



GOVERNMENT GAZETTE

OF THE

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 240 1995

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. 22 of 1995: Income Tax Amendment Act, 1995.

EXPLANATORY NOTE:

_____ Words underlined with solid line indicate insertions in existing enactments.

[] Words in bold type in square brackets indicate omissions from existing enactments.

ACT

To amend the Income Tax Act, 1981, so as to define or redefine certain expressions; to increase the tax exempt amount in respect of a gratuity payable to a person on retirement; to further regulate the exemption from income tax of amounts transferred from one pension fund or providend fund to another pension fund or providend fund, or to a retirement annuity fund; to exempt the income of Unit Trusts from tax for the 1996, 1997 and 1998 years of assessment; to allow as deductible expenses donations to approved and registered welfare organizations and approved educational institutions; to make further provision with respect to taxpayers who are not required to submit returns; to increase the rate of interest and change the method of calculation of interest on overdue amounts; to introduce new rates of taxes; and to provide for incidental matters.

(Signed by the President on 16 December 1995)

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 and section 1 of Act 17 of 1994.

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

(a) by the substitution in the definition of "assessment" for the words following paragraph (c) of the following words:

"and for the purposes of Part III of Chapter III includes any determination by [the Permanent Secretary in respect of any income rebate referred to in section 7 and any decision of] the Permanent Secretary which is in terms of this Act subject to objection and appeal;"

- (b) by the substitution in paragraph (e) of the definition of "company" for the words preceding subparagraph (i) of the following words:

"(e) any unit portfolio comprised in any unit trust scheme in securities **[other than property shares]** managed or carried on by any company registered as a management company under section 4 of the Unit Trusts Control Act, 1947 (Act 18 of 1947), and incorporated or deemed to be incorporated in Namibia if -";

- (c) by the substitution in paragraph (d) of the definition of "gross income" for the words preceding the proviso of the following words:

"(d) any amount received by or accrued to an employee from a pension fund representing a refund or payout of any one or more of the following:

- (i) contributions made to the pension fund by the employee or office-holder in accordance with a condition of service attached to such employment or office and allowed as a deduction under this Act or any previous income tax law;
- (ii) contributions made to the pension fund by the employer of the employee or office-holder for the benefit of the employee or office-holder;
- (iii) contributions made to the pension fund by way of the transfer from another pension fund or a retirement annuity fund or a provident fund of the amount representing the accrued interest of the employee or office-holder in such pension fund, retirement annuity fund or provident fund;
- (iv) any interest on moneys referred to in subparagraph (i), (ii) or (iii);"

- (d) by the substitution for subparagraph (ii) of paragraph (dB) of the definition of "gross income" of the following subparagraph:

"(ii) the termination of such a member's employment or membership of the provident fund due to dismissal or resignation, or for any other reason; or";

- (e) by the substitution for paragraph (h) of the definition of "gross income" of the following paragraph:

"(h) any amount received or accrued during any year of assessment by way of the disposal of any asset previously acquired if the expenditure relating to the acquisition of such asset was allowed to be deducted as capital expen-

diture in terms of section 18(1)(a) of the corresponding provisions of any previous income tax law, less such portion of the amount of such capital expenditure not as yet deducted by virtue of the provisions of section 36(1);";

- (f) by the substitution for subparagraph (ii) of paragraph (b) of the definition of "retirement annuity fund" of the following subparagraph:

"(ii) that not more than one-third of the total value of any annuities to which any person becomes entitled, may be commuted for a single payment, except where such total value does not exceed [R5 000] N\$10 000;";

- (g) by the substitution for the definition of "taxable amount" of the following definition:

" 'taxable amount', in relation to a person other than a company, means the taxable income of such person;" and

- (h) 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;"

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

- (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 1992.
- (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 1992.

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 and section 2 of Act 17 of 1994

2. (1) Section 5 of the principal Act is amended -

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

"(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,";

- (b) by the substitution for subsection (4) of the following subsection:

"(4) Where, but for the inclusion of the income of a person referred to in subsection (3) of 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, such person would not have had any taxable amount for the year of assessment in question, no tax shall, notwithstanding anything to the contrary contained in subsection (3) or any other provision of this Act, be leviable on the amount representing such person's taxable amount as a result of the inclusion of that amount in such income."; and

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

"(5) Where, but for the inclusion in the income of any company carrying on pastoral, agricultural or other farming operations of any amount by virtue of the provisions of paragraph 4(2)(c)(ii), 6A(1) or 6A(2) of the First Schedule to this Act, such company would not have had any taxable income for the year of assessment in question, no tax shall, notwithstanding anything to the contrary contained in this Act, be leviable on the amount representing such company's taxable income as a result of the inclusion of that amount in its income.".

(2) The amendments effected by 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 1994, and
- (b) in the case of a taxpayer which is a company, at the beginning of the year of assessment of such company on or after 1 January 1994.

Substitution of section 5B of Act 24 of 1981 as inserted by section 3 of Act 10 of 1993

3. The following section is substituted for section 5B of the principal Act:

Special abatement in respect of manufacturers

"5B.(1) Notwithstanding anything to the contrary contained in this Act, there shall in respect of a taxpayer who is a registered manufacturer and who has in any year of assessment derived income from manufacturing, be allowed as a special abatement, and amount equal to -

- (a) 50 per cent 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 per cent of the income so derived in the sixth ensuing year of assessment;

- (c) 40 per cent of the income so derived in the seventh ensuing year of assessment;
- (d) 35 per cent of the income so derived in the eighth ensuing year of assessment;
- (e) 30 per cent of the income so derived in the ninth ensuing year of assessment;
- (f) 25 per cent of the income so derived in the tenth ensuing year of assessment;
- (g) 20 per cent of the income so derived in the eleventh ensuing year of assessment;
- (h) 15 per cent of the income so derived in the twelfth ensuing year of assessment;
- (i) 10 per cent of the income so derived in the thirteenth ensuing year of assessment;
- (j) 5 per cent of the income so derived in the fourteenth ensuing year of assessment;

(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 manufacturing 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 abatement 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 applying in respect of such determination."

Repeal of section 7 of Act 24 of 1981, as substituted by section 4 of Act 25 of 1992 and amended by section 4 of Act 10 of 1993 and section 3 of Act 17 of 1994

4. Section 7 of the Principal Act is repealed.

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 and section 4 of Act 17 of 1994

5. (1) Section 16 of the principal Act is amended -

- (a) by the substitution for subparagraph (i) of paragraph (n) of subsection (1) of the following subparagraph:

"(i) subject to the provisions of section 42, dividends received by or accrued to or in favour of any taxpayer;";

- (b) by the deletion of subparagraphs (iii) and (iv);

- (c) by the substitution in paragraph (o) of subsection (1) for the words preceding the proviso of the following words:

"(o) so much of any amount (being a lump sum) referred to in paragraph (c) of the definition of 'gross income' in section 1 or in section 13(3) as does not exceed **[thirty thousand rand] N\$50 000** less the sum of any other amounts which have been excluded from the taxpayer's income by virtue of the exemption conferred by this paragraph whether in the current or any previous year of assessment:';

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

"(z) the total proceeds of a lump sum benefit derived by the taxpayer from any pension fund or provident fund, if it is proved to the satisfaction of the Permanent Secretary that the total proceeds of the lump sum benefit so derived -

(i) has been paid by the taxpayer; or

(ii) has been directly transferred from such pension fund or provident fund,

during the year of assessment in question to any pension fund, provident fund or retirement annuity fund for the benefit of the taxpayer: Provided that the lump sum benefit so derived represents the taxpayer's full benefit in the pension fund or provident fund concerned;"

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

"(ab) so much of any amount received by or accrued to any [person] 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 has been or is to be expended for providing for the education or training at an educational institution of a child or step-child as contemplated in section 17(5) [in respect] of [which] the taxpayer concerned, [is entitled to a rebate under section 7(3)] 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;"

- (f) by the addition of the following paragraph to subsection (1):

"(ac) the income of a company referred to in paragraph (e) of the definition of 'company' in section 1, for the years of assessment commencing on or after 1 January 1995, 1996 and 1997 respectively."; and

- (g) by the deletion of subsection (4).

(2) The amendments effected by paragraph (c) of subsection (1) shall be deemed to have come into operation at the beginning of the year of assessment which commenced on or after 1 March 1994.

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 and section 7 of Act 10 of 1993

6. Section 17 of the principal Act is amended -

- (a) by the substitution for the first proviso to paragraph (e) of subsection (1) of the following proviso:

"Provided that the amount of any such expenditure shall not be fully deductible in the same year of assessment, but shall be deducted, one-third in the year of assessment in which the expenditure is incurred, one-third in the first ensuing year of assessment and one-third in the second ensuing year of assessment, but if any such motor vehicle, machinery, implement, utensil or article is sold or otherwise disposed of by the taxpayer during any of such years of assessment, no such deduction shall be allowed in respect of such motor vehicle, machinery, implement, utensil or article in that year of assessment or any such ensuing year of assessment which may remain.";

- (b) by the substitution for paragraph (s) of subsection (1) of the following paragraph:

"(s) any amount donated by the taxpayer during the year of assessment to -

- (i) a welfare organization registered or deemed to be registered under the National Welfare Act, 1965 (Act 79 of 1965), and which is approved by the Minister after consultation with the Minister of Health and Social Services; or
- (ii) an educational institution approved by the Minister after consultation with the Minister of Higher Education, Vocational Training, Science and Technology or with the Minister of Basic Education and Culture, as the case may be:

Provided that -

- (a) no deduction in terms of this paragraph shall give rise to or increase any loss;
- (b) no individual is nominated as a beneficiary;
- (c) a certificate containing particulars as determined by the Permanent Secretary shall be issued by the welfare organization or educational institution in respect of any such donation; or
- (d) no payment in respect of school fees or contribution to a school fund made to any school which a taxpayer is required to make shall be allowed as a deduction"; and

(c) by the addition of the following subsections -

"(3) There shall be allowed as a deduction from the income of a person who is a sole breadwinner an amount of N\$4 000.

(4) For the purpose of subsection (3) 'sole breadwinner' means -

- (a) any married person whose spouse's income during the year of assessment in question did not exceed N\$3 000; or
- (b) any divorced or unmarried person in whose custody and under whose control his or her child is and who has not during the year of assessment in question received from any person responsible to contribute to the maintenance of such child or children, maintenance in respect of such child in excess of N\$3 000.

- (5) For the purposes of paragraph (b) of subsection (4) 'child' includes a step-child and means any child who on the last day of such year of assessment was unmarried, and -
- (a) was not or would not, had he or she been alive, have been over the age of eighteen years;
 - (b) was not or would not, had he or she been alive, have been over the age of twenty-one years and -
 - (i) was wholly or partially dependent for his or her maintenance upon the taxpayer; and
 - (ii) was not liable for the payment of normal tax in respect of such year;
 - (c) was not or would not, had he or she been alive, have been over the age of twenty-six years and -
 - (i) was wholly or partially dependent for his or her maintenance upon the taxpayer;
 - (ii) was not liable for the payment of normal tax in respect of such year; and
 - (iii) is proved to the satisfaction of the Permanent Secretary that he or she was during such year of assessment a full-time student at an educational institution of a public character; or
 - (d) because of mental or physical infirmity, was incapable of maintaining himself or herself, and was wholly or partially dependent for his or her maintenance upon the taxpayer, and was not liable for the payment of normal tax in respect of such year or assessment.

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

7. Section 17A of the principal Act is amended by the substitution for paragraphs (a) and (b) of subsection (1) of the following paragraphs:

- "(a) payments in respect of remuneration or contributions to a pension fund, provident fund or benefit fund made by such taxpayer during such year of assessment to or on behalf of employees of such taxpayer who are directly engaged in any manufacturing process; and

- (b) expenditure incurred by such taxpayer during such year of assessment in providing training to employees of such taxpayer referred to in paragraph (a),".

Amendment of section 56 of Act 24 of 1981 as amended by section 10 of Proclamation AG 10 of 1985 and section 10 of Act 10 of 1993

8. Section 56 of the principal Act is amended by the substitution for the proviso to paragraph (a) of subsection 91) of the following proviso:

"Provided that any taxpayer (other than a company) shall, unless the Permanent Secretary, by way of a written notice addressed to such taxpayer or his or her representative, requires such taxpayer to furnish returns, not be obliged to furnish such returns if his or her taxable income during that year of assessment consisted only of interest or salary, or interest and salary, the total amount of which did not exceed N\$15 000."

Amendment of section 79 of Act 24 of 1981 as amended by section 12 of Proclamation AG 10 of 1985

9. Section 79 of the principal Act is amended -

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

"(2) If the taxpayer fails to pay any tax in full on or before the date of payment notified by the Permanent Secretary in the notice of assessment, or any extension of such date which the Permanent Secretary may grant having regard to the circumstances of the case, or on or before the period for payment prescribed by this Act, as the case may be, interest shall be paid by the taxpayer on the outstanding balance of such tax at the rate of 20 per cent per annum calculated daily as from the date for payment and compounded monthly during the period which any portion of the tax remains unpaid."; and

- (b) by the addition of the following subsection:

"(3) Any amount which, on the date of promulgation of the Income Tax Amendment Act, 1995, 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 the effect from that date, bear interest at the rate of 20 per cent per annum, calculated daily and compounded monthly, and to be reckoned from such date of promulgation."

Amendment of section 80 of Act 24 of 1981 as amended by section 13 of Proc-

Amendment AG 10 of 1985

10. Section 80 of the principal Act is amended -

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

"(2) If any amount of employees' tax is not paid in full within the period of 20 days prescribed for the payment of such amount by subparagraph (1) of paragraph 2 of Schedule 2, or if any amount of provisional tax is not paid in full within the relevant period prescribed for the payment of such amount by paragraph 22, 23, or 24 or by subparagraph (1) of paragraph 26 of that Schedule, interest shall be paid by the person liable to pay the amount in question at the rate of 20 per cent per annum, calculated daily and compounded monthly as from the day immediately following the expiry of the period for payment so prescribed, unless the Permanent Secretary having regard to the circumstances of the case otherwise directs."; and

(b) by the insertion of the following subsection after subsection (2), the existing subsection (3) becoming subsection (4):

"(3) Any amount which, on the date of promulgation of the Income Tax Amendment Act, 1995, is owing by any person in respect of employees' tax, provisional 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 to be reckoned from such date of promulgation."

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 and section 9 of Act 17 of 1994

11. Schedule 1 to the principal Act is amended by the substitution in subparagraph (a) of paragraph 6(1) for the words preceding item (i) of the following words:

"(a) in the case of any farmer (other than a company or the estate of a deceased person) who, in respect of the year of assessment ending on 28 February 1994 or any person (other than a company) who commenced farming operations after that date, includes in his or her return of income any class of livestock -"

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

12. Schedule 2 to the principal Act is amended by the substitution for subparagraph (1) of paragraph 2 of the following subparagraph:

"(1) Every employer (whether or not registered as an employer under paragraph 15) who pays or becomes liable to pay any amount by way of remuneration to any employee shall, unless the Permanent Secretary has granted authority to the contrary, deduct or withhold from that amount by way of employee's tax an amount which shall be determined as provided in paragraph 9, 10, 11 or 12, whichever is applicable, in respect of the liability for normal tax of that employee and shall pay the amount so deducted or withheld to the Permanent Secretary within ~~[seven]~~ 20 days after the end of the month during which the amount was deducted or withheld, or in the case of a person who ceases to be an employer before the end of such month, within ~~[seven]~~ 20 days after the day on which such person ceased to be an employer, or in either case within such further period as the Permanent Secretary may approve."

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 and section 10 of Act 17 of 1994

13. Schedule 4 to the principal Act is amended -

- (a) by the substitution for the Rates of Normal Tax set out in paragraph 1 of the Rates and Normal Tax set out in the Schedule to this Act;
- (b) by the substitution for subparagraph (a) of paragraph 3 of the following subparagraph:

"(a) on each ~~[rand]~~ N\$ of the taxable income of any company (excluding taxable income derived from mining operations and taxable income referred to in paragraph (c)), ~~[thirty-eight]~~ 35 cents;"

and

- (c) by the substitution in subparagraph (c) of paragraph 3 for the words preceding the proviso of the following words:

"(c) on each ~~[rand]~~ N\$ of the taxable income derived by any company from mining for diamonds, or from services rendered by such company in connection with the mining for diamonds on behalf of any person licensed to conduct such mining operations, fifty cents."

Short title and commencement

14. This Act shall be called the Income Tax Amendment Act, 1995, 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 1995;
- (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 1995.

SCHEDULE
(Section 13)

"1.

RATES OF NORMAL TAX
(section 6)

Taxable amount	Rates of Tax
Where the taxable amount -	
does not exceed N\$15 000	no tax payable;
exceeds N\$15 000 but does not exceed N\$20 000	19 per cent of each N\$1 of the taxable amount;
exceeds N\$20 000 but does not exceed N\$30 000	N\$950 plus 22 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\$3 150 plus 27 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\$5 850 plus 32 per cent of the amount by which the taxable amount exceeds N\$40 000;
exceeds N\$50 000 but does not exceed N\$80 000	N\$9 050 plus 33 per cent of the amount by which the taxable amount exceeds N\$50 000;
exceeds N\$80 000	<u>N\$18 950 plus 35 per cent of the amount by which the taxable amount exceeds N\$80 000."</u>