



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$1.00

WINDHOEK - 3 December 1999

No. 2240

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GOVERNMENT NOTICE

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of the Parliament

Government Notice

OFFICE OF THE PRIME MINISTER

No. 275

1999

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. 21 of 1999: Income Tax Second Amendment Act, 1999.

EXPLANATORY NOTE:

_____ Words underlined with a solid line indicate insertions in existing provisions.

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

ACT

To amend the Income Tax Act, 1981, so as to amend the definition of "company" in so far as it relates to unit trust schemes; to include income from preservation funds in the definition of "gross income"; to redefine the exemption from tax of any lump sum payment by a pension fund on retirement; to include certain pension schemes in the definition of "pension fund"; to increase the amount below which any member's interest in a pension fund may be commuted for a single payment and to preclude local authorities from controlling the assets or management of funds created for their employees; to define preservation funds; to provide that only provident funds registered under the Pension Funds Act, 1956, may be approved; to redefine the assets in respect of which recoupments of allowances may arise; to include in taxable income any withdrawals from a preservation fund; to deem the source of annuities received from purchased annuity contracts entered into in a foreign country to be Namibia, subject to certain conditions; to increase the exemption from tax on a lump sum on retirement and retrenchment; to reformulate the exemption applicable on transfer of pension and provident fund proceeds to any approved fund; to exempt from taxation one-third of the proceeds from a preservation fund on retirement; to exempt unit portfolios from taxation; to exempt from taxation, subject to certain conditions, annuities arising from capital invested outside Namibia; to provide that expenditure incurred in respect of aircraft, ships and boats also be claimed over three years; to increase the allowance in respect of contributions to retirement funds; to allow that expenditure incurred for both private and business purposes be apportioned and that the business portion may be claimed as an expense; to make new provisions for the granting of extensions for the submission of returns of income and for the payment of any tax due; to provide for the assessment of taxpayers who are not required to submit returns of income and to allow a period of time for the payment of any tax due by such taxpayers; to subject deductions of employees' tax from the remuneration of employees made by an employer to examination; to require that certain information be supplied annually instead of only at the request of the Minister; to change the basis of calculation of additional tax in respect of the late submission of returns of income; to provide for changes with regard to the calculation of interest on late payments; to require employees to supply a copy of their "Certificates of Registration as a Taxpayer for Income Tax" to their employers and to provide that, should an employee fail to supply such copy, deductions of employees' tax from the remuneration of employees be made at the maximum rate; to increase the threshold of other income before which a taxpayer is required to register as a provisional taxpayer; to repeal superfluous provisions; and to provide for incidental matters.

(Signed by the President on 19 November 1999)

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

Act No. 21, 1999 INCOME TAX SECOND AMENDMENT ACT, 1999

Amendment of section 1 of Act No. 24 of 1981, as amended by section 1 of Proclamation AG. 10 of 1985, section 1 of Act No. 8 of 1987, section 1 of Act No. 1 of 1989, section 24 of Act No. 3 of 1991, section 1 of Act No. 8 of 1991, section 1 of Act No. 12 of 1991, section 1 of Act No. 25 of 1992, section 1 of Act No. 10 of 1993, section 1 of Act No. 17 of 1994, section 1 of Act No. 22 of 1995, section 1 of Act No. 12 of 1996 and section 1 of Act No. 5 of 1997

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

(a) by the substitution for paragraph (c) of the definition of "company" of the following paragraph :

"(e) any unit trust scheme, whether in property shares or in securities other than property shares, managed or carried on by any company registered as a management company under the Unit Trusts Control Act, 1981 (Act No. 54 of 1981);"

(b) by the substitution for paragraph (d) of the definition of "gross income" of the following paragraph :

"(d) any amount, excluding any annuity, received by or accrued to an employee from a pension fund : Provided that this provision shall not apply to any lump sum payable on termination or relinquishment of office or employment due to -

(i) the death; or

(ii) the superannuation, ill-health or other infirmity, proven to the satisfaction of the Minister; or

(iii) the retirement,

of such employee;"

(c) by the insertion after paragraph (dC) of the definition of "gross income" of the following paragraph :

"(dD) any amount received or accrued under the rules of a preservation fund upon -

(i) the withdrawal of a member's benefit or of any portion of a member's benefit; or

(ii) the retirement or death of a member of the provident preservation fund; or

(iii) the cessation of the preservation fund;"

(d) by the substitution for the words preceding paragraph (a) of the definition of "pension fund" of the following words:

" 'pension fund' includes a pension scheme established by or under any law: Provided that the rules of such scheme, unless contained in such law, shall be subject to approval by the Minister and shall not be contrary paragraph (b), and any superannuation, widows' and orphans' fund [and any pension scheme established by or under any law] and any other fund

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(other than a preservation fund, a provident fund or a retirement annuity fund) which is approved by the Minister in respect of the year of assessment in question : Provided further that the Minister may approve a fund subject to such limitations or conditions as he or she may determine, and shall not approve a fund in respect of any year of assessment unless he or she is in respect of that year of assessment satisfied -";

- (e) by the substitution for subparagraph (iv) of paragraph (b) of the definition of "pension fund" of the following subparagraph :

"(iv) that if -

- (aa) the total value of the annuity or annuities which an employee or other person referred to in paragraph (a) becomes entitled to exceeds N\$ 20 000, not more than one-third of such annuity or annuities may be commuted for a single payment;
- (bb) the total value of the annuity or annuities which a person referred to in subparagraph (aa) becomes entitled to does not exceed N\$ 20 000, the total of such annuity or annuities may be commuted for a single payment;
- (cc) the value of an existing annuity which any person is entitled to at the date of commencement of the Income Tax Second Amendment Act, 1999, does not exceed N\$20 000, irrespective of whether any portion of such annuity has before such date in terms of any provision of this Act been commuted for a single payment, the total of such annuity may be commuted, at the request of such person, for a single payment;"

- (f) by the substitution for subparagraph (v) of paragraph (b) of the definition of "pension fund" of the following subparagraph :

"(v) for the administration of the fund in such a manner as to preclude the employer [**except in the case of a local authority**] from controlling the management or assets of the fund and from deriving any monetary advantage from moneys paid into or out of the fund, except that where the employer is a partnership, a member of the partnership may be permitted to derive such monetary advantage if he or she was previously an employee and, on becoming a partner, was permitted to retain his or her membership of the fund as though he or she had not ceased to be an employee, his or her contributions being based upon his or her pensionable emoluments during the twelve months which ended on the day on which he or she ceased to be an employee and his or her benefits from the fund being calculated accordingly; and";

- (g) by the insertion of the following definition after the definition of "prescribed" :

" 'preservation fund' means any fund (other than a pension fund, provident fund, benefit fund or retirement annuity fund) which is approved by the Minister in respect of the year of assessment in question : Provided that the Minister may approve a preservation fund subject to such limitations or conditions as he or she may determine, and shall not approve any preservation fund in respect of any year of assessment unless he or she is in respect of that year of assessment satisfied -

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- (a) that the preservation fund is a permanent pension preservation fund or a permanent provident preservation fund, established *bona fide* and solely for the purposes of -
 - (i) preserving so much of any amount derived by the taxpayer from any pension fund or provident fund as is invested in such preservation fund until such time that the invested amount can be transferred or paid to any pension fund, provident fund or retirement annuity fund, or withdrawn in one or more amounts for other purposes; and
 - (ii) if any amount remains in such fund at the time of retirement of the taxpayer as provided for in the rules of such preservation fund, to provide for annuities or lump sum benefits for members on retirement, or for widows, children, dependants or nominees of deceased members, or mainly for such purposes, and also for the purpose of providing benefits other than annuities or lump sum benefits to such persons;
- (b) that the rules of the fund provide -
 - (i) that contributions to the preservation fund only be made by way of the transfer or payment of so much of the members' share in a pension fund or provident fund, as the case may be, as may be transferred or paid to the preservation fund within the year of assessment or within a further period of three months following such year of assessment, as the result of the termination of such member's membership of such pension fund or provident fund, or on the cessation of such pension fund or provident fund, as the case may be;
 - (ii) that if, in the case of a pension preservation fund -
 - (aa) the total value of the annuity or annuities which a taxpayer referred to in paragraph (a)(i) becomes entitled to exceeds N\$20 000, not more than one-third of the total value of such annuity or annuities may be commuted for a single payment;
 - (bb) the total value of the annuity or annuities which a taxpayer referred to in paragraph (a)(i) becomes entitled to does not exceed N\$20 000, the total of such annuity or annuities may be commuted for a single payment;
 - (cc) a person dies after he or she has become entitled to an annuity, no further benefit other than an annuity or annuities shall be payable to such person's spouse, children, dependants or nominees;
 - (iii) that a member shall be entitled to -
 - (aa) withdraw, subject to the rules of the preservation fund, amounts from the member's share of the preservation fund for a period not exceeding three years from the date on which the transfers or payments were made to the preservation fund in terms of subparagraph (i);

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- (bb) transfer amounts from the member's share of the preservation fund to any one or more pension funds, provident funds or retirement annuity funds;
- (cc) the commencement of the payment of retirement benefits to such member not earlier than on reaching the age of 55 years and not later than on reaching the age of 70 years, except in the case of a member who through infirmity of mind or body becomes permanently incapable of carrying on his or her occupation, in which case the payment of such retirement benefits shall commence on the date such member became so permanently incapable;
- (iv) for the administration of the preservation fund by a Board of Trustees appointed by the administrators of the preservation fund; and
- (v) that the Minister shall be notified of any amendment of the rules;
- (c) that the rules of the preservation fund have been complied with; and
- (d) that the preservation fund is registered in Namibia under the Pension Funds Act, 1956 (Act No. 24 of 1956); and
- (h) by the insertion of the following paragraph after paragraph (a) of the definition of a provident fund :

“(aA) that the fund is registered in Namibia as a provident fund under the Pension Funds Act, 1956 (Act No. 24 of 1956);”.

(2) The amendments effected by paragraphs (b), (c), (g) and (h) of subsection (1) shall be deemed to have come into operation at the beginning of the year of assessment commencing on or after 1 March 1998.

Amendment of section 5 of Act No. 24 of 1981, as amended by section 1 of Proclamation AG. 25 of 1989, section 24 of Act No. 3 of 1991, section 2 of Act No. 25 of 1992, section 2 of Act No. 10 of 1993, section 2 of Act No. 17 of 1994, section 2 of Act No. 22 of 1995 and section 3 of Act No. 12 of 1996

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

“(a) any amount referred to in paragraph (d) or (dB)(ii) or (iii) or (dD)(i) or (iii) of the definition of “gross income” in section 1;”.

(2) The amendment effected by subsection (1) shall be deemed to have come into operation at the beginning of the year of assessment commencing on or after 1 March 1998.

Amendment of section 14 of Act No. 24 of 1981, as amended by section 6 of Act No. 12 of 1996 and section 2 of Act No. 5 of 1997

3. (1) Section 14 of the principal Act is amended -

(a) by the substitution for subsection (4) of the following subsection :

“(4) There shall be included in the taxpayer's income all amounts

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allowed to be deducted or set off under the provisions of subsection (1) of this section, and 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 by means of the disposal, withdrawal from trade or removal from Namibia of any **[motor vehicle, machinery, implement, utensil or article]** item in respect of which deductions were allowed against the income from the trade of such taxpayer in respect of such **[motor vehicle, machinery, implement, utensil or article]** item : Provided that such **[motor vehicle, machinery, implement, utensil or article]** item so disposed of, withdrawn from the trade or removed from Namibia shall be valued at market value for the purpose of calculating the amount of any deduction recouped or recovered.”; and

(b) by the addition of the following subsection :

“(6) So much of any amount which has been withdrawn by the taxpayer from a preservation fund and which has not been paid or transferred into any pension fund, provident fund or retirement annuity fund, shall be included in the taxable income of such taxpayer in the year of assessment in which the taxpayer’s benefit from a pension fund or provident fund was exempted from the tax due to the transfer or payment thereof into such preservation fund.”.

(2) The amendments effected by paragraph (a) 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 1998; and
- (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 1998.

Amendment of section 15 of Act No. 24 of 1981, as amended by section 4 of Proclamation AG. 10 of 1985, section 4 of Act No. 8 of 1987, section 4 of Act No. 12 of 1991, section 5 of Act No. 10 of 1993 and section 7 of Act No. 12 of 1996

4. Section 15 of the principal Act is amended by the insertion after subsection (2) of the following subsection :

“(3) Any annuity which has in respect of any purchased annuity contract as contemplated in section 16B been received by or has accrued to any natural person who is ordinarily resident in Namibia, shall be deemed to have been derived from a source within Namibia, irrespective of where such purchased annuity contract was entered into or where the annuity is payable.”.

Amendment of section 16 of Act No. 24 of 1981, as amended by section 5 of Proclamation AG. 10 of 1985, section 5 of Act No. 8 of 1987, section 2 of Act No. 8 of 1991, section 5 of Act No. 12 of 1991, section 1 of Act No. 33 of 1991, section 6 of Act No. 25 of 1992, section 6 of Act No. 10 of 1993, section 4 of Act No. 17 of 1994, section 5 of Act No. 22 of 1995 and section 8 of Act No. 12 of 1996

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

- (a) by the substitution for the words preceding the proviso to paragraph (o) of subsection (1) 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)

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as does not exceed [N\$50 000] N\$100 000 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 :”;

- (b) by the deletion of paragraph (u) of subsection (1);
- (c) by the substitution for paragraph (z) of subsection (1) of the following paragraph :

“(z) so much of a lump sum benefit derived by the taxpayer from any pension fund, provident fund or preservation fund, as contemplated by paragraph (d), (dB) or (dD) of the definition of ‘gross income’, and as is proved to the satisfaction of the Minister to have been paid or transferred during the year of assessment in question or within a period of three months after the end of such year of assessment, to any pension fund, provident fund, retirement annuity fund or preservation fund, for the benefit of such taxpayer : Provided that no amount shall be exempt from the tax if such amount may be claimed as a deduction in terms of paragraph (n) or (q) of subsection (1) of section 17;”;

- (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 or a provident preservation fund due to the retirement or death of the member of such fund;”;

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

“(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

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

“(ad) annuities paid by an insurer outside Namibia from any purchased annuity contract entered into outside Namibia, to any natural person who is ordinarily resident in Namibia, if it is proved to the satisfaction of the Minister that the full capital invested in such purchased annuity contract was obtained from a source outside Namibia; and

(ae) the receipts and accruals of any pension fund, provident fund, preservation fund or retirement annuity fund managed and controlled in a country other than Namibia if, having regard to the rules of the fund and the manner in which it is administered, such fund is substantially similar to a pension fund, provident fund, preservation fund or retirement annuity fund : Provided that the receipts and accruals of pension funds, provident funds, preservation funds or retirement annuity funds managed and controlled in Namibia are exempt from any tax imposed by such other country.”.

- (2) The amendments effected -

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- (a) by paragraphs (c) and (d) of subsection (1) shall be deemed to have come into operation at the beginning of the year of assessment commencing on or after 1 March 1998; and
- (b) by paragraph (e) shall be deemed to have come into operation at the beginning of the year of assessment commencing on or after 1 January 1998.

Amendment of section 16B of Act No. 24 of 1981, as inserted by section 6 of Act no. 12 of 1981 and amended by section 10 of Act no. 12 of 1996

6. Section 16B of the principal Act is amended by the substitution in subsection (1) for the definition of "annuity contract" of the following definition:

"annuity contract" means an agreement concluded between an insurer in the course of the business of such an insurer and a natural person (hereinafter referred to as the purchaser), in terms of which-

- (a) the insurer agrees to pay to the purchaser or the purchaser's spouse or surviving spouse an annuity or annuities (whether to one such person or to each of them) until the death of the annuitant or the expiry of a specified term;
- (b) the purchaser agrees to pay the insurer a lump sum cash consideration for such annuity or annuities; and
- (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,

but does not include any agreement for the payment by any insurer of any annuity which is under the rules of a pension fund or of a provident fund or of a preservation fund or of a retirement annuity fund payable to a member of such fund or to the widow of such member or to any other person;"

Amendment of section 17 of Act No. 24 of 1981, as amended by section 2 of Act No. 12 of 1982, section 6 of Proclamation AG. 10 of 1985, section 6 of Act No. 8 of 1987, section 7 of Act No. 25 of 1992, section 7 of Act No. 10 of 1993, section 6 of Act No. 22 of 1995, section 11 of Act No. 12 of 1996 and section 3 of Act No. 5 of 1997

7. Section 17 of the principal Act is amended -

- (a) by the substitution for paragraph (e) of subsection (1) of the following paragraph :
 - “(e) expenditure incurred during the year of assessment in respect of the acquisition of **[motor]** vehicles, aircraft, sea-going craft, machinery, implements, utensils and articles used by the taxpayer for the purpose of the taxpayer's trade : 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, aircraft, sea-going craft, machinery, implement, utensil or article is sold or otherwise disposed

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of by the taxpayer during any of such years of assessment, no such deduction shall be allowed in respect of such **[motor]** vehicle, aircraft, sea-going craft, machinery, implement, utensil or article in that year of assessment or any such ensuing year of assessment which may remain : Provided further that where, at the commencement of the year of assessment ending on 28 February 1993, or, in the case of a company, at the commencement of the financial year ending on or after 1 March 1992, a taxpayer holds for purposes of such taxpayer's trade any **[motor]** vehicles, aircraft, sea-going craft, machinery, implements, utensils or articles not previously disposed of or scrapped by the taxpayer, the original cost to the taxpayer of such asset less any deductions allowed to the taxpayer in respect thereof in terms of sections 11(e), 12(1), 12A(2), 14 and 14bis of the Income Tax Act, 1962 (Act No. 58 of 1962), sections 14(e) and 15(2) of the Income Tax Ordinance, 1974 (Ordinance No. 5 of 1974), or the provisions of this paragraph before its amendment, or paragraph (t) of this section before its deletion by the Income Tax Amendment Act, 1992, shall be deemed to be expenditure incurred in respect of the acquisition of such **[motor]** vehicles, aircraft, sea-going craft, machinery, implements, utensils and articles during that year of assessment : Provided further that where any person becomes liable for the payment of the tax by reason of the repeal or amendment of any provision of this Act or any other law by virtue of which such person was exempted from the tax, any expenditure as contemplated in this paragraph which was incurred by such person at any time during the three years of assessment immediately preceding the year of assessment in which such person becomes so liable, shall be deemed to have been incurred in the year of assessment in which such person becomes so liable.”; and

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

“(2) The aggregate of the amounts that may be deducted in terms of paragraphs (n), (q) and (qA) of subsection (1) shall not, as from the year of assessment commencing on or after 1 March **[1996]** 1999, in any year of assessment exceed the sum of [N\$20 000] N\$30 000.”.

Amendment of section 24 of Act No. 24 of 1981

8. Section 24 of the principal Act is amended by the substitution for subsection (g) of the following subsection :

“(g) any monies claimed as a deduction from income derived from trade to the extent to which such monies are not **[wholly or exclusively]** laid out or expended for the purposes of trade;”.

Amendment of section 56 of Act No. 24 of 1981, as amended by section 10 of Proclamation AG. 10 of 1985, section 10 of Act No. 10 of 1993, section 8 of Act No. 22 of 1995 and as substituted by section 5 of Act No. 5 of 1997

9. (1) Section 56 of the principal Act is amended -

- (a) by the substitution for the words preceding sub-paragraph (a) of subsection (1) of the following words :

“(1) Subject to subsections (4), (5) and (16), any person who is liable to taxation under this Act in respect of any year of assessment from

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the commencement date of the [Second] Income Tax Amendment Act, 1997, whether personally or in a representative capacity, shall, **[within 120 days]** before or on the due date, which date shall be the last day of the period of four months immediately after the end of such year of assessment [or within such further period of time as the Minister may allow on good cause shown] - ”;

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

“(3) The Minister may, on good cause shown -

- (a) for all taxpayers, or for certain categories of taxpayers, extend the due date for -
- (i) the submission of returns of income; or
- (ii) payment of any tax due as contemplated in subsection 1;
- (b) on written application by the taxpayer or his or her representative -
- (i) extend the due date -
- (aa) for the submission of returns of income;
- (bb) subject to the requirements of Section 79, for the payment of any tax due; or
- (ii) permit the payment of any tax due to be made by way of such instalments or within such period of time,

as the Minister may consider appropriate.”;

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

“(5) A person referred to in subsection (4)(b) shall -

- (a) be assessed on a copy of the employees’ tax certificate rendered together with the return required from such person’s employer in terms of subparagraph (3) of paragraph 14 of Schedule 2 to the Act; or
- (b) if instructed by the Minister to furnish a return of income, be assessed on the information contained in such return; and
- (c) pay any amount due before or on the due date, which due date is the later of the last day of the period of four months after the end of such year of assessment or the last day of a period of 60 days after the date of the notice of assessment concerned.”; and

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

“(17) Any -

- (a) (i) return of income, statement or form furnished; or
- (ii) computation of tax payable made,
- by any person in terms of this section; or

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- (b) employees' tax declared by one or more employers on behalf of any employee,

shall be subject to examination and assessment by the Minister under Part II."

- (2) The amendments effected -
- (a) by paragraphs (a), (c) and (d) of subsection (1) shall be deemed to have come into operation at the beginning of the year of assessment commencing on or after 1 March 1998; and
- (b) by paragraph (b) of subsection (1) shall be deemed to have come into operation at the beginning of the year of assessment commencing on or after 1 March 1997.

Amendment of section 59 of Act No. 24 of 1981

10. Section 59 of the principal Act is amended -
- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words :

"(1) Every person shall, **[if required by the Minister]** in respect of every year of assessment ending on the last day of February of each year, within a period of 31 days after the end of each such year of assessment or within such other period of time as the Minister may allow, furnish to **[him,]** the Minister in such form **[and within such time]** as may be prescribed **[or as the Minister may direct]** returns showing -";

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

"(a) the names and addresses of all persons **[or of all persons of any particular class]** employed by him or her, and the earnings, salaries, wages, allowances or pensions, whether in money or otherwise, received by or accrued to or in favour of each such person in respect of such employment and in respect whereof no employee's tax certificates have been issued;";

- (c) by the deletion of paragraph (c) of subsection (1);
- (d) by the substitution for paragraph (d) of subsection (1) of the following paragraph :

"(d) all interest, **[or]** rental or income from agriculture received by or accrued to or in favour of any person from the person furnishing the return or from any business carried on by the last-named person in Namibia;"; and

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

"(f) all such other information in his or her possession with regard to the income or monies received by or accrued to or in favour of himself or herself or of any other person as may be required by the Minister."

Amendment of section 66 of Act No. 24 of 1981

11. (1) Section 66 of the principal Act is amended by the substitution for paragraph (a) of subsection (1) of the following paragraph :

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“(a) if he or she defaults in rendering a return in respect of any year of assessment, an amount equal to twice the tax chargeable in respect of his or her taxable income for that year of assessment, less any amount already paid in respect of such tax at the time when an assessment for that year of assessment is issued; or”.

(2) The amendments effected by subsection (1) shall be deemed to have come into operation at the beginning of the year of assessment commencing on or after 1 March 1998.

Amendment of section 79 of Act No. 24 of 1981, as amended by section 12 of Proclamation AG. 10 of 1985, section 9 of Act No. 22 of 1995 and section 23 of Act No. 12 of 1996

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

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

“(1) Subject to the provisions of section 80 any tax chargeable shall be paid on **[such days and at such places as may be notified by the Minister or]** the due date for such payment as specified in section 56 of this Act [and may be paid in one sum or in instalments of equal or varying amounts as may be determined by the Minister having regard to the circumstances of the case].”; and

(b) 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 due date for [of] payment of such tax as specified in the Act [notified by the Minister in the notice of assessment] or any extension of such due date which the Minister may grant in terms of paragraph (a) of subsection (3) of Section 56 [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 percent per annum calculated daily as from such due date for payment and compounded monthly during the period which any portion of the tax remains unpaid.”.

(2) The amendments effected by subsection (1) shall be deemed to have come into operation at the beginning of the year of assessment commencing on or after 1 March 1998.

Amendment of section 94 of Act No. 24 of 1981

13. (1) Section 94 of the principal Act is amended -

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

“(1) If it is proved to the satisfaction of the Minister that any amount paid by a taxpayer was in excess of the amount properly charged under this Act, the Minister may at his or her discretion -

(a) set off any tax so overpaid against any other tax, levy, interest or penalty due by such taxpayer and payable in terms of this Act, the Sales Tax Act, 1992 (Act No. 5 of 1992) or the Additional Sales Levy Act, 1993 (Act No. 11 of 1993), or any other law administered by the Minister; or

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- (b) refund to such taxpayer any tax so overpaid, or the balance of such tax so overpaid remaining after a set-off under paragraph (a) : Provided that the amount to be refunded exceeds N\$10 and no returns due by such taxpayer are outstanding.”;

- (b) by the deletion of subsection (2).

(2) The amendments effected by subsection (1) shall be deemed to have come into operation on 1 December 1998.

Amendment of Schedule 2 to Act No. 24 of 1981, as amended by section 16 of Proclamation AG. 10 of 1985, section 20 of Act No. 25 of 1992, section 12 of Act No. 22 of 1995 and section 11 of Act No. 5 of 1997

14. (1) Schedule 2 to the principal Act is amended -

- (a) by the substitution for paragraph 12 of the following paragraph :

“Employee to furnish to employer a copy of his or her ‘Certificate of Registration as a Taxpayer for Income Tax’

12. (1) Every employee who is subject to income tax in terms of the rates of tax contained in paragraph 1 of Schedule 4 to the Act, shall register, in such form and manner as the Minister may determine, with the Inland Revenue Directorate as a taxpayer and furnish his or her employer with a copy of his or her ‘Certificate of Registration as a Taxpayer for Income Tax’.

(2) If an employer has not at any time received a copy of the ‘Certificate of Registration as a Taxpayer for Income Tax’ from any employee as required by subparagraph (1), or has not in respect of such employee received a directive from the Minister as provided in paragraph 11, the employer shall, until such copy of the certificate or directive is received, deduct or withhold employees’ tax under the provisions of paragraph 9 or 10, whichever may be applicable, at the maximum rate of tax in terms of paragraph 1 of Schedule 4 to the Act.”;

- (b) by the substitution for subparagraph (a) of paragraph 18 of the following subparagraph :

“(a) in respect of any period in respect of which provisional tax would but for the provisions of this item be payable by him or her any person (other than a company or a director of a private company) who satisfies the Minister that apart from any taxable income which he or she may derive by way of remuneration or any amount referred to in paragraph (i), (iii) or (v) of the definition of ‘remuneration’ in paragraph 1, he or she will not during that period derive any taxable income in excess of [N\$1 000] N\$5 000;” and

- (c) by the substitution for subparagraph (1) of paragraph 19 of the following subparagraph :

“(1) Every provisional taxpayer shall, during every period within which provisional tax is payable as provided in this part or any extension of such period granted in terms of paragraph 26(2), submit to the Minister, in such form as the Minister may prescribe, an estimate of the total taxable income which will be derived by the taxpayer in respect of the year of assessment in respect of which provisional tax is payable: Provided that the amount of any estimate submitted by a provisional taxpayer during any relevant period referred to in paragraph 22(1)(a)

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or any extension of any such period granted in terms of paragraph 26(2), shall, unless the Minister, having regard to the circumstances of the case, agrees to accept an estimate of a lower amount, not be less than the amount of the provisional taxpayer's taxable income as assessed by the Minister, for the latest year of assessment preceding the year of assessment in question in respect of which an assessment has been issued by the Minister not less than **[fourteen]** 60 days before the date on which such estimate is submitted by the provisional taxpayer."

(2) The amendments effected -

- (a) by paragraph (a) of subsection (1) shall be deemed to have come into operation at the beginning of the year of assessment commencing on or after 1 March 1998; and
- (b) by paragraph (c) shall be deemed to have come into operation on 1 December 1998.

Short title and commencement

15. This Act shall be called the Income Tax Second Amendment Act, 1999, 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 1999; and
 - (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 1999.
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