution for subsection (3) of the following subsection:

"(3) For the purpose only of determining the rate of normal tax payable by any person (other than a company) whose income for the year of assessment in question includes -

- (a) any amount referred to in paragraph (d) or (dB)(ii) or (iii) of the definition of "gross income" in section 1;

- (b) any amount by virtue of the provisions of paragraph 4(2)(c)(i), 6A(1) or 6A(2) of the First Schedule to this Act,

there shall be deducted from the income of such person for such year of assessment the amount so included in his or her income, but in no case, subject to subsection (4), shall the rate of normal tax be less than that applicable to the first Namibia Dollar of taxable amount on which tax becomes payable in accordance with paragraph 1 of Schedule 4 and this subsection shall not be construed as relieving any person from liability for taxation in terms of this Act upon any portion of his or her taxable income.”.

Amendment of section 5A of Act 24 of 1981, as inserted by section 3 of Act 10 of 1993.

4. The following section is substituted for section 5A of the principal Act:

“Registration of taxpayer as manufacturer

5A. (1) Any person who conducts or intends to conduct a manufacturing enterprise and who requires to be recognised as a registered manufacturer in respect of such enterprise for the purposes of any relevant provision of this Act, may apply for such registration to the Minister, and the Minister shall so register such person if the Minister, acting in consultation with the Minister of Trade and Industry, is satisfied that such manufacturing enterprise is or will be beneficial to the economic development of Namibia or the economic advancement of its inhabitants.

(2) An application referred to in subsection (1) shall -

- (a) be made in writing to the Minister in a manner and form determined by the Minister ; and
- (b) be accompanied by such information as the Minister may require.”.

Repeal of section 5B of Act 24 of 1981, as inserted by section 3 of Act 10 of 1993 and substituted by section 3 of Act 22 of 1995

5. Section 5B of the principal Act is repealed.

Amendment of section 14 of Act 24 of 1981.

6. Section 14 of the principal Act is amended by the substitution for subsection (4) of the following subsection:

“(4) There shall be included in the taxpayer’s income all amounts allowed to be deducted or set off under the provisions of sections 17 to 21, inclusive, except section 17 (1)(n), (qA) and (r) and section 18(1)(a), or under the corresponding provisions of any previous income tax law, whether in the current or any previous year of assessment, which have been recovered or recouped during the current year of assessment.”.

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Amendment of section 15 of Act 24 of 1981, as amended by section 4 of Proclamation AG. 10 of 1985, section 4 of Act 8 of 1987, section 4 of Act 12 of 1991 and section 5 of Act 10 of 1993

7. Section 15 of the principal Act is amended -

(a) by the substitution for the words in paragraph (g) of subsection (1) preceding the second proviso of the following words:

“(g) any services rendered by such person to, or work or labour done by such person for or on behalf of, the Government of Namibia or **[the Council of Ministers or any Representative Authority]** a regional council or any local authority in Namibia, notwithstanding that such services are rendered or that such work or labour is done outside Namibia: Provided that such services are rendered or such work or labour is done in accordance with a contract of employment entered into with such Government, **[Council, Representative Authority]** regional council or local authority.”; and

(b) by the substitution for subparagraph (i) of paragraph (i) of subsection (1) of the following subparagraph:

“(i) the Government of Namibia, or by any **[Representative Authority or]** regional council or local authority in Namibia; or”.

Amendment of section 16 of Act 24 of 1981, as amended by section 5 of Proclamation AG. 10 of 1985, section 5 of Act 8 of 1987, section 2 of Act 8 of 1991, section 5 of Act 12 of 1991, section 1 of Act 33 of 1991, section 6 of Act 25 of 1992, section 6 of Act 10 of 1993, section 4 of Act 17 of 1994 and section 5 of Act 22 of 1995

8. Section 16 of the principal Act is amended -

(a) by the substitution for paragraph (e) of subsection (1) of the following paragraph:

“(e) the receipts and accruals of -

(i) any institution, board or body established by or under any law (other than a company or co-operative society registered or deemed to be registered in terms of any law which governs, or any repealed law which governed, the incorporation or registration of companies or of co-operative societies), or any foreign organization or institution, and which, in the furtherance of its sole object or one of its principal objects, conducts scientific, technical or industrial research or provides necessary or useful commodities, amenities or services to the State (including any regional council) or the inhabitants of Namibia in general, or carries on activities (including the rendering of financial assistance by way of loans or otherwise) designed to promote commerce, industry or agriculture

or any branch thereof, provided such institution, board or body is by law or under its constitution not permitted to distribute any of its profits or gains to any person and is required to utilize its funds solely for investment or the objects for which it has been established;

- (ii) any Namibian company, all the shares of which are held by an institution, board or body referred to in subparagraph (i), if the Minister is satisfied that the operations of such company are ancillary or complementary to the objects of such institution, board or body;”;

- (b) by the substitution in paragraph (f) of subsection (1) for the words preceding subparagraph (i) of the following words:

“the receipts or accruals of any company, society, or other association of persons, or any foreign organization or institution, whether or not registered under any law, but excluding a co-operative society or co-operative company registered under any law which governs, or any repealed law which governed, the registration of co-operative societies, if -”

- (c) by the substitution for paragraph (l) of subsection (1) of the following paragraph:

“(l) interest received by or accrued to any person (other than a company) or any external company not carrying on business in Namibia, from stock or securities (including Treasury Bills) issued by the Government of Namibia, or any **[Representative Authority]** regional council or local authority in Namibia;”;

- (d) by the substitution for paragraph (aa) of subsection (1) of the following paragraph:

“(aa) an amount equal to one-third of any amount derived from a provident fund, except where such amount is so derived as a consequence of the termination of the taxpayer's office or employment due to dismissal or resignation or upon the dissolution of such provident fund;” and

- (e) by the substitution for paragraph (ab) of subsection (1) of the following paragraph:

“(ab) (i) so much of any amount received by or accrued to any taxpayer, or other beneficiary nominated by the taxpayer, under or upon the maturity, payment, surrender or disposal, as the case may be, of any policy of insurance as is proved to the satisfaction of the **[Permanent Secretary]** Minister has been or is to be expended for providing for the education or training at an educational institution of a public character of a child or step-child, as contemplated

in [section 17(5)] subparagraph (ii), of the taxpayer concerned, and which education or training is or will be undergone by such child or step-child for the purpose of obtaining a post-school qualification;

- (ii) For the purposes of subparagraph (i) "child or stepchild" means any such child who on the last day of the said year of assessment was unmarried, was not or would not, had he or she been alive, have been, over the age of twenty-six years, was wholly or partially dependent for his or her maintenance upon the taxpayer and not liable for the payment of normal tax in respect of such year."

Amendment of section 16A of Act 24 of 1981, as inserted by section 2 of Act 8 of 1991

9. Section 16A of the principal Act is amended -

- (a) by the substitution in subsection (1) for the definition of "housing benefit" of the following definition:

"housing benefit" means any amount in cash or benefit or advantage paid or granted under an approved scheme to an employee in respect of employment, which relates to -

- (a) residential accommodation (excluding meals) provided by his or her employer, whether free of charge or for a rental consideration which is less than the rental value of such accommodation as determined by the **[Permanent Secretary: Finance] Minister**;
- (b) any cash payment made or subsidy granted by his or her employer in respect of -
- (i) any rental due by him or her for the lease of a private residence; or
- (ii) the repayment of, or any interest due on, the amount of any loan obtained and used by him or her for the purchase of a private residence; or
- (c) a rate of interest which is less than an appropriate rate of interest as determined by the **[Permanent Secretary: Finance] Minister**, charged by his or her employer on a loan granted by such employer out of his or her own funds to such employee and obtained and used by such employee for the purchase of a private residence;" and
- (b) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

"The **[Permanent Secretary: Finance] Minister** shall not approve any scheme for the purposes of this section unless he or she is satisfied that -"

Amendment of section 16B of Act 24 of 1981, inserted by section 6 of Act 12 of 1991.

10. Section 16B of the principal Act is amended -

- (a) by the substitution for paragraph (c) of the definition of "annuity contract" in subsection (1) of the following paragraph:

"(c) no amounts are or will be payable by the insurer to the purchaser or any other person other than amounts payable by way of such annuity or annuities or, where an annuity is payable for a minimum term and such annuity is in the event of the death of the annuitant before the end of such term to continue to be payable to some third person for the balance of that term, amounts which may be so payable to such third person by way of such annuity,";

- (b) by the substitution for subsection (8) of the following subsection:

"(8) The [Permanent Secretary] Minister shall, when making an assessment upon the taxpayer concerned for the year of assessment during which there has become payable the first annuity amount affected by a calculation referred to in subsection (4) or a recalculation referred to in subsection (6)(b), determine the capital element of annuity amounts received or accrued during such year and affected by such calculation or recalculation, as the case may be, in accordance with such calculation or recalculation [of] or, if the [Permanent Secretary] Minister is dissatisfied with such calculation or recalculation or is in doubt as to the correctness thereof, or if no such calculation or recalculation has been made, the [Permanent Secretary] Minister may, having regard to any calculation or recalculation of the capital element made by a practising actuary at the [Permanent Secretary's] Minister's request or at the request of the taxpayer, calculate or recalculate the capital element and determine the capital element of the said annuity amounts accordingly."

Amendment of section 17 of Act 24 of 1981, as amended by section 2 of Act 12 of 1982, section 6 of Proclamation AG. 10 of 1985, section 6 of Act 8 of 1987, section 7 of Act 25 of 1992, section 7 of Act 10 of 1993 and section 6 of Act 22 of 1995

- 11.** Section 17 of the principal Act is amended by the deletion of subsections (3), (4) and (5).

Amendment of section 17A of Act 24 of 1981, as inserted by section 8 of Act 10 of 1993

- 12.** Section 17A of the principal Act is amended by the substitution for subsection (2) of the following subsection:

"(2) An additional deduction in terms of paragraph (b) of subsection (1) shall be allowed only if the contents, nature and duration of, and the costs pertaining to, the training programme concerned have, before the commencement of such training programme, been approved by the [Permanent

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Secretary] Minister in consultation with the **[Permanent Secretary: Labour and Manpower and the Permanent Secretary: Trade and Industry] Minister of Labour and Human Resources Development and the Minister of Trade and Industry.**”.

Amendment of section 17B of Act 24 of 1981, as inserted by section 8 of Act 10 of 1993 and amended by section 5 of Act 17 of 1994

13. Section 17B of the principal Act is amended by the substitution for subsection (3) of the following subsection:

“(3) The Minister, acting in consultation with the Minister of Trade and Industry, may upon application of any registered manufacturer recognise such manufacturer as an exporter for the purposes of this section.”.

Insertion of section 17D in Act 24 of 1981

14. The following section is inserted after section 17C of the principal Act:

“Special deduction for registered manufacturers

17D.(1) Notwithstanding anything to the contrary contained in this Act, there shall be allowed, in respect of a taxpayer who is a registered manufacturer and who has in any year of assessment derived income from manufacturing, a special deduction from that income, and after the deduction of all expenses attributable to manufacturing deductible under section 17 and, where applicable, the deductions allowed by sections 17A, 17B and 17C, an amount equal to -

- (a) 50 percent of the income so derived in each year of assessment for the first five years of assessment, commencing in the year of assessment during which the taxpayer concerned is registered as a manufacturer under section 5A;
- (b) 45 percent of the income so derived in the sixth ensuing year of assessment;
- (c) 40 percent of the income so derived in the seventh ensuing year of assessment;
- (d) 35 percent of the income so derived in the eighth ensuing year of assessment;
- (e) 30 percent of the income so derived in the ninth ensuing year of assessment;
- (f) 25 percent of the income so derived in the tenth ensuing year of assessment;
- (g) 20 percent of the income so derived in the eleventh ensuing year of assessment;

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- (h) 15 percent of the income so derived in the twelfth ensuing year of assessment;
- (i) 10 percent of the income so derived in the thirteenth ensuing year of assessment;
- (j) 5 percent of the income so derived in the fourteenth ensuing year of assessment,

but the amount so deductible shall, where it exceeds the amount of the taxpayer's taxable income derived from manufacturing, be limited to the amount of that taxable income.

(2) Notwithstanding the provisions of subsection (1), the Minister, in consultation with the Minister of Trade and Industry, and any other Minister whom the Minister considers it expedient to consult, and having regard to the nature, and importance to Namibia's economy, of the taxpayer's enterprise, may, on such terms and conditions as the Minister may impose by agreement with the registered manufacturer concerned, determine that the amount to be allowed by way of a special deduction under any of paragraphs (a) to (j) of that subsection, and for the year or years of assessment as the Minister may so determine, be increased in respect of such registered manufacturer to an amount equal to not more than 100 per cent of the taxable income of such taxpayer which has been derived from manufacturing in the year or years of assessment in question.

(3) The Minister shall in respect of a determination made by him or her under subsection (2), by notice in the *Gazette* notify -

- (a) the name of the taxpayer concerned;
- (b) the name of the manufacturing enterprise concerned;
- (c) the extent of the increase of such determination; and
- (d) the terms and conditions applicable in respect of such determination.

Amendment of section 18 of Act 24 of 1981, as substituted by section 8 of Act 25 of 1992

15. Section 18 of the principal Act is amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

- “(a) an amount in respect of capital expenditure to be ascertained under the provisions of section 36, in lieu of the allowances in section 17(1)(e), (f), (g) and (i);”.

Amendment of section 20 of Act 24 of 1981, as amended by section 7 of Act 8 of 1987 and section 9 of Act 25 of 1992

16. Section 20 of the principal Act is amended -

- (a) by the substitution for subsection (1) of the following subsection:

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“(1) The provisions of section 17(1)(a) and (b) and section 21 shall, subject to the provisions of subsection (2) of this section, *mutatis mutandis* apply in relation to any income derived by any person in the form of dividends distributed by a building society.”; and

(b) by the substitution for subsection (2) of the following subsection:

“(2) In respect of expenditure and losses not of a capital nature incurred by any person in the production of his or her income from dividends, the amounts to be deducted under section 17(1)(a) and (b), as applied by subsection (1) of this section, shall be an amount equal to two-thirds of the expenditure and losses so incurred.”.

Amendment of section 22 of Act 24 of 1981.

17. Section 22 of the principal Act is amended by the substitution for paragraph (a) of subsection (2) of the following paragraph:

“(a) if such trading stock formed part of the trading stock of such person at the end of the immediately preceding year of assessment, be the amount which was, in the determination of the taxable income of such person for such preceding year of assessment, taken into account in respect of the value of such trading stock at the end of such preceding year of assessment; or”.

Substitution of section 25 of Act 24 of 1981

18. The following section is substituted for section 25 of the principal Act:

“Credit agreements providing for the postponement of the passing of ownership

25. If any taxpayer has entered into any agreement with any other person in respect of any property, the effect of which is that, in the case of movable property, the ownership shall pass or, in the case of immovable property, transfer shall be effected from the taxpayer to that other person upon or after the receipt by the taxpayer of the whole or a certain portion of the amount payable to the taxpayer under the agreement, the whole of that amount shall for the purposes of this Act be deemed to have accrued to the taxpayer on the day on which the agreement was entered into: Provided that, the [Permanent Secretary] Minister, taking into consideration any allowance he or she has made under paragraph (m) of section 17(1), may make such further allowance as under the special circumstances of the trade of the taxpayer seems to him or her reasonable, in respect of all amounts which are deemed to have accrued under such agreements but which have not been received at the close of the taxpayer's accounting period: Provided further that any allowance so made shall be included as income in the taxpayer's returns for the following year of assessment and shall form part of his or her income, and for that purpose any allowance granted in terms of the corresponding provisions of a previous income tax law shall be deemed to be an allowance which was made in terms of this section in respect of a year of assessment under this Act.”.

Amendment of section 64 of Act 24 of 1981.

19. Section 64 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) For the purpose of obtaining full information in respect of any income of any taxpayer or any part thereof, the **[Permanent Secretary] Minister** may require any person to produce for examination by the **[Permanent Secretary] Minister**, or by any person appointed by **[him] the Minister** for that purpose, at such time and place as may be appointed by the **[Permanent Secretary] Minister** in that behalf, any deeds, plans, instruments, books, accounts, trade lists, stock lists or documents which the **[Permanent Secretary] Minister** may deem necessary for the purposes of this Act, and if any such deeds, plans, instruments, books, accounts, lists or documents are not in the English **[or the Afrikaans]** language the **[Permanent Secretary] Minister** may by notice in writing require the taxpayer to produce at his or her own expense and at such time and place as may be appointed, a translation in **[either]** the English **[or the Afrikaans]** language prepared and certified by a sworn translator or a person other than a sworn translator approved by the **[Permanent Secretary] Minister**.”

Amendment of section 73 of Act 24 of 1981, as amended by section 10 of Act 8 of 1987

20. Section 73 of the principal Act is amended -

(a) by the substitution for subsection (2) of the following subsection:

“(2) Every court so constituted shall consist of a judge of the **[South West Africa Division of the Supreme Court of South Africa] High Court of Namibia**, who shall be the President of the court, an accountant of not less than ten years' standing, and a representative of the commercial community: Provided that in all cases relating to the business of mining, if the appellant so prefers, such third member shall be a qualified mining engineer.”;

(b) by the substitution for subsection (3) of the following subsection:

“(3) The **[Administrator-General] Minister** may, by **[proclamation in the Official Gazette] notice in the Gazette**, constitute such court or courts, and may from time to time by such **[proclamation] notice** abolish any existing court or courts or constitute such additional courts as circumstances may require.”;

(c) by the substitution for subsection (5) of the following subsection:

“(5) (a) The members of any such court, other than judges, shall be appointed by the **[Administrator-General by proclamation in the Official Gazette] Minister by notice in the Gazette**, and shall hold office for five years from the date of the relevant **[proclamation] notice**: Provided that the appointment of any such member may at any time be terminated by the **[Administrator-General] Minister** for any reason which **[he] the Min-**

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ister considers good and sufficient, and shall lapse in the event of the abolition of the court in terms of subsection (3).

- (b) Any person so appointed shall be eligible for reappointment for such further period or periods as the [Administrator-General] Minister may think fit.”; and
- (d) by the substitution for subsection (6) of the following subsection:

“(6) The Judge-President of the [South West Africa Division of the Supreme Court] High Court shall nominate and second a judge or an acting judge of [such division] that Court to be the President of such court and such secondment shall be for such period or for the hearing of such cases as the said Judge-President shall determine.”.

Amendment of section 76 of Act 24 of 1981

21. Section 76 of the principal Act is amended -

- (a) by the substitution for subsection (2) of the following subsection:

“(2) Such appeal shall lie to the [South West Africa Division of the Supreme Court of South Africa] High Court of Namibia.”;

- (b) by the substitution for subsection (5) of the following subsection:

“(5) If the person nominated as President of the special court cannot act in that capacity for the purposes of this section by reason of [his] him or her having ceased to be a judge or acting judge or if such person has died or if it is inconvenient for such person to act in the said capacity by reason of his or her absence or illness or for some other reason, the Judge President of the [South West Africa Division of the Supreme Court of South Africa] High Court may nominate and second another judge or acting judge to act as President of the special court for the purposes of this section in the place of the said person.”; and

- (c) by the substitution for subsection (17) of the following subsection:

“(17) Service of any notice which the registrar of the special court is required to give to any person under this section or of any notice which any party may under this section lodge with an opposite party or his or her [attorney] legal practitioner or agent, shall be effected by the registrar or the party lodging the notice, as the case may be, or by some person acting on the instructions of the registrar or such party, in the manner prescribed by law for the service of process of the [Supreme Court] High Court, or by despatching such notice to the person to whom it is addressed by registered post addressed to such person’s residential or business address.”.

Substitution of section 77 of Act 24 of 1981

22. The following section is substituted for section 77 of the principal Act:

“Members of Court not disqualified from adjudicating

77. A member of a special court or a judge of the [South West Africa Division of the Supreme Court of South Africa] High Court or Supreme Court of Namibia shall not solely on account of his or her liability to be assessed under this Act be deemed to be interested in any matter upon which he or she may be called upon to adjudicate thereunder”.

Amendment of section 79 of Act 24 of 1981 as amended by section 12 of Proclamation AG. 10 of 1985 and section 9 of Act 22 of 1995

23. (1) Section 79 of the principal Act is amended -

(a) by the substitution for subsection (3) of the following subsection:

“(3) Any amount which on 1 February 1996 is owing by any taxpayer in respect of any tax, penalties or interest levied or accrued in terms of this Act before such date, shall with effect from that date bear interest at the rate of 20 per cent per annum, calculated daily and compounded monthly.”; and

(b) by the addition of the following subsection:

“(4) Notwithstanding anything to the contrary contained in any law or the common law, the amount that may be accumulated and be recovered in respect of interest levied in accordance with any provision of this section shall not be limited to, and may exceed, the amount of the principal debt due, whether such principal debt represents tax, penalties or interest, or a combination thereof.”.

(2) Notwithstanding anything to the contrary contained in the Income Tax Amendment Act, 1995 (Act 22 of 1995) -

(a) the amendment referred to in paragraph (a) of section 9 of that Act, shall be deemed to have been declared by that Act to come into operation on 1 February 1996; and

(b) the amendment referred to in paragraph (b) of section 9 of that Act, shall be deemed not to have been part of that Act.

(3) The amendment effected by paragraph (a) of subsection (1) and the provisions of subsection (2) shall be deemed to have come into operation on 1 February 1996.

Amendment of section 80 of Act 24 of 1981 as amended by section 13 of Proclamation AG. 10 of 1985 and section 13 of Act 22 of 1995

24. (1) Section 80 of the principal Act is amended -

(a) by the substitution for subsection (3) of the following subsection:

“(3) Any amount which on 1 February 1996 is owing by any taxpayer in respect of any employees’ tax, provisional tax, penalties

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or interest levied or accrued in terms of this Act before such date, shall with effect from that date bear interest at the rate of 20 per cent per annum, calculated daily and compounded monthly.”; and

(b) by the addition of the following subsection:

“(5) Notwithstanding anything to the contrary contained in any law or the common law, the amount that may be accumulated and be recovered in respect of interest levied in accordance with any provision of this section shall not be limited to, and may exceed, the amount of the principal debt due, whether such principal debt represents tax, penalties or interest, or a combination thereof.”.

(2) Notwithstanding anything to the contrary contained in the Income Tax Amendment Act, 1995 (Act 22 of 1995) -

(a) the amendment referred to in paragraph (a) of section 10 of that Act, shall be deemed to have been declared by that Act to come into operation on 1 February 1996; and

(b) the amendment referred to in paragraph (b) of section 10 of that Act, shall be deemed not to have been part of that Act.

(3) The amendment effected by paragraph (a) of subsection (1) and the provisions of subsection (2) shall be deemed to have come into operation on 1 February 1996.

Amendment of section 81 of Act 24 of 1981

25. Section 81 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) Where any taxes as defined in subsection (3) are owing by the taxpayer in respect of more than one year of assessment or more than one of such taxes are owing by the taxpayer, whether for one or more years of assessment, the **[Permanent Secretary] Minister** shall not be required to maintain a separate account in respect of each year of assessment or each of such taxes, but may maintain one tax account for the taxpayer recording details of the assessed amounts of the said taxes and the interest payable in respect of such taxes in terms of section 79[(2)] for which the taxpayer has from time to time become liable, the amounts of the payments made in respect of such taxes or interest (excluding payments made by way of provisional tax in terms of Schedule 2), any credit in respect of any amount of employees' tax or provisional tax which the taxpayer is under that Schedule entitled to have set off against his liability for such taxes and such other details as may be required to establish the total amount owing by the taxpayer from time to time in respect of such taxes or interest, and any such payment or credit shall be deemed to have been made or to have accrued in respect of the total amount reflected in such tax account as owing by the taxpayer at the time such payment is made or such credit is passed.”.

Amendment of Schedule 1 to Act 24 of 1981, as amended by section 3 of Act 12 of 1982, section 15 of Proclamation AG. 10 of 1985, section 19 of Act 25 of 1992, section 12 of Act 10 of 1993, section 9 of Act 17 of 1994 and section 11 of Act 22 of 1995

26. Schedule 1 to the principal Act is amended by the substitution for subparagraph (b) of paragraph 10(3) of the following subparagraph:

- “(b) Where any allowance was granted in respect of such asset under the provisions of section 17(1)(e) of this Act the provisions of section 14(4) of this Act shall not apply in respect of any amount recovered or recouped in respect of such allowance.”.

Amendment of Schedule 2 to Act 24 of 1981, as amended by section 16 of Proclamation AG. 10 of 1985, section 20 of Act 25 of 1992 and section 12 of Act 22 of 1995

27. Schedule 2 to the principal Act is amended -

- (a) by the substitution for the definition of “employer” of the following definition:

“‘employer’ means any person (excluding any person not acting as a principal, but including any person acting in a fiduciary capacity or in his or her capacity as a trustee in an insolvent estate, an executor or an administrator of a benefit fund, pension fund, provident fund, retirement annuity fund or any other fund) who pays or is liable to pay to any person other than a company any amount by way of remuneration, and any person responsible for the payment of any amount by way of remuneration to any person other than a company under the provisions of any law or out of public funds (including the funds of the Government of Namibia [**or of a Representative Authority in Namibia, or of the Government or any provincial council of the Republic of South Africa**] regional council, or any administration or undertaking thereof) or out of funds voted by [**the National Assembly or the Legislative Authority of a Representative Authority, or by the Parliament or a provincial council of the said Republic**] the National Assembly.”;

- (b) by the insertion in paragraph 1 after the definition of “employer” of the following definition:

“‘month’ means any of the twelve portions into which a calendar year is divided;”;

- (c) by the deletion of paragraph (i) of the definition of “remuneration” in paragraph 1;
- (d) by the deletion of subparagraph (3) of paragraph 2;
- (e) by the substitution for subparagraph (1) of paragraph 6 of the following subparagraph:

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“(1) If an employer fails to pay any amount of employees’ tax for which he or she is liable within the period allowed for payment thereof in terms of paragraph 2 he or she shall, in addition to any other penalty or charge for which he or she may be liable under this Act, pay a penalty equal to ten percent of such amount for each month or part of a month that the amount remains unpaid, reckoned from the first day of the month during which payment became due to the date of payment, but such penalty shall not exceed such amount of employee’s tax.”;

- (f) by the substitution for subparagraph (1) of paragraph 9 of the following subparagraph:

“(1) The [**Permanent Secretary**] Minister may from time to time, having regard to the rates of normal tax prescribed in section 6 of this Act, or as foreshadowed by the [**Chairman of the Council of Ministers**] Minister in his or her budget statement, [**to the rebates applicable in terms of section 7(2) and (3) of this Act**] and to any other factors having a bearing upon the probable liability of taxpayers for normal tax, prescribe deduction tables applicable to such classes of employees as he or she may determine, and the manner in which such tables shall be applied, and the amount of employees’ tax to be deducted from any amount of remuneration shall, subject to the provisions of subparagraph (3) of this paragraph, and paragraphs 10, 11 and 12, be determined in accordance with such tables or, where subparagraph (3) is applicable, in accordance with that subparagraph.”;

- (g) by the substitution for subparagraph (a) of paragraph 13(2) of the following subparagraph:

“(a) if the employer who is required to deliver the certificate has not ceased to be an employer in relation to the employee concerned, within [**fourteen**] 30 days after the end of the period to which the certificate relates;”;

- (h) by the substitution for subparagraphs (3) and (4) of paragraph 17 of the following subparagraphs:

“(3) For the purpose of any calculation of normal tax under subparagraph (2) the rate at which such tax is to be calculated shall be the relevant rate prescribed in section 6 of this Act in respect of the year of assessment in respect of which such provisional tax is required to be paid under this Schedule, or the relevant rate in respect of that year foreshadowed by the [**Chairman of the Council of Ministers**] Minister in his or her budget statement.

(4) The [**Permanent Secretary**] Minister may from time to time, having regard to the rates of normal tax prescribed in section 6 of this Act or foreshadowed by the [**Chairman of the Council of Ministers**] Minister in his or her budget statement, [**to the rebates applicable in terms of section 7(2) and (3) of this Act**] and to any other factors having a bearing upon the probable liability of taxpayers for normal tax, prescribe tables for optional use by provisional tax-

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payers falling within any category specified by the [Permanent Secretary] Minister, or by provisional taxpayers generally, for the purpose of estimating the liability of such taxpayers for normal tax, and the [Permanent Secretary] the Minister may prescribe the manner in which such tables shall be applied.”; and

- (i) by the substitution for paragraph 27 of the following paragraph:

“Certain matters to be decided by the Minister

27. The Minister’s decision or direction in regard to the question whether any provisional taxpayer should from time to time pay provisional tax in the manner provided in paragraph 22 or in the manner provided in paragraph 23 shall be final.”.

Amendment of Schedule 4 to Act 24 of 1981, added by section 21 of Act 25 of 1992 and amended by section 14 of Act 10 of 1993, section 10 of Act 17 of 1994 and section 13 of Act 22 of 1995

28. Schedule 4 to the principal Act is amended by the substitution for the rates of normal tax as set out in paragraph 1 of the rates of normal tax set out in the Schedule to this Act.

Substitution of certain expressions in Act 24 of 1981

29. The principal Act is amended -

- (a) by the substitution for the expression “Permanent Secretary”, wherever it occurs, of the word “Minister”; and
- (b) by the substitution for the expression “Central Revenue Fund”, where it appears in sections 5(1) and 41, of the expression “State Revenue Fund”.

Amendment of section 1 of Act 22 of 1995

30. (1) Section 1 of the Income Tax Amendment Act, 1995 (Act 22 of 1995) is amended by the substitution of the following subsection for subsection (2):

“(2) The amendments effected by paragraph (e) of subsection (1) shall be deemed to have come into operation -

- (a) in the case of a taxpayer other than a company, at the beginning of the year of assessment commencing on or after 1 March [1992] 1995;
- (b) in the case of a company, at the beginning of the year of assessment of such company commencing on or after 1 January [1992] 1995.”.

(2) Subsection (1) shall be deemed to have come into operation on 27 December 1995.

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31. This Act shall be called the Income Tax Amendment Act, 1996, and shall be deemed to have come into operation, unless otherwise stated -

- (a) in the case of any taxpayer other than a company, at the beginning of the year of assessment commencing on or after 1 March 1996;
- (b) in the case of any taxpayer which is a company, at the beginning of the year of assessment of such company commencing on or after 1 January 1996.

SCHEDULE 4**"1. RATES OF NORMAL TAX***(section 6)*

<i>Taxable amount</i>	<i>Rates of Tax</i>
Where the taxable amount -	
does not exceed N\$ 15 000	no tax payable
exceeds N\$ 15 000 but does not exceed N\$20 000	10 per cent of the amount by which the taxable amount exceeds N\$15 000
exceeds N\$20 000 but does not exceed N\$30 000	N\$500 plus 15 per cent of the amount by which the taxable amount exceeds N\$20 000
exceeds N\$30 000 but does not exceed N\$40 000	N\$2 000 plus 20 per cent of the amount by which the taxable amount exceeds N\$30 000
exceeds N\$40 000 but does not exceed N\$50 000	N\$4000 plus 25 per cent of the amount by which the taxable amount exceeds N\$40 000
exceeds N\$50 000 but does not exceeds N\$80 000	N\$6 500 plus 30 per cent of the amount by which the taxable amount exceeds N\$50 000
exceeds N\$80 000	N\$15 500 plus 35 per cent of the amount by which the taxable amount exceed <u>N\$80 000</u> ".