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REPUBLIC OF NAMIBIA

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 181

1997

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. 5 of 1997: Income Tax Amendment Act, 1997.

EXPLANATORY NOTE:

_____ Words underlined with 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 redefine “assessment” and “gross income”; to deem the withdrawal of certain assets from a trade or the removal from Namibia, in respect of which deductions have been claimed, as taxable recoupments; to increase the amount which may be deducted in respect of premiums for educational policies and contributions to retirement funds; to extend the date for the furnishing of returns of income for the assessment of tax from ninety days to one hundred and twenty days after the end of the year of assessment; to require that the return of income for the assessment of tax includes a computation of taxable income and the amount of tax due; to exempt taxpayers, other than companies, receiving a remuneration from one source only and with no claims for expenses against such remuneration, from the obligation to furnish a return of income for the assessment of tax; to provide that returns of income for the assessment of tax for any year that ended on or before 31 December 1997 for companies and 28 February 1998 for individuals are due on 30 April 1998 and 30 June 1998 respectively, and shall include computations of taxable income and tax due, and payment of the tax due; to provide that any taxes due are to be paid on the due dates for the furnishing of the return of income for the assessment of taxes, irrespective of any extension of time that may have been granted for the furnishing of the return of income; to allow an employer to deduct from the taxable income of an employee any contributions to a retirement annuity fund on proof of payment thereof; to provide that tax credits may be set off against any other taxes due; to require an employer to, during the year of assessment, reconcile the employees’ tax deducted during such year to the amount calculable from the deduction tables in respect of qualifying employees; to repeal superfluous provisions; and to provide for incidental matters.

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, section 1 of Act 22 of 1995 and section 1 of Act 12 of 1996

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

- (a) by the substitution for the definition of "assessment" of the following definition :

" 'assessment' means the determination by the Minister [by way of a notice of assessment served in the manner contemplated in section 98(2)] -

- (a) of an amount upon which any tax leviable under this Act is chargeable; or
- (b) of the amount of any such tax; or
- (c) of the amount of any loss ranking for set-off,

and for the purposes of Part III of Chapter III includes any determination by the Minister which is in terms of this Act subject to objection and appeal;"; and

- (b) by the substitution in paragraph (d) of the definition of "gross income" of 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 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) ;” .

Amendment of section 14 of Act 24 of 1981, as amended by section 6 of Act 12 of 1996.

2. 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 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 the trade or removal from Namibia of any motor vehicle, machinery, implement, utensil or article 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 : Provided that such motor vehicle, machinery, implement, utensil or article 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.”.

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, section 6 of Act 22 of 1995 and section 11 of Act 12 of 1996

3. 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 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 **[ensuring]** ensuing year of assessment which may remain.”; 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, in any year of assessment exceed the sum of **[R 15 000]** N\$20 000.”.

Amendment of section 22 of Act 24 of 1981, as amended by section 17 of Act 12 of 1996

4. Section 22 of the principal Act is amended by the substitution for subparagraph (ii) of subsection (6) of the following subparagraph:

“(ii) where a return is accepted under **[the proviso to]** subsection **[(13)]** (16) of section 56 to a date other than the last day of February, a reference to the beginning or end, as the case may be, of the period covered by the return.”.

Substitution of section 56 of Act 24 of 1981, as amended by section 10 of Proclamation AG. 10 of 1985, section 10 of Act 10 of 1993 and section 8 of Act 22 of 1995

5. The following section is substituted for section 56 of the principal Act -

“Taxpayer responsible to furnish a return of income and a computation of the tax payable, and to pay the tax so payable, and the manner of furnishing returns and interim returns

56. (1) Subject to subsections (4) and (16), any person who is liable to taxation under this Act in respect of any year of assessment from the commencement date of the Second Income Tax Amendment Act, 1997, whether personally or in a representative capacity, shall, within 120 days after the end of such year of assessment, or within such further period of time as the Minister may allow on good cause shown -

- (a) furnish a return of income in the prescribed form, signed by such person or by his or her duly authorised agent, which return shall include a computation of such person’s taxable income and of the amount of tax payable on the income so computed, in accordance with the rates of normal tax set out in Schedule 4; and

- (b) subject to subsection (3), pay, simultaneous with the furnishing of the return of income contemplated in paragraph (a), the amount of the tax due in accordance with the computation contemplated in that paragraph.
- (2) Any person liable to furnish a return of income and to pay the tax in terms of subsection (1), shall furnish such return and pay such tax at any -
- (a) office of the Directorate : Inland Revenue;
- (b) Magistrate's Court; or
- (c) other place as may be designated by the Minister by notice in the *Gazette*.
- (3) The Minister may, after considering a written application made by any person liable to pay the tax in terms of subsection (1), grant such extension of time for payment, or permit payment to be made by way of such instalments or within such period of time, as the Minister may consider appropriate.
- (4) Notwithstanding subsection (1) -
- (a) no person (other than a company) in respect of whose taxable income for the year of assessment there is no liability to tax; or
- (b) no person -
- (i) who was for the year of assessment in the employment of the same employer without any interruption of such employment; and
- (ii) the whole of whose income for the year of assessment consisted solely of remuneration as defined in paragraph 1 of Schedule 2 paid by the employer referred in subparagraph (i), and interest not exceeding N\$500; and
- (iii) who is not entitled to any deduction from income in terms of this Act, other than the deductions which were taken into account in terms of paragraph 2(4) of Schedule 2 by the employer referred to in subparagraph (i) for the purposes of the deduction of employees' tax in respect of such person,
- shall, unless specifically instructed otherwise by the Minister in writing, be required to furnish a return of income in terms of that subsection.
- (5) If a person referred to in subsection (4)(b) does not furnish a return of income in respect of any year of assessment, the employees' tax deducted in terms of Schedule 2 shall in respect of such year of assessment be deemed the tax payable by such person.
- (6) The Minister may, if he or she considers it advisable, cause a return of income ~~form~~ contemplated in subsection (1)(a) to be delivered by hand or by post to any person required by this Act to furnish a return of income to the Minister.

(7) Notwithstanding subsection (6), a person required in terms of subsection (1) to furnish a return of income to the Minister, shall, if he or she does not receive a return of income form from the Minister, himself or herself obtain the required form from the Minister.

(8) Notwithstanding subsection (1), the Minister may, at any time prior to the expiration of the period of time referred to in that subsection, by notice in writing require any person to, within the period of time or before the date specified in the notice

- (a) render an interim return of income in the prescribed form;
- (b) make a computation of his or her taxable income; and
- (c) pay the amount of the tax payable,

in respect of the period of time specified in the notice, *mutatis mutandis* in accordance with paragraphs (a) and (b) of that subsection.

(9) Any return, statement or form furnished, or purporting to be furnished, under this Act by or on behalf of any person shall, for the purposes of this Act be *prima facie* evidence that the same have been furnished by such person or with the authority of such person, and any person signing such a return, statement or form shall be deemed to be cognisant of all matters contained therein.

(10) The return of income in respect of any year of assessment to be furnished by any person in terms of subsection (1), shall, subject to subsection (11), be a full and true return of such person's income for the whole period of twelve months ending on the last day of such year of assessment.

(11) The Minister may, if he or she is satisfied that it is not convenient for any person referred to in subsection (10) to furnish a return of income in respect of a full year of assessment, accept a return furnished in respect of the income of such person for any period during such year of assessment up to a date approved by the Minister, and a return of income so furnished shall for the purposes of this Act be deemed to be a return of income in respect of such year of assessment.

(12) A person who, in terms of subsection (11), has furnished a return of income in respect of a period of time up to a date approved by the Minister under that subsection, and which period of time was less than a full year of assessment, shall not, without the prior written consent of the Minister, be entitled to furnish a return of income in respect of any subsequent year of assessment for a period of time which -

- (a) is less than twelve months; and
- (b) commences on a date other than the day following the date so approved by the Minister.

(13) The return of income to be made by any company in respect of any year of assessment shall be a full and true return for the whole period of the relevant financial year of such company comprising the year of assessment.

(14) If any person who is required to furnish a return of income in terms of this Act is unable to furnish such return because such person is not in possession of all the relevant particulars relating to such return, the Minister may allow such person to furnish a return based on an estimate of such person's income in respect of the year of assessment in question, and to pay the tax computed in accordance with such estimate, subject to adjustment of the assessment when the actual return of income is furnished, which return shall be furnished not later than the date determined by the Minister.

(15) Persons conducting a business in partnership shall furnish separate returns of income and computations as contemplated in subsection (1)(a), but every such person shall in his or her return include a copy of the joint financial statements of such partnership, together with such other or further particulars as may from time to time be prescribed.

(16) If any person renders a return of income in respect of any year of assessment which ended before 31 December 1997 in respect of a company, or before 28 February 1998 in respect of a person other than a company, such person shall, notwithstanding anything to the contrary contained in this Act, comply with subsection (1) -

- (a) if such person is a company, not later than 30 April 1998; or
- (b) if such person is not a company, not later than 30 June 1998.

(17) Any -

- (a) return of income, statement or form furnished; or
- (b) computation of tax payable made,

by any person in terms of this section, shall be subject to examination and assessment by the Minister under Part II."

Substitution of section 67 of Act 24 of 1981, as amended by section 15 of Act 25 of 1992

6. The following section is substituted for section 67 of the principal Act:

"Examination of computation of taxable income and amount of tax payable

67. (1) A computation of the taxable income and of the amount of tax payable which a taxpayer is required to furnish and to pay in terms of section 56(1)(a) shall be subject to examination by the Minister.

(2) If upon the examination of a computation by a taxpayer referred to in subsection (1), such computation is found to be incorrect, the Minister shall assess the return of income furnished by the taxpayer in order to determine the taxable income of, and the amount of the tax payable by, such taxpayer, and shall, in the prescribed form and manner, cause a notice of assessment to be made and issued to such taxpayer, stating -

- (a) the particulars of the assessment and of the amount of tax payable thereon;
- (b) the date before which the amount of tax referred to in paragraph (a) shall be paid;
- (c) that any objection to such assessment shall be lodged in writing within a period of 90 days after the date of issue of the notice of assessment; and
- (d) the name and address of the person with whom an objection contemplated in paragraph (c) shall be lodged.

(3) Every assessment made under subsection (2), and the relevant computation furnished by the taxpayer, shall be filed and be retained by the Minister for such period as the Minister may determine after consultation with the Auditor-General."

Amendment of section 71 of Act 24 of 1981

7. Section 71 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

"(1) Objections to any assessment made under this Act may be made within [twenty-one] 90 days after the date of the issue of the notice of assessment, in the manner and under the terms prescribed by this Act by any taxpayer who is aggrieved by any assessment in which he or she has any interest."

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, section 11 of Act 22 of 1995 and section 26 of Act 12 of 1996

8. Schedule 1 to the principal Act is amended -

- (a) by the substitution for subparagraph (2)(c)(i)(bb) of paragraph 4 of the following subparagraph:

"(bb) for the years of assessment ending on the last day of February 1996 [1997 and 1998, respectively] an amount equal to 13,33 per cent;"; and

- (b) by the substitution for subparagraph (2)(c)(ii)(bb) of paragraph 4 of the following subparagraph:

"(bb) for the years of assessment commencing on or after 1 January 1995 and 1996 [and 1997], respectively, an amount equal to 13,33 per cent,".

Amendment of section 94 of Act 24 of 1981

9. Section 94 of the principal Act is amended by the substitution in subsection (1) for the words preceding the proviso of the following words :

"(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 payable in terms of this Act, the Sales Tax Act, 1992 (Act 5 of 1992) or the Additional Sales Levy Act, 1993 (Act 11 of 1993), or any other law administered by the Minister, due by such taxpayer; or
- (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) :"

Repeal of section 94A of Act 24 of 1981, inserted by section 14 of Proclamation AG. 10 of 1985

10. Section 94A of the principal Act is repealed.

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

11. Schedule 2 to the principal Act is amended -

- (a) by the substitution for subparagraph (4) of paragraph 2 of the following subparagraph:

"(4) Any amount required to be deducted or withheld from any amount of remuneration under this Schedule by way of employees' tax shall be calculated on the balance of such amount of remuneration remaining after deducting, subject to section 17(2) of this Act -

- (a) any current contribution by the employee concerned to any pension fund, provident fund or retirement annuity fund which is calculated with reference to such amount of remuneration or to a portion of that amount or to the period in respect of which the amount of remuneration is paid or payable and which the employer is *vis-à-vis* the employee concerned, entitled or required to deduct or withhold from such amount of remuneration;
- (b) any current contribution to a retirement annuity fund,

other than a contribution to a retirement annuity fund contemplated in paragraph (a), if proof of the payment of such contribution has been furnished to the employer; and

- (c) any current premiums paid by the employee under any policy of insurance for education purposes contemplated in section 17(1)(qA), if proof of the payment of such premiums has been furnished to the employer,

if such contributions were made or if such premiums were paid by the employee during the year of assessment in question."; and

- (b) by the insertion after paragraph 12 of the following paragraph :

"Annual adjustment of tax withheld from employees

12A. Every employer shall, in respect of the employees' tax to be deducted from an employee in his or her employ, and who has continuously been in his or her employ from the beginning of the year of assessment in question, during such year of assessment make such adjustments as may be necessary to ensure that the total amount of employees' tax deducted in respect of such employee for such year of assessment shall be equal to the amount of employees' tax determined in accordance with the deduction tables prescribed under paragraph 9(1) applicable to such employee.".

Short title and commencement

12. This Act shall be called the Income Tax Amendment Act, 1997, and, unless otherwise stated -

- (a) sections 1(a), 4, 5, 6, 7, 8, 10 and 11 shall be deemed to have come into operation -
- (i) in the case of any taxpayer other than a company, at the beginning of the year of assessment commencing on or after 1 March 1997; and
- (ii) 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 1997; and
- (b) sections 1(b), 2, 3, and 9 shall come into operation -
- (i) 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

- (ii) in the case of any taxpayer which is a company, at the beginning of the year of assessment commencing on or after 1 January 1998.
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