



Republic of Namibia
Annotated Statutes

Income Tax Act 24 of 1981

(OG 4580)

came into force on date of publication: 31 December 1981; applied to natural persons who are “citizens of Rehoboth” with certain amendments, with effect from 31 December 1981; see Act 5 of 1982 (Rehoboth), (*Official Gazette 86 of Rehoboth*, dated 23 December 1983)

as amended by

Income Tax Amendment Act 12 of 1982 (OG 4656)

came into force on date of publication: 16 July 1982,
unless otherwise provided (see annotations to individual sections)

Income Tax Amendment Proclamation, AG 10 of 1985 (OG 5016)

deemed to have come into force as from the commencement of the years of assessment ending on or after 1 January 1985 (section 17 of AG 10 of 1985),
unless otherwise provided (see annotations to individual sections)

Income Tax Amendment Act 13 of 1985 (OG 5115)

deemed to have come into force “from the beginning of the financial year of a company ending on or after 1 July 1985” (section 2 of Act 13 of 1985)

Income Tax Amendment Act 11 of 1986 (OG 5234)

deemed to have come into force on 1 March 1986 (section 2 of Act 11 of 1986)

Income Tax Amendment Act 8 of 1987 (OG 5400)

“the amendments effected to the principal Act by this Act shall come into operation, or shall be deemed to have come into operation, save in so far as the context indicates otherwise, at the beginning of the year of assessment ending on or after 1 January 1988”
(section 12 of Act 8 of 1987)

Income Tax Amendment Act 1 of 1989 (OG 5675)

deemed to have come into force on 1 March 1988 (section 2 of Act 1 of 1989)

Second Law Amendment (Abolition of Discriminatory or Restrictive Laws for purposes of Free and Fair Election)

Proclamation, AG 25 of 1989 (OG 5758)

relevant portion deemed to have come into force
on 1 April 1989 (section 2(2) of AG 25 of 1989)

Petroleum (Taxation) Act 3 of 1991 (GG 179)

came into force on 30 September 1992 (section 25 of Act 3 of 1991,
as amended by the Petroleum Matters (Amendment and Validation) Act 27 of 1992)

Income Tax Amendment Act 8 of 1991 (GG 222)

(a) “in relation to a person referred to in subsection (2)(a) of section 16A,
as inserted by this Act”, deemed to have come into force on 1 March 1987, and
(b) in relation to any other person, deemed to have come into force
on 1 March 1990 (section 3 of Act 8 of 1991)

Second Income Tax Amendment Act 12 of 1991 (GG 229)

deemed to have come into force at the beginning of the year of assessment commencing on or after 1 March 1991 (section 9 of Act 12 of 1991),
unless otherwise provided (see annotations to individual sections)

Third Income Tax Amendment Act 33 of 1991 (GG 335)

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deemed to have come into force on 1 March 1991 (section 2 of Act 33 of 1991)

Income Tax Amendment Act 25 of 1992 (GG 487)

deemed to have come into force (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; and (b) in the case of any taxpayer which is a company, at the beginning of the financial year of such company ending on or after 1 March 1992 (section 22(1) of Act 25 of 1992), unless otherwise provided (see annotations to individual sections)

Income Tax Amendment Act 10 of 1993 (GG 693)

deemed to have come into force (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 1993; 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 1993 (section 15 of Act 10 of 1993)

Income Tax Amendment Act 17 of 1994 (GG 932)

deemed to have come into force (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 1994; 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 1994 (section 11 of Act 17 of 1994), 9 of 1994, unless otherwise provided (see annotations to individual sections)

Income Tax Amendment Act 22 of 1995 (GG 1225)

deemed to have come into force (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; 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 1995 (section 14 of Act 22 of 1995), unless otherwise provided (see annotations to individual sections); note that Act 22 of 1995 is amended by Act 12 of 1996

Income Tax Amendment Act 12 of 1996 (GG 1375)

deemed to have come into force (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; 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 1996 (section 31 of Act 12 of 1996), unless otherwise provided (see annotations to individual sections)

Income Tax Amendment Act 5 of 1997 (GG 1680)

different commencement dates for different sections and for different categories of taxpayers (section 12 of Act 5 of 1997; see annotations to individual sections)

Income Tax Amendment Act 13 of 1998 (GG 1882)

deemed to have come into force (a) in the case of a taxpayer other than a company, at the commencement of the year of assessment commencing on or after 1 March 1998; and (b) in the case of a taxpayer which is a company, at the commencement of the year of assessment of such company on or after 1 January 1998 (section 2 of Act 13 of 1998)

Income Tax Amendment Act 7 of 1999 (GG 2135)

deemed to have come into force (a) in the case of any taxpayer other than a company, at the commencement 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 commencement of the year of assessment of such company on or after 1 January 1999 (section 2 of Act 7 of 1999)

Income Tax Second Amendment Act 21 of 1999 (GG 2240)

deemed to have come into force (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 (section 15 of Act 21 of 1999), unless otherwise provided (see annotations to individual sections)

Appeal Laws Amendment Act 10 of 2001 (GG 2585)

came into force on date of publication: 25 July 2001

Income Tax Amendment Act 7 of 2002 (GG 2820)

deemed to have come into force (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 2002; and (b) in the case of a taxpayer which is a company, at the beginning of the year of assessment of such company commencing on or after 1 January 2002 (section 14 of Act 7 of 2002), unless otherwise provided (see annotations to individual sections)

Income Tax Amendment Act 11 of 2003 (GG 3049)

deemed to have come into force in relation to a taxpayer other than a company at the commencement of the year of assessment commencing on or after 1 March 2003 (section 2 of Act 11 of 2003)

Income Tax Amendment Act 4 of 2005 (GG 3428)

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came into force on date of publication: 14 May 2005,
unless otherwise provided (see annotations to individual sections)

Income Tax Amendment Act 5 of 2007 (GG 3964)

came into force on date of publication: 27 December 2007,
unless otherwise provided (see annotations to individual sections)

Income Tax Amendment Act 5 of 2010 (GG 4475)

came into force on date of publication: 30 April 2010, or in the case of a taxpayer other than a company, at the beginning of the year of assessment commencing on or after 1 March 2009, (section 9(a) of Act 5 of 2010), unless otherwise provided (see annotations to individual sections)

The Act was amended by the Income Tax Amendment Act 3 of 2011, which was promulgated by Government Notice 79/2011 (GG 4732). Its purpose, according to the long title was "To amend the Income Tax Act, 1981, so as to amend the definitions of "person", "pension", "preservation fund" and "retirement annuity fund" to increase the amount which may be commuted for a single tax free payment; to increase the exemption from tax on a lump sum derived on retirement or retrenchment; to delete allowable deductions to mining companies in respect of rehabilitation expenditure; to provide for the administration of withholding tax on interest; to increase the threshold on income tax payable by individuals; to reduce the tax rate payable by non-mining companies; and to provide for incidental matters". However, this Government Notice was withdrawn by Government Notice 150/2011 (GG 4787): "Government Notice No. 79 of 10 June 2011 under which the Income Tax Amendment Act, 2011 (Act No. 3 of 2011) was published is withdrawn." Act 3 of 2011 was not subsequently published, so the amendments made by it have not been incorporated here.

Income Tax Second Amendment Act 7 of 2011 (GG 4755)

came into force on date of publication: 14 July 2011

Income Tax Third Amendment Act 15 of 2011 (GG 4864)

came into force generally on date of publication: 30 December 2011, but came into force (a) in the case of any taxpayer other than a company, at the commencement of the year of assessment commencing on or after 1 March 2012; and (b) in the case of any taxpayer which is a company, at the commencement of the year of assessment of such company commencing on or after 1 January 2012, unless otherwise provided (see annotations to individual sections)

Income Tax Amendment Act 4 of 2013 (GG 5206)

deemed to have come into force (a) in the case of any taxpayer, other than a company, at the commencement of the year of assessment commencing on or after 1 March 2013; and (b) in the case of any taxpayer which is a company, at the commencement of the year of assessment of such company on or after 1 January 2013 (section 2 of Act 4 of 2013)

The Act was applied to "citizens of Rehoboth", subject to certain amendments, by section 2(1)(a) of the "Application of the Income Tax Act to Citizens of Rehoboth Act 5 of 1982 (Rehoboth)", (*Official Gazette 86 of Rehoboth*, dated 23 December 1983): "The Income Tax Act, 1981 (Act 24 of 1981) of the National Assembly of South West Africa, (hereinafter referred to as the Act), shall, subject to the provisions of this Act and in so far as the first-mentioned Act applies to natural persons, apply also to citizens of Rehoboth." Section 2(1)(a) was deemed to have come into force on 31 December 1981, in terms of section 2(1)(b) of Act 5 of 1982 (Rehoboth). Section 2(2) provided that any future amendments of the Act would be applicable to "citizens of Rehoboth", insofar as those amendments applied to natural persons. The amendments made in respect of the "citizens of Rehoboth" by Act 5 of 1982 (Rehoboth) are indicated in annotations to the affected sections.

ACT

To consolidate and amend the law relating to the taxation of income; and to provide for incidental matters.

(Afrikaans text signed by the Administrator-General on 21 December 1981)

ARRANGEMENT OF SECTIONS

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PRELIMINARY

Section

1. Interpretation

CHAPTER I

ADMINISTRATION

2. Administration of the Act
[heading of section 2 substituted by Act 12 of 1996]
3. Exercise of powers and performance of duties
4. Preservation of secrecy

CHAPTER II

THE TAXES

Part I

Normal Tax

5. Levy of normal tax for the benefit of the State Revenue Fund and transfer of a part thereof to the revenue funds of representative authorities
- 5A. Registration of companies as registered manufacturers
[section 5A inserted by Act 10 of 1993; heading substituted by Act 7 of 2002]
- 5B.
[section 5B inserted by Act 10 of 1993 and deleted by Act 12 of 1996]
6. Rates of normal tax
7.
[section 7 deleted by Act 22 of 1995]
8. Rebate in respect of any taxes on dividends payable to the government of any country other than Namibia
9. Rebate in respect of non-resident shareholders' tax
10. Rebate in respect of foreign income taxes on royalties and similar income
11. Rebate in respect of diamond profits tax
12. When income is deemed to have accrued or to have been received
13. Date of receipt or accrual of antedated salaries or pensions and of certain retirement gratuities
14. Certain amounts to be included in income or taxable income
15. Circumstances in which amounts deemed to have accrued from sources within Namibia
16. Exemptions
- 16A. Taxation of housing benefits
[section 16A inserted by Act 8 of 1991]
- 16B. Exemption of capital element of purchased annuities
[section 16B inserted by Act 12 of 1991]
17. General deductions allowed in determination of taxable income
- 17A. Additional deductions in respect of expenditure for remuneration and training of employees of taxpayers who are registered manufacturers
[section 17A inserted by Act 10 of 1993]
- 17B. Additional deduction in respect of export expenditure incurred by registered manufacturer

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- [section 17B inserted by Act 10 of 1993; heading substituted by Act 7 of 2002]
- 17C. Allowance in respect of profits attributable to the export of certain manufactured goods
[section 17C inserted by Act 17 of 1994]
- 17D. Allowance in respect of land-based transportation costs
[section 17D inserted by Act 12 of 1996; heading substituted by Act 7 of 2002]
18. Deductions from income derived from mining operations
19. Deduction of expenses incurred by a lessor of land let for farming purposes, in respect of soil conservation works
20. Deductions and set-off from income derived from dividends
21. Set-off of assessed losses
- 21A. Ring-fencing of assessed losses of certain trades
[section 21A inserted by Act 15 of 2011]
22. Amounts to be taken into account in respect of values of trading stocks
23. Schemes of arrangement involving trading stock
24. Deductions not allowed in determination of taxable income
25. Credit agreements providing for postponement of the passing of ownership
- 25A. Gains or losses on foreign exchange transactions
[section 25A inserted by AG 10 of 1985]
26. Income of beneficiaries and estates of deceased persons
27. Determination of taxable income derived from farming
28.
[section 28 deleted by Act 8 of 1987]
29. Persons carrying on business which extends beyond Namibia
30. Assessment of persons not ordinarily resident in Namibia who derive income from film business
31. Determination of taxable income of co-operative societies and companies
32. Determination of taxable income derived from insurance business
33. Assessments on transfer of business undertaking by foreign company to South West African subsidiary
34. Assessment of owners or charterers of ships or aircraft not ordinarily resident or registered, managed or controlled in Namibia
- 34A. Withholding tax on interest
- 34B. Person liable for withholding tax on interest
- 34C. Deduction or withholding of tax on interest
- 34D. When withholding tax on interest is payable
[sections 34A-34D inserted by Act 5 of 2007]
- 34E. Persons and institutions not liable for withholding tax on interest
[section 34E inserted by Act 5 of 2010]
35. Assessment of persons not ordinarily resident or registered, managed or controlled in Namibia who derive income from royalties or similar payments
- 35A. Deduction or withholding of tax on services rendered by non-residents
[section 35A inserted by Act 15 of 2011]
36. Calculation of redemption allowances of capital expenditure in connection with mining operations
37. Calculation of capital expenditure on change of ownership of mining property

Part II

Special Provisions Relating to Companies

38. Classification of companies
39. Redetermination of company's status
40. Objection and appeal

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Part III

Non-resident Shareholders' Tax

41. Levy of non-resident shareholders' tax
42. Income subject to tax
43. Person liable for tax
44. Recovery of tax
45. Rate of tax
46. Determination of tax if company also operates outside territory
[Act 12 of 1991 directs the substitution of "Namibia" for the phrase "the territory", and not "territory" on its own. However, the heading of this section should probably be "Determination of tax if company also operates outside Namibia".]
47. Date of payment of tax
48. Exemptions

Part IV

Undistributed Profits Tax

[sections 49-54 deleted by Act 12 of 1991]

- 49.
- 50.
- 51.
- 52.
- 53.
- 54.

CHAPTER III

GENERAL PROVISIONS

Part I

Returns

55. Returns to be in form prescribed by Minister
56. 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
[heading of section 56 substituted by Act 5 of 1997]
57.
[section 57 deleted by Act 25 of 1992]
58. Income of married women and minor children
59. Duty to furnish returns as to employees, their earnings and other matters
60. Duty of companies to furnish returns
61. Return of payments in respect of bearer warrants
62. Return as to shareholdings
- 62A. Power of Minister to require submission of certified financial statements in support of returns
[section 62A inserted by Act 17 of 1994]
63. Duty of persons submitting accounts in support of returns or preparing accounts for other persons

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- 64. Production of documents and evidence on oath
- 65. Penalty on default
- 66. Additional tax in the event of default or omission

Part II**Assessments**

- 67. Examination of return and assessment
[heading of section 67 substituted by Act 5 of 1997 and by Act 7 of 2002]
- 68. Estimated assessments
- 69. Additional assessments
- 70. Inspection of record of assessments

Part III**Objections and Appeals**

- 71. Time and manner of lodging objections
- 72. Burden of proof in respect of exemptions, deductions and rebates
- 73. Appeal to special court against Minister's decision
- 73A. Appeals to tax tribunal
[section 73A inserted by Act 4 of 2005]
- 74. Summoning of witnesses and penalty for non-attendance
- 75. Contempt of special court
- 76. Appeals against decision of a special court
- 77. Members of courts not disqualified from adjudicating
- 78. Payment of tax pending appeal

Part IV**Payment and Recovery of Tax**

- 79. Appointment of day for payment of tax and interest on overdue payments
- 80. Payments of employees' tax and provisional tax and interest on overdue payments of such taxes
[In the text of the Act, the heading is "Payment of..." (singular rather than plural).]
- 81. Accounts and recovery proceedings in respect of certain taxes
- 82. Persons by whom normal tax is payable
- 83. Recovery of tax
- 83A. Recovery of outstanding tax, penalty or interest by debt collector
[section 83A inserted by Act 5 of 2007]
- 84. Correctness of assessment cannot be questioned
- 85. Collection of taxes under arrangements made under section 100
- 86. Evidence as to assessments

Part V**Representative Taxpayers**

- 87. Liability of representative taxpayer
- 88. Right of representative taxpayer to indemnity

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- 89. Personal liability of representative taxpayer
- 90. Company regarded as agent for absent shareholder
- 91. Power to appoint agent
- 92. Remedies of Minister against agent or trustee
- 93. Public officers of companies

Part VI

Miscellaneous

- 94. Refunds
- 94A. **[section 94A inserted by AG 10 of 1985 and deleted by Act 5 of 1997]**
- 95. Transactions, operations or schemes for purposes of avoiding or postponing liability for or reducing amounts of taxes on income
- 95A. Determination of taxable income of certain persons in respect of international transactions
[section 95A inserted by Act 4 of 2005]
- 96. Offences and penalties
- 97. Jurisdiction of courts
- 98. Authentication and service of documents
- 99. Regulations
- 100. Prevention of or relief from double taxation
- 101. Repeal of laws
- 102. Short title

SCHEDULE 1

Computation of taxable income derived from pastoral,
agricultural or other farming operations

SCHEDULE 2

Amounts to be deducted or withheld by employers
and provisional payments in respect of normal tax

SCHEDULE 3

Laws repealed

SCHEDULE 4

Rates of normal tax

[Schedule 4 inserted by Act 25 of 1992. The heading of the Schedule is mistakenly preceded by the number "1" in the *Government Gazette*, but there are no other headings in Schedule 4.]

BE IT ENACTED by the National Assembly of South West Africa, as follows:-

[Section 2(3) of Act 5 of 1982 (Rehoboth) provides as follows:

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"In applying the Act and any amendment thereof to citizens of Rehoboth -

- (a) the references to the Government of the territory in section 81(2) and 83(1) of, and paragraphs 4 and 32 of Schedule 2 to, such Act, shall be construed as references to the Government of Rehoboth; and
- (b) any reference in such Act or amendment to -
- (i) the Council of Ministers, shall be construed as a reference to the Kaptein's Council;
 - (ii) the Chairman of the Council of Ministers, shall be construed as a reference to the Kaptein;
 - (iii) a Representative Authority, shall be construed as a reference also **[also]** to the Government of Rehoboth;
 - (iv) the Secretary, shall be construed as a reference to the Chief Director of Rehoboth;
 - (v) the Central Revenue Fund, shall be construed as a reference to the Rehoboth Revenue Fund;
 - (vi) the *Official Gazette*, shall be construed as a reference to the *Official Gazette* of Rehoboth;
 - (vii) the Auditor-General, shall be construed as a reference to the Auditor-General appointed under section 22 of the State Finance Act, 1982 (Act 1 of 1982), of the National Assembly and, until such time as the Legislative Authority of Rehoboth has provided otherwise by law, as a reference also to the Auditor-General of the Republic of South Africa;
[The State Finance Act 1 of 1982 has been replaced by the State Finance Act 31 of 1991.]
 - (viii) the Secretary for Agriculture and Nature Conservation, shall be construed as a reference to the Director of Agriculture and Works of Rehoboth."

Act 12 of 1991 makes the following substitutions throughout the Act:

- * "Permanent Secretary" for "Secretary"; and
- * "Namibia" for "the territory".

Act 12 of 1996 makes the following substitutions throughout the Act:

- * "Minister" for "Permanent Secretary"; and
- * "State Revenue Fund" for "Central Revenue Fund".

The Act is inconsistent in its use of "percent" and "per cent".]

PRELIMINARY

Interpretation

1. Unless the context otherwise indicates -

"agent" includes any partnership or company or any other body of persons corporate or unincorporate acting as an agent;

"assessment" means the determination by the Minister -

- (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;

[The definition of "assessment" is amended by Act 22 of 1995. It is also amended by Act 5 of 1997, with this amendment deemed to have come into force (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 1997; 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 1997 (section 12(a) of Act 5 of 1997).]

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“benefit fund” means -

- (a) any friendly society registered under the Friendly Societies Act, 1956 (Act 25 of 1956) and which is approved by the Minister;
- (b) any medical scheme registered under the Medical Schemes Act, 1967 (Act 72 of 1967); or

[The Medical Schemes Act 72 of 1967 has been replaced by the Medical Aid Funds Act 23 of 1995.]

- (c) any fund (other than a pension fund, provident fund or retirement annuity fund) which, in respect of the year of assessment in question, the Minister is satisfied is a permanent fund bona fide established for the purpose of providing sickness, accident or unemployment benefits for its members, or mainly for any such purpose, and also for the purpose of providing benefits for the spouses, children, dependants or nominees of deceased members;

[definition of “benefit fund” inserted by Act 25 of 1992]

“boat” means any vessel used or capable of being used in, under or on the sea or internal waters, whether -

- (a) self-propelled or not; or
- (b) equipped with an inboard or outboard motor;

[definition of “boat” inserted by Act 15 of 2011]

“bonus debentures or securities” means debentures or securities issued by a company, whether by way of a bonus award or otherwise, in such manner that the company’s reserves or unappropriated profits are in whole or in part applied in paying up such debentures or securities;

“building society” means a building society registered in terms of the Building Societies Act, 1986 (Act 2 of 1986);

[definition of “building society” inserted by Act 25 of 1992]

“capitalization shares” means shares issued by a company, whether by way of a bonus award or otherwise, in such manner that the company’s reserves (including any share premium account) or unappropriated profits are in whole or in part applied in paying up such shares;

“Commissioner” means the Commissioner of Inland Revenue;

[definition of “Commissioner” inserted by Act 4 of 2005]

“company” includes -

- (a) any association, corporation or company incorporated or deemed to be incorporated by or under any law in force in Namibia or in any part thereof, or any body corporate formed or established or deemed to be formed or established by or under any such law; or
- (b) any association, corporation or company incorporated under the law of any country other than Namibia or any body corporate formed or established under such law, if such association, corporation, company or body, as the case may be, carries on

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business or has an office or place of business in Namibia or derives income from any source within or deemed to be within Namibia or in which any person ordinarily resident or carrying on business in Namibia is interested as a shareholder or member; or

- (c) any association, corporation or company incorporated under the law of any country other than Namibia or any body corporate formed or established under such law, if such association, corporation, company or body, as the case may be, is a shareholder in or member of any company as defined in paragraph (a) or (b), either directly, or indirectly by reason of the fact that it is a shareholder in or member of any other company; or
- (d) any association (not being an association referred to in paragraph (a) or an association to which the provisions of paragraph (i) of subsection (1) of section 16 apply) formed in Namibia to serve a specified purpose, beneficial to the public in Namibia or a section of the public in Namibia; or
- (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);

[paragraph (e) of definition of “company” amended by Act 22 of 1995 and substituted by Act 21 of 1999]

“date of assessment”, in relation to any assessment, means the date specified in the notice of such assessment as the due date or, where a due date is not so specified, the date of such notice;

“dividend” means any amount distributed by a company (not being a building society or an association or institution to which section 16(1)(d) applies) to its shareholders or any amount (excluding interest) distributed out of the assets pertaining to any unit portfolio referred to in paragraph (e) of the definition of “company” in this section to shareholders in relation to such unit portfolio (including, in the case of any co-operative society or company referred to in section 31, any amount distributed to its members, whether divided among the members in accordance with their rights as shareholders or according to the value of business transactions between individual members and such society or company or in some other basis), and in this definition the expression “amount distributed” includes -

**[The introductory portion of the definition of “dividend” is amended by Act 25 of 1992 and by Act 5 of 2007 with effect from 1 March 2008 (section 12(5) of Act 5 of 2007).
The phrase “in some other basis” should be “on some other basis”.]**

- (a) in relation to a company that is being wound up or liquidated, any profits distributed, whether in cash or otherwise, other than those of a capital nature, earned before or during the winding-up or liquidation (any such profits distributed by the liquidator of the company being deemed for the purposes of this definition to have been distributed by the company);
- (b) in relation to a company that is not being wound up or liquidated, any profits distributed, whether in cash or otherwise, and whether of a capital nature or not, including an amount equal to the nominal value, at the time of issue thereof, of any capitalization shares awarded to shareholders and the nominal value of any bonus debentures or securities awarded to shareholders;
- (c) in the event of the partial reduction or redemption of the capital of a company, so much of the sum of any cash and the value of any asset given to a shareholder as

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exceeds the cash equivalent of the amount by which the nominal value of the shares of that shareholder is reduced; and

- (d) in the event of the reconstruction of a company, so much of the sum of any cash and the value of any asset given to a shareholder as exceeds the nominal value of the shares held by him before the reconstruction,

but does not include -

- (e) the nominal value of any capitalization shares awarded to a shareholder to the extent to which such shares have been paid up by means of the application of the whole or any portion of the share premium account of a company; or
- (f) subject to the provisions of the second proviso to this definition, any cash and the value of any asset given to a shareholder to the extent to which the cash and the value of the asset represents a reduction of the share premium account of a company; or
- (g) so much of the nominal value of any capitalization shares awarded to shareholders on or before 30 June 1975 as part of the equity share capital of a company by a company which during the period of ten years ending the day before the date of such award has made any partial reduction of its paid-up share capital involving a distribution to shareholders of cash or other assets, as exceeds the sum of the amounts which in the opinion of the Minister were available for distribution to shareholders on each and every date on which the company made a partial reduction of its paid-up share capital during the said period, less the sum of so much of the nominal values of all capitalization shares awarded by such company during that period (excluding any portion of that period occurring prior to 1 July 1957) as constituted dividends for the purposes of this definition or the definition of "dividend" in section 1 of the Income Tax Act, 1941: Provided that for the purposes of this paragraph the amount available for distribution on any date on which the company made a partial reduction of its paid-up share capital shall, if that amount exceeds the nominal amount of such reduction, be deemed to be an amount equal to such nominal amount; or
- (h) the nominal value of any capitalization shares awarded to shareholders as part of the equity share capital of a company, if -
 - (i) such shares are or were awarded on or before 30 June 1975 and during the period of ten years ending the day before the date of such award the company has not made any partial reduction of its paid-up share capital involving a distribution to shareholders of cash or other assets; or
 - (ii) such shares are awarded on or after 1 July 1975;
- (i) any amount distributed by any co-operative society or company referred to in section 31 by way of a bonus, to the extent that such amount is allowable as a deduction from the income of such society or company under the provisions of section 31:

Provided that the provisions of paragraphs (g) and (h) shall not apply in respect of the nominal value (or any portion thereof) of any capitalization share awarded before 1 January 1974 by any company which is recognized as a private company in terms of section 38: Provided further that, for the purposes of this definition -

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- (i) where a company has on or after 1 January 1974 transferred any amount from reserves (excluding any share premium account) or undistributed profits to the share capital or the share premium account of the company without applying the amount in paying up capitalization shares or has applied the amount in paying up capitalization shares the nominal value of which did not in whole or in part constitute an amount distributed as contemplated in the foregoing provisions of this definition, the amount so transferred (reduced by so much thereof as constitutes such an amount distributed) shall be deemed -
- (aa) to the extent that such amount (as so reduced) is shown to consist of profits of a capital nature, to be a profit of a capital nature available for distribution by the company to shareholders who, in the event of a distribution by the company at any time (whether before or during the winding-up or liquidation of the company) of profits of a capital nature would be entitled to participate in such a distribution; and
- (bb) to the extent that subparagraph (aa) does not apply, to be a profit which is not of a capital nature and is available for distribution by the company to shareholders who, in the event of a distribution by the company at any time (whether before or during the winding-up or liquidation of the company) of profits which are not of a capital nature would be entitled to participate in such a distribution,
- regardless of whether in either case the company in fact has or has not any profits available for distribution;
- (ii) where the share capital of the company consists of different classes of share capital, any amount deemed by paragraph (i) of this proviso to be available for distribution to shareholders shall, in applying that paragraph, be apportioned between such classes of share capital in accordance with the rights of the holders of the corresponding classes of shares to participate in distributions of profits of a capital nature or profits which are not of a capital nature, as the case may be, and the amount deemed by the said paragraph to be available for distribution to the shareholders in respect of any such class of shares shall be the amount allocated to the share capital of that class under such apportionment;
- (iii) where any amount is under the provisions of paragraph (i) of this proviso or that paragraph as applied by paragraph (ii) of this proviso, deemed to be a profit available for distribution to shareholders and any of the shares of any class (hereinafter referred to as the original shares) held by any such shareholders are converted into shares of any other class or the original shares are cancelled and shares of any other class are issued in place of the original shares, the said amount shall, to the extent that it relates to or may have been apportioned to the original shares be deemed to relate to and to be a profit available for distribution to the shareholders in respect of the shares of such other class and the provisions of this proviso shall, to the extent that the said amount is deemed to consist of a profit as aforesaid, apply in respect of such amount as though it were an amount referred to in paragraph (i) of this proviso, and the shareholders in respect of the shares of such other class shall, regardless of the rights attaching to such shares, be deemed as respects the said amount to be entitled to participate in profits of the same nature as the profit deemed by this paragraph to be available for distribution to the shareholders, whether such profit is of a capital nature or is not of a capital nature;
- (iv) subject to the provisions of paragraphs (iii) and (vi) of this proviso, where any amount is under the provisions of paragraph (i) of this proviso or that paragraph as

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applied by paragraph (ii) of this proviso, deemed to be a profit available for distribution to shareholders and any shares issued by the company are cancelled without a return of the share capital or any share premium relating to such shares, such share capital or share premium or any reserve created by reason of the cancellation of such shares shall, to the extent that the said profit may be apportioned to the said shares, be deemed to consist of a profit (of the same nature as the aforesaid profit) available for distribution to shareholders who are or may become interested in such share capital, share premium or reserve, and where any cash is or any assets are given to shareholders by way of a return of or a distribution out of such share capital, share premium or reserve, the sum of the amount of such cash and the value of such assets shall, to the extent that such sum does not exceed the amount deemed by this paragraph to consist of a profit available for distribution to shareholders, be deemed to be a profit (of the same nature as the first-mentioned profit) distributed to the shareholders;

- (v) if, in the event of the subsequent partial reduction or redemption of the share capital (including any share premium) of the company or the reconstruction of the company, any cash or any asset is given to shareholders and such cash or asset (or a portion thereof) represents a return of share capital or share premium, the amount of share capital or share premium so returned -
 - (aa) to shareholders entitled to participate in distributions of profits which are not of a capital nature and in respect of whom any amount is deemed under paragraph (i) (bb) of this proviso to be such a profit available for distribution to such shareholders, shall (to the extent that the amount returned to such shareholders does not exceed the aggregate of the amounts of the profits so deemed to be available for distribution to such shareholders) be deemed to be a profit, not of a capital nature, distributed to such shareholders, and the amounts so deemed to be available for distribution shall be deemed to have been reduced accordingly; or
 - (bb) to shareholders entitled to participate in distributions of profits of a capital nature and in respect of whom any amount is deemed under paragraph (i)(aa) of this proviso to be such a profit available for distribution to such shareholders, shall (to the extent that the amount returned to such shareholders (less so much thereof as is deemed under sub-paragraph (aa) of this paragraph to be a profit, not of a capital nature, distributed to such shareholders) does not exceed the aggregate of the amounts of the profits deemed under the said paragraph (i)(aa) to be available for distribution to such shareholders) be deemed to be a profit of a capital nature distributed to such shareholders and the amounts so available for distribution shall be deemed to have been reduced accordingly;
- (vi) where the company has lost some of its paid-up share capital (including any share premium) as a result of losses actually incurred by it and such share capital is in consequence partially reduced to take account of such losses, any amounts which in terms of this proviso are at the date of such partial reduction of such share capital deemed to be profits available for distribution to shareholders shall be deemed to have been reduced to the extent that such losses are so accounted for and in such manner that, as far as possible and on the basis, where necessary, of an apportionment between different classes of share capital in accordance with the rights of shareholders -
 - (aa) any such profits which are of a capital nature and relate to shareholders entitled to participate in profits of that nature, are reduced by so much of the

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amount by which the said share capital is reduced as is attributable to losses of a capital nature; and

- (bb) any such profits which are not of a capital nature and relate to shareholders entitled to participate in profits which are not of a capital nature, are reduced by so much of the amount by which the said share capital is reduced as is attributable to losses which are not of a capital nature;
- (vii) in the event of the winding-up or liquidation of the company -
- (aa) any profits which in terms of the preceding provisions of this proviso are, at the commencement of the winding-up or liquidation, deemed to be available for distribution to shareholders shall, if the company has lost some of its paid-up share capital (including any share premium) as a result of losses actually incurred by it, be deemed to have been reduced in such manner that, as far as possible and on the basis, where necessary, of an apportionment between different classes of share capital in accordance with the rights of shareholders -
 - (A) any such profits which are of a capital nature and relate to shareholders entitled to participate in profits of that nature, are reduced by so much of the loss of the said share capital as is attributable to losses of a capital nature; and
 - (B) any such profits which are not of a capital nature and relate to shareholders entitled to participate in profits which are not of a capital nature, are reduced by so much of the loss of the said share capital as is attributable to losses which are not of a capital nature; and
 - (bb) the aggregate of any cash and the value of any assets given to shareholders entitled to participate in profits not of a capital nature shall, to the extent that such aggregate exceeds so much of the sum of the share capital and any share premium contributed by such shareholders (less so much of such share capital and share premium as has been lost) as remains after deducting therefrom an amount equal to so much of any profits, not of a capital nature, which are deemed by this proviso (after applying subparagraph (aa) of this paragraph) to be available for distribution to such shareholders at the commencement of the winding-up or liquidation, as relates to the said share capital, be deemed to be a profit, not of a capital nature, distributed to such shareholders, but the amount of that profit shall not be determined at an amount which exceeds the aforesaid amount:

Provided further that for the purposes of this definition an asset shall be deemed to have been given to a shareholder of a company if any asset or any interest, benefit or advantage measurable in terms of money is given or transferred to such shareholder or if the shareholder is relieved of any obligation measurable in terms of money: Provided further that a reserve of any company which consists of or includes any amount transferred from the share premium account of the company shall, except to the extent to which the Minister is satisfied that such reserve consists of any other amount, be deemed for the purposes of this definition to be a share premium account of, or share premium received by, such company;

“domestic company” means a Namibia company or a company which is managed and controlled in Namibia;

[definition of “domestic company” amended by Act 25 of 1992]

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“education policy” means a policy of insurance that is taken out by a tax payer exclusive and solely for the purpose of making provision for the future education or training of a child or step-child of the taxpayer contemplated by section 16(1)(ab)(ii);

[definition of “education policy” inserted by Act 15 of 2011]

“equity share capital” means, in relation to any company, its issued share capital excluding any part thereof which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution, and the expression “equity shares” shall be construed accordingly;

“executor” means any person to whom letters of administration or executorship, as the case may be, have been granted by the Master in respect of the estate of a deceased person under any law relating to the administration of estates, and includes a person acting or authorised to act under letters of administration or executorship granted outside Namibia but signed and sealed by such Master for use within Namibia and, in any case where the estate is not required to be administered under the supervision of such Master, the person administering the estate;

“external company” means any company other than a domestic company;

“financial year” means -

- (i) the period, whether of twelve months or not, commencing upon the date of incorporation or creation of such company and ending upon the last day of February immediately succeeding such date or upon such other date as the Minister having regard to the circumstances of the case may approve; or
- (ii) any period subsequent to the period referred to in subparagraph (i), whether of twelve months or not, commencing immediately after the specified date of that company in respect of the immediately preceding year of assessment of that company and ending upon the first anniversary of the last-mentioned specified date or upon such other date as the Minister having regard to the circumstances of the case may approve;

“gross income”, in relation to any year or period of assessment, means, in the case of any person, the total amount, in cash or otherwise, received by or accrued to or in favour of such person during such year or period of assessment from a source within or deemed to be within Namibia, excluding receipts or accruals of a capital nature, but including, without in any way limiting the scope of this definition, such amounts (whether of a capital nature or not) so received or accrued as are described hereunder, namely -

- (a) any amount received or accrued by way of annuity;
- (b) any amount, including any voluntary award, received or accrued in respect of services rendered or to be rendered;
- (c) any amount, including any voluntary award, received or accrued in respect of the relinquishment, termination, loss, repudiation, cancellation or variation of any office or employment or of any appointment (or right or claim to be appointed) to any office or employment: Provided that the provisions of this paragraph shall not apply to any lump sum award from any pension fund, retirement annuity fund or benefit fund;

[paragraph (c) amended by Act 25 of 1992]

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- (d) any amount, excluding an annuity, received by or accrued to an employee from a pension fund or a pension preservation fund: Provided that this paragraph does not apply to a lump sum payable on the termination or relinquishment of office or employment of an employee due to -
 - (i) death;
 - (ii) superannuation, ill-health or other infirmity proven to the satisfaction of the Minister; or
 - (iii) retirement.

[Paragraph (d) is amended by Act 12 of 1991 with effect from 1 March 1990 (section 1(2) of Act 12 of 1991), and by Act 25 of 1992 and Act 22 of 1995. It is also amended by Act 5 of 1997, with this amendment deemed to have come into force (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 commencing on or after 1 January 1998 (section 12(b) of Act 5 of 1997). It is then substituted by Act 21 of 1999, with this substitution deemed to have come into force at the beginning of the year of assessment commencing on or after 1 March 1998 (section 1(2) of Act 21 of 1999), and again substituted by Act 7 of 2002, with this substitution deemed to have come into force on 1 March 1999 (section 1(2)(a) of Act 7 of 2002). The full stop at the end of the paragraph should be a semicolon.]

- (dA) the amount of any gain received by or accrued to any person under a single premium endowment policy or any policy of a similar nature resulting in a cash payment, other than on death or earlier disability, within ten years after the commencement of such policy, by way of any insurance benefit – including any bonus, loan or share of profits – or by way of compensation in respect of the total or partial cession by the owner of the said policy of his rights in terms of that policy: Provided that this paragraph shall apply only to policies entered into on or after 1 March 1987;

[paragraph (dA) inserted by Act 8 of 1987]

- (dB) any amount received or accrued under the rules of a provident fund upon -
 - (i) the death or the relinquishment of office or employment of any member of the provident fund due to superannuation, ill-health or other infirmity;
 - (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
 - (iii) the cessation of the provident fund;

[paragraph (dB) inserted by Act 25 of 1992 and amended by Act 10 of 1993 and by Act 22 of 1995]

- (dC) any amount received or accrued under or upon the maturity, payment, surrender or disposal of any education policy if any premium paid in respect of such policy was allowed as a deduction in terms of section 17(1)(qA);

[paragraph (dC) inserted by Act 10 of 1993 and substituted by Act 15 of 2011]

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

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- (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;

[Paragraph (dD) is inserted by Act 21 of 1999, with this insertion deemed to have come into force at the beginning of the year of assessment commencing on or after 1 March 1998 (section 1(2) of Act 21 of 1999).]

- (e) any amount received or accrued in commutation of amounts due under any contract of employment or service;
- (f) any amount received or accrued from another person, as premium or like consideration -
 - (i) for the use or occupation or the right of use or occupation of land or buildings; or
 - (ii) for the use or the right of use of plant or machinery; or
 - (iii) for the use or the right of use of any motion picture film or any film or video tape or disc for use in connection with television or any sound recording or advertising matter connected with such motion picture film, film or video tape or disc; or
 - (iv) for the use or the right of use of any patent or design as defined in the Patents and Designs Proclamation, 1923 (Proclamation 17 of 1923), or any trade mark as defined in the Trade Marks in South West Africa Act, 1973 (Act 48 of 1973), or any copyright as defined in the Copyright Act, 1965 (Act 63 of 1965), or any other property which in the opinion of the Minister is of a similar nature:

[The Patents and Designs Proclamation 17 of 1923 will be replaced by the Industrial Property Act 1 of 2012, which has not yet been brought into force. The Copyright Act 63 of 1965 has been replaced by the Copyright and Neighbouring Rights Protection Act 6 of 1994.]

- (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 Minister;

[paragraph (g) amended by Act 8 of 1987 and by Act 1 of 1989, substituted by Act 8 of 1991, and amended by Act 12 of 1996]

- (h) (i) 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 expenditure 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);
- (ii) any other expenditure deducted in terms of section 18(1)(a) or the corresponding provisions of any previous income tax law, which have been recovered or recouped during the current year of assessment, including recovery or recoupment by means of the withdrawal from development or

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exploration operations for use for non-development, exploration or mining operations or removal from Namibia of any asset, less such portion of that expenditure not yet deducted by virtue of the provisions of section 36(1): Provided that any asset so withdrawn from development, exploration or mining operations or removed from Namibia or disposed at a consideration, which is less than the fair value of such asset, shall be valued at market value for the purpose of determining the amount recovered or recouped.

[Paragraph (h) is substituted by Act 22 of 1995, with this substitution deemed to have come into force (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; 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 1995 (section 1(2) of Act 22 of 1995, as amended by section 30 of Act 12 of 1996). It is amended by Act 5 of 2007, with effect from (a) in the case of a tax payer other than a company, at the beginning of the year of assessment commencing on or after 1 March 2007; and (b) in the case of a tax payer which is a company, at the beginning of the year of assessment of such company on or after 1 January 2007 (section 12(4) of Act 5 of 2007).]

(i) any amounts received or accrued by way of dividends, including any dividends distributed by a private company out of, or by way of the capitalization of, any profits of such company which had previously been apportioned among its shareholders in terms of the provisions of any previous income tax law as the taxable income or the income subject to super tax of such company: Provided that all dividends from sources outside Namibia received by or accrued to or in favour of any person who is ordinarily resident in Namibia shall be deemed to have been received by or to have accrued to or in favour of such person from a source within Namibia;

(iA) any amount derived from a building society by way of dividends or interest;

[paragraph (iA) inserted by Act 25 of 1992]

(j) any amount received or accrued by way of grant or subsidy in respect of any soil conservation works referred to in section 19 or any of the matters mentioned in paragraph 10(1)(a) to (j) inclusive, of Schedule 1;

(k) any amount received or accrued from another person as consideration (or payment of like nature) for the imparting of or the undertaking to impart any scientific, technical, industrial or commercial knowledge or information for use in Namibia, or for the rendering of or the undertaking to render any assistance or service in connection with the application or utilization of such knowledge or information;

(l) in the case of any person to whom, in terms of any agreement relating to the grant to any other person of the right of use or occupation of land or buildings, or by virtue of the cession of any rights under any such agreement, there has accrued in any such year or period the right to have improvements effected on the land or to the buildings by any other person -

(i) the amount stipulated in the agreement as the value of the improvements or as the amount to be expended on the improvements; or

(ii) if no amount is so stipulated, an amount representing in the opinion of the Minister the fair and reasonable value of the improvements;

(m) any amount received or accrued under or upon surrender or disposal of, or by way of any loan or advance granted by the insurer concerned under or upon the security of, any policy of insurance upon the life of any person who at any time while the policy was in force was an employee of the taxpayer or, where the taxpayer is a

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company, was a director or employee of the company, if any premium paid in respect of such policy is or was deductible from the income of the taxpayer, whether in the current or any previous year of assessment, under section 17, but -

- (i) where any amount received or accrued under or upon the surrender or disposal of any such policy falls to be included in the gross income of the taxpayer, the amount so included in his or her gross income is reduced by the amount of any loan or advance under or upon security of that policy which has been included in his or her gross income, whether in the current or any previous year of assessment; or
- (ii) where any such policy has been terminated by the insurer and a paid-up policy has been issued, the terminated policy and the paid-up policy is, for the purposes of this paragraph, deemed to be one and the same policy;

[paragraph (m) substituted by Act 15 of 2011]

- (n) any amount which in terms of any other provision of this Act is specifically required to be included in the taxpayer's income, and for the purposes of this paragraph all amounts which in terms of subsection (4) of section 14 are required to be included in the taxpayer's income shall be deemed to have been received by or to have accrued to the taxpayer from a source within Namibia notwithstanding that such amounts may have been recovered or recouped outside Namibia;
- (o) any amount received or accrued from another person as consideration (or payment of like nature) or the open market value by way of a sale, donation, expropriation, cession, grant or other alienation or transfer of ownership of a mineral licence as defined in the Minerals (Prospecting and Mining) Act, 1992 (Act No. 33 of 1992), or right to mine minerals in Namibia, and includes a sale of shares in a company for a mineral licence or right to mine minerals in Namibia;

[paragraph (o) substituted by Act 15 of 2011]

“income” means the amount remaining of the gross income of any person for any year or period of assessment after deducting therefrom any amounts exempt from normal tax under Part 1 of Chapter II;

“local authority” means the council of a municipality constituted or established in terms of the provisions of the Municipal Ordinance, 1963 (Ordinance 13 of 1963), a Village Management Board constituted in terms of the provisions of the Village Management Boards Ordinance, 1963 (Ordinance 14 of 1963) and the Peri-Urban Development Board established in terms of the provisions of the Peri-Urban Development Board Ordinance, 1970 (Ordinance 19 of 1970);

“manufacturing activity” means -

- (a) the physical or chemical transformation of materials or components into new products -
 - (i) whether manually or by mechanical or other process;
 - (ii) whether in a factory, at a private dwelling or any other place; or
 - (iii) whether for purposes of sale in the wholesale or in the retail trade; or
- (b) the assembly of the component parts of manufactured products, but excluding -

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- (i) assembly on the site of prefabricated integral parts into bridges, water tanks, storage or warehouse facilities, railroad and elevated rights-of-way, lifts and escalators, plumbing, sprinklers, central heating, ventilating and air conditioning, lighting and electrical wiring, systems of building and all kinds of structures; and
- (ii) assembly and installation of machinery and equipment rendered as a service incidental to the sale of goods by a person primarily engaged in the wholesale or retail trade;

[definition of “manufacturing activity” inserted by Act 7 of 2002, with this insertion coming into effect for a company at the beginning of the year of assessment of such company commencing on or after 1 January 2003 (section 1(2)(b) of Act 7 of 2002)]

“married” includes a marriage by customary law and “spouse” shall be construed accordingly;

[definition of “married” substituted by Act 25 of 1992]

“married person” means any person who during any portion of the period in respect of which any assessment is made, was married or was a widower or widow but does not include any person who, although married, was during the whole of such period separated from his spouse under a judicial order or written agreement;

[definition of “married person” substituted by AG 10 of 1985 as from the commencement of the years of assessment ending on or after 28 February 1986]

“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);

[definition of “Master” substituted by Act 12 of 1996]

[definition of “mining for gold” deleted by Act 25 of 1992]

“mining operations” and “mining” include every method or process by which any mineral (excluding petroleum) is won from the soil or from any substance or constituent thereof;

[definition of “mining operations” and “mining” amended by Act 3 of 1991]

“Minister” means the Minister of Finance;

[definition of “Minister” inserted by Act 25 of 1992]

“Namibian company” means any association, corporation, company or body corporate referred to in paragraph (a) of the definition of “company” or any association referred to in paragraph (d) of that definition or any unit portfolio referred to in paragraph (e) of that definition;

[The definition of “Namibian company” is inserted by Act 25 of 1992. The word “association” is misspelt in the *Government Gazette* in its second use in this definition, as reproduced above.]

[definition of “natural oil” deleted by Act 3 of 1991]

“nominal value” means -

- (a) in relation to shares issued by a company -
 - (i) if the shares have a par value, such par value; or

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- (ii) if the shares do not have a par value, an amount equal to the amount at which the par value of those shares would be determined if the company were to convert the shares into shares having a par value:

Provided that in the case of capitalization shares the nominal value thereof at the time of the issue thereof shall be deemed to be the amount of the company's reserves (including any share premium account) and unappropriated profits applied in paying up such shares as contemplated in the definition of "capitalization shares" in this section and the amount of such reserves applied in paying up any share premium in respect of the said shares; or

- (b) in relation to bonus debentures or securities issued by a company, the amount of the company's reserves or unappropriated profits applied in paying up such debentures or securities as contemplated in the definition of "bonus debentures or securities" in this section;

"notice of assessment" means a notice of assessment issued in terms of section 67(2);

[definition of "notice of assessment" inserted by Act 7 of 2002]

"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 other fund (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 -

[The introductory portion of the definition of "pension fund" is amended by Act 25 of 1992 and by Act 21 of 1999 (amendment markings incomplete). The word "to" should be inserted into the phrase "shall not be contrary to paragraph (b)".]

- (a) that the fund is a permanent fund bona fide established for the purpose of providing annuities for employees on retirement from employment or for widows, children, dependants or nominees of deceased employees, or mainly for the said purpose and also for the purpose of providing benefits other than annuities for the persons aforesaid; and
- (aA) that the fund is registered in Namibia as a pension fund under the Pension Funds Act, 1956 (Act 24 of 1956); and

[paragraph (aA) inserted by Act 17 of 1994]

- (b) that the rules of the fund provide -
 - (i) that all annual contributions of a recurrent nature to the fund shall be in accordance with specified scales;
 - (ii) that membership of the fund throughout the period of employment shall be a condition of the employment by the employer of all persons of the class or classes specified therein who enter his employment on or after the date upon which the fund comes into operation;

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- (iii) that persons who immediately prior to the said date were employed by the employer and who on the said date fall within the said class or classes may, on application made within a period of not more than twelve months as from the said date, be permitted to become members of the fund on such conditions as may be specified in the rules;
- (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\$50 000, 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 (iv)(aa) becomes entitled to does not exceed N\$50 000, 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 Amendment Act, 2010, does not exceed N\$50 000, 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;

[Subparagraph (iv) is amended by Act 25 of 1992 and by Act 17 of 1994; substituted by Act 21 of 1999; and amended by Act 5 of 2010 with effect from 1 April 2010 (section 9(b) of Act 5 of 2010) and by Act 15 of 2011.]

- (v) for the administration of the fund in such a manner as to preclude the employer 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

[subparagraph (iv) amended by Act 21 of 1999]

- (vi) that the Minister shall be notified of all amendments of the rules; and

- (c) that the rules of the fund have been complied with;

“registered manufacturer” means a taxpayer registered as a manufacturer under section 5A;

[The definition of “registered manufacturer” is inserted here as directed by Act 10 of 1993, but the resulting alphabetical order is incorrect. Act 10 of 1993 should have directed that the definition of “registered manufacturer” be inserted after the definition of “provident fund” rather than after the definition of “pension fund”.]

[The definition of “Permanent Secretary” is inserted by Act 12 of 1991 and deleted by Act 12 of 1996.]

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“person” includes any trust and the estate of a deceased person and such estate is deemed to have come into existence at the moment of death of the deceased person, and includes a partnership for purposes of sections 34A, 34B, 34C, 34D and 34E;

[The definition of “person” is amended by Act 5 of 2007 with effect from 1 March 2009 (section 12(6) of Act 5 of 2007). It is substituted by Act 5 of 2010. The word “existence” is misspelt in the *Government Gazette*, as reproduced above.]

“petroleum” means petroleum as defined in section 1 of the Petroleum (Exploration and Production) Act, 1991;

[definition of “petroleum” inserted by Act 3 of 1991]

“prescribed” means prescribed or deemed to be prescribed by or under this Act;

“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 -

- (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\$50 000, not more than one-third of the total value of such annuity or annuities may be commuted for a single payment;

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- (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\$50 000, 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;

[Subparagraph (ii) is amended by Act 5 of 2010 with effect from 1 April 2010 (section 9(b) of Act 5 of 2010).]

- (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);
 - (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);

[The definition of "preservation fund" is inserted by Act 21 of 1999, with this insertion deemed to have come into force at the beginning of the year of assessment commencing on or after 1 March 1998 (section 1(2) of Act 21 of 1999).]

"provident fund" means any fund (other than a pension 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 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 -

- (a) that the fund is a permanent fund *bona fide* established solely for the purpose of providing benefits for employees on retirement from employment or solely for the purpose of providing benefits for the spouses, children, dependants or nominees of deceased employees or deceased former employees, or solely for a combination of such purposes;

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- (aA) that the fund is registered in Namibia as a provident fund under the Pension Funds Act, 1956 (Act No. 24 of 1956);
- (b) that the rules of the fund contain provisions similar in all respects to those required to be contained in the rules of a pension fund in terms of subparagraphs (i), (ii), (iii), (v) and (vi) of paragraph (b) of the definition of “pension fund”; and
- (c) that the rules of the fund have been complied with;

[The definition of “provident fund” is inserted by Act 25 of 1992 and amended by Act 21 of 1999, with this amendment deemed to have come into force at the beginning of the year of assessment commencing on or after 1 March 1998 (section 1(2) of Act 21 of 1999).]

“regional council” means a regional council established under section 2 of the Regional Councils Act, 1992 (Act 22 of 1992);

[The definition of “regional council” is inserted by Act 12 of 1996.]

[The definition of “registered manufacturer” should appear here. It is listed above, after the definition of “pension fund”, in accordance with the instructions in Act 10 of 1993.]

“regulation” means a regulation in force under this Act;

“relative” in relation to any person, means the spouse of such person or anybody related to him or his spouse within the third degree of consanguinity, or any spouse of anybody so related, and for the purpose of determining the relationship between any child and any other person, such child shall be deemed to be related to its adoptive parent within the first degree of consanguinity;

“representative taxpayer” means -

- (a) in respect of the income of a company, the public officer thereof;
- (b) in respect of the income under his management, disposition or control, the agent of any person, including an agent appointed as such under the provisions of section 91, and for the purposes of this paragraph the term “agent” includes every person in Namibia having the receipt, management or control of income on behalf of any person permanently or temporarily absent from Namibia or remitting or paying income to or receiving moneys for such person;
- (c) in respect of income the subject of any trust or in respect of the income of any minor or mentally disordered or defective person or any other person under legal disability, the trustee, guardian, curator or other person entitled to the receipt, management, disposal or control of such income or remitting or paying to or receiving moneys on behalf of such person under disability;
- (d) in respect of income paid under the decree or order of any court or judge to any receiver or other person, such receiver or person, whoever may be entitled to the benefit of such income, and whether or not it accrues to any person on a contingency or an uncertain event;
- (e) in respect of the income received by or accrued to any deceased person during his lifetime and the income received by or accrued to the estate of any deceased person, the executor or administrator of the estate of such deceased person,

but nothing in this definition shall be construed as relieving any person from any liability, responsibility or duty imposed upon him by this Act;

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

- (a) that the fund is a permanent fund *bona fide* established solely for the purpose of providing life annuities for the members of the fund or annuities for the spouses, children, dependants or nominees of deceased members; and

[paragraph (a) amended by Act 25 of 1992]

- (b) that the rules of the fund provide -
- (i) for periodical contributions by the members or contributions made by way of transfer of members' interests in approved pension funds, provident funds or other retirement annuity funds;
- (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 N\$50 000;

[Subparagraph (ii) is amended by Act 25 of 1992, Act 22 of 1995, Act 7 of 2002 and Act 5 of 2010 with effect from 1 April 2010 (section 9(b) of Act 5 of 2010).]

- (iii) that no portion of any annuity payable to the spouse, child, dependant or nominee of a deceased member may be commuted later than six months from the date of the death of such member;

[subparagraph (iii) amended by Act 25 of 1992]

- (iv) adequate security to safeguard the interests of persons who may become entitled to annuities;
- (v) that no member shall become entitled to the payment of any annuity after he reaches the age of seventy years or; except in the case of a member who becomes permanently incapable through infirmity of mind or body of carrying on his occupation, before he reaches the age of fifty-five years;
- (vi) that where a member dies before he or she becomes entitled to the payment of an annuity, the benefits shall not exceed a refund to his or her estate or to his or her spouse, children, dependants or nominees of the sum of the amounts (with or without reasonable interest thereon) contributed by him or her and an annuity or annuities to his or her spouse, children, dependants or nominees;

[subparagraph (vi) amended by Act 25 of 1992]

- (vii) that where a member dies after he or she has become entitled to an annuity no further benefit shall be payable other than an annuity or annuities to his or her spouse, children, dependants or nominees;

[subparagraph (vii) amended by Act 25 of 1992]

- (viii) that a member who discontinues his contributions prematurely shall be entitled either to an annuity (payable from the date on which he would have become

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entitled to the payment of an annuity if he had continued his contributions) determined in relation to his actual contributions or to be reinstated as a full member under conditions prescribed in the rules of the fund;

- (ix) that upon the winding-up of the fund a member's interest therein must either be used to purchase a policy of insurance which the Minister is satisfied provides benefits similar to those provided by such fund or be paid for the member's benefit into another approved retirement annuity fund;
- (x) that save as is contemplated in subparagraph (ii), no member's rights to benefits shall be capable of surrender, commutation or assignment or of being pledged as security for any loan;
- (xi) that the Minister shall be notified on all amendments of the rules; and
- (c) that the rules of the fund have been complied with;
- (d) that the retirement annuity fund is registered in Namibia under the Pension Funds Act, 1956 (Act No. 24 of 1956);

[paragraph (d) inserted by Act 7 of 2011]

“scientific research” means any activity in the field of natural or applied science for the extension of knowledge;

[definition of “Secretary” deleted by Act 12 of 1991]

“shareholder” -

- (a) in relation to any company referred to in paragraph (a), (b), (c) or (d) of the definition of “company” in this section, means the registered shareholder in respect of any share, except that where some person other than the registered shareholder is entitled, whether by virtue of any provision in the memorandum or articles of association of the company or under the terms of any agreement or contract, or otherwise, to all or part of the benefit of the rights of participation in the profits or income attaching to the share so registered, such other person shall, to the extent that he is entitled to such benefit, also be deemed to be a shareholder; or
- (b) in relation to any company referred to in paragraph (e) of the said definition, the registered holder of any unit certificate issued in respect of a unit included in the relevant unit portfolio, except that where some person other than the registered holder of any unit is entitled, whether by virtue of any provision in the trust deed entered into for the purposes of the relevant unit trust scheme or under the terms of any agreement or contract, or otherwise, to all or part of the benefit of the rights of participation in the profits or income attaching to the unit certificate, such other person shall, to the extent that he is entitled to such benefit, also be deemed to be a shareholder;

[definition of “South West African company” deleted by Act 25 of 1992]

“specified date”, in relation to a year of assessment of any company, means the last day of such year of assessment;

“specified period”, in relation to a year of assessment of any company means -

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- (a) where such year of assessment is the first financial year of such company, the period commencing on the first day of such year and ending six months after the specified date in respect of such year; and
- (b) where such year of assessment is a subsequent financial year of such company, the period commencing the day after the end of the specified period in respect of the immediately preceding year of assessment and ending six months after the specified date in respect of the year of assessment in question:

Provided that where by any reason of the amalgamation under section 94 of the Co-operative Societies Ordinance, 1946 (Ordinance 15 of 1946), of two or more agricultural co-operatives (as defined in section 31(4) of this Act), the assets and liabilities of such co-operatives have vested in a new agricultural co-operative (as so defined), the Minister may, having regard to the circumstances of the case, direct that the specified period of each of the co-operatives which have so amalgamated, as applicable in relation to the final year of assessment of the co-operative in question be extended so as to end on such day as the Minister may determine;

“tax” or “the tax” or “taxation” means any levy or tax leviable under this Act; and for the purposes of Part IV of Chapter III includes any levy or tax leviable under any previous income tax law;

“taxable amount”, in relation to a person other than a company, means the taxable income of such person;

[definition of “taxable amount” substituted by Act 22 of 1995]

“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;

[definition of “taxable income” substituted by Act 22 of 1995 and amended by Act 12 of 1996]

“taxpayer” means any person chargeable with any tax leviable under this Act and, for the purposes of any provision relating to any return, includes every person required by this act to furnish such return and for the purposes of Part IV of Chapter III includes any person chargeable with any tax leviable under any previous income tax law;

[definition of “territory” deleted by Act 12 of 1991]

“this Act” includes the regulations;

“trade” includes every profession, trade, business, employment, calling, occupation or venture, including the letting of any property, and the use of or the grant of permission to use any patent or design as defined in the Patents and Designs Proclamation, 1923 (Proclamation 17 of 1923), or any trade mark as defined in the Trade Marks in South West Africa Act, 1973 (Act 48 of 1973), or any copyright as defined in the Copyright Act, 1965 (Act 63 of 1965), or any other property which in the opinion of the Minister is of a similar nature;

[The Patents and Designs Proclamation 17 of 1923 will be replaced by the Industrial Property Act 1 of 2012, which has not yet been brought into force. The Copyright Act 63 of 1965 has been replaced by the Copyright and Neighbouring Rights Protection Act 6 of 1994.]

“trading stock” includes anything produced, manufactured, purchased or in any other manner acquired by a taxpayer for purposes of manufacture, sale or exchange by him or on his behalf, or the proceeds from the disposal of which forms, or will form, part of his gross income;

“trustee” in addition to every person appointed or constituted as such by act of parties, by will, by order or declaration of court or by operation of law, includes an executor or administrator,

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tutor or curator, and any person having the administration or control of any property subject to a trust, usufruct, fidei-commissum or other limited interest, or acting in any fiduciary capacity or having, either in a private or an official capacity, the possession, direction, control or management of any property of any person under legal disability;

“year of assessment” means any year or other period in respect of which any tax or duty leviable under this Act is chargeable.

[Act 5 of 1982 (Rehoboth) provides the following additional definitions relevant to the application of this Act to “citizens of Rehoboth”

“Chief Director” means the officer at the head of the government service of Rehoboth;

“citizen of Rehoboth” means a citizen of Rehoboth as contemplated in section 5 of the Rehoboth Self-Government Act, 1976 (Act 56 of 1976), irrespective of whether such citizen is resident within Rehoboth or elsewhere in the territory of South West Africa;

“Rehoboth” means the area defined in section 6 of the Rehoboth Self-Government Act, 1976 (Act 56 of 1976).]

CHAPTER I

ADMINISTRATION

Administration of the Act

2. The Minister shall be responsible for carrying out the provisions of this Act.

[section 2 amended by Act 12 of 1996]

Exercise of powers and performance of duties

3. (1) The powers conferred and the duties imposed upon the Minister by or under the provisions of this Act or any amendment thereof may be exercised or performed by the Minister personally, or by any officer or employee carrying out the said provisions under the control, direction or supervision of the Minister.

(2) Any decision made and any notice (or communication issued or signed by any such officer or employee may be withdrawn or amended by the Minister or by the officer or employee concerned, and shall for the purposes of the said provisions, until it has been so withdrawn, be deemed to have been made, issued or signed by the Minister: Provided that a decision made by any such officer or employee in the exercise of any discretionary power under the provisions of this Act or of any previous income tax law shall not be withdrawn or amended after the expiration of two years from the date of the written notification of such decision or of the notice of assessment giving effect thereto, if all the material facts were known to the said officer or employee when he made his decision.

(3) Any written decision made by the Minister personally in the exercise of any discretionary power under the provisions of this Act or of any previous income tax law shall not be withdrawn or amended by the Minister if all the material facts were known to him when he made his decision.

Preservation of secrecy

4. (1) Every person employed in carrying out the provisions of this Act shall preserve and aid in preserving secrecy with regard to all matters that may come to his

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knowledge in the performance of his duties in connection with those provisions, and shall not communicate any such matter to any person whatsoever other than the taxpayer concerned or his lawful representative nor suffer or permit any such person to have access to any records in the possession or custody of the Minister except in the performance of his duties under this Act or by order of a competent court: Provided that -

- (a) any information obtained by the Minister in the performance of his duties under the provisions of this Act or any previous income tax law may be used by him for the purposes of the performance of his duties in terms of the provisions of any other fiscal law administered by him; and
 - (b) the Auditor-General shall in the performance of his duties in terms of the provisions of any law have access to documents in the possession or custody of the Minister.
- (2) (a) Every person so employed shall, before acting under this Act, take and subscribe before a magistrate or justice of the peace, or an officer or employee of the Department of Finance who is a commissioner of oaths, such oath of fidelity or secrecy as may be prescribed.
- (b) Any oath of fidelity or secrecy taken and subscribed under the provisions of any previous income tax law by any person who is employed in connection with carrying out the provisions of this Act shall be deemed to be an oath taken and subscribed in terms of this subsection.

(3) Every person who in contravention of the provisions of this section or of the true intent of the oath of fidelity or secrecy taken by him, and without lawful excuse, reveals any matter or thing which has come to his knowledge in the course of his official duties to any person whatsoever or suffers or permits any person to have access to any records in the possession or custody of the Minister, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding two years.

(4) Any person who takes up employment as contemplated in subsection (1) before taking the prescribed oath shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred rand.

CHAPTER II

THE TAXES

Part I

Normal Tax

Levy of normal tax for the benefit of the State Revenue Fund and transfer of a part thereof to the revenue funds of representative authorities

5. (1) (a) Subject to the provisions of Schedule 2 there shall be paid annually for the benefit of the State Revenue Fund, an income tax (in this Act referred to as the normal tax) in respect of the taxable income received by or accrued to or in favour of -

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- (i) any person other than a company during the year of assessment ending on the last day of February, 1982, and every succeeding year of assessment; and
- (ii) any company during every financial year thereof ending on or after 1 March 1982.

(b)

[Act 5 of 1982 (Rehoboth) deleted paragraph (b) for the purpose of “the application of the Act and any amendment thereof to citizens of Rehoboth”. Paragraph (b) was generally deleted by AG 25 of 1989.]

(2) Subject to the provisions of this Act with regard to the calculation of tax, the normal tax payable in respect of the taxable income of any person (other than a company) for any year of assessment shall be calculated on the taxable amount of such person for such year.

(3) For the purpose only of determining the rate of normal tax payable by a person (other than a company) whose income for the year of assessment includes an 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, there shall be deducted from the person’s income for that year of assessment the amount so included, but in no case shall the rate of normal tax be less than that applicable to the first N\$ of taxable amount on which tax becomes payable in terms of paragraph 1 of Schedule 4, and this subsection shall not be construed as relieving a person from liability for taxation upon any portion of the person’s taxable income.

[Subsection (3) is amended by Act 25 of 1992, Act 10 of 1993 and Act 17 of 1994 with effect from the beginning of the year of assessment which commenced on or after 1 March 1993 (section 2(2) of Act 17 of 1994). It is also amended by Act 22 of 1995, with this amendment deemed to have come into force (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 (section 2(2) of Act 22 of 1995). It is then substituted by Act 12 of 1996. It is amended by Act 21 of 1999, with this amendment deemed to have come into force at the beginning of the year of assessment commencing on or after 1 March 1998 (section 2(2) of Act 21 of 1999). It is again substituted by Act 7 of 2002.]

(4)

[Subsection (4) is deleted by Act 3 of 1991 and inserted by Act 17 of 1994 with effect from the beginning of the year of assessment which commenced on or after 1 March 1993 (section 2(2) of Act 17 of 1994). It is amended by Act 22 of 1995, with this amendment deemed to have come into force (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 (section 2(2) of Act 22 of 1995). It is then deleted by Act 7 of 2002.]

(5)

[Subsection (5) is amended by Act 25 of 1992, deleted by Act 10 of 1993 and inserted by Act 17 of 1994 with effect from the beginning of the year of assessment which commenced on or after 1 March 1993 (section 2(2) of Act 17 of 1994). It is substituted by Act 22 of 1995, with this amendment deemed to have come into force (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 (section 2(2) of Act 22 of 1985). It is deleted by Act 7 of 2002.]

Registration of companies as registered manufacturers

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5A. (1) A company which conducts or intends to conduct a manufacturing activity and which requires to be recognised as a registered manufacturer in respect of that manufacturing activity for the purposes of this Act, may apply for registration to the Minister.

(2) An application for registration in terms of subsection (1) shall -

- (a) be made in writing to the Minister; and
- (b) be accompanied by such information or documents as the Minister may require.

(3) Upon receipt of an application in terms of subsection (1), the Minister may register a company in respect of the manufacturing activity applied for if the Minister, acting with the concurrence of the Minister of Trade and Industry, is satisfied that the manufacturing activity concerned -

- (a) is or will be beneficial to the Namibian economy by way of net employment creation, net value addition, replacement of imports or an increase in net exports; and
- (b) represents or will represent an investment in a new manufacturing activity or a substantial expansion of an existing manufacturing activity.

[Section 5A is inserted by Act 10 of 1993, and substituted by Act 12 of 1996 and by Act 7 of 2002, with this substitution coming into operation for a company at the beginning of the year of assessment of such company commencing on or after 1 January 2003 (section 3(2) of Act 7 of 2002). Section 3 of Act 7 of 2002 provides the following transitional provisions:

- “(3) Notwithstanding the substitution of section 5A of the principal Act by subsection (1) -
 - (a) any registration of a company as a manufacturer under that section before its substitution continues to be of effect as if it were effected under that section as substituted;
 - (b) any application for registration of a company made in terms of that section before its substitution which is pending when the substitution becomes of effect shall be determined as if it had been made in terms of that section as substituted.
- (4) Notwithstanding the provisions of section 5A of the principal Act as of force before the commencement of subsection (1) of this section -
 - (a) no application for registration in terms of that section made by a person other than a company shall be received or considered after the publication of this Act in the *Gazette*; and
 - (b) the registration of any person, not being a company, under that section shall on 28 February 2003 cease to be of further effect and such person shall cease to be entitled to any deduction, special tax rate or other benefit conferred exclusively on a registered manufacturer by any provision of the principal Act.”]

Special abatement in respect of manufacturers

5B.

[Section 5B is inserted by Act 10 of 1993, substituted by Act 22 of 1995 and deleted by Act 12 of 1996.]

Rates of normal tax

6. The rates of normal tax chargeable in respect of taxable income referred to in section 5(1) shall be as set out in Schedule 4.

[Section 6 is amended by Act 12 of 1982 (with some of these amendments deemed to have come into force on 1 March 1982 and some coming into force from the beginning of the financial year of a company that ends on or after 1 June 1982). Section 6 is also amended by AG 10 of 1985, with this amendment deemed to have come into operation from the beginning of the financial year of a company ending on or after 1 January 1984, and by Act 13 of 1985, Act 11 of 1986, Act 8 of 1987 and Act 12 of 1991. Section 6 is then substituted by Act 25 of 1992.]

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7.

[Act 5 of 1982 (Rehoboth) added a proviso to section 7(4) for the purpose of “the application of the Act and any amendment thereof to citizens of Rehoboth”. Section 7 is amended generally by AG 10 of 1985, Act 8 of 1987 and Act 12 of 1991; substituted by Act 25 of 1992; amended by Act 10 of 1993 and by Act 17 of 1994; and deleted by Act 22 of 1995.]

Rebate in respect of any taxes on dividends payable to the government of any country other than Namibia

8. There shall be deducted from the normal tax payable by any person in whose taxable income there is included any amount received by or accrued to him or in his favour in respect of any dividends referred to in the proviso to paragraph (i) of the definition of “gross income” in section 1, the sum of any taxes proved to the satisfaction of the Minister to be payable, without any right of recovery, by such person to the government of any country other than Namibia in respect of such dividends: Provided that the rebate under this section shall not exceed so much of the normal tax payable by the taxpayer as the Minister determines to be attributable to the inclusion in his taxable income of the said amount.

Rebate in respect of non-resident shareholders’ tax

9. There shall be deducted from the normal tax payable by any person in whose taxable income there is included any dividend in respect of which non-resident shareholders’ tax has been paid in terms of this Act, so much of the normal tax as the Minister determines to be attributable to the inclusion in such person’s taxable income of taxable income from such dividend.

Rebate in respect of foreign income taxes on royalties and similar income

10. There shall be deducted from the normal tax payable by any person, in whose taxable income there is included any amount received by or accrued to him in respect of the use or right of use in any country other than Namibia or the grant of permission to use in such other country any patent or any design as defined in the Patents and Designs Proclamation, 1923 (Proclamation 17 of 1923), or any trade mark as defined in the Trade Marks in South West Africa Act, 1973 (Act 48 of 1973), or any copyright as defined in the Copyright Act, 1965 (Act 63 of 1965), or any model, pattern, plan, formula or process, or any other property or right of a similar nature, or any motion picture film, or any film or video tape or disc for use in connection with television, or any sound recording or advertising matter used or intended to be used in connection with such motion picture film, film, video tape or disc, the sum of any taxes on income proved to the satisfaction of the Minister to be payable, without any right of recovery, by such person to the government of any country other than Namibia in respect of the said amount: Provided that the rebate under this section shall not exceed so much of the normal tax payable by the taxpayer as the Minister determines to be attributable to the inclusion in his taxable income of the said amount.

[The Patents and Designs Proclamation 17 of 1923 will be replaced by the Industrial Property Act 1 of 2012, which has not yet been brought into force. The Copyright Act 63 of 1965 has been replaced by the Copyright and Neighbouring Rights Protection Act 6 of 1994.]

Rebate in respect of diamond profits tax

11. There shall be deducted from the normal tax payable by any person in respect of taxable income derived from mining for diamonds any amount assessed in respect of any period coinciding with or forming part of the year of assessment as tax payable by such person under the provisions of section 4 of the Diamond Taxation Proclamation, 1941 (Proclamation 16 of

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1941): Provided that the rebate under this section shall not exceed so much of the normal tax payable by the taxpayer as the Minister determines to be attributable to the inclusion in his taxable income of the said amount.

When income is deemed to have accrued or to have been received

12. (1) Income shall be deemed to have accrued to a person notwithstanding that such income has been invested, accumulated or otherwise capitalized by him or that such income has not been actually paid over to him but remains due and payable to him or has been credited in account or reinvested or accumulated or capitalized or otherwise dealt with in his name or on his behalf, and a complete statement of all such income shall be included by any person in the returns rendered by him under this Act.

(2)

[subsection (2) deleted by Act 25 of 1992]

(3) Income shall be deemed to have been received by the parent of any minor child, if by reason of any donation, settlement or other disposition made by that parent of that child -

- (a) it has been received by or has accrued to or in favour of that child or has been expended for the maintenance, education or benefit of that child; or
- (b) it has been accumulated for the benefit of that child:

Provided that if both the parents had contributed to such donation, settlement or other disposition, such income shall be deemed to have been received by the parents in the same ratio as the amounts of their respective contributions bear to the whole amount of such donation, settlement or other disposition.

[Subsection (3) is amended by Act 25 of 1992 to add the proviso.
A colon has accordingly been added at the end of paragraph (b).]

(4) Any income received by or accrued to or in favour of any minor child of any person, by reason of any donation, settlement or other disposition made by any other person, shall be deemed to be the income of the parent of such minor child, if such parent has made a donation, settlement or other disposition or given some other consideration in favour directly or indirectly of the said other person or his or her family: Provided that if both the parents had contributed to such donation, settlement or other disposition or consideration in favour of such other person or his or her family, such income shall be deemed to have been received by the parents in the same ratio as the amounts of their respective contributions bear to the whole amount of such donation, settlement or other disposition or consideration in favour of such other person or his or her family.

[subsection (4) amended by Act 25 of 1992]

(5) If any person has made any donation, settlement or other disposition which is subject to a stipulation or condition, whether made or imposed by such person or anybody else, to the effect that the beneficiaries thereof or some of them shall not receive the income or some portion of the income thereunder until the happening of some event, whether fixed or contingent, so much of any income as would, but for such stipulation or condition, in consequence of the donation, settlement or other disposition be received by or accrued to or in favour of the beneficiaries, shall, until the happening of that event or the death of that person, whichever first takes place, be deemed to be the income of that person.

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(6) If any deed of donation, settlement or other disposition contains any stipulation that the right to receive any income thereby conferred may, under powers retained by the person by whom that right is conferred, be revoked or conferred upon another so much of any income as in consequence of the donation, settlement or other disposition is received by or accrues to or in favour of the person on whom that right is conferred, shall be deemed to be the income of the person by whom it is conferred, so long as he retains those powers.

(7) An amount received by or accrued to or in favour of any person from a provident fund by reason of the death of a member of such a fund shall be deemed to have accrued to the estate of the deceased member.

[subsection (7) inserted by Act 25 of 1992]

Date of receipt or accrual of antedated salaries or pensions and of certain retirement gratuities

13. (1) For the purposes of this section -

“antedated salary or pension” means an amount of salary or pension which has become payable to any person under a permanent grant, made with retrospective effect, of a salary or pension or of an increase in a salary or pension, and which in terms of such grant is payable in respect of a period ending on or before the date on which the grant has become effective;

“pension” means an annuity payable under any law or under the rules of a pension fund or provident fund or by an employer to a former employee of that employer or to the widow, child or dependant of a deceased person who was employed by such employer;

“salary” means salary, wages or similar remuneration payable by an employer to an employee. but does not include any bonus or any amount referred to in subsection (3).

(2) Where any antedated salary or pension has been received by or has accrued to any person during any year or period of assessment and the period in respect of which such antedated salary or pension has become payable (hereinafter referred to as the accrual period) commenced before the commencement of the said year or period of assessment, such antedated salary or pension shall at the option of the taxpayer be deemed -

- (a) if the accrual period commenced not more than two years before the commencement of the said year or period of assessment, to have been received by or to have accrued to the said person in part during each of the years or periods of assessment in which any portion of the accrual period falls (the part of the said amount relating to any such year or period of assessment being determined on the basis of a reasonable apportionment of the whole of the said amount between all the said years or periods of assessment); or
- (b) if the accrual period commenced more than two years before the commencement of the first-mentioned year or period of assessment, to have been received by or to have accrued to the said person in three equal annual instalments (the first and second instalments two years and one year respectively before the date on which the said amount accrued to the said person and the third instalment on the said date).

(3) Any amount received by or accrued to an employee or the holder of any office by way of bonus, gratuity or compensation upon or because of the termination of his services or because of the impending termination of his services within five years (or such longer period as the Minister may approve) from the date of receipt or accrual of such amount (less so much thereof as is exempt from tax under section 16(1)(o)), shall at the option of the taxpayer be

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deemed to have been received or to have accrued in three successive equal annual instalments of which the first shall be deemed to have been received or to have accrued on the date of receipt or accrual of such amount and each of the other two on an appropriate anniversary of that date, if -

- (a) the termination or impending termination of the services of such employee or office holder is due to superannuation, ill-health or other infirmity; or
- (b) the Minister is satisfied that the circumstances of the case warrant this concession.

Certain amounts to be included in income or taxable income

14. (1) So much of any amount which has been paid by any person as an allowance or advance to a director, manager, employee or other person in respect of expenses of travelling, entertainment or other service, as the Minister is not satisfied was actually expended by the recipient on such travelling or entertainment or in the performance of such service, shall be deemed to be part of the taxable income of the recipient.

(2) If, prior to 1 January 1974 any company awarded any capitalization shares the nominal value of which in terms of paragraph (g) or (h) of the definition of "dividend" in section 1 did not wholly rank as a dividend, and, within the period of ten years from the date of such award, any cash or any asset is given to any shareholder of that company in consequence of the liquidation or reconstruction of the company or the partial reduction of its share capital, there shall, subject to the provisions of subsection (3), be included in the taxable income of the company -

- (a) In the case of the reconstruction of the company or the partial reduction of its share capital, an amount equal to the sum of the amount of any such cash and the value of any such asset; and
- (b) in the case of the liquidation of the company-
 - (i) if the Minister is satisfied that such liquidation is *bona fide* and was not brought about solely or mainly for the purpose of avoiding liability for tax under this subsection, the amount by which the sum of all the amounts of any such cash and the value of all such assets so given to shareholders exceeds the sum of the paid-up capital of the company and the amount (if any) standing to the credit of the share premium account of the company immediately prior to the commencement of the liquidation of the company; or
 - (ii) if the Minister is not so satisfied, an amount determined as provided in paragraph (a):

Provided that the amounts included in the company's taxable income under this subsection shall not in total exceed so much of the nominal value of such capitalization shares as did not rank as a dividend as aforesaid, less any amount paid up on such shares by the application of the company's share premium account: Provided further that so much of the sum of the amount of any cash and the value of any asset so given to any shareholder of the company as by virtue of the provisions of the definition of "dividend" in section 1 constitutes a dividend in the hands of such shareholder, shall not be included in the company's taxable income under this subsection.

- (3) (a) The provisions of subsection (2) shall not apply where any cash or asset referred to therein is given -

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- (i) in respect of any class of redeemable share capital issued before the first day of July, 1957, in pursuance of special provisions prescribed before that date for the repayment of such capital; or
 - (ii) in respect of any class of redeemable share capital issued on or after the first day of July, 1957, for the repayment of which special provisions are contained in the memorandum and articles of association of the company, if the holders of the equity share capital of the company were not either at the time of the award of such capitalization shares or at any time thereafter shareholders in that class of redeemable share capital.
- (b) For the purposes of subsection (2) “paid-up capital” means the nominal value of the paid-up capital, excluding so much of the nominal value of any capitalization shares as did not rank as a dividend in terms of paragraph (g) or (h) of the definition of “dividend” in section 1 or the corresponding provisions of any previous income tax law.
- (c) The decision of the Minister in the exercise of his discretion under subsection (2) shall be subject to objection and appeal.

(4) There must be included in the income of the taxpayer all amounts allowed to be deducted or set off under subsection (1) and sections 17 to 21, inclusive, except sections 17(1)(n), (q), (qA) and (s) 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, including recovery or recoupment by means of -

- (a) the disposal or withdrawal from trade for use for non-trade purposes; or
- (b) the removal from Namibia of any item in respect of which deductions were allowed against the income from the trade of such taxpayer in respect of such item,

but any item so disposed of, withdrawn from trade or removed from Namibia is valued at market value for the purpose of calculating the amount of any deduction recouped or recovered.

[Subsection (4) is amended by Act 12 of 1996. It is also amended by Act 5 of 1997, with this amendment deemed to have come into force (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 commencing on or after 1 January 1998 (section 12(b) of Act 5 of 1997). It is further amended by Act 21 of 1999, with this amendment deemed to have come into force (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 (section 3(2) of Act 21 of 1999). It is also amended by Act 7 of 2002 (amendment markings incomplete) and by Act 4 of 2005, with this amendment deemed to have come into force on 1 March 2004 (section 8(2) of Act 4 of 2005). It is further amended by Act 5 of 2007 with effect from the beginning of the year of assessment commencing on or after 1 March 2007 (section 12(3) of Act 5 of 2007) (amendment markings incomplete). It is then substituted by Act 15 of 2011.]

- (5) (a) Any amount which has been paid, whether in the form of rent or otherwise, by any person for the right of use or occupation of any movable or immovable property and has been allowed as a deduction in the determination of such person’s taxable income, and which or the equivalent of which is upon the subsequent acquisition of such property by that or any other person applied in reduction or towards settlement of the purchase price of such property, shall be included in the income of the person by whom the property is acquired as aforesaid for the year of

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assessment in which such person exercises the option or concludes the agreement, as the case may be, in consequence of which the property is acquired by him.

- (b) Where any amount has been paid by any person for the right of use or occupation of any property which is thereafter acquired by that or any other person for a consideration which in the opinion of the Minister is not an adequate consideration, it shall for the purposes of paragraph (a) be deemed, unless the Minister, having regard to the circumstances of the case otherwise decides, that the said amount, or so much thereof as does not exceed the difference between the fair market value of such property as determined by the Minister and the amount of the consideration for which it has been acquired as aforesaid, has been applied in reduction or towards settlement of the purchase price of such property.
- (c) Any decision of the Minister under paragraph (b) shall be subject to objection and appeal.

(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.

[subsection (6) inserted by Act 21 of 1999]

Circumstances in which amounts deemed to have accrued from sources within Namibia

15. (1) An amount shall be deemed to have accrued to any person from a source within Namibia if it has been received by or has accrued to or in favour of such person by virtue of -

- (a) any contract made by him within Namibia for the sale of goods, whether such goods have been delivered or are to be delivered in or out of Namibia;
- (b) the use or right of use in Namibia, or the grant of permission to use in Namibia -
- (i) any patent or design as defined in the Patents and Designs Proclamation, 1923 (Proclamation 17 of 1923), or any trade mark as defined in the Trade Marks in South West Africa Act, 1973 (Act 48 of 1973), or any copyright defined in the Copyright Act, 1965 (Act 63 of 1965), or any model, pattern, plan, formula or process or any other property or right of a similar nature; or
- (ii) any motion picture film, or any film or video tape or disc for use in connection with television, or any sound recording or advertising matter used or intended to be used in connection with such motion picture film, film or video tape or disc,

wheresoever such patent, design, trade mark, copyright, model, pattern, plan, formula, process, property, right, motion picture film, film, video tape or disc, sound recording or advertising matter has been produced or made or such right of use or permission has been granted or payment for such use, right of use or grant of permission has been made or is to be made and whether such payment has been made or is to be made by a person resident in or outside Namibia: Provided that the provisions of this paragraph shall not apply in respect of any amount which is received by or accrued to any person (other than a company) who is not ordinarily resident in Namibia, or to any external company, in respect of the use (otherwise

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than for advertising purposes in connection with any motion picture film or otherwise than in connection with television) in any printed publication of any copyright as aforesaid;

[The Patents and Designs Proclamation 17 of 1923 will be replaced by the Industrial Property Act 1 of 2012, which has not yet been brought into force. The Copyright Act 63 of 1965 has been replaced by the Copyright and Neighbouring Rights Protection Act 6 of 1994.]

- (c) the imparting of or the undertaking to impart any scientific, technical, industrial or commercial knowledge or information for use in Namibia, or the rendering of or the undertaking to render, any assistance or service in connection with the application or utilisation of such knowledge or information, wheresoever such knowledge or information has been obtained or such knowledge or information has been imparted or is to be imparted or such assistance or service has been rendered or is to be rendered or any such undertaking has been given, and whether payment for such knowledge, information, assistance, service or undertaking has been made or is to be made by a person resident in or out of Namibia;
- (d) any business carried on by any such person who is ordinarily resident in Namibia or in the case of a company is a domestic company, as owner or charterer of any ship or aircraft, or the disposal by such person of any commodity acquired in connection with the operation of such ship or aircraft, wheresoever such ship or aircraft may be operated or such disposal of the commodity may be effected;
- (e) any service rendered or work or labour done by such person in the carrying on in Namibia of any trade, whether the payment for such service or work or labour is or is to be made by a person resident in or out of Namibia and wheresoever payment for such service or work or labour is or is to be made;
- (f) any service rendered or work or labour done by such person outside Namibia, during any temporary absence of such person from Namibia, if such person is ordinarily resident in Namibia and such service is rendered or such work or labour is done for or on behalf of any employer by whom such person is employed in Namibia, whether the payment for such service or work or labour is or is to be made by a person resident in or out of Namibia and wheresoever payment for such service or work or labour is or is to be made;
- (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 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, regional council or local authority: Provided further that nothing in this paragraph shall be construed as imposing liability for taxation under this Act upon any salary or emolument paid to any person in the employment of the Government of Namibia in respect of any period for which such person is stationed in the Republic of South Africa;

[paragraph (g) amended by Act 12 of 1996]

- (h) any services rendered or work or labour done by any such person who is ordinarily resident in Namibia, as an officer or a member of the crew of any ship or aircraft, notwithstanding that such services are rendered or such work or labour is done outside Namibia and wheresoever payment for such services or work or labour is made or is to be made;

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- (i) any pension or annuity granted to such person, wheresoever payment of that pension or annuity is made and wheresoever the funds from which payment is made are situate, by -
- (i) the Government of Namibia, or by any regional council or local authority in Namibia; or
 - (ii) the Government of the Republic of South Africa, including the Railway Administration, if any portion of the services in respect of which that pension or annuity was granted, was performed within Namibia; or
 - (iii) any person whether residing or carrying on business in Namibia or not, if the services in respect of which that pension or annuity was granted were performed within Namibia for at least two years during the ten years immediately preceding the date from which the pension or annuity first became due:

Provided that if the pension or annuity was granted in respect of services which were rendered partly within and partly outside Namibia, only so much of such pension or annuity as bears to the amount of such pension or annuity the same ratio as the period during which the services were rendered in Namibia bears to the total period during which the services were rendered, shall be deemed to be derived from a source within Namibia.

[paragraph (i) amended by Act 12 of 1996]

(2) Any interest which has been received by or has accrued to any domestic company or any person who is ordinarily resident in Namibia in respect of any loan, deposit, advance, participation bond, debenture or interest-bearing security, or any dividend distributed by any building society which has been received by or has accrued to any such domestic company or person, shall be deemed to have been derived from a source within Namibia, wheresoever such loan, deposit or advance is made or held or participation bond is registered or debenture, interest-bearing security or any share to which such dividend or share of profits relates is subscribed for or issued or held or such interest or dividend is payable.

[subsection (2) amended by Act 8 of 1987 and by Act 12 of 1991 (amendment markings incomplete)]

(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.

[Subsection (3) is amended by Act 8 of 1987, deleted by Act 12 of 1991 and inserted by Act 21 of 1999.]

(4) Any amount referred to in paragraph (d) of the definition of "gross income" in section 1 shall be deemed to have been received by or to have accrued to any employee or the holder of any office from a source within Namibia, wheresoever payment of such amount is made and wheresoever the funds from which payment is made are situate.

(5) Any amount received or accrued by way of annuity in terms of the rules of any retirement annuity fund in respect of which any contribution was allowed as a deduction under the provisions of section 17 in determining the taxable income derived by any person, shall be deemed to have been received or accrued from a source within Namibia, irrespective of where

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payment of such amount is made and irrespective of where the funds from which payment is made are situate.

[Subsection (5) is inserted by AG 10 of 1985 and amended by Act 8 of 1987.]

(6) Any amount received by or accrued to any person who is ordinarily resident in Namibia or in the case of a company is a domestic company, under or upon the surrender or disposal of any policy of insurance, shall be deemed to have been received or accrued from a source within Namibia if any premium in respect of such policy had been allowed as a deduction under the provisions of section 17.

[subsection (6) inserted by AG 10 of 1985]

(7) Any amount referred to in paragraph (dA), (dB) or (dC) of the definition of “gross income” in section 1 shall be deemed to have been received or accrued from a source within Namibia, irrespective of where payment of such amount is made and irrespective of where the funds from which payment is made are situate.

[Subsection (7) is inserted by Act 8 of 1987 and amended by Act 10 of 1993.]

(8) Any amount received by or accrued to a member of a retirement annuity fund shall be deemed to have been so received or accrued from a source within Namibia, irrespective of where payment of such amount is made and irrespective of where the funds from which payment is made are situate, if such member’s contribution to such retirement annuity fund was made by or on behalf of such member through the payment or transfer to such retirement annuity fund of a lump sum representing his or her accrued benefit in a pension fund, because -

- (a) such pension fund ceased to exist; or
- (b) the member, while being a member of such pension fund, elected that his or her accrued benefit in the pension fund be transferred to such retirement annuity fund or be appropriated to purchase an annuity with.

[subsection (8) inserted by Act 10 of 1993]

(9) Any amount referred to in paragraph (o) of the definition of “gross income” is deemed to have been received or accrued from a source within Namibia, irrespective of -

- (a) whether the transaction was concluded in or outside Namibia;
- (b) the place where payment of such amount is made; or
- (c) the place where the funds from which payment is made are held.

[subsection (9) inserted by Act 15 of 2011]

Exemptions

16. (1) There shall be exempt from the tax -

- (a) the revenues of the Government of Namibia and of any other state;

[paragraph (a) substituted by Act 25 of 1992]

- (b) the revenues of local authorities;

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- (c) the salaries and emoluments payable to any person who holds office in Namibia as an official of any government, other than the government of Namibia, or any Specialized Agency of the United Nations contemplated in the Convention on the Privileges and Immunities of the Specialized Agencies as approved by the General Assembly of the United Nations on 21 November 1947, provided such person is stationed in Namibia for that purpose by virtue of an agreement between such government or such a Specialized Agency and the Government of Namibia, is not a Namibian citizen or ordinarily resident in Namibia, and the salaries and emoluments concerned are paid from a source outside Namibia.

[paragraph (c) substituted by Act 25 of 1992]

- (d) the receipts and accruals (including receipts or accruals from investments) of any temporary building society, pension fund, provident fund, retirement annuity fund or benefit fund, or of any institution which in the opinion of the Minister is a mutual savings bank, a mutual loan association, a fidelity or indemnity fund, a trade union, a chamber of commerce or industries (or an association of such chambers), a local publicity association or a non-proprietary stock exchange;

[paragraph (d) substituted by AG 10 of 1985]

- (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;

[paragraph (e) substituted by Act 12 of 1996]

- (f) 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 -
- (i) the sole or principal object of such company, society or association is as follows, namely -
- (aa) to conduct or promote scientific, technical or industrial research; or

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- (bb) to provide medical, dental, blood transfusion, hospital or nursing services; or
- (cc) to engage in or promote nature conservation or animal protection activities; or
- (dd) to engage in or promote activities which the Minister is satisfied are of a cultural nature; or
- (ee) to provide social or recreational amenities or facilities for the members of such company, society or association; or
- (ff) to promote the common interests of persons carrying on any particular kind of business, profession or occupation by means other than the carrying on by such company, society or association of any trading or other profit-making activities, or the participation by such company, society or association in any business, profession or occupation carried on by any of its members, or the provision to any of its members of financial assistance or of any premises or continuous services or facilities required by its members for the purpose of carrying on any business, profession or occupation;
- (ii) the activities of such company, society or association are wholly or mainly directed to the furtherance of its sole or principal object;
- (iii) such company, society or association is under its constitution not permitted to distribute any of its profit or gains to any person and is required to utilize its funds solely for investment or the objects for which it has been established; and
- (iv) under the constitution of such company, society or association it will upon its winding-up or liquidation be obliged to give or transfer its assets remaining after the satisfaction of its liabilities to some other company, society or association with objects similar to those of the aforesaid company, society or association;

[paragraph (f) amended by Act 12 of 1996]

- (g) the receipts and accruals of any association which in the opinion of the Minister is an amateur sporting association;

(h)

[paragraph (h) deleted by AG 10 of 1985]

- (i) the receipts and accruals of any company, society or other association of persons, whether or not registered under any law (other than a co-operative society or company registered under the Co-operative Societies Act, 1939 (Act 29 of 1939), or the Co-operative Societies Ordinance, 1946 (Ordinance 15 of 1946)), the profits or gains of which, other than profits or gains from investments (including the letting of property), are derived solely from transactions with or on behalf of its individual members, and the constitution of which does not admit of the distribution of its profits or gains to any persons other than the members with whom or on whose behalf the transactions took place, and does not confer upon

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any person any benefit other than benefits accruing to that person from transactions with or on behalf of that person, except as regards any receipts or accruals from investments (including the letting of property to non-members) by any such company, society or association: Provided that the provisions of this paragraph shall not be construed as requiring the taxable income of such company, society or association from investments (including the letting of property to non-members) to be determined at an amount greater than an amount determined to the satisfaction of the Minister as representing the taxable income on which such company, society or association would have been taxable under this Act if the exemption conferred by this paragraph had not been applicable;

- (j) the receipts and accruals of all ecclesiastical, charitable and educational institutions of a public character, whether or not supported wholly or partly by grants from the public revenue;
- (k) any amount received as a war pension, or as an award or a benefit under any law relating to the payment of compensation in respect of diseases contracted by persons employed in mining operations;
- (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 regional council or local authority in Namibia;

[paragraph (l) amended by AG 12 of 1996]

- (m) (i) interest received by or accrued to any person, other than a company, from any deposit in the Post Office Savings Bank;

[subparagraph (i) amended by Act 17 of 1994]

- (ii) any amount credited as interest in respect of any subscription share in any building society in Namibia;
- (iii) in the case of a taxpayer who is a natural person, so much of the aggregate of the amounts received or accrued as dividends on Special Tax-Free Indefinite Period Shares in building societies in Namibia as does not in any year of assessment exceed so much of the dividends, including any bonus or other distribution of profits, on such shares as are derived in respect of that portion of the total amount invested in such shares which is equal to the amount of R100 000: Provided that this exemption shall not apply, unless
 - (aa) such dividends are calculated at a rate not exceeding a rate determined by the Minister from time to time by notice in the *Gazette* for the purposes of this exemption; and
 - (bb) such Special Tax-Free Indefinite Period Shares are issued on such conditions, if any, as may be so determined by the Minister;

[subparagraph (iii) amended by Act 12 of 1991
(amendment markings incomplete)]

- (iv)

[Subparagraph (iv) is inserted by Act 8 of 1987 and deleted by Act 5 of 2007, with effect from 1 March 2009 (section 12(6) of Act 5 of 2007).]

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

[Subparagraph (i) is amended by Act 25 of 1992 and substituted by Act 22 of 1995.]

(ii)

[subparagraph (ii) deleted by Act 25 of 1992]

(iii)

[subparagraph (iii) deleted by Act 22 of 1995]

(iv)

[subparagraph (iv) deleted by Act 22 of 1995]

(v)

[subparagraph (v) deleted by Act 25 of 1992]

- (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 N\$300 000 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: Provided that the exemption under this paragraph shall not apply in respect of any amount received by or accrued to any person upon or because of the termination or because of the impending termination of the services required to be rendered by him or her as the holder of any office or employment in respect of the relinquishment, termination, loss, repudiation, cancellation or variation of his or her office or employment or in respect of his or her appointment (or right or claim to be appointed) to any office or employment, unless -

(i) such person has attained the age of fifty-five years; or

(ii) the Minister is satisfied that the termination or impending termination of such person's services or the relinquishment, termination, loss, repudiation, cancellation or variation of his or her appointment (or right or claim to be appointed) to any office or employment is due to superannuation, ill-health or other infirmity; or

(iii)

[subparagraph (iii) deleted by Act 25 of 1992]

(iv) the Minister is satisfied that the termination of the taxpayer's services is due to the taxpayer having become redundant as a consequence of his or her employer having effected a reduction in personnel or due to his or her employer having ceased to carry on or intending to cease carrying on the trade in respect of which the taxpayer was employed;

[Paragraph (o) is amended by AG 10 of 1985, Act 33 of 1991 and Act 22 of 1995, with this amendment deemed to have come into force at the beginning of the year of assessment which commenced on or after 1 March 1994 (section 5(2) of Act 22 of 1995). It is further amended by Act 21 of 1999 and by Act 5 of 2010.]

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- (p) where an employee is as a condition of his employment required while on duty to wear a special uniform which is clearly distinguishable from ordinary clothing, the value of any such uniform given to the employee by his employer, or so much of any allowance made by the employer to the employee in lieu of any such uniform as the Minister considers reasonable;
- (q) any amount received by or accrued to any person from such person's spouse or former spouse by way of alimony or allowance or maintenance of such person or any children under an order of divorce or a judicial order or written agreement of separation;
- (r) interest received by or accrued to any domestic company or any person who is ordinarily resident in Namibia in respect of any loan, deposit, advance, participation bond, debenture or interest-bearing security, or any dividend distributed by any building society which accrues from a source outside Namibia to any such domestic company or person, if it is proved to the satisfaction of the Minister -
 - (i) (aa) that such loan, deposit or advance has been made and retained outside Namibia or that such participation bond has been registered outside Namibia or that such debenture, interest-bearing security or share to which such dividend relates has been subscribed for or issued or held outside Namibia for the purposes of any business carried on by such company or person outside Namibia; and
 - (bb) that the said interest or dividend is subject to income tax under the laws of the country within which such loan, deposit or advance has been made and retained or such participation bond has been registered or that such debenture, interest-bearing security or share has been subscribed for or issued or held; or
 - (ii) that such loan, deposit or advance has been made and retained outside Namibia or that such participation bond has been registered outside Namibia or that such debenture, interest-bearing security or share to which such dividend relates has been subscribed for or issued or held outside Namibia, and that the full capital for such loan, deposit, advance, participation bond, debenture, interest-bearing security or share was obtained from a source outside Namibia;

[paragraph (r) amended by Act 8 of 1987 and by Act 12 of 1991]
- (s)

[paragraph (s) amended by Act 8 of 1987 and deleted by Act 12 of 1991]
- (t) the receipts and accruals of the Labour Promotion Fund, established under section 1 of Proclamation R.69 of 1975 by the State President of the Republic of South Africa;
- (u)

[paragraph (u) deleted by Act 21 of 1999]
- (v) any amount received or accrued which is proved to the satisfaction of the Minister to be a single grant on obtaining a higher or additional academic qualification at any acknowledged educational institution;

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[paragraph (v) amended by Act 8 of 1987]

- (w) so much of any amount received by or accrued to any person as is proved to the satisfaction of the Minister to be a bona fide bursary granted to enable or assist such person to study at a recognized educational or research institution;
- (x)

[paragraph (x) deleted by Act 10 of 1993]

- (y) an amount received or accrued as an occupation allowance in relation to the pursuit of farming operations in an area which is a designated area as contemplated in the Promotion of the Density of Population in Designated Areas Act, 1979 (Act 18 of 1979).
- (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;

[Paragraph (z) is inserted by Act 8 of 1987, deleted by Act 12 of 1991, inserted by Act 25 of 1992 and substituted by Act 22 of 1995 and by Act 21 of 1999, with this substitution deemed to have come into force at the beginning of the year of assessment commencing on or after 1 March 1998 (section 5(2)(a) of Act 21 of 1999).]

- (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;

[Paragraph (aa) is inserted by Act 25 of 1992 and amended by Act 12 of 1996 and by Act 21 of 1999, with this substitution deemed to have come into force at the beginning of the year of assessment commencing on or after 1 March 1998 (section 5(2)(a) of Act 21 of 1999).]

- (ab) (i) so much of any amount received by or accrued to any taxpayer or any beneficiary nominated by the taxpayer, under or upon the maturity, payment, surrender or disposal of an education policy as is proved to the satisfaction of the Minister has been or is to be expended for providing for the education or training of a child or step-child of the taxpayer, and which education or training -
 - (aa) is provided or will be provided at an educational institution of a public character; and
 - (bb) is undergone 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 step-child” 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

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the taxpayer and not liable for the payment of normal tax in respect of such year.

[Paragraph (ab) is inserted by Act 10 of 1993 and amended by Act 22 of 1995, Act 12 of 1996 and Act 15 of 2011. It should end with a semicolon.]

- (ac) the income of a company referred to in paragraph (e) of the definition of “company” in section 1;

[Paragraph (ac) is inserted by Act 22 of 1995 and amended by Act 21 of 1999, with this amendment deemed to have come into operation at the beginning of the year of assessment commencing on or after 1 January 1998 (section 5(2)(b) of Act 21 of 1999).]

- (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

[Paragraph (ad) inserted by Act 21 of 1999. The word “and” at the end of paragraph (ad) should be removed since additional paragraphs have been added to the subsection.]

- (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.

[Paragraph (ae) is inserted by Act 21 of 1999. It should end with a semicolon.]

- (af) the salaries and emoluments payable to any person who is stationed in Namibia by virtue of a technical assistance agreement entered into between the Government of Namibia and any organisation or the government of any other country: Provided that such person is not a Namibian citizen or ordinarily resident in Namibia and the salaries and emoluments concerned are paid from a source outside Namibia.

[Paragraph (af) is inserted by Act 4 of 2005, with this insertion deemed to have come into force on 1 March 2004 (section 8(2) of Act 4 of 2005). The paragraph should end with a semicolon and the word “and”.]

- (ag) interest received by or accrued to any person (other than a Namibian company) from a trust or partnership that received interest, which is proved to the satisfaction of the Minister that tax was withheld in terms of section 34A.

[Paragraph (ag) is inserted by Act 5 of 2007 with effect from 1 March 2009 (section 12(6) of Act 5 of 2007) and amended by Act 5 of 2010.]

- (2) Notwithstanding the exemptions provided for in subsection (1)(l), (m) and (n) -
 - (a) all amounts falling within the scope of the said paragraphs shall be set out by the taxpayer in the return rendered by him; and
 - (b) the said exemptions shall not apply in respect of any portion of an annuity.

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(3) The exemptions provided by any paragraph of subsection (1) shall not extend to any payments out of the revenues, receipts, accruals or profits mentioned in such paragraph.

(4)

[subsection (4) amended by Act 8 of 1987 and by Act 25 of 1992, and deleted by Act 22 of 1995]

Taxation of housing benefits

16A. (1) For the purposes of this section -

“approved scheme” means a scheme approved under subsection (4);

“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 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 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;

[definition of “housing benefit” amended by Act 12 of 1996]

“purchase” includes the improving of a private residence; and

“remuneration” shall have the meaning assigned to that word in paragraph (1) of Part I of Schedule 2, but excluding any housing benefit, leave pay, honorarium, gratuity, overtime pay or refund or contributions referred to in paragraph (d) of the definition of “gross income” in section 1.

(2) The cash equivalent of a housing benefit referred to in paragraph (a) of the definition of “housing benefit” in subsection (1) shall, in the case of a person whose remuneration for the year of assessment -

- (a) does not exceed R15 000, be exempt from tax; or
- (b) exceeds R15 000, but not R30 000, be reduced -
 - (i) by an amount equal to such percentage of such cash equivalent as determined in accordance with the formula -

$$y = 100 - \frac{x}{150}$$

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in which formula y represents the percentage to be determined and x the amount of the said remuneration which exceeds R15 000; and

- (ii) by an additional amount equal to one-third of such cash equivalent, after deduction of the amount determined in accordance with subparagraph (i).

(3) In any case where the provisions of subsection (2) do not apply, an amount equal to one-third of the cash equivalent of any housing benefit shall be exempt from tax.

(4) The Minister shall not approve any scheme for the purposes of this section unless he or she is satisfied that -

- (a) such scheme is operated *bona fide* solely for the purpose of -
 - (i) providing assistance to an employee to lease or purchase a private residence; or
 - (ii) providing residential accommodation to an employee;
- (b) no housing benefit under the scheme will be granted in substitution for any reward for services rendered which would otherwise have been granted to such employee; and
- (c) such private residence or residential accommodation will be occupied by such employee personally.

[subsection (4) amended by Act 12 of 1996]

[section 16A inserted by Act 8 of 1991]

Exemption of capital element of purchased annuities

16B. (1) For the purposes of this section -

“annuity amount” means an amount payable by way of annuity under an annuity contract;

“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 to 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,

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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;

[The definition of “annuity contract” is amended by Act 12 of 1996 and by Act 21 of 1999 (changes of punctuation in Act 21 of 1999 not indicated by amendment markings).]

“commencement”, in relation to an annuity contract, means the date on which the annuity contract is concluded;

“expected return”, in relation to an annuity under an annuity contract, means an amount determined in a manner contemplated in this section as representing the sum of all the annuity amounts which may, as at the commencement of the annuity contract, be expected to become payable by way of the annuity from the said commencement;

“valuator”, in relation to an insurer, means the valuator of the insurer contemplated in section 10 of the Insurance Act, 1943 (Act 27 of 1943).

(2) There shall be exempt from normal tax so much of any annuity amount payable to a purchaser or his spouse or surviving spouse (as contemplated in paragraph (a) of the definition of “annuity contract” in subsection (1)) as is determined in accordance with subsection (3) to represent the capital element of such amount.

(3) The capital element of an annuity amount shall be -

(a) a sum determined in accordance with the formula -

$$y = \frac{A}{B} \times C,$$

in which formula -

Y, represents the sum to be determined;

A, represents the amount of the cash consideration paid by the purchaser under the annuity contract in question as contemplated in paragraph (b) of the definition of “annuity contract” in subsection (1);

B, represents the total expected returns of all the annuities provided for in the annuity contract in question;

C, represents the aforesaid annuity amount; or

(b) where, by reason of any unpredictable contingency (other than the death or survival of any person), any amount payable by way of any annuity under the annuity contract in question is uncertain at the date on which the first payment by way of an annuity becomes due under that contract, such sum as may on the basis of a fair and reasonable calculation be taken to be the capital element of the aforesaid annuity amount: Provided that the said sum shall be determined in such manner that the capital element of all the annuity amounts becoming due during any year of assessment in respect of all the annuities under the said contract does not in total exceed an amount determined in accordance with the formula -

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$$Z = \frac{1}{N} \times A,$$

in which formula -

Z, represents the amount to be determined;

N, represents the probable number of years during which annuity amounts will be payable under the said annuity contract from the date on which the first of such amounts becomes due, due regard being had to the manner in which and the frequency with which such amounts are payable; and

A, represents the amount of the cash consideration paid by the purchaser under the said annuity contract as contemplated in paragraph (b) of the definition of “annuity contract” in subsection (1).

(4) The valuator of an insurer who is a party to an annuity contract shall, before payment of the first annuity amount is made under such contract, or, where such payment was made before the date on which this section comes into operation, within one month after that date, or in either case within such period as the Minister may allow, make a calculation (with due regard to the provisions of subsection (5)) in the manner prescribed in paragraph (a) of subsection (3) or, if the provisions of paragraph (b) of that subsection are applicable, in accordance with that paragraph, of the capital element of all the annuity amounts to be paid under the said contract: Provided that -

- (i) where the capital element is calculated under the said paragraph (a), it shall be sufficient if the capital element is calculated as a percentage to be applied to each of the said annuity amounts; or
- (ii) where the capital element is calculated under the said paragraph (b), it shall be sufficient if a calculation is made of the amount to be determined in accordance with the formula in the proviso to that paragraph.

(5) A valuator who makes any calculation as provided in subsection (4) or any recalculation as provided in subsection (6)(b), shall do so in accordance with generally accepted actuarial principles or practice, and where a determination has to be made of the life expectancy of any person for the purpose of a calculation of the expected return of any annuity or the probable number of years during which annuity amounts will be paid under any annuity contract, the mortality tables to be used for such determination shall be the select tables in the volume of tables published in 1953 at the University Press, Cambridge, for the Institute of Actuaries and the Faculty of Actuaries, entitled “*The a (55) Tables for Annuitants*”, and the age of the person concerned shall for the purposes of such determination be taken to be his age on his birthday immediately preceding the commencement of the annuity contract in question.

- (6) (a) Where any annuity contract is varied so that it no longer conforms with the requirements prescribed in the definition of “annuity contract” in subsection (1), the exemption conferred by subsection (2) in respect of the capital element of annuity amounts under that contract shall not apply in respect of such amounts under that contract which become due on or after the date of such variation.
- (b) Subject to the provisions of paragraph (a), where any annuity contract is varied as to the payment of any annuity or consideration payable thereunder, the capital element of annuity amounts becoming due thereunder after such variation is effected shall, with due regard to the provisions of subsection (5), be recalculated by the valuator of the insurer concerned.

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(7) (a) Where the capital element of annuity amounts has been calculated as provided in subsection (4) or has been recalculated as provided in subsection (6)(b), the insurer concerned shall furnish each annuitant under the annuity contract in question, within one month after the date on which the calculation or recalculation is made, as the case may be, or within such further period as the Minister may allow, with two copies of such calculation or recalculation, as the case may be.

(b) An annuitant who has received the two copies referred to in paragraph (a) shall submit one of them to the Minister as and when required by the Minister.

(8) The 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 or, if the 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 Minister may, having regard to any calculation or recalculation of the capital element made by a practising actuary at the 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.

[subsection (8) amended by Act 12 of 1996]

(9) Any decision of the Minister in the exercise of his discretion under the provisions of subsection (8) shall, in respect of a year of assessment referred to in that subsection, be subject to objection and appeal.

(10) Subject to the provisions of section 69, the final calculation or recalculation of the capital element as made in relation to the year of assessment referred to in subsection (8) shall, subject to the provisions of subsection (6)(b), be final and conclusive and shall apply in respect of all relevant annuity amounts which become due to any person under the annuity contract in question in any succeeding years of assessment.

[section 16B inserted by Act 12 of 1991]

General deductions allowed in determination of taxable income

17. (1) For the purpose of determining the taxable income derived by any person from carrying on any trade within Namibia, there shall be allowed as deductions from the income of such person so derived -

- (a) expenditure and losses actually incurred in Namibia in the production of the income, provided such expenditure and losses are not of a capital nature;
- (b) so much as the Minister may allow of any expenditure and losses actually incurred outside Namibia in the production of the income, provided such expenditure and losses are not of a capital nature;
- (c) any legal expenses (being fees for the services of legal practitioners, expenses incurred in procuring evidence or expert advice, court fees, witness fees and expenses, taxing fees, the fees and expenses of sheriffs or messengers of court and other expenses of litigation which are of an essentially similar nature to any of the

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said fees or expenses) actually incurred by the taxpayer during the year of assessment in respect of any claim, dispute or action at law arising in the course of or by reason of the ordinary operations undertaken by him in the carrying on of his trade: Provided that the amount to be allowed under this paragraph in respect of any such expenses, shall be limited to so much thereof as -

- (i) is not of a capital nature; and
 - (ii) is not incurred in respect of any claim made against the taxpayer for the payment of damages or compensation if by reason of the nature of the claim or the circumstances any payment which is or might be made in satisfaction or settlement of the claim does not or would not rank for deduction from his income under paragraph (a) or (b); and
 - (iii) is not incurred in respect of any claim made by the taxpayer for the payment to him of any amount which does not or would not constitute income of the taxpayer; and
 - (iv) is not incurred in respect of any dispute or action at law relating to any such claim as is referred to in paragraph (ii) or (iii) of this proviso;
- (d) expenditure actually incurred during the year of assessment on repairs of property occupied for the purpose of trade or in respect of which income is receivable, including any expenditure so incurred on the treatment against attack by beetles of any timber forming part of such property and sums expended for the repair of machinery, implements, utensils and other articles employed by the taxpayer for the purposes of his trade;
- (e) expenditure incurred during the year of assessment in respect of the acquisition of 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 vehicle, aircraft, sea-going craft, 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 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 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 58 of 1962), sections 14(e) and 15(2) of the Income Tax Ordinance, 1974 (Ordinance 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 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

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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.

[Paragraph (e) is amended by Act 25 of 1992, Act 10 of 1993 and Act 22 of 1995. It is also amended by Act 5 of 1997, with this amendment deemed to have come into force (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 commencing on or after 1 January 1998 (section 12(b) of Act 5 of 1997). It is further amended by Act 21 of 1999.]

- (eA) subject to section 24(g), financing expenditure incurred during the year of assessment by the tax-payer in respect of any financing agreement for the acquisition of any item referred to in paragraph (e).

[Paragraph (eA) is inserted by Act 7 of 2002. It should end with a semicolon.]

- (f) in respect of buildings used by the taxpayer for the purposes of such taxpayer's trade, an allowance equal to 20 per cent of the cost of erection of such buildings in the year of assessment during which such buildings are brought into use, and four per cent of such costs for each of the 20 years following on the year of assessment during which such buildings are brought into use: Provided that in respect of any such buildings of which the erection is completed after the commencement of the Income Tax Amendment Act 2010, and which are brought into use, and used solely for manufacturing purposes, by a taxpayer who is a registered manufacturer, an allowance equal to 20 per cent of the cost of erection of such buildings is deductible in the year of assessment during which such buildings are brought into use and eight per cent of such cost for each of the 10 years following on the year of assessment during which such buildings are brought into use: Provided further that no allowance is made under this paragraph or the first proviso to this paragraph -
- (i) where any allowance in respect of such costs has already been granted under paragraph (h);
- (ii) in respect of buildings used or to be used by the taxpayer for the making available of housing or housing facilities to employees or, where the taxpayer is a company, to employees or directors or officials of such company;

[Paragraph (f) is amended by AG 10 of 1985 and substituted by Act 15 of 2011.]

- (g) an allowance in respect of any premium or consideration in the nature of a premium paid by a taxpayer for -
- (i) the right of use or occupation of land or buildings used or occupied for the production of income or from which income is derived; or
- (ii) the right of use of any plant or machinery used for the production of income or from which income is derived; or
- (iii) the right of use of any motion picture film or any sound recording or advertising matter connected with such film, if such film, sound recording or advertising matter is used for the production of income or income is derived therefrom; or

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- (iv) the right of use of any patent or design as defined in the Patents and Designs Proclamation, 1923 (Proclamation 17 of 1923), or any trade mark as defined in the Trade Marks in South West Africa Act, 1973 (Act 48 of 1973), or any copyright as defined in the Copyright Act, 1965 (Act 63 of 1965), or of any other property which in the opinion of the Minister is of a similar nature, if such patent, design, trade mark, copyright or other property is used for the production of income or income is derived therefrom; or
- (v) the imparting of or the undertaking to impart any knowledge directly or indirectly connected with the use of such film, sound recording, advertising matter, patent, design, trade mark, copyright or other property as aforesaid:

Provided that -

- (aa) the allowance under subparagraph (i), (ii), (iii) or (iv) shall not exceed for any one year such portion of the amount of the premium or consideration so paid as is equal to the said amount divided by the number of years for which the taxpayer is entitled to the use or occupation, or one twenty-fifth of the said amount, whichever is the greater;
- (bb) if the taxpayer is entitled to such use or occupation, for an indefinite period he shall be deemed, for the purposes of this paragraph, to be entitled to such use or occupation for such period as in the opinion of the Minister represents the probable duration of such use or occupation; and
- (cc) the allowance under subparagraph (v) shall not exceed for any one year such portion (not being less than one twenty-fifth) of the amount of the premium or consideration so paid as the Minister may allow having regard to the period during which the taxpayer will enjoy the right to use such film, sound recording, advertising matter, patent, design, trade mark, copyright or other property as aforesaid and any other circumstances which in the opinion of the Minister are relevant;

[The Patents and Designs Proclamation 17 of 1923 will be replaced by the Industrial Property Act 1 of 2012, which has not yet been brought into force. The Copyright Act 63 of 1965 has been replaced by the Copyright and Neighbouring Rights Protection Act 6 of 1994.]

- (h) an allowance in respect of any expenditure actually incurred by the taxpayer, in pursuance of an obligation to effect improvements on land or to buildings, incurred under an agreement whereby the right of use or occupation of land or buildings is granted by any other person, where the land or buildings are used or occupied for the production of income or income is derived therefrom: Provided that -
 - (i) the aggregate of the allowances under this paragraph shall not exceed the amount stipulated in the agreement as the value of the improvements or as the amount to be expended on the improvements or, if no amount is so stipulated, an amount representing in the opinion of the Minister the fair and reasonable value of the improvements;
 - (ii) any such allowance shall not exceed for any one year such portion of the aggregate of the allowances under this paragraph as is equal to the said aggregate divided by the number of years (calculated from the date on which the improvements are completed) for which the taxpayer is entitled to the use or occupation, or one twenty-fifth of the said aggregate, whichever is the greater; and

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- (iii) if the taxpayer is entitled to such use or occupation for an indefinite period, he shall for the purposes of this paragraph be deemed to be entitled to such use or occupation for such period as in the opinion of the Minister represents the probable duration of such use or occupation;
- (i) an allowance in respect of any expenditure (other than expenditure which has qualified in whole or part for deduction or allowance under any of the other provisions of this section or the corresponding provisions of any previous income tax law) actually incurred by the taxpayer -
 - (i) in devising or developing any invention, or in creating or producing any design as defined in the Patents and Designs Proclamation, 1923 (Proclamation 17 of 1923), or any trade mark as defined in the Trade Marks in South West Africa Act, 1973 (Act 48 of 1973), or any copyright as defined in the Copyright Act, 1965 (Act 63 of 1965), or any other property which in the opinion of the Minister is of a similar nature; or
 - (ii) in obtaining any patent or the restoration of any patent or the registration of any design under the Patents and Designs Proclamation, 1923, or the registration of any trade mark under the Trade Marks in South West Africa Act, 1973; or
 - (iii) in acquiring by assignment from any other person any such patent, design, trade mark or copyright or in acquiring any other property which in the opinion of the Minister is of a similar nature or any knowledge connected with the use of such patent, design, trade mark, copyright or other property or the right to have such knowledge imparted,

if such invention, patent, design, trade mark, copyright, other property or knowledge, as the case may be, is used by the taxpayer in the production of his income or income is derived by him therefrom: Provided that -

- (aa) where such expenditure exceeds two hundred rand the allowance shall not exceed for any one year such portion of the amount of the expenditure as is equal to such amount divided by the number of years which, in the opinion of the Minister, represents the probable duration of use of the invention, patent, design, trade mark, copyright, other property or knowledge, or one twenty-fifth of the said amount, whichever is the greater;
- (bb) where such expenditure was incurred before the commencement of the year of assessment in question the allowance shall be calculated on the amount of such expenditure, less an amount equivalent to the sum of the allowances to which the taxpayer was entitled under this paragraph and the allowances to which, in the opinion of the Minister, the taxpayer would have been entitled under this paragraph if this paragraph had been applicable, in respect of such expenditure in respect of previous years of assessment, including any year of assessment under any previous income tax law;

[The Patents and Designs Proclamation 17 of 1923 will be replaced by the Industrial Property Act 1 of 2012, which has not yet been brought into force. The Copyright Act 63 of 1965 has been replaced by the Copyright and Neighbouring Rights Protection Act 6 of 1994.]

- (j) expenditure (other than expenditure which has qualified in whole or part for deduction or allowance under any of the other provisions of this section) actually

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incurred by the taxpayer during the year of assessment in obtaining the extension of the term of any patent or the extension of the registration period of any design under the Patents and Designs Proclamation, 1923 (Proclamation 17 of 1923), or the renewal of the registration of any trade mark under the Trade Marks in South West Africa Act, 1973 (Act 48 of 1973), if such patent, design or trade mark is used by the taxpayer in the production of his income or income is derived by him therefrom;

[The Patents and Designs Proclamation 17 of 1923 will be replaced by the Industrial Property Act 1 of 2012, which has not yet been brought into force.]

- (k) such allowance in respect of any amounts included in the taxpayer's gross income under paragraph (f) or (l) of the definition of "gross income" in section 1 as the Minister may deem reasonable having regard to any special circumstances of the case and, in the case of an amount so included under the said paragraph (l), to the original period for which the right of use or occupation was granted: Provided that where there has accrued to the taxpayer the right to have improvements effected on land or to buildings by any other person and an amount is required to be included in the taxpayer's gross income under the said paragraph (l) with respect to such improvements, no allowance shall be made to the taxpayer under this paragraph in respect of such amount, if -
- (i) the taxpayer or such other person is a company and such other person or the taxpayer, as the case may be, is interested in more than fifty per cent of any class of shares issued by such company, whether directly as a shareholder in that company or indirectly as a shareholder in any other company; or
 - (ii) both the taxpayer and such other person are companies and any third person is interested in more than fifty per cent of any class of shares issued by one of those companies and in more than fifty per cent of any class of shares issued by the other company, whether directly as a shareholder in the company by which the shares in question were issued or indirectly as a shareholder in any other company;
- (l) the amount of any debts due to the taxpayer to the extent to which they are proved to the satisfaction of the Minister to be bad, provided such amount is included in the current year of assessment or was included in the previous years of assessment in the taxpayer's income;
- (m) such an allowance as may be made each year by the Minister in respect of such debts due to the taxpayer as he considers to be doubtful: Provided that such allowance shall be included in the income of the taxpayer in the following year of assessment, and for that purpose any allowance granted in terms of any previous income tax law, shall be deemed to be an allowance which was made in terms of this paragraph;
- (n) (i) subject to subsection (2), any sum contributed during the year of assessment by way of current contributions to any pension fund or provident fund by any person holding any office or employment where the making of such a contribution is a condition of the holding of such office or employment;

[Subparagraph (i) is amended by AG 10 of 1985 and by Act 25 of 1992.]

- (ii)

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[Subparagraph (ii) is amended by Act 8 of 1987 and deleted by Act 25 of 1992.]

- (o) any sum contributed by the taxpayer during the year of assessment for the benefit of the taxpayer's employees to any pension fund, benefit fund or provident fund: Provided that -

[introductory portion of paragraph (o) amended by Act 25 of 1992]

- (i) in respect of any lump sum contribution, the Minister may determine that the said sum shall be deducted in a series of annual instalments, so that only a portion thereof is deducted in the year of assessment in which it is contributed, and the residue in such subsequent years of assessment, and in such proportions as the Minister may determine, until the contribution is extinguished;
- (ii) if the contributions (including any lump sum payments) made by the taxpayer in respect of any employee during any year of assessment to such fund exceed an amount equal to ten per cent of the approved remuneration of such employee for such year of assessment, and the Minister is satisfied that the aggregate of such contributions and the total remuneration accrued during such year of assessment to such employee in respect of his employment by the taxpayer is excessive or unjustifiable in relation to the value of the services rendered by such employee to the taxpayer, and having regard to other benefits, if any, derived by him from his employment by the taxpayer only so much of such contributions as appears to the Minister to be reasonable, but not less than an amount equal to ten per cent of the approved remuneration of such employee for such year of assessment, shall be allowed to be deducted under this paragraph:
- (iii) any decision of the Minister under this paragraph, not being a decision under paragraph (i) of this proviso, shall be subject to objection and appeal,

and for the purposes of paragraph (ii) of this proviso "approved remuneration", in relation to any employee for any year of assessment, means so much of the total remuneration accrued to such employee during such year of assessment in respect of his employment by the taxpayer concerned as the Minister considers to be fair and reasonable in relation to the value of the services rendered by such employee during such year of assessment to the taxpayer and having regard to other benefits, if any, derived by him from his employment by the taxpayer;

- (p) any amount paid by way of annuity during the year of assessment by any taxpayer -
- (i) to a former employee who has retired from the taxpayer's employ on grounds of old age, ill-health or infirmity; or
- (ii) to any person who is dependent for his maintenance upon a former employee or (where such former employee is deceased) was so dependent immediately prior to his death:

Provided that the deduction under subparagraph (ii) shall not exceed in respect of the persons so dependent on any one retired or deceased employee, the sum of two thousand rand;

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- (q) subject to subsection (2), so much of the total current contributions to any retirement annuity fund or funds made by any person as a member of such fund or funds during a year of assessment during which such person has carried on any trade;

[Paragraph (q) is amended by Act 12 of 1982, AG 10 of 1985 and Act 9 of 1987, and substituted by Act 25 of 1992.]

- (qA) subject to subsection (2), so much of the total current premiums paid during the year of assessment in question for an education policy taken out by the taxpayer to provide funds at a future date for the education or training of a child or step child of such taxpayer as contemplated in paragraph (ab) of section 16(1);

[Paragraph (qA) is inserted by Act 10 of 1993 and amended by Act 15 of 2011.]

- (r) expenditure incurred during the year of assessment by any taxpayer -
- (i) for the purpose of scientific research undertaken by him for the development of his business, if such expenditure is not of a capital nature; or
 - (ii) by way of contributions to any association, institute, college or university, for scientific research relating to the taxpayer's own business, if the Council for Scientific and Industrial Research certifies to the Minister that it approves the proposals of such association, institute, college or university, in regard to such research and that it is satisfied that such contributions will be used in such research;
- (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 Minister 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;

[Paragraph (s) is amended by Act 8 of 1987 and substituted by Act 22 of 1995.]

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(t)

[paragraph (t) deleted by Act 25 of 1992]

- (u) an allowance in respect of any motor vehicle, machinery, implements, utensils or articles referred to in paragraph (e) equal to the amount by which the original cost to the taxpayer of such motor vehicle, machinery, implements, utensils or articles exceeds the total amount arrived at by adding the allowances granted in respect of such motor vehicle, machinery, implements, utensils or articles under paragraph (e) to the amount or the value of any consideration accruing to the taxpayer in respect of the sale or disposal of such motor vehicle, machinery, implements, utensils or articles;

[paragraph (u) amended by Act 25 of 1992]

- (v) any amounts which in terms of any other provision in this Part, are allowed to be deducted from the income of the taxpayer.

[Paragraph (v) should end with a semicolon rather than a full stop now that it is no longer the last paragraph in subsection (1).]

- (w) expenditure incurred by a taxpayer in respect of any premiums payable under a long-term insurance policy of which the taxpayer is the policyholder, where -
- (i) the amount of expenditure incurred by the taxpayer in respect of the premiums payable under the policy is included in the taxable income of an employee or director of the taxpayer;
 - (ii) the taxpayer is insured against any loss by reason of the death, disablement or severe illness of an employee or director of the taxpayer;
 - (iii) the policy is a risk policy with no cash value or surrender value prior to the maturity date thereof or the death of the employee or director whose life is insured under the policy;
 - (iv) the policy is not the property of any person other than the taxpayer at the time of the payment of the premium, but any premium paid is not disallowed as a deduction by reason of the policy being held by a creditor of the taxpayer other than any person contemplated in paragraph (v) as security for a debt of the taxpayer; and
- (v) no transaction, operation or scheme exists in terms of which any amount recoverable under the policy or an amount equivalent to or in lieu of such amount is to be made over by the taxpayer to or in favour of -
- (aa) the employee or director or a connected person in relation to the employee or director;
 - (bb) the estate of the employee or director; or
 - (cc) any person who is or was wholly or partly dependent for his or her maintenance upon the employee or director;

[paragraph (w) inserted by Act 15 of 2011]

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(2) The aggregate of the amounts that may be deducted in terms of paragraphs (n), (q), (qA) and (w) of subsection (1) shall not, as from the year of assessment commencing on or after 1 March 2011 in any year of assessment exceed the sum of N\$40 000.

[Subsection (2) is inserted by Act 25 of 1992 and amended by Act 10 of 1993. It is also amended by Act 5 of 1997, with this amendment deemed to have come into force (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 commencing on or after 1 January 1998 (section 12(b) of Act 5 of 1997). It is further amended by Act 21 of 1999 (amendment markings incomplete) and by Act 5 of 2007 with effect from the beginning of the year of assessment commencing on or after 1 March 2007 (section 12(3) of Act 5 of 2007) (amendment markings incomplete). It is further amended by Act 15 of 2011 (amendment markings incomplete).]

(3)

[subsection (3) inserted by Act 22 of 1995 and deleted by Act 12 of 1996]

(4)

[subsection (4) inserted by Act 22 of 1995 and deleted by Act 12 of 1996]

(5)

[subsection (5) inserted by Act 22 of 1995 and deleted by Act 12 of 1996]

Additional deductions in respect of expenditure for remuneration and training of employees of taxpayers who are registered manufacturers

17A. (1) For the purpose of determining the taxable income derived by a taxpayer who is a registered manufacturer during a year of assessment from the manufacturing enterprise in respect of which such taxpayer is registered under section 5A, there shall, subject to subsection (2), be allowed as a deduction from the income so derived by such manufacturer, in addition to the expenditure actually incurred and allowed as a deduction during such year of assessment in terms of section 17 in respect of -

- (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),

an amount equal to 25 per cent of the amount so allowed as a deduction under section 17.

[subsection (1) amended by Act 22 of 1995]

(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 Minister in consultation with the Minister of Labour and Human Resources Development and the Minister of Trade and Industry.

[subsection (2) amended by Act 12 of 1996]

[section 17A inserted by Act 10 of 1993]

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Additional deduction in respect of export expenditure incurred by registered manufacturer

17B. A registered manufacturer which derives income from the export of goods manufactured or produced by it to a country other than Namibia, is entitled to deduct from that income, in addition to the expenditure actually incurred and allowed as a deduction in terms section 17(1) in the year of assessment, an amount equal to 25% of any expenditure incurred in relation to those goods for -

- (a) marketing in an export country;
- (b) advertising, securing publicity or soliciting orders in an export country, including exhibition at trade fairs;
- (c) providing to prospective customers in an export country samples free of charge or technical information;
- (d) bringing prospective customers from an export country to Namibia;
- (e) the preparation or submission of tenders or quotations for export to an export country;
- (f) the payment of commission or other remuneration in respect of the sale or clearing of the goods in, or the forwarding of the goods to, an export country; and
- (g) the appointment of agents in an export country.

[section 17B inserted by Act 10 of 1993, amended by Act 17 of 1994 and by Act 12 of 1996, and substituted by Act 7 of 2002]

Allowance in respect of profits attributable to the export of certain manufactured goods

17C. (1) Where a taxpayer's taxable income has been derived, whether wholly or partly, from the export of goods manufactured in Namibia, but excluding fish or meat products, such taxable income shall be reduced by an allowance equal to 80% of the amount representing the taxable income so derived, but subject to subsection (3).

[subsection (1) amended by Act 15 of 2011
(amendment markings incomplete)]

(2) Where the taxable income of a taxpayer contemplated in subsection (1) has not been wholly derived from the export of manufactured goods referred to in that subsection, the amount representing taxable income so derived shall be determined by the Minister in accordance with the relation which the gross profit of the taxpayer derived from such exports bears to the taxpayer's total gross profit, and subject to such adjustments as the Minister in any particular case deems necessary to be made in order to reflect the true taxable amount derived from such exports.

(3) The Minister may for the purposes of subsection (1) prescribe the accounting procedures to be followed by taxpayers in general or a particular taxpayer in order to qualify for the allowance granted by that subsection, and may, in a case where any taxpayer has failed to adhere to any accounting procedures so prescribed, decline to allow any reduction as contemplated in that subsection, and in such an event the taxpayer concerned shall not be entitled to that reduction.

[section 17C inserted by Act 17 of 1994]

Income Tax Act 24 of 1981**Allowance in respect of land-based transportation costs**

17D. (1) For the purpose of determining the taxable income of a registered manufacturer there shall, for the period referred to in subsection (2), be allowed as a deduction from the income of the registered manufacturer, in addition to the expenditure actually incurred and allowed as a deduction in terms of section 17 in respect of the cost of transportation by road or by rail of -

- (a) material and components used in the manufacturing activity for which the company is registered under section 5A; or
- (b) manufacturing equipment imported by the registered manufacturer for use directly in that manufacturing activity,

an amount equal to 25% of such transportation costs incurred in the year of assessment.

(2) The deduction allowed in terms of subsection (1) applies with effect from the beginning of the year of assessment commencing on or after 1 January 2003 -

- (a) in relation to a company registered in terms of section 5A on or after that date, for a period of ten years of assessment reckoned from, and inclusive of, the year of assessment within which the company is registered;
- (b) in relation to a company registered before that date in terms of section 5A, before its substitution by the Income Tax Amendment Act, 2002, for the remaining number of years of assessment of a ten year period reckoned from, and inclusive of, the year of assessment within which the company was registered.

[Section 17D is inserted by Act 12 of 1996 and substituted by Act 7 of 2002 with effect from 1 January 2003 (section 7(2) of Act 7 of 2002).]

Deductions from income derived from mining operations

18. (1) There shall be allowed to be deducted from the income derived by the taxpayer from mining operations -

- (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);

[paragraph (a) substituted by Act 12 of 1996]

- (b)

[Paragraph (b) is deleted by Act 5 of 2010 with effect from the beginning of the year of assessment commencing on or after 1 January 2010 in respect of a taxpayer which is a company(section 9(c) of Act 5 of 2010).]

(2) Any amount provided for in terms of subsection (1)(b)(ii), prior to its deletion, that is not utilized for the purpose mentioned in that subsection, shall be included in the taxpayer's income in the year of assessment following the year of assessment within which the taxpayer ceases with mining operations, but if the amount so provided for or any part thereof is at any time, before the cessation of mining operations, utilized for any purpose other than that mentioned in the said subsection, the amount so utilized shall be included in the taxpayer's income in the year of assessment within which the amount is so utilized.

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[Subsection (2) is amended by Act 5 of 2010 with effect from the beginning of the year of assessment commencing on or after 1 January 2010 in respect of a taxpayer which is a company (section 9(c) of Act 5 of 2010).]

[Section 18 is substituted by Act 25 of 1992. The amendment markings are too incomplete to be a useful guide to the changes made.]

Deduction of expenses incurred by a lessor of land let for farming purposes, in respect of soil conservation works

19. (1) Subject to the provisions of subsection (2), there shall be allowed to be deducted from the income derived by any taxpayer from letting any land on which *bona fide* pastoral, agricultural or other farming operations were carried on during the year of assessment, the expenditure incurred by him during such year in respect of the construction of soil conservation works, provided a certificate by the Minister for Agriculture and Nature Conservation is produced to the effect that such works have been approved under the provisions of the Soil Conservation Act, 1969 (Act 76 of 1969).

(2) Where expenditure incurred by the taxpayer during any year of assessment and ranking for deduction from income under subsection (1) exceeds the taxable income (as calculated before allowing any deduction under that subsection) derived by the taxpayer from letting land on which *bona fide* pastoral, agricultural or other farming operations were carried on during such year, the amount allowed to be deducted under subsection (1) in respect of the said year shall be limited to an amount equal to such taxable income (calculated as aforesaid), and the excess shall be carried forward and be deemed for the purposes of this section to be expenditure incurred by the taxpayer during the next succeeding year of assessment in respect of the construction of soil conservation works.

Deductions and set-off from income derived from dividends

20. (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.

[subsection (1) amended by Act 25 of 1992 and by Act 12 of 1996]

(1A)

[subsection (1A) inserted by Act 8 of 1987 and deleted by Act 25 of 1992]

(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.

[subsection (2) amended by Act 8 of 1987 and by Act 25 of 1992, and substituted by Act 12 of 1996]

(3) In respect of income in the form of dividends derived by any person from a building society there shall be allowed as a deduction in the determination of the taxable income of such person an amount representing one-third of the amount of such dividends.

[subsection (2) amended by Act 25 of 1992]

(4) In the case of a company which carries on long-term insurance business in Namibia there shall, in the determination of the taxable income derived by such company during any year

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of assessment in the form of dividends, be deducted from the income so derived by such company during such year an amount determined in accordance with the formula -

$$y = A \times \frac{B}{C},$$

in which formula -

- (a) “Y” represents the amount to be determined;
 - (b) “A” represents the taxable income, as determined before any deduction is made under this subsection, derived by such company during such year in the form of dividends;
 - (c) “B” represents an amount equal to so much of the income derived by the company during such year in the form of dividends as the Minister is satisfied has been included in the amount determined under the provisions of section 32(1) as the taxable income derived by such company during such year from the carrying on of long-term insurance business; and
 - (d) “C” represents the total income derived by the company during such year in the form of dividends.
- (5)

[Subsection (5) is substituted by AG 10 of 1985 and deleted by Act 25 of 1992.]

(6) Income received by or accrued to any person in the form of an annuity shall, notwithstanding the fact that such income may also be in the form of dividends or be income of the nature described in subsection (5), be deemed for the purposes of this section to be income derived otherwise than in the form of dividends.

Set-off of assessed losses

21. (1) For the purpose of determining the taxable income derived by any person from carrying on any trade within Namibia, there shall be set off against the income so derived by such person -

- (a) any balance of assessed loss incurred by the taxpayer in any previous year which has been carried forward from the preceding year of assessment: Provided that -
 - (i) no person, whose estate has been voluntarily or compulsorily sequestered, shall, unless the order of sequestration has been set aside, be entitled to carry forward any assessed loss incurred prior to the date of sequestration;
 - (ii) the balance of assessed loss shall be reduced by the amount or value of any benefit received by or accruing to a person resulting from a concession granted by, or a compromise made with his creditors whereby his liabilities to them have been reduced or extinguished, provided such liabilities arose in the ordinary course of trade;
- (b) any assessed loss incurred by the taxpayer during the same year of assessment in carrying on in Namibia any other trade either alone or in partnership with others, otherwise than as a member of a company the capital whereof is divided into shares.

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(2) For the purposes of subsection (1), “assessed loss” means any amount, as established to the satisfaction of the Minister, by which the deductions admissible under sections 17, 18 and 20, but excluding deductions admissible under sections 17A, 17B, 17C and 17D, exceed the income in respect of which they are so admissible, or, if the context so requires, means an assessed loss as determined under section 29.

[subsection (2) substituted by Act 7 of 2002]

Ring-fencing of assessed losses of certain trades

21A. (1) Subject to subsection (3), where the circumstances in subsection (2) apply during any year of assessment in respect of any trade carried on by a natural person, any assessed loss incurred during that year in carrying on such trade may not be set off against any income of the person derived during that year otherwise than from carrying on such trade, despite section 21(1)(b).

(2) Subsection (1) applies where the sum of the taxable income of a person for a year of assessment determined without having regard to the other provisions of this section and any assessed loss and balance of assessed loss which were set off in terms of section 21 in determining the taxable income, equals or exceeds the amount of N\$200 000, and where -

- (a) the person, during the five year period ending on the last day of the year of assessment, has incurred an assessed loss in at least three years of assessment in carrying on the trade contemplated in subsection (1) (before taking into account any balance of assessed loss carried forward); or
- (b) the trade contemplated in subsection (1) in respect of which the assessed loss was incurred constitutes -
 - (i) any sport practiced by the person;
 - (ii) any dealing in collectibles by the person;
 - (iii) the rental of residential accommodation unless at least 80 per cent of the residential accommodation is used by persons who are not relatives of the person for at least half of the year of assessment;
 - (iv) the rental of vehicles, aircraft or boats unless at least 80 per cent of the vehicles, aircraft or boats are used by persons who are not relatives of the person for at least half of the year of assessment;
 - (v) animal showing by the person;
 - (vi) farming or animal breeding unless the person carries on farming, animal breeding or activities of a similar nature on a full-time basis;
 - (vii) any form of performing or creative arts practiced by the person; or
 - (viii) any form of gambling or betting practiced by the person.

(3) Subsection (1) does not apply in respect of an assessed loss incurred by a person during any year of assessment from carrying on any trade contemplated in subsection (2)(a) or (b), where the trade constitutes a business in respect of which there is a reasonable prospect of deriving taxable income within a reasonable period having special regard to -

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- (a) the proportion of the gross income derived from the trade in the year of assessment in relation to the amount of the allowable deductions incurred in carrying on the trade during that year;
- (b) the level of activities carried on by the person or the amount of expenses incurred by the person in respect of advertising, promoting or selling in carrying on the trade;
- (c) whether the trade is carried on in a commercial manner, taking into account -
 - (i) the number of full-time employees appointed for purposes of the trade (other than persons partly or wholly employed to provide services of a domestic or private nature);
 - (ii) the commercial setting of the premises where the trade is carried on;
 - (iii) the extent of the equipment used exclusively for purposes of carrying on the trade; and
 - (iv) the time that the person spends at the premises conducting the business;
- (d) the number of years of assessment during which assessed losses were incurred in carrying on the trade in relation to the period from the date when the person commenced carrying on the trade and taking into account -
 - (i) any unexpected events giving rise to any of those assessed losses; and
 - (ii) the nature of the business involved;
- (e) the business plans of the person and any changes thereto to ensure that taxable income is derived in future from carrying on the trade; and
- (f) the extent to which any asset attributable to the trade is used, or is available for use, by the person or any relative of the person for recreational purposes or personal consumption.

(4) Subsection (3) does not apply in respect of a trade contemplated in subsection (2)(b) carried on by a person during any year of assessment where the person has, during the 10 year period ending on the last day of the year of the assessment, incurred an assessed loss in at least six years of assessment in carrying on the trade (before taking into account any balance of assessed loss carried forward).

(5) Despite section 21(1)(a), any balance of assessed loss carried forward from the preceding year of assessment which is attributable to an assessed loss in respect of which subsection (1) applied in that preceding year or any prior year of assessment may not be set off against any income derived by the person otherwise than from carrying on the trade contemplated in subsection (1).

(6) For the purposes of this section and section 21, the income derived from any trade referred to in subsection (1) or (5), includes any amount which is included in the income of the person in terms of section 14 in respect of an amount deducted in any year of assessment in carrying on the trade.

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(7) Despite anything to the contrary in this Act, all farming activities carried on by a person are deemed to constitute a single trade carried on by the person for the purposes of this section.

(8) Where subsection (2) applies during any year of assessment in respect of any trade carried on by a person, the person must indicate the nature of the business in his or her return contemplated in section 59 for the year of assessment.

(9) For the purposes of subsections (2)(a) and (4), any assessed loss incurred in any year of assessment ending on or before 28 February 2011 is not taken into account.

(10) For the purposes of this section -

“assessed loss” means assessed loss as defined in section 21(2); and

“relatives” in relation to a person means a spouse, parent, child, stepchild, brother, sister, grandchild or grandparent of the person.

[section 21A inserted by Act 15 of 2011]

Amounts to be taken into account in respect of values of trading stocks

22. (1) The amount which shall, in the determination of the taxable income derived by any person during any year of assessment from carrying on any trade (other than farming), be taken into account in respect of the value of any trading stock held and not disposed of by him at the end of such year of assessment, shall be the cost price to such person of such trading stock, less such amount as the Minister may think just and reasonable as representing the amount by which the value of such trading stock, not being shares held by any company in any other company has been diminished by reason of damage, deterioration, change in fashion, decrease in the market value or for any other reason satisfactory to the Minister.

(2) The amount which shall in the determination of the taxable income derived by any person during any year of assessment from carrying on any trade (other than farming), be taken into account in respect of the value of any trading stock held and not disposed of by him at the beginning of any year of assessment, shall -

- (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

[paragraph (a) amended by Act 12 of 1996]

- (b) if such trading stock did not form part of the trading stock of such person at the end of the immediately preceding year of assessment, be the cost price to such person of such trading stock.

(3) For the purposes of this section the cost price at any date of any trading stock in relation to any person shall be the cost incurred by such person, whether in the current or any previous year of assessment in acquiring such trading stock, plus any further costs incurred by him up to and including the said date in getting such trading stock into its then existing condition or location.

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(4) If any trading stock has been acquired by any person for no consideration or for a consideration which is not measurable in terms of money, such person shall for the purposes of subsection (3) be deemed to have acquired such trading stock at a cost equal to the price which in the opinion of the Minister was the current market price of such trading stock on the date on which it was acquired by such person.

(5) (a) If, for the purpose of determining the cost price of any trading stock, any person wishes to adopt the basis of trading stock valuation whereunder the last item of any class of trading stock acquired by him on any date is deemed to be the first item of that class of trading stock disposed of by him on or after that date, and such person satisfies the Minister that he will maintain records in respect of his trading stock which will be adequate for the purposes of applying the said basis and that his trading stock will be accounted for on the said basis in his records, any annual financial statements prepared for submission to shareholders or for proprietors and the financial statements furnished for income tax purposes, the said person may, with the written consent of the Minister, obtained before such person renders his return of income for the first year of assessment in respect of which the said basis of trading stock valuation is to be adopted, and subject to such conditions as the Minister, having regard to the circumstances of the case, may determine, adopt the said basis of trading stock valuation.

(b) Where the aforesaid basis of trading stock valuation has been adopted by any person in respect of any year of assessment as contemplated in this subsection, such basis and any conditions determined by the Minister under this subsection in relation to the adoption of the said basis shall be binding upon such person in respect of the said year of assessment and all subsequent years of assessment and may not be varied by him save with the consent of the Minister and subject to such conditions as the Minister, having regard to the circumstances of the case, may determine, which conditions shall be binding upon such person for the year of assessment in respect of which the variation is made and all subsequent years of assessment.

(c) Any conditions determined by the Minister under this subsection may include any conditions as to the manner in which the person concerned shall account for his trading stock, whether or not such condition may in some circumstances have the effect of deferring or accelerating liability for taxation.

(6) Any reference in this section to the beginning or end of a year of assessment includes -

(i) where the period assessed is less than twelve months, a reference to the beginning or end, as the case may be, of the period assessed;

(ii) where a return is accepted under subsection (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.

[Subsection (6) is amended by Act 5 of 1997, with this amendment deemed to have come into force (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 1997; 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 1997 (section 12(a) of Act 5 of 1997).]

(7) In this section any reference to a year of assessment includes a reference to a year of assessment under any previous income tax law.

Schemes of arrangement involving trading stock

23. (1) If, under any scheme of arrangement or reconstruction of any company or its affairs (including any scheme for the amalgamation of two or more companies and any other scheme) which is sanctioned by any order of court, any company (hereinafter referred to as the transferee company) has acquired from any other company (hereinafter referred to as the transferor company) any asset which was trading stock of the transferor company, and in respect of such acquisition -

- (a) no consideration measurable in terms of money accrued from the transferee company to the transferor company; or
- (b) a consideration accrued from the transferee company to the transferor company the money value of which was less than the market value of such asset on the date on which the transferee company acquired such asset,

such asset shall for the purposes of this Act be deemed to be trading stock of the transferee company, and, where paragraph (a) is applicable -

- (i) the transferee company shall be deemed to have acquired such asset at a price equal to the cost price thereof to the transferor company; and
- (ii) notwithstanding the provisions of section 22(2), no deduction shall, in the determination of the taxable income of the transferor company for the year of assessment of that company during which the transferee company acquired such asset, be made in respect of the value of such asset as trading stock.

(2) Any amount which is received by or accrues to the transferee company from the disposal of the said asset (or of any interest therein) shall be included in that company's income, whether such amount is derived in carrying on any trade or otherwise or is derived from a source within or outside Namibia.

Deductions not allowed in determination of taxable income

24. No deductions shall in any case be made in respect of the following matters, namely -

- (a) the cost incurred in the maintenance of any taxpayer, his family or establishment;
- (b) domestic or private expenses, including the rent of or cost of repairs of or expenses in connection with any premises not occupied for the purposes of trade or of any dwellinghouse or domestic premises except in respect of such part as may be occupied for the purposes of trade;
- (c) any loss or expense, the deduction of which would otherwise be allowable, to the extent to which it is recoverable under any contract of insurance, guarantee, security or indemnity;
- (d) the taxation levied on incomes;
- (e) income carried to any reserve fund or capitalized in any way;
- (f) any expenses incurred in respect of any amounts received or accrued which do not constitute income as defined in section 1;

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- (g) any monies claimed as a deduction from income derived from trade to the extent to which such monies are not laid out or expended for the purposes of trade;

[paragraph (g) amended by Act 21 of 1999
(amendment markings incomplete)]

- (h) interest which might have been made on any capital employed in trade.

[Paragraph (h) should end with a semicolon rather than a full stop
now that it is no longer the last paragraph in section 24.]

- (i) any amount paid in respect of land tax referred to in section 76 of the Agricultural (Commercial) Land Reform Act, 1995 (Act No. 6 of 1995).

[Paragraph (i) is inserted by Act 4 of 2005, with this insertion deemed to have come into force
(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 2004; 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 2004 (section 8(3) of Act 4 of 2005).]

Credit agreements providing for 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 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.

[section 25 amended by Act 12 of 1996]

Gains or losses on foreign exchange transactions

25A. (1) Where any taxpayer has on or after 1 March 1981 paid any amount owed by him in respect of any loan or advance in a foreign currency or of any debt incurred in a foreign currency and in paying such amount, has realized a gain or sustained a loss, such gain shall in the determination of the taxpayer's taxable income be included in the taxpayer's income or such loss shall in the said determination be deducted from the taxpayer's income, if such loan or advance was utilized or such debt was incurred by the taxpayer for the purpose of incurring or financing expenditure incurred by the taxpayer or, where the taxpayer is a company, by an associated company in relation to the taxpayer, in order to produce income derived by the taxpayer or associated company, as the case may be, from carrying on any business undertaking in Namibia.

(2) Such gain or loss shall be deemed to be the difference between the equivalent in the currency of Namibia of the amount referred to in subsection (1), when the loan or advance in

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question was utilized or the debt was incurred by the taxpayer as aforesaid, and the equivalent amount in the currency of Namibia actually required to pay the said amount, and such gain or loss shall be deemed to have been realized or sustained at the time when the said amount was paid: Provided that where, subsequent to the date on which the loan or advance was utilized or the debt was incurred, any change in foreign currency rates occurred in consequence of which the difference between the value of the said amount (or a portion thereof) on the said date and the value thereof when the change in foreign currency rates occurred was taken into account for normal tax purposes, the amount so taken into account shall be suitably accounted for for the purposes of determining the said gain or loss.

[The word “occurred” is misspelt in the *Official Gazette*, as reproduced above.]

(3) Any gain realized or any loss sustained by reason of a change in foreign currency exchange rates shall, to the extent that such gain is required to be included in the taxpayer's income under any other provision of this Act or to the extent that such loss is allowable as a deduction from the taxpayer's income under any other provision of this Act, not be included in or be allowed as a deduction from the taxpayer's income under this section, as the case may be.

[The word “deduction” is misspelt in the *Official Gazette* in its second use, as reproduced above.]

(4) There shall be included in the taxpayer's income for any year of assesment so much of any loss allowed to be deducted from his income under this section as has been recovered or recouped by him during such year, whether the loss was incurred in that year or in any previous year of assesment.

[The word “assesment” is misspelt in the *Official Gazette* in its first use, as reproduced above.]

(5) Where any taxpayer has obtained and utilized any loan or advance in a foreign currency for the purpose of repaying any amount owed by him in respect of a loan or advance in foreign currency utilized for a purpose contemplated in subsection (1) or of any debt incurred by him for such a purpose, the loan or advance so obtained shall, to the extent that it does not exceed the said amount, be deemed for the purposes of this section to have been utilized by the taxpayer for the said purpose.

(6) (a) Any loss sustained upon the repayment of the amount referred to in subsection (5) shall not be allowed as a deduction from the taxpayer's income under the provisions of subsection (1) unless the Minister is satisfied that in obtaining the loan or advance which was obtained, as contemplated in subsection (5), the obtaining of the loan or advance was not arranged solely or mainly for the purpose of benefiting by a deduction from income: Provided that the Minister may authorize that such loss be carried forward to a subsequent year of assesment in order to be dealt with in such manner and in such circumstances as the Minister may direct.

(b) Any decision of the Minister in the exercise of his discretion under paragraph (a) shall be subject to objection and appeal.

(7) There shall be allowed as a deduction from the income of any taxpayer who has obtained foreign currency under a forward exchange contract and has utilized such currency for a purpose contemplated in subsection (1), any premium or other consideration paid by him under such contract for the purpose of obtaining such currency and which is not deductible from his income under any other provision of this Act.

(8) For the purposes of this section -

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“associated company”, in relation to another company, means a company which, in the opinion of the Minister, is associated with such other company by reason of the fact that both companies are managed or controlled directly or indirectly by substantially the same persons;

“forward exchange contract” means any agreement with an authorized dealer in foreign currencies in Namibia, where currency of Namibia is exchanged for a foreign currency at some future date at a specified rate of exchange.

[Section 25A is inserted by AG 10 of 1985, with this insertion deemed to have come into force on 1 March 1981 in the case of any person other than a company, and, in the case of any company, from the beginning of the first financial year of such company ending on or after 1 March 1982 (section 8(2) of AG 10 of 1985).]

Income of beneficiaries and estates of deceased persons

26. (1) Any income received by or accrued to or in favour of any person in his capacity as executor of the estate of a deceased person, and any amount so received or accrued which would have been income in the hands of the deceased person had it been received by or accrued to or in favour of such deceased person during his lifetime, shall, to the extent that the Minister is satisfied that such income or amount has been derived for the immediate, or future benefit of any ascertained heir or legatee of such deceased person, be deemed to be income received by or accrued to such heir or legatee, and shall, to the extent that the Minister is not so satisfied, be deemed to be income of the estate of such deceased person.

(2) So much of the amount of any expenditure incurred by or on behalf of the estate of any deceased person during any year of assessment as, in the opinion of the Minister, relates to any amount of income deemed to be income received by or accrued to an heir or legatee of such deceased person in terms of subsection (1) shall -

- (a) not be taken into account in the determination of the taxable income of such estate; and
- (b) be deemed to be expenditure incurred by such heir or legatee during such year, and shall, to the extent that the deduction of expenditure of the same nature is authorised by this Act, be taken into account in the determination of the taxable income of such heir or legatee.

(3) Nothing in subsection (1) shall be construed as imposing liability for tax in respect of the same amount both in the hands of the estate or heir or legatee of a deceased person, and in the hands of such deceased person.

(4) The decision of the Minister in the exercise of his discretion under subsection (1) or (2) shall be subject to objection and appeal.

Determination of taxable income derived from farming

27. The taxable income of any person carrying on pastoral, agricultural or other farming operations shall, in so far as it is derived from such operations, be determined in accordance with the provisions of this Act but subject to the provisions of Schedule 1.

28.

[section 28 deleted by Act 8 of 1987]

Persons carrying on business which extends beyond Namibia

29. When the business of any person, other than any person in respect of whose business outside Namibia special provision is made under this Act, extends to any country outside Namibia, the taxable income or assessed loss of such person shall be a sum which shall bear the same proportion to his total net profits or total loss from all sources, as the case may be, calculated in the manner provided in this Act for the determination of taxable income or assessed loss, as his assets in Namibia bear to his total assets: Provided that if accounts satisfactory to the Minister can be furnished, the Minister or the taxpayer may claim that the actual taxable income derived from sources within Namibia or loss incurred within Namibia shall be assessed in the manner otherwise provided in this Act.

Assessment of persons not ordinarily resident in Namibia who derive income from film business

30. Where any person who is not ordinarily resident in Namibia derives income under or by virtue of any contract or agreement with any other person in relation to the carrying on in Namibia by such other person of any business of distributing, exhibiting or exploiting motion picture films, or of leasing such films to other persons, or of licensing other persons to exhibit or display such films, or in relation to the acquisition of any advertising matter for use in connection with such films, such first-mentioned person shall be deemed to have derived under or by virtue of such contract or agreement a taxable income equal to an amount arrived at by deducting from an amount equal to ten per cent of the income derived by him as aforesaid any expenditure and losses (other than expenditure or losses of a capital nature) actually incurred by him in Namibia during the year of assessment under or by virtue of such contract or agreement.

Determination of taxable income of co-operative societies and companies

31. (1) In the determination of the taxable income of any co-operative trading society, as defined in the Co-operative Societies Ordinance, 1946 (Ordinance 15 of 1946), derived by that society from its transactions, whether with persons who are members or with persons who are not members of the society, the amount of any bonus distributed in any year of assessment to its members by any such society which is a closed society as defined in section 97 of that Ordinance shall be allowed as a deduction from the income of that society in so far as such bonus does not exceed an amount equivalent to one-tenth of the aggregate value of the business of such society with its members during such year of assessment, but no such deduction shall be allowed in the case of any such co-operative trading society which is not such a closed society.

(2) In the determination of the taxable income of any agricultural co-operative, there shall be allowed as deductions from the income of such agricultural co-operative for the year of assessment in question the amounts of any profits distributed by it during the specified period in relation to the year of assessment by way of bonuses to persons entitled to participate in such distribution: Provided that the amounts allowed as deductions under this subsection shall not in the aggregate exceed an amount equal to the taxable income of such agricultural co-operative for the year of assessment, as calculated before allowing any deductions under this subsection and before setting off any balance of assessed loss brought forward from a previous year of assessment.

(3) (a) The full amount of any bonus distributed by any agricultural co-operative shall, to the extent that such amount qualifies for deduction from the income of such co-operative under subsection (2), be included in the gross income of the person who has become entitled thereto and shall be deemed to have accrued to such person on the date of the distribution of the bonus by such co-operative.

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- (b) For the purposes of this section the amount of any bonus distributed by way of capitalization shares or bonus debentures or securities shall be deemed to be the nominal value of such shares, debentures or securities, as the case may be.

- (4) In this section -

“agricultural co-operative” means any co-operative agricultural society or company or any farmers’ special co-operative company, as defined in the Co-operative Societies Ordinance, 1946;

“bonus” means any amount distributed by any co-operative society or company referred to in this section out of its profits or surplus for any year of assessment, whether such amount is distributed in cash or by way of a credit or an award of capitalization shares or bonus debentures or securities, if such amount -

- (a) is divided among the persons entitled thereto in such manner that the amount accruing to each such person is determined in accordance with the value of the business transactions between such society or company and such person; and
- (b) is distributed during the specified period in relation to such year of assessment.

Determination of taxable income derived from insurance business

32. (1) Notwithstanding anything contained in this Act the taxable income derived from the carrying on of long-term insurance business by any taxpayer who carries on such business in Namibia (whether on mutual principles or otherwise), shall be deemed to be an amount equivalent to forty per cent of the sum of -

[introductory phrase of section 32 amended by Act 8 of 1987]

- (a) the gross amounts which the Minister is satisfied have been derived by the taxpayer during the year of assessment from the investment (including the letting of any property) of so much of his funds as are invested within or outside Namibia in respect of any long-term insurance business carried on by him in Namibia and of so much of his funds as are invested within Namibia in respect of any long-term insurance business carried on by him outside Namibia, but excluding -
- (i) amounts proved to the satisfaction of the Minister to have been derived by the taxpayer from the investment of funds attributable to any long-term insurance business carried on by him or her in Namibia with any pension fund, provident fund or retirement annuity fund;

[subparagraph (i) amended by Act 10 of 1993]

- (ii) amounts proved to the satisfaction of the Minister to have been derived by the taxpayer from the investment of funds attributable to individual annuity contracts entered into by him in respect of which annuities are being paid and which are not connected with any business carried on by him in Namibia with any fund referred to in subparagraph (i); and
- (iii) interest on the loan portion of the normal tax imposed under any income tax law; and
- (b) where the taxpayer is a company, the gross amounts which have been derived by the taxpayer during the year of assessment by way of remuneration for managerial

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or secretarial or other services from subsidiary companies of the taxpayer (including any company in which the taxpayer is directly or indirectly interested, if the beneficial interest of the taxpayer in the issued share capital or the issued equity share capital of such company is a direct interest or is equivalent to a direct interest, in at least ten per cent of such issued share capital or such equity share capital, but excluding any company the sole or principal function of which is, in the opinion of the Minister, the rendering of services).

(2) Subject to the provisions of this Act the taxable income derived by any taxpayer from the carrying on in Namibia of short-term insurance business (whether on mutual principles or otherwise) shall be determined by charging against the sum of all premiums (including premiums on reinsurance) received by or accrued to such taxpayer in respect of the insurance of any risk, and other amounts derived from the carrying on of such business of insurance in Namibia, the sum of -

[The word “mutual” in the phrase “mutual principles” is misspelt in the *Official Gazette*, as reproduced above.]

- (a) the total amount of the liability incurred in respect of premiums on reinsurance;
- (b) the total amount of the liability incurred in respect of any claims during the year of assessment in respect of that business of insurance, less the value of any claims recovered or recoverable under any contract of insurance, guarantee, security or indemnity;
- (c) the expenditure, not being expenditure falling under paragraph (a) or (b), incurred in respect of that business of insurance;
- (d) such allowance as may be made each year by the Minister in respect of unexpired risks: Provided that the allowance granted under this paragraph in respect of any year of assessment shall be included in the income of the taxpayer in the following year of assessment, and for that purpose any allowance granted in terms of the corresponding provisions of any previous income tax law shall be deemed to be an allowance which was granted under this paragraph;
- (e) such allowance as may be made each year by the Minister in respect of claims which have been intimated but not paid: Provided that the allowance granted under this paragraph in respect of any year of assessment shall be included in the income of the taxpayer in the following year of assessment, and for that purpose any allowance granted in terms of the corresponding provisions of any previous income tax law shall be deemed to be an allowance which was granted under this paragraph; and
- (f) such allowance as may be made each year by the Minister in respect of claims which have not been intimated or paid: Provided that the allowance granted under this paragraph in respect of any year of assessment shall be included in the income of the taxpayer in the following year of assessment and for that purpose any allowance granted in terms of the corresponding provisions of any previous income tax law shall be deemed to be an allowance which was granted under this paragraph.

(3) Nothing in this section contained shall be construed as relieving any taxpayer from the obligation to render returns of any income derived otherwise than from the carrying on of long-term or short-term insurance business or in the form of dividends (notwithstanding the inclusion of such dividends or of a portion thereof in the gross amounts referred to in subsection (1)(a)) or from any liability for taxation in respect of any taxable income so derived or as

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depriving the taxpayer of the right to set off against the taxable income derived from the business of insurance any loss incurred in respect of any other business or any balance of loss so incurred which the taxpayer would be entitled to set off under the provisions of section 21.

(4) In this section -

“insurance” includes reinsurance;

“long-term insurance business” means long-term insurance business as defined in the Insurance Act, 1943 (Act 27 of 1943), and includes any business which is for the purposes of the said Act dealt with by the Registrar of Insurance as long-term insurance business and any business which in the opinion of the Minister is medical aid insurance business conducted on a non-cancellable basis;

[The Insurance Act 27 of 1943 has been replaced by the Short-term Insurance Act 4 of 1998 and the Long-term Insurance Act 5 of 1998.]

“short-term insurance business” means any insurance business other than long-term insurance business.

Assessments on transfer of business undertaking by foreign company to South West African subsidiary

33. If the Minister is satisfied that the circumstances warrant a concession and it is proved to his satisfaction -

- (a) that any company (hereinafter referred to as the subsidiary) which is incorporated, managed and controlled in Namibia has under an arrangement with any other company (hereinafter referred to as the foreign company) which is incorporated, managed and controlled outside Namibia, acquired all the assets and assumed all the liabilities of the foreign company relating to any industrial, commercial or other business undertaking of the foreign company in Namibia which has been transferred by the foreign company to the subsidiary as a going concern; and
- (b) that at the time the arrangement was implemented, all the issued shares of the subsidiary were held for its own benefit by the foreign company or a company which was incorporated, managed and controlled outside Namibia and was controlled by or controlled the foreign company,

[The word “foreign” in the phrase “foreign company” is misspelt in the *Official Gazette* in its first use in paragraph (b), as reproduced above.]

any taxable income derived or any assessed loss incurred by the foreign company prior to the discontinuance by it of the said undertaking and any taxable income derived or assessed loss incurred by the subsidiary after the transfer to it of such undertaking shall, subject to any conditions imposed by the Minister, be determined in accordance with the provisions of this act as though, so far as the foreign company is concerned, such undertaking had not been discontinued by it and, so far as the subsidiary is concerned, such undertaking had belonged to and had been carried on by it prior to the transfer to it of such undertaking.

Assessment of owners or charterers of ships or aircraft not ordinarily resident or registered, managed or controlled in Namibia

34. (1) Any person (not being a person ordinarily resident in Namibia or a domestic company) who embarks passengers or loads livestock, mails or goods in Namibia, as an owner or charterer of any ship or aircraft, shall be deemed to have derived therefrom (apart from any

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taxable income derived by him from other sources) a taxable income of twenty rand for every two hundred rand payable to him or to any agent on his behalf, whether the amount be payable in or outside Namibia, in respect of passengers, livestock, mails and goods so embarked or loaded, but the provisions of this section shall not apply to any such person who renders accounts which in the opinion of the Minister satisfactorily disclose the taxable income derived by him from the embarking of passengers or the loading of livestock, mails and goods as aforesaid.

(2) Where the person so embarking passengers or loading livestock, mails or goods has no recognized agent in Namibia other than the master of the ship or the pilot of the aircraft in connection with which any such amounts are payable, or where the agent fails to make returns of any such amounts payable in respect of any ship or aircraft -

- (a) the Minister may make the assessment from such information as may be available to him;
- (b) the tax thereon shall be payable to the Minister prior to the clearance of the ship or aircraft;
- (c) the principal officer of customs at the port or airport where such ship or aircraft is being cleared shall have power to detain the clearance until such payment is made; and
- (d) upon such payment the master, pilot or agent (as the case may be) shall be entitled to a certificate from such officer of customs that the amount so paid has been paid under the provisions of this Act, and such certificate shall be sufficient warrant to such master, pilot or agent of the amount so paid.

Withholding tax on interest

34A. (1) There must be paid for the benefit of the State Revenue Fund a tax (*in this Act referred to as withholding tax on interest*) equal to 10 per cent of any amount of interest, excluding interest from stock or securities, including Treasury Bills issued by the Government of Namibia, any regional council or local authority in Namibia, accruing to or in favour of any person, other than a Namibian company, from -

- (a) a banking institution registered under the Banking Institutions Act, 1998 (Act No. 2 of 1998), but any amount of interest accruing to or in favour of any person in respect of any negotiable instrument issued by such banking institution is not subject to the withholding tax on interest as determined by this section; or
- (b) a unit trust scheme as defined in paragraph (e) of the definition of “company” in section 1, which is registered in Namibia,

provided that where the interest accrues to or in favour of an undisclosed principal who is represented by an agent or any other person, excluding a stock broker, and which agent or any other person does not disclose the full name and further particulars required to assess whether the principal is a Namibian company, this section applies despite the fact that the undisclosed principal may be a Namibian company.

[Subsection (1) is amended by Act 5 of 2010 and by Act 15 of 2011 (changes of punctuation not indicated by amendment markings), with that amendment deemed to have come into force at the beginning of the year of assessment commencing on or after 1 March 2009, in terms of section 13(c) of Act 15 of 2011.]

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(2) The tax withheld in terms of subsection (1) is a final tax as the interest on which it is paid is not added to or set-off against any other income.

(3) If the tax withheld in terms of subsection (1) is in respect of interest in favour of a trust or partnership of which a Namibian company is a beneficiary or partner, respectively -

- (a) so much of the tax withheld on the interest which is paid to the Namibian company is not a final tax;
- (b) any interest received by a Namibian company must be included in the taxable income of the company and taxed at the rates as prescribed by Schedule 4 of the Act; and
- (c) any tax which is proved to the satisfaction of the Minister to be withheld must be set-off against the tax payable.

[subsection (3) amended by Act 5 of 2010]

(4) For the purposes of this section the net interest accrued to or in favour of a unit trust scheme and not distributed by the unit trust scheme to its unit holders before the end of the financial year is deemed to be distributed to a person other than a Namibian Company on the last day of the financial year and is subject to withholding tax.

[subsection (4) inserted by Act 5 of 2010]

(5) For the purposes of this section and sections 34C and 34D -

“gross interest” means interest excluding interest from stock or securities, including Treasury Bills issued by the Government of Namibia, a regional council or local authority in Namibia;

“negotiable instrument” means an instrument issued by a banking institution registered under the Banking Institutions Act, 1998 (Act No. 2 of 1998) that is capable of being transferred to a purchaser provided that the purchaser acquires it in good faith, and where payment in good faith to the holder discharges the instrument and parties to it;

“stock broker” means any person who is a member of a stock exchange licensed in terms of the Stock Exchange Control Act, 1985 (Act No. 1 of 1985), and is, under the rules of that stock exchange, authorized to carry on the business of buying and selling securities on behalf of other persons or on his or her own account;

“net interest” means gross interest accrued to or in favour of a unit trust scheme less allocated permitted expenses; and

“allocated permitted expenses” means all permitted expenditure incurred by a unit trust scheme multiplied with “A” where $A = B/C$, “B” equals gross interest received or accrued to or in favour of the unit trust scheme, and “C” equals gross income, including interest, received or accrued to or in favour of the unit trust scheme.

[Subsection (5) is inserted by Act 5 of 2010 and amended by Act 15 of 2011, with that amendment deemed to have come into force at the beginning of the year of assessment commencing on or after 1 March 2009 (section 13(c) of Act 15 of 2011).]

[Section 34A is inserted by Act 5 of 2007, with effect from 1 March 2009 (section 12(6) of Act 5 of 2007).]

Person liable for withholding tax on interest

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34B. The person liable for withholding tax on interest is the person to whom or in whose favour the amounts referred to in section 34A accrue.

[Section 34B is inserted by Act 5 of 2007, with effect from 1 March 2009 (section 12(6) of Act 5 of 2007).]

Deduction or withholding of tax on interest

34C. (1) Despite section 34B, the withholding tax on interest is deducted or withheld by any Namibian banking institution or Namibian unit trust scheme from any amount referred to in section 34A and paid to the Minister in terms of section 34D.

(2) A banking institution or unit trust scheme which is required to make a payment to the Minister in terms of subsection (1) is personally liable for making such payment, and the amount so payable -

- (a) is, for the purposes of this section, deemed to be a tax due by such institution or scheme; and
- (b) is recoverable from such institution or scheme in the manner prescribed in section 83.

(3) The banking institution or unit trust scheme from whom the tax in subsection (2) is recovered in terms of section 83 has the right of recovery from the person who is liable for the tax in terms of section 34B.

(4) Any amount which is paid by the banking institution or unit trust scheme and which is in excess of the withholding tax due may be set-off against future withholding tax payable, and if such excess amounts cannot be set-off against future payments, the Minister must refund the excess payments to the institution or scheme.

(5) Any tax withheld by the banking institution or unit trust scheme which is in excess of the withholding tax due must be refunded or credited by the institution, scheme or savings bank to the person from whose interest it was deducted or withheld.

(6) The banking institution or unit trust scheme must issue a certificate in a prescribed form within 60 days after the last day of February each year in respect of tax withheld in excess of N\$100 to every person or partnership to whom or in whose favour amounts referred to in section 34A were paid or have accrued, or to every agent or person acting on behalf of undisclosed principals where the interest accrued or were paid to or in favour of the undisclosed principals, and a certificate must show -

- (a) the total amounts of interest paid or accrued; and
- (b) the amounts of tax withheld on or after first March of any year and ending on the last day of February following that date,

provided that if funds are invested in a banking institution or unit trust scheme by a stock broker acting on behalf of undisclosed principals, the banking institution or unit trust scheme may issue one certificate to the stock broker for the total amount of tax withheld in respect of funds invested in this manner and the stock broker must then issue certificates to the undisclosed principals.

[subsection (6) amended by Act 5 of 2010
(amendment markings incomplete)]

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(7) The unit trust scheme must issue a return to the Minister in a prescribed form within 60 days after the last day of each financial year in respect of tax withheld in terms of the deemed distribution as contemplated in section 34A(4) and the return must show -

- (a) the total amount of the net interest accrued to or in favour of the unit trust scheme and not distributed by the unit trust scheme to its unit holders before the end of the financial year; and
- (b) the amount of withholding tax on the net interest deemed to be distributed.

[subsection (7) inserted by Act 5 of 2010]

[Section 34C is inserted by Act 5 of 2007, with effect from 1 March 2009 (section 12(6) of Act 5 of 2007).]

When withholding tax on interest is payable

34D. (1) The withholding tax on interest is payable within 20 days after the month following the month in which the interest accrued or was received or within such further period as the Minister may approve.

(2) A person paying the withholding tax must at the time of payment submit to the Minister a declaration in a prescribed form.

(3) If a banking institution or unit trust scheme fails to pay any amount of tax withheld within the prescribed period allowed for payment thereof in terms of subsection (1), such institution or scheme must pay a penalty equal to 10 per cent of such amount for each month or part thereof that the payment remains unpaid, reckoned from the first day of the month following the due date for payment, but such penalty may not exceed the amount of tax withheld.

(4) If the Minister is satisfied that the failure of the banking institution or unit trust scheme to pay the amounts withheld was not due to an intent to evade or postpone payment of tax or otherwise to evade its obligations under this Act, the Minister may cancel the whole or part of the penalty imposed under subsection (3).

(5) If a banking institution or unit trust scheme fails to pay any amount of tax withheld within the prescribed period allowed for payment thereof in terms of subsection (1), interest must be paid by such institution or scheme on the outstanding balance of such tax at the rate of 20 per cent per annum calculated as from the day immediately following the expiry of the period for payment so prescribed until the day of payment.

(6) Where a banking institution or unit trust scheme fails to pay any amount of withholding tax as a result of an incorrect information provided by a stock broker to a banking institution or unit trust scheme, and the Minister is satisfied that the failure was not due to an intent to evade or postpone payment of the withholding tax by the banking institution or unit trust scheme, the Minister may absolve the banking institution or unit trust scheme from its liability to pay the withholding tax, and recover the said tax, penalties and interest directly from the stock broker in such manner as the Minister may determine.

[subsection (6) inserted by Act 5 of 2010]

(7) The withholding tax on interest referred to in section 34A(4) is payable within 60 days after the last day of the financial year of the unit trust scheme.

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[Subsection (7) is inserted by Act 15 of 2011, with that insertion deemed to have come into force at the beginning of the year of assessment commencing on or after 1 March 2009, in terms of section 13(c) of Act 15 of 2011.]

[Section 34D is inserted by Act 5 of 2007, with effect from 1 March 2009 (section 12(6) of Act 5 of 2007).]

Persons and institutions not liable for withholding tax on interest

34E. Persons and institutions exempted from withholding tax on interest are -

- (a) the persons contemplated in section 16 of this Act to the extent that the Minister is satisfied that such persons are not liable;
- (b) the persons established by virtue of enabling legislation that are exempt from income tax; or
- (c) the foreign banking institutions which control and manage accounts of Namibian banking institutions where interest is initiated by the foreign banking institutions and where no relief is provided in agreements as contemplated by section 100 of the Act or any other tax refund relief is provided.

[section 34E inserted by Act 5 of 2010]

Assessment of persons not ordinarily resident or registered, managed or controlled in Namibia who derive income from royalties or similar payments

35. (1) Any person (not being a person who is ordinarily resident in Namibia or a domestic company) to whom any amount referred to in paragraph (b) or (c) of subsection (1) of section 15 is deemed to accrue from a source within Namibia, shall (apart from taxable income derived by him from other sources) be deemed to have derived from that amount a taxable income equal to thirty per cent of that amount.

- (2) (a) Any person who incurs a liability to pay to any other person (not being a person who is ordinarily resident in Namibia or a domestic company) any amount referred to in paragraph (b) or (c) of subsection (1) of section 15, or who receives payment of any such amount on behalf of such other person, shall within fourteen days after the end of the month during which the said liability is incurred or the said payment is received, as the case may be, or within such further period as the Minister may approve, make a payment (which shall be deemed to be an advance payment made on behalf of such other person) to the Minister in respect of such other person's obligation to pay normal tax for the year of assessment during which the said amount accrues to or is received by such other person, calculated on a sum equal to thirty per cent of the said amount at the rate of tax (excluding any loan portion) applicable to the taxable income (other than taxable income derived from mining operations) of companies, and shall submit to the Minister at the time of such tax payment a declaration in such form as the Minister may prescribe: Provided that -
 - (i) if the Minister is satisfied that the tax payment required to be made in terms of this paragraph in respect of the said amount has been or will be made by any person, the Minister may direct that any other person who is in terms of this paragraph required to make a tax payment in respect of the said amount, shall be relieved of the duty to make such payment;

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- (ii) for the purposes of this subsection a person having an address outside Namibia shall until the contrary is proved be deemed to be not ordinarily resident in Namibia or, in the case of a company, to be a company which is not a domestic company.
- (b) Any person making a payment to the Minister in terms of paragraph (a) shall, notwithstanding any agreement to the contrary, be entitled to deduct or withhold the amount of such payment from the amount which he is liable to pay to the aforesaid other person, or to recover the amount so paid from such other person or to retain out of any money that may be in his possession or may come to him as the agent of such other person an amount equal to the amount of such payment.
- (c) A taxpayer on whose behalf a payment has been made to the Minister in terms of paragraph (a) shall not be entitled to recover the amount of such payment from the person who under the provisions of paragraph (b) deducts, withholds or retains the amount of such payment and shall be deemed to have received the amount so deducted or withheld.
- (d) Every person who is required to make a payment to the Minister in terms of paragraph (a) shall be personally liable for making such payment, and the amount so payable shall be deemed to be a tax due by such person and shall be recoverable from him in the manner prescribed in section 83.
- (e) Nothing in this section contained shall be construed as relieving any person to whom the provisions of subsection (1) apply from the obligation to render a return of income for any year of assessment or from paying any tax for which he may be liable or as depriving him of the right to prove for the purposes of section 94 that payments made on his behalf in terms of paragraph (a) in respect of any year of assessment were in excess of the amount of normal tax properly chargeable under this Act in respect of income received by or accrued to him during such year.

Deduction or withholding of tax on services rendered by non-residents

35A. (1) For the purposes of this section -

“entertainment fee” means any amount payable to an entertainer (including a cabaret, motion picture, radio, television or theatre artiste and any musician) or a sportsperson, and includes any payment made to any other person in relation to such activity;

“management or consultancy fee” means any amount payable for administrative, managerial, technical or consultative services or any similar services, whether such services are of a professional nature or not;

“resident person” means -

- (a) the State, a regional council or a local authority in Namibia; or
- (b) a natural person ordinarily resident in Namibia; or
- (c) a company, partnership, board or trust which is formed or established or incorporated under the laws of Namibia or which is managed or controlled in Namibia.

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(2) A resident person who becomes liable to pay, whether directly or indirectly, any management fee, consultancy fee, director's fee or entertainment fee to a non-resident must deduct or withhold tax from such payment in accordance with subsection (3).

(3) The rate of tax is 25 per cent of any fees specified in subsection (1).

(4) For the purposes of this section, "non-resident" means -

- (a) a person, other than a company, not ordinarily resident or carrying on business in Namibia; or
- (b) a company neither managed nor controlled in Namibia.

(5) Despite subsection (3), a person or company to whom any payment is made to which this section applies is presumed, unless the contrary is proved, to be a non-resident if such payment is made to an address outside Namibia.

(6) Where a resident person pays withholding tax under subsection (2) at the rate specified in subsection (3), it is a final charge to tax and does not form part of the assessable income.

(7) A resident person who -

- (a) fails to deduct or withhold an amount of tax in terms of subsection (2) and (3) from any payment made to a non-resident; or
- (b) deducts or withholds an amount of tax but fails to pay that amount over in terms of subsection (8),

is liable for payment of the amount of tax which may be recovered from the resident person in terms of this Act as if it is a tax due by the resident person.

(8) The amount of withholding tax deducted or withheld in terms of subsection (2) is payable within 20 days after the end of the month during which the amount was deducted or withheld.

(9) A resident person paying the withholding tax must, together with the payment contemplated in subsection (2), submit to the Minister a return in the manner and form and containing the information as prescribed by the Minister.

(10) If a resident person fails to pay an amount for which he or she is liable under this section within the period allowable for payment thereof, in addition to any other penalty or charge for which he or she may be liable under this Act, is liable for a penalty equal to 10 per cent of the amount of withholding tax for each month or part thereof reckoned from the first day after the due date to the date of payment of such unpaid amount.

(11) A penalty imposed under subsection (10) -

- (a) may not exceed the amount of withholding tax; and
- (b) is in addition to interest payable in terms of subsection (13).

(12) A penalty paid by the resident person under subsection (10) must be refunded to such person to the extent that the tax to which it relates is subsequently determined not to have been due and payable.

(13) If a resident person fails to pay an amount for which he or she is liable under this section within the period allowable for payment thereof, in addition to any other penalty or charge for which he or she may be liable under this Act, is liable for interest on the outstanding withholding tax at the rate of 20 per cent per annum calculated as from the day immediately following such due date for payment until the day of payment.

(14) The interest levied may not exceed the amount of the withholding tax.

[section 35A inserted by Act 15 of 2011]

Calculation of redemption allowances of capital expenditure in connection with mining operations

36. (1) The capital expenditure to be deducted under section 18(1)(a) from income derived during a year of assessment from the working of a mine may consist of either exploration expenditure or development expenditure or both exploration expenditure and development expenditure incurred during the year of assessment in question, but subject to subsections (2) and (3).

(2) Where a mine commences with production for the first time in a year of assessment all exploration expenditure incurred before such year of assessment shall for the purposes of subsection (1) be deemed to have been incurred in that year of assessment.

(3) The amount of any development expenditure incurred during a year of assessment shall not be fully deductible in the same year of assessment, but shall be deducted, one-third in the year of assessment in which such expenditure is incurred, one-third in the first ensuing year of assessment and one-third in the second ensuing year of assessment: Provided that where a mine commences with production for the first time in a year of assessment all development expenditure incurred before such year of assessment shall for the purposes of this subsection be deemed to have been incurred in that year of assessment.

(4) For the purposes of this section -

“development expenditure” means expenditure actually incurred, whether directly or indirectly, in or in connection with the carrying out of development operations in any area in Namibia, including expenditure incurred in respect of -

- (a) the acquisition of motor vehicles, machinery, implements, utensils and other articles used for purposes of such operations, including pipes, units for purposes of production, treatment and processing, wellhead equipment, subsurface equipment, enhanced recovery systems, onshore and offshore drilling;
- (b) the acquisition of furniture, tools and equipment used in offices and accommodation referred to in paragraph (c) of the definition of “development operations” and in warehouses, export terminals, harbours, piers, marine vessels, vehicles, motorised rolling equipment, aircraft, fire and security stations, water and sewage plants and power plants;
- (c) labour, fuel, haulage, supplies, materials and repairs in connection with development operations;
- (d) charges, fees or rent for, or in respect of, land or buildings occupied for purposes of carrying out development operations;

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- (e) the general administration and management directly connected with development operations;

“development operations” means operations carried out for or in connection with the development of a mine and includes -

- (a) the sinking of shafts;
- (b) the installation of machinery, implements, utensils and other articles required for the purpose of mining operations;
- (c) the construction and erection of -
- (i) facilities for production, storage, gathering and conveyance of minerals;
- (ii) offices and residential accommodation for the use by persons employed in or in connection with mining operations, or facilities for purposes of health, education and recreation;
- (d) the construction of roads in or to the area where mining operations are or will be carried out;

“exploration expenditure”, means expenditure actually incurred, whether directly or indirectly, in or in connection with the carrying out of exploration operations in any area in Namibia, including expenditure actually incurred in respect of -

- (a) the acquisition of motor vehicles, machinery, implements, utensils and other articles employed for purposes of such operations, including pipes, wellhead equipment and subsurface and drilling equipment;
- (b) labour, fuel, haulage, supplies, materials and repairs in connection with exploration operations;
- (c) charges, fees or rent for, or in respect of, land or buildings occupied for purposes of carrying out exploration operations;
- (d) the general administration and management directly connected with exploration operations;

“exploration operations” means any operations carried out for or in connection with the exploration for minerals, and includes -

- (a) geological, geophysical, geochemical, palaeontological, aerial, magnetic, gravity or seismic surveys;
- (b) the study of the feasibility of any mining operations or development operations to be carried out or of the environmental impact of such operations.

[section 36 amended by Act 3 of 1991 and substituted by Act 25 of 1992]

Calculation of capital expenditure on change of ownership of mining property

37. (1) Whenever there takes place a change of ownership of a mining property the Minister shall allow to rank as capital expenditure by the new owner the effective value to him

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at the time the change of ownership takes place, of the preliminary surveys, boreholes, shafts, development and equipment included in the assets passing by such change of ownership: Provided that if, in a case in which consideration is given, the effective value of the assets so passing exceeds the consideration, the amount allowed to rank for deduction by the new owner shall be such proportion of the consideration as such effective value of the preliminary surveys, boreholes, shafts, development and equipment bears to the effective value of all the assets passing.

(2) The amount allowed to rank as capital expenditure by the new owner under the provisions of subsection (1) shall for the purposes of paragraph (h) of the definition of “gross income” in section 1 be deemed to be a recoupment from capital expenditure by the person from whom ownership was acquired.

(3) If the value of the consideration given or of the property passing where no consideration is given is in dispute, it may be fixed by the Minister if the new owner consents thereto, otherwise the value shall be determined in the same manner as if transfer duty were payable.

(4) The effective value, at the time the change of ownership takes place, of the assets passing shall be determined by an Inspector of Mines who for the purposes of such determination, notwithstanding the repeal of the Transvaal Mining Leases and Mineral Law Amendment Act, 1918 (Act 30 of 1918), shall *mutatis mutandis* have all the powers which were conferred upon the Government Mining Engineer by the provisions of the Second Schedule thereof.

Part II

Special Provisions Relating to Companies

Classification of companies

38. (1) For the purposes of this Act a company shall in respect of each year of assessment be recognized as either a public or a private company, and the Minister shall upon the request of any company inform that company whether it is recognized as a public company or as a private company.

(2) The following companies shall, subject to the provisions of section 39, be recognized as public companies, namely -

- (a) Any company all classes of whose equity shares are publicly quoted on the specified date by a stock exchange in the list issued under its authority, provided the Minister is satisfied -
 - (i) that the stock exchange is a recognized and *bona fide* stock exchange under adequate control;
 - (ii) that the rules and regulations of the stock exchange for granting and continuing a quotation for the purchase and sale of shares provide for full protection of the interests of the public in regard to dealings in the shares of the company;
 - (iii) that the memorandum and articles of association of the company contain no such restrictions on the right to acquire or transfer any of its shares as are

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likely to preclude members of the general public from becoming shareholders in any class of the company's shares; and

- (iv) that the general public was throughout the year of assessment in question interested either directly as shareholders in the company or indirectly as shareholders in any other company, in more than forty per cent of every class of equity shares issued by the company;
- (b) any other company, not being a private company as defined in section 20 of the Companies Act, 1973 (Act 61 of 1973), in respect of which the Minister is satisfied -

[The Companies Act 61 of 1973 has been replaced by the Companies Act 28 of 2004.]

- (i) that the general public was throughout the year of assessment in question interested either directly as shareholders in the company or indirectly as shareholders in any other company, in more than fifty per cent of every class of equity shares issued by the company; and
 - (ii) that the business of the company is conducted and its profits are distributed in such manner that no person enjoys or receives or is entitled to enjoy or receive, by reason of shareholding, participation in the management or otherwise, any advantage which would not be enjoyed or received by him if the company had been under the control of a board of directors acting in the best interests of all its shareholders and had been one which could have been recognized as a public company under paragraph (a);
 - (c) any company which the Minister is satisfied was incorporated to serve a specified purpose, beneficial to the public or a section of the public, if under the constitution of the company no shareholder is entitled to participate in the profits or income of the company to an extent greater than seven per cent of the nominal value of his shareholding;
 - (d) any society or company registered under the Co-operative Societies Ordinance, 1946 (Ordinance 15 of 1946);
 - (e) any insurance society or company subject to assessment in terms of section 32;
 - (f) any public utility company, established by law;
 - (g) any company the sole or principal business of which in Namibia is mining for gold or diamonds;
 - (h) any company to which the provisions of section 34 apply; and
 - (i) any unit portfolio referred to in paragraph (e) of the definition of "company" in section 1.
- (3) A company which is not recognized as a public company shall be recognized as a private company.
- (4) For the purposes of this section -
- (a) the general public in relation to any company (in this paragraph referred to as the company) shall be deemed not to include -

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- (i) any director of the company; or
 - (ii) any relative of any director of the company, unless it is shown to the satisfaction of the Minister that such relative, if he is not the spouse or minor child of such director, has at all times which the Minister considers relevant exercised his rights as a shareholder in the company or in any other company through which such relative is interested in the shares of the company, independently of such director; or
 - (iii) the executor of the deceased estate or the trustee of the insolvent estate of any person referred to in subparagraph (i) or (ii); or
 - (iv) any person to the extent that he acts in a fiduciary capacity, or as a nominee, for the benefit of any person who is not in fact or in terms of any other provision of this subsection a member of the general public in relation to the company; or
 - (v) any man or his wife or any minor child of any man or his wife, if one or more of such persons are directly or indirectly interested (otherwise than by virtue of any shareholding in any public company or any private company which is interested in the shares of the company through a direct or indirect interest in the issued share capital of a public company) in altogether more than fifteen per cent of any class of equity shares issued by the company;
- (b) the general public in relation to any company (in this paragraph referred to as the company) shall be deemed to include -
- (i) any benefit fund, pension fund, provident fund or retirement annuity fund or any trust or institution which in the opinion of the Minister is of a public character; and
 - (ii) any person to the extent that he acts in a fiduciary capacity, or as a nominee, for the benefit of any person who is in fact or in terms of any other provision of this subsection a member of the general public in relation to the company;
- (c) where any person -
- (i) being a public company, is indirectly interested in any shares of any other company; or
 - (ii) being a member of the general public in relation to any company, is indirectly interested in any shares of that company,

by virtue of his being a shareholder in any private company and such interest is not attributable to a direct or indirect interest of such private company in the issued share capital of a public company, the said person shall be deemed to be interested in only that portion of such shares as the Minister is satisfied such person would be entitled to receive if every company through which that person is interested in those shares were to be wound up or liquidated and the assets of each such company were, without regard to its liabilities, to be distributed among its shareholders;

- (d) where persons are jointly interested, whether directly or indirectly, but otherwise than through a direct or indirect interest in the issued share capital of a public company, in the shares of any company, each such person shall be deemed to be

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interested in only such proportion of those shares as the Minister is satisfied he would be entitled to receive if the joint interest of all such persons in such shares were to be divided between such persons.

Redetermination of company's status

39. If owing to changes in the constitution or shareholding of any company which has been recognized as a public company under paragraph (a), (b) or (c) of subsection (2) of section 38, or for any other reason, the Minister is no longer satisfied of the matters of which he is in terms of the applicable paragraph required to be satisfied, or the company ceases to comply with the requirements of that paragraph, the Minister may notify the public officer of the company that it will as from the next succeeding specified date be recognized as a private company

Objection and appeal

40. The decision of the Minister in the exercise of his discretion under paragraph (a), (b) or (c) of subsection (2) of section 38 shall be subject to objection and appeal.

Part III**Non-resident Shareholders' Tax****Levy of non-resident shareholders' tax**

41. There shall be paid for the benefit of the State Revenue Fund, a tax (referred to in this Act as the non-resident shareholders' tax) in respect of the amounts specified in section 42.

Income subject to tax

42. (1) The non-resident shareholders' tax shall be paid in respect of the amount of any dividend (including an interim dividend) which has been declared by any company if the shareholder to whom the dividend or interim dividend has been paid or is payable is -

- (i) a person, other than a company, and not ordinarily resident nor carrying on business in Namibia; or
- (ii) a deceased estate of any person who at the date of his or her death was not ordinarily resident nor carrying on business in Namibia; or

[subparagraph (ii) amended by Act 25 of 1992]

- (iii) a company neither managed nor controlled in Namibia; or
- (iv) a company (whether or not managed and controlled in Namibia) more than fifty per cent of the issued share capital or equity share capital (as defined in section 1 of the Companies Act, 1973 (Act 61 of 1973)), of which is held, either directly or through a nominee or some other company or companies, for the direct or indirect benefit of one or more companies neither managed nor controlled in Namibia; or

[The Companies Act 61 of 1973 has been replaced by the Companies Act 28 of 2004.]

- (v) the holder of bearer scrip, irrespective of whether he is resident within or outside Namibia,

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and was a shareholder as at the date of declaration of the dividend, or if some date other than the date of declaration of the dividend is specified as the date at which a shareholder is required to be registered to be entitled to the dividend, as at such other date.

- (2) For the purposes of this Part, where any cash is given or any assets are given -
 - (a) by a company to shareholders of that company otherwise than by way of a formal declaration of a dividend; or
 - (b) by the liquidator of a company to the shareholders of that company in the course of the winding-up or liquidation of that company,

and the amount of such cash or the value of such assets in whole or in part constitutes a dividend in terms of the definition of "dividend" in section 1, such dividend shall be deemed to have been declared by the company concerned on the date on which the shareholders became entitled to such cash or such assets.

Person liable for tax

43. The person liable for the tax shall be the person to whom or in whose favour the amounts described in section 42 accrue or are deemed to accrue.

Recovery of tax

44. (1) Notwithstanding the provisions of section 43 the tax shall be payable by and recoverable from the persons set out hereunder, namely -

- (a) in the case of dividends distributable by any company to any person whose address appearing in the share register of the company is outside Namibia, or to any holder of bearer scrip, the company by which the dividend is declared; or
- (b) in the case of dividends received by any agent in Namibia on behalf of any shareholder referred to, in section 42, the agent so receiving the dividend; or
- (c) in the case of dividends distributable by any company to any shareholder referred to in section 42(1)(iii) or (iv), the company by which the dividend is declared.

(2) For the purposes of this section a person shall be deemed to be the agent of a shareholder referred to in section 42 and shall be deemed to have received a dividend on behalf of that shareholder if that person's address appears in the share register of the company as the registered address of the shareholder and the dividend warrant or cheque in payment of the dividend distributable to the shareholder is delivered at that address: Provided that any person so deemed to be the agent of any shareholder shall as regards such shareholder and in respect of any income received by or accruing to him or in his favour have and exercise all the powers, duties and responsibilities of an agent for a taxpayer absent from Namibia.

(3) Nothing contained in subsection (2) shall be construed as relieving any company by which a dividend is declared from the duties and responsibilities imposed upon it by section 90 as the agent of any shareholder or member absent from Namibia.

(4) Any tax payable in terms of this section by any company or agent for any shareholder may be recovered by such company or such agent, as the case may be, from the shareholder concerned.

Income Tax Act 24 of 1981**Rate of tax**

- 45.** The rate of tax is -
- (a) 10 per cent of the amounts specified in section 42 if the beneficial owner is a company which holds directly or indirectly at least 25 per cent of the capital of the company paying the dividends; or
 - (b) 20 per cent of the amounts specified in section 42 in all other cases.

[Section 45 is amended by AG 10 of 1985 with effect from 1 September 1984 (section 9(2) of AG 10 of 1985) and by Act 25 of 1992 with effect from 25 September 1992 (section 22(2) of Act 25 of 1992 read together with section 12) (not all changes indicated by amendment markings). It is then substituted by Act 15 of 2011.]

Determination of tax if company also operates outside territory

[Act 12 of 1991 directs the substitution of "Namibia" for the phrase "the territory", and not "territory" on its own. However, the heading of this section should probably be "Determination of tax if company also operates outside Namibia".]

46. (1) If any amount specified in section 42 has been received or is deemed to have been received from a company which derives income from sources within and outside Namibia, the tax payable in respect of that amount shall be calculated upon an amount which bears to that amount the same ratio as the sum of the net profits of the company derived from sources in Namibia bears to the total sum of the net profits derived from all sources as last determined by the Minister, or in cases in which there has been no previous determination by the Minister, as estimated by the Minister according to such information as is available to him.

(2) Where such company is a company referred to in section 42(1)(iv), any dividend derived by such company on which the non-resident shareholders' tax has been paid, shall, for the purposes of this section, be deemed to have been derived by such company from a source outside Namibia.

Date of payment of tax

47. (1) The company which in terms of section 44(1)(a) or (c) is required to pay the tax on any dividend shall pay to the Minister the tax due on such dividend within thirty days of the date on which the dividend is payable or within such further period as may be approved by the Minister and shall furnish him with a return showing the names and addresses of the persons (with the amount in each case) to whom the dividend accrues and in the case of dividends payable in respect of bearer scrip the total dividends distributable to holders of such scrip.

(2) The agent in Namibia by whom the tax is payable in terms of section 44(1)(b) shall, within thirty days of the date of delivery of the dividend warrant or cheque in payment of the dividend at his address, or within such further period as may be approved by the Minister, pay the tax to the Minister and furnish him with a return showing the amount of the dividend and the name and address of the person to whom it has accrued.

(3) The provisions of subsections (1) and (2) shall not prevent the Minister from recovering from the person liable any tax which has not been paid and which the Minister may ascertain to be due, after the dates specified in the said subsections.

Exemptions

- 48.** The non-resident shareholders' tax shall not be charged in respect of -

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- (a) dividends received or deemed to have been received from -
 - (i) any society or company registered under the Co-operative Societies Ordinance, 1946 (Ordinance 15 of 1946), as amended; or
 - (ii) any insurance society or company subject to assessment in terms of section 32 of this Act; or
 - (iii) any public utility company, established by law;
- (b) so much of the amount of any dividend declared by any company as is proved to the satisfaction of the Minister to have been distributed -
 - (i) out of taxable income derived by such company from mining for natural oil in Namibia; or
 - (ii) out of dividends received by such company from any other company all the issued shares of which are held for its own benefit by the first-mentioned company, to the extent that such dividends are proved to the satisfaction of the Minister to have been distributed by such other company out of taxable income derived by such other company from mining for natural oil in Namibia;
- (c) dividends accruing to any person in the form of an annuity derived from a source within Namibia.

Part IV

Undistributed Profits Tax

[sections 49-54 deleted by Act 12 of 1991]

CHAPTER III

GENERAL PROVISIONS

Part I

Returns

Returns to be in form prescribed by Minister

55. All forms of returns and other forms required for the administration of this Act shall be in such form as may be prescribed by the Minister from time to time.

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

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56. (1) Subject to subsections (4), (5) and (16), every person who is personally or in a representative capacity liable to taxation under this Act in respect of a year of assessment, shall not later than the last day fixed by subsection (1A) -

- (a) furnish a return of income in the prescribed form, which shall -
 - (i) be signed by the person or the duly authorised agent of the person; and
 - (ii) include a computation of the taxable income of the person and of the amount of tax payable on that income, calculated in accordance with the rates of normal tax set out in Schedule 4; and
- (b) subject to subsection (3), pay the amount of the tax due in accordance with that computation.

[Subsection (1) is amended by Act 21 of 1999 (amendment markings incomplete), with this amendment deemed to have come into force at the beginning of the year of assessment commencing on or after 1 March 1998 (section 9(2)(a) of Act 21 of 1999). It is substituted by Act 7 of 2002, with this substitution deemed to have come into force (a) in relation to a taxpayer other than a company, at the beginning of the year of assessment commencing on or after 1 March 1999; and (b) in relation to a company, at the beginning of the year of assessment of such company commencing on or after 1 January 1999 (section 9(2) of Act 7 of 2002).]

(1A) The last day for the furnishing of a return of income and payment of the tax due in terms of subsection (1) is -

- (a) in relation to a taxpayer other than a person referred to in paragraph (b), the last day of June following the end of the year of assessment;
- (b) in relation to a taxpayer -
 - (i) which is a company; or
 - (ii) who derives income wholly or partially from business, any profession or farming carried on by the taxpayer,

the last day of the 7th month after the end of the year of assessment.

[Subsection (1A) is inserted by Act 7 of 2002, with this insertion deemed to have come into force (a) in relation to a taxpayer other than a company, at the beginning of the year of assessment commencing on or after 1 March 1999; and (b) in relation to a company, at the beginning of the year of assessment of such company commencing on or after 1 January 1999 (section 9(2) of Act 7 of 2002).]

(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, on good cause shown -
- (a) for all taxpayers, or for certain categories of taxpayers, extend the due date for -

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- (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

[The word "section" should not be capitalised.]

- (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.

[subsection (3) substituted by Act 21 of 1999, with this substitution deemed to have come into force at the beginning of the year of assessment commencing on or after 1 March 1997 (section 9(2)(b) of Act 21 of 1999).]

- (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 from remuneration as defined in paragraph 1 of Schedule 2 paid by the employer referred in subparagraph (i); and

[Subparagraph (ii) is amended by Act 5 of 2007, with effect from 1 March 2009 (section 12(6) of Act 5 of 2007). The phrase "from remuneration" should be "of remuneration".]

- (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) 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

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- (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.

[Subsection (5) is substituted by Act 21 of 1999, with this substitution deemed to have come into force at the beginning of the year of assessment commencing on or after 1 March 1998 (section 9(2)(a) of Act 21 of 1999).]

(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 -

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

[Act 5 of 1982 (Rehoboth) deletes subsection (12) for the purpose of "the application of the Act and any amendment thereof to citizens of Rehoboth".]

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

[Subsection (17) is amended by Act 21 of 1999 (amendment markings incomplete), with this amendment deemed to have come into force at the beginning of the year of assessment commencing on or after 1 March 1998 (section 9(2)(a) of Act 21 of 1999).]

[Section 56 is amended by AG 10 of 1985, Act 10 of 1993 and Act 22 of 1995. It is also substituted by Act 5 of 1997, with this substitution deemed to have come into force (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 1997; 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 1997 (section 12(a) of Act 5 of 1997).]

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57.

[section 57 deleted by Act 25 of 1992]

Income of married women and minor children

58. (1)

[subsection (1) deleted by Act 25 of 1992]

(2)

[subsection (2) deleted by Act 25 of 1992]

- (3) (a) Every parent shall be required to include in his or her return any income received by or accrued to or in favour of, or deemed to have been received by or accrued to or in favour of any of his or her minor children either directly or indirectly from himself or herself, as the case may be, together with such particulars as may be required by the Minister.
- (b) Every parent shall be required to include in his or her return any income deemed to be his or hers in terms of section 12(3) or (4).

[subsection (3) amended by Act 25 of 1992]

Duty to furnish returns as to employees, their earnings and other matters

59. (1) Every person shall, 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 the Minister in such form as may be prescribed returns showing -

[introductory phrase of subsection (1) amended by Act 21 of 1999]

- (a) the names and addresses of all persons employed by him or her, and the earnings, salary, 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;

[paragraph (a) amended by Act 21 of 1999]

- (b) all amounts received by or accrued to or in favour of any person in respect of any share or interest in any business carried on by the person furnishing the return;

(c)

[paragraph (c) deleted by Act 21 of 1999]

- (d) all interest, 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;

[paragraph (d) amended by Act 21 of 1999]

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- (e) all interest, rent or dividends collected for or on behalf of any person by the person furnishing the return;
- (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.

[paragraph (f) amended by Act 21 of 1999]

(2) In addition to the returns specified in subsection (1), every person, whether a taxpayer or not, shall, if required by the Minister, supply such information and furnish such returns or such further or other returns as the Minister may require.

(3) Every person to whom a form of return or a written request for information is sent by the Minister shall complete the form of return or comply with the written request for information in accordance with the requirements of the Minister and shall return the completed form or furnish the information to the Minister at such place and within such time as the Minister may direct.

Duty of companies to furnish returns

60. (1) Where, during any period of twelve months ending on the last day of February in any year, any interest has become due by any company upon or in respect of debentures, debenture stock, loans or advances, the company shall, within thirty days after the end of such period or within such further period as the Minister may allow, furnish the Minister with a return giving the full name and address of each person to whom such interest became due and the amount of such interest.

(2) Where, during any period of twelve months ending on the last day of February in any year, any cash or any asset the amount or value of which in whole or part constitutes a dividend as defined in section 1, is given to shareholders in any company or a company distributes to shareholders any amount which constitutes a dividend so defined, whether by way of an award of capitalization shares or bonus debentures or securities or otherwise, the company concerned shall, within thirty days after the end of the said period, or within such further period as the Minister may allow, furnish the Minister with a return giving the full name and address of each shareholder and the amount of the dividend accruing to such shareholder.

(3) Every company which has transferred from its reserves (excluding any share premium account) or unappropriated profits to its share capital or share premium account any amount which is in whole or part deemed by the second proviso to the definition of "dividend" in section 1 to be a profit available for distribution to shareholders of the company, shall, when rendering the annual return of the company's income, furnish the Minister with a statement (which may be included in the accounts or statements accompanying such return) showing the profits of a capital nature and those not of a capital nature so deemed to be available for distribution on the last day of the year of assessment in question.

(4) Where any cash or any asset (including any asset, interest, benefit or advantage referred to in the third proviso to the definition of "dividend" in section 1) is given to any shareholder of a company in consequence of the winding-up, liquidation or reconstruction of the company or the partial reduction or redemption of its share capital (including any share premium), and the amount of such cash or the value of such asset or a portion of such amount or value constitutes a dividend in terms of the said definition the company shall, before payment to the shareholders is effected or within such period as the Minister may approve, calculate the amount of such dividend and furnish the Minister with a written statement setting forth the facts

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necessary for a determination by the Minister of the amount of such dividend and giving details of the company's calculation of that amount.

(5) Within thirty days after the date of an advice by the Minister of the amount of any dividend determined by him as contemplated in subsection (4) or within such further period as the Minister may approve, the company shall, on the basis of the Minister's determination, calculate the amount accruing to each shareholder by way of such dividend and notify the shareholder accordingly.

(6) Every company shall file with the Minister a copy of the memorandum and articles of association constituting the company and copies of all amendments thereto.

(7) Every company shall, within thirty days of the registration by the Registrar of Companies of any prospectus proposed to be issued by it, file with the Minister a copy of the prospectus.

Return of payments in respect of bearer warrants

61. Every bank carrying on business in Namibia or company dealing in or negotiating bearer warrants shall keep a record of all payments in respect of interest or dividends made to any person by means of bearer warrants, and shall in such manner and form and at such times as may be prescribed or as the Minister may require, furnish particulars of such payments.

Return as to shareholdings

62. Every person who makes a return of his own income or in a representative capacity makes a return of the income of some other person, shall attach to such return a statement showing fully -

- (a) the number of shares in any company registered in the name of the taxpayer for whom the return is rendered;
- (b) the dividends from any company received by or accrued to the taxpayer for whom the return is rendered;
- (c) the name and address of the person, if the taxpayer for whom the return is rendered is not entitled to retain the dividends received or accrued from any company, or, in the case of a private company, to participate in the profit or income of any such company, who, under any agreement or arrangement, is entitled to receive and retain such dividends or to participate in such profit or income;
- (d) the number of shares in any company which are not registered in the name of the taxpayer for whom the return is rendered but in respect of which such taxpayer under an agreement or arrangement with the registered owner obtains all dividends payable by such company or in the case of a private company the rights of the registered owner to participate in the profit or income of such company;
- (e) the dividends so received by the taxpayer for whom the return is rendered from the person in whose name such shares are registered.

Power of Minister to require submission of certified financial statements in support of returns

62A. The Minister may require any taxpayer to submit, in support of any return furnished by such taxpayer, financial statements certified by an accountant registered with the

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Institute of Chartered Accountants of Namibia or by any other person who is a member of any association or body representing any profession involved in the performance of functions in accounting and related fields similar to those performed by members of the Institute of Chartered Accountants and which has been approved by the Minister.

[section 62A inserted by Act 17 of 1994]

Duty of persons submitting accounts in support of returns or preparing accounts for other persons

63. (1) If any person submits in support of any return furnished by him under this Act any balance sheet, statement of assets and liabilities or account prepared by any other person, he shall, if the Minister so requires, submit a certificate or statement by such other person recording the extent of the examination by such other person of the books of account and of the documents from which the books of account were written up, and recording in so far as may be ascertained by such examination, whether or not the entries in such books and documents disclose the true nature of any transaction, receipt, accrual, payment or debit.

(2) Any person who has prepared any balance sheet, statement of assets and liabilities or account for any other person shall, at the request of such other person, furnish him with the certificate or statement required under subsection (1).

Production of documents and evidence on oath

64. (1) For the purpose of obtaining full information in respect of any income of any taxpayer or of any part thereof, the Minister may require any person to produce for examination by the Minister, or by any person appointed by him or her for that purpose, at such time and place as may be appointed by the Minister in that behalf, any deeds, plans, instruments, books, accounts, trade lists, stock lists or documents which the 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 language the 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 the English language prepared and certified by a sworn translator or a person other than a sworn translator approved by the Minister.

[subsection (1) amended by Act 12 of 1996]

(2) (a) The Minister may by notice in writing require any person entitled to or in receipt of any income (whether on his own behalf or as the representative of any person) or any person whom the Minister may deem able to furnish information, to attend at a time and place to be named by the Minister for the purpose of being examined on oath respecting the income of any such person or any transactions or matters affecting the same or any of them or any part thereof.

(b) Any person so attending may be allowed by the Minister any reasonable expenses necessarily incurred by him in so attending.

(3) Any officer or employee engaged in carrying out the provisions of this Act who has in relation to the affairs of a particular person been authorized thereto by the Minister in writing or by telegram, may, for the purposes of the administration of this Act -

(a) without previous notice, at any time during the day enter any premises whatsoever and on such premises search for any moneys, books, records, accounts or documents;

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- (b) in carrying out any such search, open or cause to be opened or removed and opened, any article in which he suspects any moneys, books, records, accounts or documents to be contained;
- (c) seize any such books, records, accounts or documents as in his opinion may afford evidence which may be material in assessing the liability of any person for any tax;
- (d) retain any such books, records, accounts or documents for as long as they may be required for any assessment or for any criminal or other proceedings under this Act.

(4) Any authorized person exercising any power under subsection (3) shall on demand produce the written authority furnished to him by the Minister.

(5) The person to whose affairs any books, records, accounts or documents seized under subsection (3) relate, shall be entitled to examine and make extracts from them during office hours under such supervision as the Minister may determine.

Penalty on default

65. (1) Any person who -

- (a) fails or neglects to furnish, file or submit any return or document as and when required by or under this Act; or
- (b) without just cause shown by him, refuses or neglects to furnish any information or reply or to attend and give evidence as and when required by the Minister or any officer or employee duly authorized by him or to answer truly and fully any questions put to him or to produce any books or papers required of him by the Minister or any such officer or employee; or
- (c) fails to show in any return made by him any portion of the gross income received by or accrued to or in favour of himself or fails to disclose to the Minister, when making such return, any material facts which should have been disclosed; or
- (d) fails to show in any return prepared or rendered by him on behalf of any other person any portion of the gross income received by or accrued to or in favour of such other person or fails to disclose to the Minister, when preparing or making such return, any facts which, if so disclosed, might result in increased taxation; or
- (e) obstructs or hinders any officer or employee in the discharge of his duties; or
- (f) not being a person whose gross income consists solely of salary, wages or similar compensation for personal service, without just cause shown by him fails to retain for a period of five years from the date of the last entry therein all ledgers, cash books, journals, cheque books, bank statements, deposit slips, paid cheques, invoices, stock lists and all other books of account relating to any trade carried on by him and recording the details from which his returns for assessment of taxes under this Act or any previous income tax law were prepared; or
- (g) submits or furnishes a false certificate or statement under section 63,

shall be guilty of an offence and liable on conviction to a fine not exceeding three hundred rand or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

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(2) The Minister may, subject to such conditions as he may determine, and in respect of such books (other than ledgers, cash books and journals) or documents as he may specify, authorize the retention of a microfilm copy of any book or document referred to in subsection (1) in lieu of the original thereof.

(3) Any person who has been convicted under subsection (1) of failing to furnish any return, information or reply shall, if he fails within any period deemed by the Minister to be reasonable and of which notice has been given to him by the Minister, to furnish the return, information or reply in respect of which the offence was committed, be guilty of an offence and liable on conviction to a fine of thirty rand for each day during which such default continues or to imprisonment without the option of a fine for a period not exceeding three months.

Additional tax in the event of default or omission

66. (1) A taxpayer shall be required to pay in addition to the tax chargeable in respect of his taxable income -

- (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

[Paragraph (a) is amended by Act 21 of 1999 (amendment markings incomplete), with those amendments deemed to have come into operation at the beginning of the year of assessment commencing on or after 1 March 1998 (section 11(2) of Act 21 of 1999).]

- (b) if he omits from his return any amount which ought to have been included therein, an amount equal to twice the difference between the tax as calculated in respect of the taxable income returned by him and the tax properly chargeable in respect of his taxable income as determined after including the amount omitted;
- (c) if he makes an incorrect statement in any return rendered by him which results or would if accepted result in the assessment of the normal tax at an amount which is less than the tax properly chargeable, an amount equal to twice the difference between the tax as assessed in accordance with the return made by him and the tax which would have been properly chargeable.

- (2) (a) The Minister may remit the additional charge imposed under subsection (1) or any part thereof as he may think fit: Provided that, unless he is of the opinion that there were extenuating circumstances, he shall not so remit if he is satisfied that any act or omission of the taxpayer referred to in paragraph (a), (b) or (c) of subsection (1) was done with intent to evade taxation.

- (b) In the event of the Minister deciding not to remit the whole of the additional charge imposed under subsection (1), his decision shall be subject to objection and appeal.

- (c) Notwithstanding the provisions of this subsection, the Minister may either before or after an assessment is issued agree with the taxpayer on the amount of the additional charge to be paid, and the amount so agreed upon shall not be subject to any objection and appeal.

(3) The additional amounts of tax for which provision is made under this section shall be chargeable in cases where the taxable income or any part thereof is estimated by the Minister in terms of section 68 or agreed upon with the taxpayer in terms of the proviso to subsection (2)

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of the said section as well as in cases where such taxable income or any part thereof is determined from accounts rendered by the taxpayer.

(4) The powers conferred upon the Minister by this section shall be in addition to any right conferred upon him by this Act to take proceedings for the recovery of any penalties for evading or avoiding assessment or the payment of tax, or attempting to do so.

(5) Any taxpayer who in determining his taxable income as disclosed by his return, deducts or sets off any amount the deduction or set-off whereof is not permissible under the provisions of this Act, or shows as an expenditure or loss any amount which he has not in fact expended or lost, shall be deemed for the purposes of this section to have omitted such amount from his return.

(6) Any taxpayer who wilfully fails to disclose in any return made by him any facts which should be disclosed and the disclosure of which would result in the taxation of the taxpayer's income on an amount which is higher than the amount upon which such income would be taxable on such return, shall for the purpose of this section be deemed to have omitted from his return the amount by which the former amount exceeds the latter.

(7) If in any year of assessment in which the determination of the taxable income of the taxpayer does not result in an assessed loss, he is entitled to the set-off of a balance of assessed loss from the previous year of assessment and such balance is less than it would have been had it been calculated on the basis of the returns rendered by him, he shall for the purposes of this section be deemed to have omitted from his return for the first-mentioned year of assessment an amount equal to the difference between the amount at which such balance is finally determined and the amount at which it would have been determined on the said basis.

Part II

Assessments

Examination of return and assessment

67. (1) A return of income and computation of a taxpayer's liability for tax furnished in accordance with section 56 shall be subject to examination by the Minister.

(2) Upon examination of a taxpayer's return and computation of liability for tax the Minister shall issue to the taxpayer a notice of assessment stating -

- (a) the particulars of the assessment and the amount of tax payable thereon;
- (b) the date before which any amount of tax determined to be due shall be paid;
- (c) that any objection to the assessment must be lodged in writing within a period of 90 days of the date of issue of the notice of assessment;
- (d) the place where an objection to an assessment must be lodged.

(3) A notice of assessment to be issued in terms of subsection (2) to a taxpayer, other than a company, shall not be issued before expiry of the last date for the filing of an income return as fixed by section 56(1A), irrespective of the date on which the return was actually furnished by the taxpayer.

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(4) Every return of income furnished by a taxpayer and the assessment made under subsection (2) shall be filed and be retained by the Minister for such period as the Minister may determine, after consultation with the Auditor-General.

[Section 67 is amended by Act 25 of 1992. It is substituted by Act 5 of 1997, with this substitution deemed to have come into force (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 1997; 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 1997 (section 12(a) of Act 5 of 1997).
Section 67 is also substituted by Act 7 of 2002.]

Estimated assessments

68. (1) In every case in which any person makes default in furnishing any return or information or the Minister is not satisfied with the return or information furnished by any person, the Minister may estimate either in whole or in part the taxable income in relation to which the return or information is required.

(2) Any such estimate of the taxable income shall be subject to objection and appeal: Provided that if it appears to the Minister that any person is unable from any cause to furnish an accurate return of his income, the Minister may agree with such person as to what amount of such income shall be taxable income and any amount so agreed upon shall not be subject to any objection or appeal.

Additional assessments

- 69.** (1) If at any time the Minister is satisfied -
- (a) that any amount (including any amount the incorporation of which in an assessment would result in the reduction of any loss ranking for set-off or in only a portion of such amount becoming chargeable with tax) which was subject to tax and should have been assessed to tax has not been assessed to tax either under this Act or any previous income tax law; or
 - (b) that any amount of tax which was chargeable and should have been assessed under this Act or any previous income tax law has not been assessed; or
 - (c) that, as respects any tax which is chargeable and has become payable under this Act or any previous income tax law otherwise than under an assessment, such tax has not been paid in respect of any amount upon which such tax is chargeable or an amount is owing in respect of such tax,

he shall raise an assessment or assessments in respect of the said amount or amounts, notwithstanding that an assessment or assessments may have been made upon the person concerned in respect of the year of assessment in respect of which the amount or amounts in question is or are assessable, and notwithstanding the provisions of section 71(5) and 73(18) or the corresponding provisions of any previous income tax law: Provided that save to correct any error of calculation the Minister shall not raise an assessment under this subsection in respect of any amount, if any previous assessment made upon the person concerned has in respect of that amount been amended or reduced pursuant to any order made by a special court for hearing income tax appeals constituted under the provisions of this Act or any previous income tax law, unless the Minister is satisfied that the order in question was obtained by fraud or misrepresentation or non-disclosure of material facts.

(2) The provisions of sections 66 and 68 shall apply to any assessments or additional assessments made by the Minister under the powers conferred by this section.

Inspection of record of assessments

70. The record of assessments shall not be open to public inspection, but every taxpayer shall be entitled to copies certified by or on behalf of the Minister of such recorded particulars as relate to him.

Part III

Objections and Appeals

Time and manner of lodging objections

71. (1) Objections to any assessment made under this Act may be made within 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.

[Subsection (1) is amended by Act 5 of 1997, with this amendment deemed to have come into force (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 1997; 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 1997 (section 12(a) of Act 5 of 1997). The amendment markings are incomplete.]

(2) No objection shall be entertained by the Minister which is not delivered at his office or posted to him in sufficient time to reach him on or before the last day appointed for lodging objections, unless the Minister is satisfied that reasonable grounds exist for delay in lodging the objection.

(3) Every objection shall be in writing and shall specify in detail the grounds upon which it is made.

(4) On receipt of a notice of objection to an assessment the Minister may reduce or alter the assessment or may disallow the objection and shall send the taxpayer notice of such alteration, reduction or disallowance, and record any alteration or reduction made in the assessment.

(5) Where no objections are made to any assessment or where objections have been allowed or withdrawn, such assessment or altered or reduced assessment, as the case may be, shall, subject to the right of appeal hereinafter provided, be final and conclusive.

Burden of proof in respect of exemptions, deductions and rebates

72. The burden of proof that any amount is exempt from or not liable to any tax chargeable under this Act or is subject to any deduction, rebate or set-off in terms of this Act, shall be upon the person claiming such exemption, non-liability, deduction, rebate or set-off, and upon the hearing of any appeal from any decision of the Minister, the decision shall not be reversed or altered unless it is shown by the appellant that the decision is wrong.

Appeal to special court against Minister's decision

73. (1) Any person entitled to make an objection who is dissatisfied with any decision of the Minister as notified to him or her in terms of section 71(4) may, subject to the provisions of section 73A, appeal therefrom to a special court for hearing income tax appeals, constituted in accordance with the provisions of this section.

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[Act 5 of 1982 (Rehoboth) substitutes subsection (1) for the purpose of “the application of the Act and any amendment thereof to citizens of Rehoboth”, to read as follows:

“(1) Any person entitled to make an objection who is dissatisfied with any decision of the Chief Director as notified to him in terms of section 71(4), may appeal therefrom to the special court for hearing income tax appeals constituted in accordance with the provisions of section 73 of the Income Tax Act, 1981 (Act 24 of 1981) of the National Assembly.”

Subsection (1) is generally amended by Act 4 of 2005]

(2) Every court so constituted shall consist of a judge of the 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.

[Act 5 of 1982 (Rehoboth) deletes subsection (2) for the purpose of “the application of the Act and any amendment thereof to citizens of Rehoboth”. Subsection (2) is generally amended by Act 8 of 1987 and by Act 12 of 1996.]

(3) The Minister may, by notice in the *Gazette*, constitute such court or courts, and may from time to time by such notice abolish any existing court or courts or constitute such additional courts as circumstances may require.

[Act 5 of 1982 (Rehoboth) deletes subsection (3) for the purpose of “the application of the Act and any amendment thereof to citizens of Rehoboth”. Subsection (3) is generally amended by Act 12 of 1996.]

(4) Any court constituted or deemed to be constituted under the provisions of this Act may, subject to the regulations, hear and determine any appeal lodged under the provisions of this Act or any previous income tax law.

[Act 5 of 1982 (Rehoboth) substitutes subsection (4) for the purpose of “the application of the Act and any amendment thereof to citizens of Rehoboth”, to read as follows:

“(4) Any court constituted or deemed to be constituted under the provisions of section 73 of the Income Tax Act, 1981 (Act 24 of 1981) of the National Assembly, may hear and determine any appeal lodged under the provisions of this Act or any previous income tax law applicable to citizens of Rehoboth.”]

(5) (a) The members of any such court other than judges shall be appointed by the Minister by notice in the *Gazette*, and shall hold office for five years from the date of the relevant notice: Provided that the appointment of any such member may at any time be terminated by the Minister for any reason which the Minister 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 Minister may think fit.

[Act 5 of 1982 (Rehoboth) deletes subsection (5) for the purpose of “the application of the Act and any amendment thereof to citizens of Rehoboth”. Subsection (5) is generally amended by Act 12 of 1996.]

(6) The Judge-President of the High Court shall nominate and second a judge or an acting judge of 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.

[Act 5 of 1982 (Rehoboth) deletes subsection (6) for the purpose of “the application of the Act and any amendment thereof to citizens of Rehoboth”. Subsection (6) is generally amended by Act 12 of 1996.]

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- (7) (a) Every notice of appeal shall be in writing and shall be lodged with the Minister within a period of thirty days after the date of the notice mentioned in section 71(4), and no such notice of appeal shall be of any force or effect whatsoever unless it is lodged within the said period.
- (b) At any such appeal the person who made the objection shall be limited to the grounds stated in his notice of objection.
- (8) If an assessment has been altered or reduced, the assessment as altered or reduced shall be deemed to be the assessment against which the appeal is made.
- (9) At least ten days before the date fixed for the hearing of an appeal the Minister shall send to the person who made the objection or to his duly authorized attorney or representative a written notice of the time and place appointed for the hearing of such appeal.
- (10) The hearing of an appeal may be adjourned by the court from time to time to any time and place that may seem convenient.
- (11) The sittings of the court for the hearing of such appeals shall not be public, and the court shall at any time on the application of the appellant exclude from such sitting or require to withdraw therefrom all or any persons whomsoever whose attendance is not necessary for the hearing of the appeal under consideration.
- (12) The Minister or any person authorized by him may appear in support of the assessment on the hearing of any appeal, and the appellant and any person who is interested in such appeal may appear in person or by his counsel, attorney or agent.
- (13) Subject to the provisions of this Act, the court may -
- (a) in the case of any assessment under appeal, order such assessment to be amended, reduced or confirmed, or may if it thinks fit refer the assessment back to the Minister for further investigation and assessment;
- (b) in the case of any appeal against the amount of the additional charge imposed by the Minister under section 66(1), reduce, confirm or increase the amount of the additional charge so imposed;
- (c) in the case of any other decision of the Minister which is subject to appeal, confirm or amend such decision.
- (14) Any assessment made by the Minister on reference under subsection (13) shall be subject to objection and appeal as in this Part provided.
- (15) Any matter of law arising for decision before the court, and any question as to whether a matter for decision is a matter of fact or a matter of law, shall be decided by the President of the court, and the other members shall have no voice in such decision.
- (16) Any decision of the court shall be recorded by the Minister.
- (17) The court shall not make any order as to costs save when the claim of the Minister is held to be unreasonable or the grounds of appeal therefrom to be frivolous.
- (18) Any decision of the court under this section shall, subject to the provisions of section 76, be final.

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- (19) (a) The President of the court may indicate which judgments or decisions of the court he considers ought to be published for general information.
- (b) A copy of any judgment or decision of the court so indicated by the President of the court shall be referred by the registrar of the court to the appellant or his representative concerned in the case in such form as does not reveal the identity of such appellant, with a written request that the appellant give his consent in writing to the publication thereof in that form or any other suitable form which the appellant may approve.
- (c) Where the appellant fails to give his written consent to such publication within 30 days after being requested by the registrar of the court to do so, or after the expiry of any extension of that period which the registrar may grant, the registrar shall refer the matter to the President of the court who, if he is satisfied -
- (i) that the appellant's consent to publication of the relevant judgment or decision in a suitable form has been unreasonably withheld; and
 - (ii) that such judgment or decision is in a form which does not reveal the identity of the appellant concerned in the case,

may authorize the publication of such judgment or decision in that form or any other form which he may deem fit.

Appeals to tax tribunal

73A. (1) Any appeal referred to in section 73(1) shall in the first instance be heard by the tax tribunal established by subsection (2), where -

- (a) the amount of the tax in dispute does not exceed such amount which the Minister may from time to time fix by notice in the *Gazette*, or, having regard to any assessed loss which may be carried forward, will probably not in total exceed such amount; or
- (b) the Commissioner and the appellant agree thereto; or
- (c) no objection to the jurisdiction of the tribunal to hear the appeal is made at or before the commencement of the hearing of the appeal:

Provided that where the Commissioner, at any time before the hearing of such appeal, or the chairperson of the tribunal, at any time before or during the hearing of such appeal, is of the opinion that on the ground of the disputes or legal principles arising or that may arise out of such appeal, the appeal should rather be heard by the special court for hearing income tax appeals referred to in section 73 (hereinafter referred to as the special court), such appeal shall be set down for hearing anew before the special court.

(2) A tribunal to be known as the tax tribunal is hereby established for the hearing of any appeal referred to in subsection (1).

(3) The tribunal shall consist of a legal practitioner referred to in subsection (4), who shall be the chairperson of the tribunal, and, if the chairperson or the Commissioner or the taxpayer considers it necessary, an accountant or representative of the commercial community referred to in section 73(2).

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- (4) (a) The Minister shall, in consultation with the Judge-President of the High Court, appoint by notice in the *Gazette* as many legal practitioners to a panel as may be necessary, from which panel a chairperson of the tribunal shall be nominated by the Minister from time to time or as required, and the persons so appointed shall hold office for five years from the date of the relevant notice: Provided that the appointment of any such person may at any time, after such person has been given an opportunity to be heard, be terminated by the Minister for any reason which the Minister considers good and sufficient.
- (b) A person appointed in terms of paragraph (a) shall be eligible for reappointment for such further period or periods as the Minister may think fit.
- (5) The Commissioner shall appoint a staff member from his or her office as clerk of the tribunal.
- (6) The Commissioner shall determine the places for the hearing of appeals by the tribunal, and the tribunal shall hear an appeal at whichever place is closest to the appellant's residence: Provided that the appellant and the Commissioner may agree that the appeal be heard at another place.
- (7) The clerk of the tribunal appointed in terms of subsection (5) shall -
- (a) act as convenor of the tribunal;
- (b) within 30 days before the date of hearing of the appeal, furnish the members of the tribunal and the appellant with a written notice of the time and place of the hearing of the appeal and a dossier containing copies of -
- (i) the assessment against which the appeal has been lodged;
- (ii) the notice of objection and appeal;
- (iii) the relevant return of income; and
- (iv) any correspondence between the Commissioner and the appellant as well as any other documents which are, in the opinion of the Commissioner, relevant to the appeal.
- (8) The Commissioner shall designate a staff member from his or her office to appear in support of the assessment at the hearing of the appeal.
- (9) The appellant shall -
- (a) in the case of a natural person who has the capacity to act, appear in person; or
- (b) in any other case, be represented by his or her representative taxpayer,
- at the hearing of the appeal: Provided that -
- (i) the appellant or his or her representative taxpayer may, together with the notice of appeal under section 73(7)(a) or within such further period as the chairperson of the tribunal may allow, request permission to present his or her case otherwise than as contemplated in this subsection;

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- (ii) the chairperson of the tribunal may as he or she deems fit permit the appellant to present his or her case in such manner as the chairperson thinks fit;
 - (iii) where the appellant's return of income for the relevant year of assessment was prepared by any other person, such other person may appear on the appellant's behalf.
- (10) (a) During the hearing of the appeal the chairperson of the tribunal shall determine the procedures as the chairperson thinks fit, subject to each party having the opportunity to put his or her case to the tribunal in a reasonable manner.
- (b) The tribunal shall not be required to record its proceedings, but the decision of the tribunal shall be recorded in writing by the chairperson of the tribunal, with a short statement of the facts of the case as found by the tribunal and the reasons for its decision.
- (c) The hearing of an appeal may be adjourned by the chairperson of the tribunal to any time and place that may seem convenient.
- (d) The clerk of the tribunal shall by notice in writing furnish the Commissioner and the appellant with a copy of the tribunal's decision.
- (e) (i) If neither the appellant nor anyone authorised to appear on his or her behalf appears before the tribunal at the time and place appointed for that purpose, the tribunal may, at the request of the Commissioner's representative and on proof that the prescribed notice of the sitting of the tribunal had been submitted to the appellant, confirm the assessment in respect of which the appeal has been lodged, and thereafter such appellant shall not be entitled to request that the appeal be referred to the special court in terms of subsection (13)(a) for hearing.
- (ii) If the Commissioner's representative fails to appear before the tribunal at the time and place appointed for that purpose, the tribunal may, at the request of the appellant, allow the appellant's appeal, and thereafter the Commissioner shall not be entitled to refer the appeal to the special court in terms of subsection (13)(b) for hearing.
- (f) The provisions of paragraph (e) shall not apply where the chairperson of the tribunal is satisfied that sound reasons exist for the non-appearance and such reasons are advanced by the appellant or the Commissioner, as the case may be, within seven days after the date on which the appeal was set down for hearing.
- (g) If the appellant has failed to state the grounds of his or her objection and appeal in definite terms, the tribunal may, upon the opening of the proceedings, decide what shall be considered to constitute the grounds of the objection and appeal.
- (11) For the purposes of this section, the provisions of sections 72, 73(7), (8), (11), (13) and (15), 77 and 78 shall apply with the necessary changes.
- (12) Subject to the provisions of subsection (13), any decision of the tribunal in terms of this section shall be final and conclusive.
- (13) (a) Where an appellant is not satisfied with the decision of the tribunal, he or she may, within 30 days (or within such further period as the chairperson of the tribunal may on good cause shown allow) after the date of the notice referred to in

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subsection (10)(d), require that the appeal be referred to the special court for hearing.

- (b) Where the Commissioner is not satisfied with the decision of the tribunal, the Commissioner may refer the appeal to the special court for hearing, and in such event the Commissioner shall notify the appellant thereof within 30 days (or within such further period as the chairperson of the tribunal may on good cause shown allow) after the date of the notice referred to in subsection (10)(d).

(14) An appeal which has been heard by the tribunal and has been referred to the special court under subsection (13)(a) or (b), shall be heard anew by the special court.

[section 73A inserted by Act 4 of 2005]

Summoning of witnesses and penalty for non-attendance

74. (1) The Minister, the appellant or the President of a special court may procure the attendance of any witness in the manner prescribed in the regulations.

(2) If any person who has been duly subpoenaed to give evidence at the hearing of an appeal or to produce any book, record, document or thing in his possession or under his control, fails without reasonable cause to attend or to give evidence or to produce that book, record, document or thing according to the subpoena or, unless excused by the President of the court, to remain in attendance throughout the proceedings, the President of the court may, upon being satisfied upon oath or by the return of the person by whom the subpoena was served, that such person has been duly subpoenaed and that his reasonable expenses have been paid or offered to him, impose upon the said person a fine not exceeding three hundred rand or in default of payment imprisonment for a period not exceeding three months.

(3) If any person so subpoenaed fails to appear or, unless duly excused, to remain in attendance throughout the proceedings, the President of the court may also, upon being satisfied as aforesaid and in case no lawful excuse for such failure seems to him to exist, issue a warrant for the apprehension of that person in order that he may be brought up to give evidence or to produce any book, record, document or thing according to the subpoena, and on failure so to give evidence or produce that book, record, document or thing, to be dealt with in the manner prescribed in subsection (2).

(4) The President of the court may, on cause shown, remit the whole or any part of any fine or imprisonment which he may have imposed under this section.

(5) The President of the court may order the costs of any postponement or adjournment occasioned by the default of a witness, or any portion of those costs, to be paid out of any fine imposed under this section.

(6) A penalty imposed under subsection (2) or (3) shall be enforced *mutatis mutandis* as if it were a penalty imposed by a magistrate's court in circumstances such as are described in the relevant subsection, and the provisions of any law which are applicable in respect of such a penalty imposed by a magistrate's court shall *mutatis mutandis* apply in respect of a penalty imposed under either of the said subsections.

Contempt of special court

75. (1) If during the sitting of a special court, any person wilfully insults a member of the court or any officer of the court attending at the sitting, or wilfully interrupts the proceedings of the court or otherwise misbehaves himself in the place where the court is held,

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the President of the court may make an order committing that person to imprisonment for any period not exceeding three months or order that person to pay a fine not exceeding three hundred rand or in default of payment thereof to be imprisoned for such a period.

(2) An order made under subsection (1) shall be executed *mutatis mutandis* as if it were an order made by a magistrate's court under circumstances such as are described in that subsection, and the provisions of any law which are applicable in respect of such an order made by a magistrate's court shall *mutatis mutandis* apply in respect of an order made under the subsection.

Appeals against decision of a special court

76. (1) The appellant in a special court or the Minister may in the manner hereinafter provided appeal under this section against any decision of that court.

(2) Such appeal shall lie to the Supreme Court of Namibia.

[subsection (2) amended by Act 12 of 1996 and by Act 10 of 2001]

(3) Any party who in terms of subsection (1) has a right to appeal against a decision of a special court and intends to lodge an appeal against such decision under this section shall, within twenty-one business days after the date of the notice issued by the registrar of the special court notifying such decision or within such further period as the President of that court may on good cause shown allow, lodge with the said registrar and the opposite party or his attorney or agent a notice of his intention to appeal against such decision.

(4) Any such notice of an intention to appeal shall state whether, for the purposes of preparing the record on appeal, a transcript is required of the evidence given at the hearing of the case by the special court or, if only a part of such evidence is required, what part is required.

(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 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 absence or illness or for some other reason, the Judge President of the 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.

[subsection (5) amended by Act 12 of 1996]

(6) Any person who was entitled under this section to appeal against a decision of the special court but has not within the time allowed by subsection (3) lodged a notice of his intention to appeal against such decision as required by that subsection, shall be deemed to have abandoned his right of appeal against such decision: Provided that he shall be entitled as the respondent in an appeal noted by the opposite party in the same case, to note in the manner hereinafter provided a cross-appeal in that case.

(7) Any person who has in terms of subsection (3) lodged a notice of his intention to appeal against a decision of the special court but has subsequently withdrawn such notice shall be deemed to have abandoned his right to note any appeal or cross-appeal against such decision.

(8) (a) After the expiry of the time allowed under subsection (3) for the lodging of a notice of intention to appeal against a decision of the special court the registrar of that court shall -

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- (i) give notice to any person who has lodged a notice of intention in terms of the said subsection and has not withdrawn such notice, that if it is decided to appeal the appeal should be noted within twenty-one business days after the date of the registrar's notice; and
 - (ii) where the opposite party is not also an intending appellant in the same case, supply to the opposite party a copy of the notice given under subparagraph (i).
- (b) Where an intending appellant requires a transcript of evidence given at the hearing of the case by the special court to enable him to prepare the record on appeal, the registrar of that court shall not give notice under paragraph (a)(i) until such transcript has been completed.
- (9) Any appeal under this section against a decision of a special court shall be noted by lodging a written notice of such appeal with the registrar of the special court, the opposite party or his attorney and the registrar of the appeal court.
- (10) Such notice of appeal shall be lodged within the period referred to in subsection (8)(a)(i) or within such longer period as may be allowed under the rules of the appeal court.
- (11) Any cross-appeal against a decision of the special court in any case in which an appeal has been lodged under this section shall be noted by lodging a written notice of such cross-appeal with the registrar of the special court, the opposite party or his attorney and the registrar of the appeal court.
- (12) Such notice of cross-appeal shall be lodged within twenty-one business days after the date of the noting of the appeal or within such longer period as may be allowed under the rules of the appeal court.
- (13) A notice of appeal or cross-appeal lodged under this section shall state -
- (a) whether the whole or part only of the judgment is appealed against, and if part only, then what part;
 - (b) the grounds of appeal or cross-appeal specifying the findings of fact or rulings of law appealed against; and
 - (c) any further particulars that may be required under the rules of the appeal court.
- (14) (a) A party may, by notice in writing lodged with the opposite party or his attorney or agent and the registrar of the special court, abandon the whole or any part of a judgment of that court in his favour.
- (b) Such notice of abandonment shall become part of the record.
- (15) The record lodged with an appeal court in an appeal against a decision of a special Court shall include any documents placed before the special court in terms of the regulations: Provided that merely formal documents and, if the parties consent, such other documents as do not relate to the matters in dispute in the appeal, may be excluded from the record.
- (16) Any application or notice which may in terms of this section be lodged with the registrar of the special court shall be delivered to the registrar or an assistant registrar of that court personally during office hours or shall be despatched to the registrar by registered post at his official address in Windhoek.

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(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 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 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.

[subsection (17) amended by Act 12 of 1996]

- (18) For the purposes of this section -
- (a) any application or notice duly despatched by registered post as contemplated in subsection (16) or (17) shall be deemed to have been given or lodged at the time of posting;
 - (b) any notice served by or on behalf of the Minister or the registrar of the special court upon the public officer of a company in his capacity as such shall be deemed to have been served upon the company;
 - (c) "business day" means any day which is not a Saturday, Sunday or public holiday.

[Act 5 of 1982 (Rehoboth) deletes section 76 for the purpose of "the application of the Act and any amendment thereof to citizens of Rehoboth".]

Members of courts not disqualified from adjudicating

77. A member of any special court or a judge of the 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.

[section 77 amended by Act 12 of 1996]

Payment of tax pending appeal

78. The obligation to pay and the right to receive and recover any tax chargeable under this Act shall not, unless the Minister so directs, be suspended by any appeal or pending the decision of a court of law under section 76, but if any assessment is altered on appeal or in conformity with any such decision a due adjustment shall be made, amounts paid in excess being refunded with interest at the rate of fifteen per cent per annum calculated from the date proved to the satisfaction of the Minister to be the date on which such excess was received and amounts short-paid being recoverable with interest calculated as provided in section 79: Provided that where such date falls before 1 March 1985 the interest payable for the period from such date to 28 February 1985 shall be calculated at the rate of seven and a half per cent.

[section 78 amended by AG 10 of 1985 to insert the proviso, with effect from 1 March 1985; a colon has been inserted accordingly]

Part IV

Payment and Recovery of Tax

Appointment of day for payment of tax and interest on overdue payments

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79. (1) Subject to the provisions of section 80 any tax chargeable shall be paid on the due date for such payment as specified in section 56 of this Act.

[Subsection (1) is amended by Act 21 of 1999, with these amendments deemed to have come into force at the beginning of the year of assessment commencing on or after 1 March 1998 (section 12(2) of Act 21 of 1999).]

(2) If the taxpayer fails to pay any tax in full on or before the date for payment of such tax as specified in the Act or any extension of such due date which the Minister may grant in terms of paragraph (a) of subsection (3) of section 56, 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 as from the day immediately following such due date for payment until the day of payment.

[Subsection (2) is amended by AG 10 of 1985 with effect from 1 March 1985 (section 12(2) of AG 10 of 1985) and substituted by Act 22 of 1995, with that substitution “deemed to have been declared by that Act to come into operation on 1 February 1996” (section 23(2)(a) of Act 12 of 1996). It is also amended by Act 21 of 1999 (amendment markings incomplete), with these amendments deemed to have come into force at the beginning of the year of assessment commencing on or after 1 March 1998 (section 12(2) of Act 21 of 1999). It is further amended by Act 5 of 2007, with the relevant section of the amending Act being brought into force on 1 April 2009 by GN 118/2009 (GG 4270).]

(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.

[Subsection (3) is inserted by Act 22 of 1995, but this insertion was subsequently “deemed not to have been part of that Act” by section 23(2)(b) of Act 12 of 1996. Subsection (3) is substituted by Act 12 of 1996, with this substitution deemed to have come into force on 1 February 1996, in terms of section 23(3) of Act 12 of 1996.]

(4) The amount that may be accumulated and be recovered in respect of interest levied in accordance with this section may not exceed the amount of the original tax.

[Subsection (4) is inserted by Act 12 of 1996 and substituted by Act 5 of 2007, with the relevant section of the amending Act being brought into force on 1 April 2009 by GN 118/2009 (GG 4270).]

(5) For the purposes of this section “tax” does not include any additional tax levied in terms of section 66.

[Subsection (5) is inserted by Act 5 of 2007, with the relevant section of the amending Act being brought into force on 1 April 2009 by GN 118/2009 (GG 4270).]

Payment of employees’ tax and provisional tax and interest on overdue payments of such taxes

80. (1) Payments by way of employee’s tax and provisional tax shall be made in accordance with the provisions of Schedule 2 and shall be made at such place as may be notified by the Minister, and any such payments which relate to a taxpayer shall, for the purposes of this Act and subject to the provisions of paragraph 29 of the said Schedule, be deemed to have been made in respect of such taxpayer’s liability for taxes as defined in subsection (4), whether or not such liability has been ascertained or determined at the date of any payment.

[Subsection (1) is amended by Act 5 of 2007 (amendment markings incomplete), with the relevant section of the amending Act being brought into force on 1 April 2009 by GN 118/2009 (GG 4270).]

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(2) If any amount of employee's 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 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 as from the day immediately following the expiry of the period for payment so prescribed until the day of payment, unless the Minister having regard to the circumstances of the case otherwise directs.

[Subsection (2) is amended by AG 10 of 1985 with effect from 1 March 1985 (section 12(2) of AG 10 of 1985), and substituted by Act 22 of 1995 (with this substitution "deemed to have been declared by that Act to come into operation on 1 February 1996", in terms of section 24(2)(a) of Act 12 of 1996). It is also amended by Act 5 of 2007 (amendment markings incomplete), with the relevant section of the amending Act being brought into force on 1 April 2009 by GN 118/2009 (GG 4270).]

(3) Any amount which on 1 February 1996 is owing by any taxpayer in respect of any 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.

[Subsection (3) is inserted by Act 22 of 1995, but this insertion was subsequently "deemed not to have been part of that Act" by section 24(2)(b) of Act 12 of 1996. Subsection (3) was substituted by Act 12 of 1996 with effect from 1 February 1996 (section 24(3) of Act 12 of 1996).]

(4) For the purposes of this section "taxes" means the taxes comprehended in the definition of "tax" in section 1, excluding any additional tax or penalty levied in terms of Schedule 2.

[Subsection (4), previously subsection (3), was re-numbered by Act 22 of 1995. It is amended by Act 5 of 2007, with the relevant section of the amending Act being brought into force on 1 April 2009 by GN 118/2009 (GG 4270).]

(5) The amount that may be accumulated and be recovered in respect of interest levied in accordance with this section may not exceed the original amount of employee's tax or provisional tax.

[Subsection (5) is inserted by Act 12 of 1996 and substituted by Act 5 of 2007, with the relevant section of the amending Act being brought into force on 1 April 2009 by GN 118/2009 (GG 4270).]

Accounts and recovery proceedings in respect of certain taxes

81. (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 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 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.

[subsection (1) inserted by Act 12 of 1996]

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(2) The total amount owing by the taxpayer after the deduction of the relevant payments or other credits in respect of any taxes as defined in subsection (3) and of interest in respect of such taxes payable by the taxpayer in terms of section 79 shall for the purposes of any proceedings for recovery (including proceedings under section 83) be deemed to be a debt due to the Government of Namibia, and in any such proceedings the Minister shall not be required to furnish particulars of the amount claimed: Provided that the Minister shall at the request of the taxpayer furnish the taxpayer with copies of any notices of assessment relating to the taxpayer as the taxpayer may require.

(3) For the purposes of this section “taxes” means the taxes comprehended in the definition of “tax” in section 1, excluding non-resident shareholders’ tax and undistributed profits tax.

Persons by whom normal tax is payable

82. Subject to the provisions of this Act, any tax (other than non-resident shareholders’ tax and undistributed profits tax) and any interest payable in terms of section 79, shall be payable -

(a) by any representative taxpayer, liable to assessment or for the payment of such tax or interest under this Act or under any previous income tax law;

(b)

[paragraph (b) deleted by Act 25 of 1992]

(c) in respect of any other income and in all other cases, by the person by whom the income is received or to whom or in whose favour it accrues or who is legally entitled to the receipt thereof:

Provided that any person may recover so much of the taxation paid by him under this Act as is due to the inclusion in his income of any income deemed to have been received by him or to be his income, as the case may be, in terms of subsection (3), (4), (5) or (6) of section 12, from the person entitled, whether on his own behalf or in a representative capacity, to the receipt of the income so included: Provided further that nothing herein contained shall be construed as relieving any person required to make any payment by way of employees’ tax under the provisions of Schedule 2 from any liability, responsibility or duty imposed upon him by this Act.

Recovery of tax

83. (1) (a) Any tax or any interest payable in terms of section 79 shall, when such tax or interest becomes due or is payable, be deemed to be a debt due to the Government of Namibia and shall be payable to the Minister in the manner and at the place prescribed.

(b) If any person fails to pay any tax or any interest payable in terms of section 79 when such tax or interest becomes due or is payable by him, the Minister may file with the clerk or registrar of any competent court a statement certified by him as correct and setting forth the amount of the tax or interest so due or payable by that person, and such statement shall thereupon have all the effects of, and any proceedings may be taken thereon as if it were, a civil judgment lawfully given in that court in favour of the Minister for a liquid debt of the amount specified in the statement.

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- (c) The Minister may by notice in writing addressed to the aforesaid clerk or registrar, withdraw the statement referred to in paragraph (b) and such statement shall thereupon cease to have any effect: Provided that, in the circumstances contemplated in the said paragraph, the Minister may institute proceedings afresh under that paragraph in respect of any tax or interest referred to in the withdrawn statement.
- (d) The Minister may institute proceedings for the sequestration of the estate of any taxpayer and shall for the purposes of such proceedings be deemed to be the creditor in respect of any tax due by such taxpayer or any interest payable by him in terms of section 79.

(2) Notwithstanding anything contained in the Magistrates' Courts Act, 1944 (Act 32 of 1944), a statement for any amount whatsoever may be filed in terms of paragraph (b) of subsection (1) with the clerk of the court of the magistrate having jurisdiction in respect of the person by whom such amount is payable in accordance with the provisions of this Act.

[Act 5 of 1982 (Rehoboth) deletes subsection (2) for the purpose of "the application of the Act and any amendment thereof to citizens of Rehoboth".]

(3)

[subsection (3) deleted by Act 25 of 1992]

(4) So much of any tax payable by any person as is due to the inclusion in his income of any income deemed to have been received by him or to be his income, as the case may be, in terms of subsection (3), (4), (5) or (6) of section 12, may be recovered from the assets by which the income so included was produced.

(5) So much of any interest payable in terms of section 79 as relates to such portion of any tax as is in terms of subsection (4) recoverable from the assets referred to in that subsection may also be recovered from such assets.

Recovery of outstanding tax, penalty or interest by debt collector

83A. Despite anything to the contrary in this Act, but subject to section 4, the Minister, if he or she considers it necessary, may make arrangements with any person to recover outstanding tax, penalty or interest on behalf of the Minister on such terms and conditions as agreed upon between the Minister and such person.

[section 83A inserted by Act 5 of 2007]

Correctness of assessment cannot be questioned

84. It shall not be competent for any person in any proceedings in connection with any statement filed in terms of paragraph (b) of subsection (1) of section 83 to question the correctness of any assessment on which such statement is based, notwithstanding that objection and appeal may have been lodged thereto.

Collection of taxes under arrangements made under section 100

85. (1) If the Minister has, in accordance with any arrangements made with the government of any other country by an agreement contemplated in section 100 with a view to rendering reciprocal assistance in the collection of taxes, received a request for the collection from any person in Namibia of an amount alleged to be due by him or her under the income tax

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laws of such other country, the Minister may, by notice in writing, call upon such person to state, within a period specified in the notice, whether or not he or she admits liability for the said amount or for any lesser amount.

[Act 5 of 1982 (Rehoboth) amends subsection (1) for the purpose of “the application of the Act and any amendment thereof to citizens of Rehoboth”, to read as follows:

“(1) If the Secretary [**“Chief Director of Rehoboth” in terms of the rules of construction of Act 5 of 1982 (Rehoboth)**] has, in accordance with any arrangements made with the government of any other country by an agreement contemplated in section 100 of the Income Tax Act, 1981 (Act 24 of 1981) of the National Assembly with a view to rendering reciprocal assistance in the collection of taxes, received a request for the collection from any citizen of Rehoboth in the territory [**Namibia, in terms of the subsequent global substitution**] of an amount alleged to be due by him or her under the income tax laws of such other country, the Secretary [**“Chief Director of Rehoboth” in terms of the rules of construction of Act 5 of 1982 (Rehoboth)**] may, by notice in writing, call upon such person to state, within a period specified in the notice, whether or not he or she admits liability for the said amount or for any lesser amount.”]

- (2) The Minister may -
- (a) if such person so admits liability; or
 - (b) if such person fails to comply with the notice or in answer to the notice denies his or her liability for the said amount or for any part thereof, and the President of the special court has certified that he or she has afforded the person concerned an opportunity of presenting his or her case, and that on the information submitted to him or her by the Minister and by such person (if any), the amount specified in the certificate appears to be payable by such person in terms of a final determination under the income tax laws of such other country,

by notice in writing require such person to pay the amount for which he or she has admitted liability or the amount so specified, as the case may be, on a date, at a place and to a person specified in the notice, for transmission to the proper authority in such other country.

(3) If such person fails to comply with the notice under subsection (2) the amount in question may, subject, in the case of any amount to which any such certificate relates, to the outcome of any proceedings which such person may institute in such other country for determining his or her liability for the said amount, be recovered for transmission to the said authority as if it were a tax payable by such person under this Act.

(4) No steps taken in such other country under any arrangements referred to in subsection (1), for the collection of an amount alleged to be due by any person under the income tax laws of Namibia, and no judgement given against any such person in pursuance of such arrangements in such other country for any such amount, shall affect his or her right to have his or her liability for any such amount determined in Namibia in accordance with the provisions of the relevant law.

**[section 85 amended by Act 10 of 1993
(amendment markings incomplete)]**

Evidence as to assessments

86. The production of any document under the hand of the Minister purporting to be a copy of or an extract from any notice of assessment shall be conclusive evidence of the making of such assessment and, except in the case of proceedings on appeal against the assessment, shall be conclusive evidence that the amount and all the particulars of such assessment appearing in such document are correct.

Part V

Representative Taxpayers

Liability of representative taxpayer

87. (1) Every representative taxpayer shall as regards the income to which he is entitled in his representative capacity, or of which in such capacity he has the management, receipt, disposal, remittance, payment or control, be subject in all respects to the same duties, responsibilities and liabilities as if the income were income received by or accruing to or in favour of him beneficially and shall be liable to assessment in his own name in respect of that income, but any such assessment shall be deemed to be made upon him in his representative capacity only.

(2) Every representative taxpayer referred to in paragraph (e) of the definition of “representative taxpayer” in section 1 shall as regards the income received by or accrued to any deceased person during his lifetime be subject in all respects to the same duties, responsibilities and liabilities as if the income were income received by or accrued to or in favour of him beneficially and shall be liable to assessment in his own name in respect of that income, but any such assessment shall be deemed to be made upon him in his representative capacity only.

(3) Any rebate, deduction, exemption or right to set off a loss which could be claimed by the person represented by him shall be allowed in the assessment made upon the representative taxpayer in his capacity as such.

(4) Any tax payable in respect of any such assessment shall, save in the case of an assessment upon the public officer of a company, be recoverable from the representative taxpayer, but to the extent only of any assets belonging to the person whom he represents which may be in his possession or under his management, disposal or control.

(5) Any tax payable in respect of any assessment made upon a public officer of a company in his capacity as such shall be recoverable from the company of which he is the public officer.

Right of representative taxpayer to indemnity

88. (1) Every representative taxpayer who, as such, pays any tax shall be entitled to recover the amount so paid from the person on whose behalf it is paid, or to retain out of any moneys that may be in his possession or may come to him in his representative capacity, an amount equal to the amount so paid.

(2) Every representative taxpayer referred to in paragraph (e) of the definition of “representative taxpayer” in section 1 who, as such, pays any tax in respect of the taxable income of any deceased person shall be entitled to recover the amount so paid from the estate of such deceased person or to retain out of any moneys of the estate of such deceased person that may be in his possession or that may come to him as executor of such estate, an amount equal to the amount so paid.

Personal liability of representative taxpayer

89. Every representative taxpayer shall be personally liable for any tax payable by him in his representative capacity, if, while it remains unpaid -

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- (a) he alienates, charges or disposes of the income in respect of which the tax is chargeable; or
- (b) he disposes of or parts with any fund or money, which is in his possession or comes to him after the tax is payable, if the tax could legally have been paid from or out of such fund or money.

Company regarded as agent for absent shareholder

90. Where a shareholder or a member of a company is absent from Namibia, such company shall for the purposes of this Act be deemed to be the agent for such shareholder or member, and shall as regards such shareholder or member and in respect of any income received by or accruing to him or in his favour as a shareholder or member, have and exercise all the powers, duties and responsibilities of an agent for a taxpayer absent from Namibia.

Power to appoint agent

91. The Minister may, if he thinks necessary, declare any person to be the agent of any other person, and the person so declared an agent shall be the agent for the purposes of this Act and may be required to make payment of any tax due from any moneys, including pensions, salary wages or any other remuneration, which may be held by him for or due by him to the person whose agent he has been declared to be.

Remedies of Minister against agent or trustee

92. The Minister shall have the same remedies against all property of any kind vested in or under the control or management of any agent or trustee as he would have against the property of any person liable to pay any tax and in as full and ample a manner.

Public officers of companies

93. (1) Every company carrying on business or having an office in Namibia and every unit portfolio constituting a company in terms of paragraph (e) of the definition of "company" in section 1 shall at all times be represented by an individual residing therein.

(2) Such individual shall be a person approved by the Minister and shall be appointed by the company or by an agent or attorney who has authority to appoint such a representative for the purposes of this Act: Provided that in the event of any company being placed in voluntary or compulsory liquidation the liquidator or liquidators duly appointed shall be required to exercise in respect of that company all the functions and assume all the responsibilities of a public officer under this Act during the continuance of the liquidation: Provided further that in the case of any unit portfolio referred to in subsection (1) the public officer of the relevant management company shall be the public officer except in the event of the winding-up of the management company, in which event the trustee under the relevant unit trust scheme shall be the public officer.

(3) The representative shall be called the public officer of the company and shall be appointed within one month after the company begins to carry on business or acquires an office in Namibia.

(4) In default of any such appointment the public officer of any company shall be such managing director, director, Minister or other officer of the company, as the Minister may designate for that purpose.

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(5) Every company shall also within the period prescribed by subsection (3) appoint a place within Namibia approved by the Minister at which any notices or other documents under this Act affecting the company may be served or delivered or to which any such notices or documents may be sent: Provided that in the case of any unit portfolio referred to in subsection (1) the place at which any such notice or other document may be served or delivered or to which any such notice or document may be sent shall be the place appointed by the relevant management company in regard to any notice or other document affecting itself, or, in the event of the trustee under the relevant unit trust scheme becoming the public officer, the place within Namibia appointed by the trustee and approved by the Minister: Provided further that such trustee shall appoint such place within one month after becoming the public officer.

(6) No appointment shall be deemed to have been made under subsection (3) or (5), until notice thereof specifying the name of the public officer and an address for service or delivery of notices and documents has been given to the Minister.

(7) Every company shall keep the office of public officer constantly filled and shall at all times maintain a place for the service or delivery of notices in accordance with subsection (5), and every change of public officer or of the place for the service or delivery of notices shall be notified to the Minister within fourteen days of such change taking effect and every trustee referred to in subsection (5) shall at all times maintain a place for the service or delivery of such notices and shall within fourteen days of any change in such place taking effect notify the Minister thereof.

(8) Any company which makes default in appointing a public officer or appointing a place for service or delivery of notices in accordance with this Act, or in keeping the office of public officer constantly filled, or in maintaining a place for the service or delivery of notices, or which fails to notify to the Minister any change of public officer or of the place for the service or delivery of notices, and every person who acts within Namibia as agent or manager or representative of such company, shall incur a penalty not exceeding two rand for every day during which the default continues, and any such penalty shall be recoverable by the Minister by action in any competent court.

(9) Every notice, process or proceeding which under this Act may be given to, served upon or taken against any company, may be given to, served upon or taken against its public officer, or if at any time there is no public officer, any officer or person acting or appearing to act in the management of the business or affairs of such company or as agent for such company.

(10) Every public officer shall be answerable for the doing of all such acts, matters or things as are required to be done under this Act by a taxpayer and in case of default shall be liable to the penalties provided in respect of defaults by a taxpayer.

(11) Everything done by a public officer which he is required to do in his representative capacity shall be deemed to have been done by the company which he represents.

(12) The absence or non-appointment of a public officer shall not exonerate any company from the necessity of complying with the provisions of this Act, but the company shall in all respects be subject to and liable to comply with the provisions of this Act as if there were no requirement to appoint such officer.

(13) Any public officer appointed or deemed to have been appointed under the provisions of any previous income tax law, and holding office at the commencement of this Act shall, provided no objection to his continuance in office is raised by the Minister, be deemed to be a public officer appointed under this Act.

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Part VI

Miscellaneous

Refunds

94. (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

[The Sales Tax Act 5 of 1992 has been replaced by the Value-Added Tax Act 10 of 2000. The Additional Sales Levy Act 11 of 1993 has been replaced by the Value-Added Tax Act 10 of 2000. Section 88(2) of Act 10 of 2000 states: "No reference in any other law to sales tax or to additional sales levy shall be construed as a reference to tax under this Act."]

- (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.

[Subsection (1) is amended by Act 5 of 1997, with this amendment deemed to have come into force (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 commencing on or after 1 January 1998 (section 12(b) of Act 5 of 1997). It is also amended by Act 21 of 1999, with this amendment deemed to have come into force on 1 December 1998 (section 13(2) of Act 21 of 1999).]

(2)

[Subsection (2) is deleted by Act 21 of 1999, with this deletion deemed to have come into force on 1 December 1998 (section 13(2) of Act 21 of 1999).]

94A.

[Section 94A is inserted by AG 10 of 1985 and deleted by Act 5 of 1997, with this deletion deemed to have come into force (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 1997; 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 1997 (section 12(a) of Act 5 of 1997).]

Transactions, operations or schemes for purposes of avoiding or postponing liability for or reducing amounts of taxes on income

95. (1) Whenever the Minister is satisfied that any transaction, operation or scheme (whether entered into or carried out before or after the commencement of this Act, and including a transaction, operation or scheme involving the alienation of property) -

- (a) has been entered into or carried out which has the effect of avoiding or postponing liability for the payment of any tax, duty or levy imposed by this Act or any previous income tax law, or of reducing the amount thereof; and

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- (b) having regard to the circumstances under which the transaction, operation or scheme was entered into carried out -
 - (i) was entered into or carried out by means or in a manner which would not normally be employed in the entering into or carrying out of a transaction, operation or scheme of the nature of the transaction, operation or scheme in question; or
 - (ii) has created rights or obligations which would not normally be created between persons dealing at arm's length under a transaction, operation or scheme of the nature of the transaction, operation or scheme in question; and
- (c) was entered into or carried out solely or mainly for the purposes of the avoidance or the postponement of liability for the payment of any tax, duty or levy (whether imposed by this Act or any previous income tax law or any other law administered by the Minister) or the reduction of the amount of such liability,

the Minister shall determine the liability for any tax, duty or levy imposed by this Act, and the amount thereof, as if the transaction, operation or scheme had not been entered into or carried out, or in such manner as in the circumstances of the case he deems appropriate for the prevention or diminution of such avoidance, postponement or reduction.

(2) Whenever the Minister is satisfied that any agreement affecting any company or any change in the shareholding in any company, as a direct or indirect result of which income has been received by or has accrued to that company during any year of assessment, has at any time before or after the commencement of this Act been entered into or effected by any person solely or mainly for the purpose of utilizing any assessed loss or any balance of assessed loss incurred by the company, in order to avoid liability on the part of that company or any other person for the payment of any tax, duty or levy on income, or to reduce the amount thereof, the set-off of any such assessed loss or balance of assessed loss against any such income shall be disallowed.

(3) For the purposes of subsection (1) any transaction, operation or scheme (whether entered into or carried out before or after the commencement of this Act) whereby any person (other than a company) who is ordinarily resident or carrying on business in Namibia or any company registered or carrying on business in Namibia, has disposed of shares held by such person or such company in any company registered or incorporated in Namibia to any person (other than a company) not ordinarily resident nor carrying on business in Namibia or to any company registered outside Namibia, shall, unless it is proved to the satisfaction of the Minister that the parties are independent persons dealing at arm's length with each other, be deemed to be a transaction, operation or scheme entered into or carried out by means or in a manner not normally employed in the entering into or carrying out of such a transaction, operation or scheme of the nature of the transaction, operation or scheme in question.

(4) Any decision of the Minister under subsection (1), (2) or (3) shall be subject to objection and appeal, and whenever in proceedings relating thereto it is proved that the transaction, operation, scheme, agreement or change in shareholding in question would result in the avoidance or the postponement of liability for payment of any tax, duty or levy imposed by this Act or any previous income tax law or any other law administered by the Minister, or in the reduction of the amount thereof, it shall be presumed, until the contrary is proved -

- (a) in the case of any such transaction, operation or scheme, that it was entered into or carried out solely or mainly for the purposes of the avoidance or the postponement of such liability or the reduction of the amount of such liability; or

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- (b) in the case of any such agreement or change in shareholding, that it has been entered into or effected solely or mainly for the purpose of utilizing the assessed loss or balance of assessed loss in question in order to avoid or postpone such liability or to reduce the amount thereof.

Determination of taxable income of certain persons in respect of international transactions

95A. (1) For the purposes of this section -

“goods” means any goods, whether tangible or intangible, and includes, without limiting the generality of the foregoing, any corporeal movable thing, fixed property and any real right in any such thing or fixed property;

“international transaction” means a transaction, operation or scheme entered into between -

- (a) (i) a person who is a resident; and
(ii) any other person who is not a resident; or

- (b) (i) a person who is not a resident; and
(ii) any other person who is not a resident,

for the supply of goods or services to or by a permanent establishment of either of such persons in Namibia; or

- (c) (i) a person who is a resident; and
(ii) any other person who is a resident,

for the supply of goods or services to or by a permanent establishment of either of such persons outside Namibia; or

- (d) (i) a person who is a resident; and
(ii) any other person who is a resident,

where either of such persons is as a result of the application of the provisions of any agreement entered into by Namibia for the prevention of double taxation, not subject to tax in Namibia;

“resident” means -

- (a) any natural person who is ordinarily resident in Namibia; or
(b) any person (other than a natural person) which is incorporated, established or formed in Namibia or which has its place of effective management in Namibia;

“services” includes anything done or to be done, including, without limiting the generality of the foregoing -

- (a) the granting, assignment, cession or surrender of any right, benefit or privilege;
(b) the making available of any facility or advantage;

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- (c) the granting of financial assistance, including a loan, advance or debt, and the provision of any security or guarantee;
- (d) the performance of any work;
- (e) an agreement of insurance; or
- (f) the conferring of rights to incorporeal property.

(2) Where any goods or services are supplied or acquired in terms of an international transaction and -

- (a) the acquiror is a connected person in relation to the supplier; and
- (b) the goods or services are supplied or acquired at a price which is either -
 - (i) less than the price which such goods or services might have been expected to fetch if the parties to the international transaction had been independent persons dealing at arm's length (such price being the arm's length price); or
 - (ii) greater than the arm's length price,

then, for the purposes of this Act in relation to either the acquiror or supplier, the Minister may, in the determination of the taxable income of either the acquiror or supplier, adjust the consideration in respect of the international transaction to reflect an arm's length price for the goods or services.

- (3) (a) Where any person who is not a resident (hereinafter referred to as the investor) has granted financial assistance contemplated in paragraph (c) of the definition of "services" in subsection (1), whether directly or indirectly, to -
 - (i) any connected person (in relation to the investor) who is a resident; or
 - (ii) any other person (in whom the investor has a direct or indirect interest) other than a natural person, which is a resident (hereinafter referred to as the recipient) and, by virtue of such interest, is entitled to participate in not less than 25 per cent of the dividends, profits or capital of the recipient, or is entitled, directly or indirectly, to exercise not less than 25 per cent of the votes of the recipient,

and the Minister is, having regard to the circumstances of the case, of the opinion that the value of the aggregate of all such financial assistance is excessive in relation to the fixed capital (being share capital, share premium, accumulated profits, whether of a capital nature or not, or any other permanent owners' capital, other than permanent capital in the form of financial assistance as so contemplated) of such connected person or recipient, any interest, finance charge or other consideration payable for or in relation to or in respect of the financial assistance shall, to the extent to which it relates to the amount which is excessive as contemplated in this paragraph, be disallowed as a deduction for the purposes of this Act.

- (b) For the purposes of paragraph (a), financial assistance granted indirectly shall be deemed to include any financial assistance granted by any third person who is not a connected person in relation to the investor, a connected person contemplated in paragraph (a) or the recipient, where such financial assistance has been granted by

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arrangement, directly or indirectly, with the investor and on the strength of any financial assistance granted, directly or indirectly, by the investor or any connected person in relation to the investor, to such third person.

[section 95A inserted by Act 4 of 2005]

Offences and penalties

96. (1) Any person who with intent to evade assessment or taxation or to assist any other person to evade assessment or taxation -

- (a) makes or causes or allows to be made any false statement or entry in any return rendered in terms of this Act, or signs any statement or return so rendered without reasonable grounds for believing the same to be true; or
- (b) gives any false answer, whether verbally or in writing, to any request for information made under this Act by the Minister or any person duly authorized by him or any officer or employee referred to in section 3; or
- (c) prepares or maintains or authorizes the preparation or maintenance of any false books of account or other records or falsifies or authorizes the falsification of any books of account or other records; or
- (d) makes use of any fraud, art or contrivance whatsoever, or authorizes the use of any such fraud, art or contrivance,

shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand rand or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

(2) Whenever in any proceedings under this section it is proved that any false statement or entry is made in any return rendered under this Act by or on behalf of any taxpayer or in any books of account or other records of any taxpayer, that taxpayer shall be presumed, until the contrary is proved, to have made that false statement or entry or to have caused that false statement or entry to be made or to have allowed it to be made with intent to evade assessment or taxation, and any other person who made any such false statement or entry shall be presumed, until the contrary is proved, to have made such false statement or entry with intent to assist the taxpayer to evade assessment or taxation.

Jurisdiction of courts

97. Any person charged with an offence under this Act may, notwithstanding anything to the contrary contained in any law, be tried in respect of that offence by any court having jurisdiction within any area in which he resides or carries on business.

Authentication and service of documents

98. (1) Any form, notice, demand or other document issued or given by or on behalf of the Minister or any other officer or employee under this Act shall be sufficiently authenticated if the name or official designation of the Minister or other officer or employee by whom the same is issued or given is stamped or printed thereon.

(2) Any form, notice, demand, document or other communication required or authorized under this Act to be issued, given or sent to or served upon any person by the Minister or any other officer or employee under this Act shall, except as otherwise provided in this Act, be deemed to have been effectually issued, given, sent or served -

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- (a) if delivered to him; or
- (b) if left with some adult person apparently residing at or occupying or employed at his last known abode or office or place of business in Namibia; or
- (c) if despatched by registered or any other kind of post addressed to him at his last known address, which may be any such place or office as is referred to in paragraph (b) or his last known post office box number or private bag number or that of his employer; and
- (d) in the case of a company -
 - (i) if delivered to the public officer of the company; or
 - (ii) if left with some adult person apparently residing at or occupying or employed at the place appointed by the company under subsection (5) of section 93 or, in the case of any unit portfolio referred to in paragraph (e) of the definition of "company" in section 1, the public officer of which is the trustee referred to in the said subsection (5), by such trustee, or where no such place has been appointed by the company or trustee, as the case may be, if left with some adult person apparently residing at or occupying or employed at the last known office or place of business of the company or trustee, as the case may be, in Namibia; or
 - (iii) if despatched by registered or any other kind of post addressed to the company or its public officer at its or his last known address, which may be any such office or place as is referred to in subparagraph (ii) or its or his last known post office box number or private bag number or that of his employer.

(3) Any form, notice, demand, document or other communication referred to in subsection (2) which has been issued, given, sent or served in the manner contemplated in paragraph (c) or (d)(iii) of that subsection shall be deemed to have been received by the person to whom it was addressed at the time when it would, in the ordinary course of post, have arrived at the place to which it was addressed, unless the Minister is satisfied that it was not so received or was received at some other time or, where the time at which it was received or the fact that it was received is in dispute in proceedings under this Act in any court having jurisdiction to decide the matter, the court is so satisfied: Provided that the preceding provisions of this subsection shall not apply where any person is in criminal proceedings charged with the commission of an offence under this Act by reason of his failure, refusal or neglect to do anything which he is required to do in terms of the said form, notice, demand, document or other communication, unless it was despatched to such person by registered or certified post.

(4) If the Minister is satisfied that any form, notice, demand, document or other communication (other than a notice of assessment) issued, given, sent or served in a manner contemplated in paragraph (b), (c) or (d)(ii) or (iii) of subsection (2), has not been received by the person to whom it was addressed or has been received by such person considerably later than it should have been received by him and that such person has in consequence been placed at a disadvantage, the Minister may, if he is satisfied that the circumstances warrant such action, direct that such form, notice, demand, document or other communication be withdrawn and be issued, given, sent or served anew.

Regulations

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99. (1) The Minister may make regulations -

[introductory phrase of subsection (1) amended by Act 17 of 1994]

- (a) prescribing the duties of all persons engaged or employed in the administration of this Act;
- (b) defining the limits of areas within which such persons are to act;
- (c) prescribing the nature of the accounts to be rendered by any taxpayer in support of any returns rendered under this Act and the manner in which such accounts shall be authenticated;
- (d) prescribing the procedure to be followed in the consideration of objections by the Minister and at the hearing of appeals by the special court;
- (e) fixing the standard values of livestock,

and generally for giving effect to the objects and purposes of this Act.

(2) The regulations may prescribe penalties for any contravention thereof or failure to comply therewith, not exceeding a fine of N\$ 10 000.

[subsection (2) amended by Act 7 of 2002]

Prevention of or relief from double taxation

100. (1) Where, pursuant to Article 32(3)(e) of the Namibian Constitution, an agreement has been entered into with the government of any other country providing for arrangements with a view to the prevention, mitigation or discontinuance of the levying under the laws of Namibia and of such other country of income tax in respect of the same income, or to the rendering of reciprocal assistance in the administration of and the collection of taxes under the income tax laws of Namibia and of such other country, the arrangements thereby made shall be notified by proclamation by the President in the *Gazette*, and any amendment to, or termination of, any such agreement shall be notified in like manner.

[subsection (1) substituted by Act 25 of 1992]

(2)

[subsection (2) deleted by Act 25 of 1992]

(3)

[subsection (3) deleted by Act 25 of 1992]

(4)

[subsection (4) deleted by Act 25 of 1992]

(5) The provisions of section 4 and of any other law imposing a duty to preserve secrecy with regard to income tax shall not prevent the disclosure to any authorized officer of a country with which an agreement referred to in subsection (1) has been entered into of the facts, knowledge of which is necessary to enable such country to determine whether immunity, exemption or relief ought to be given or which is necessary to be disclosed in order to render or receive assistance in accordance with such an agreement.

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[subsection (5) substituted by Act 25 of 1992]

[Act 5 of 1982 (Rehoboth) deletes section 100 for the purpose of “the application of the Act and any amendment thereof to citizens of Rehoboth”.]

Repeal of laws

101. (1) Subject to the provisions of subsections (2), (3) and (4), the laws specified in Schedule 3 are hereby repealed to the extent indicated in the third column of that Schedule.

(2) The laws purporting to be repealed under subsection (1), shall, in relation to every financial year of a company ending before 1 March, 1982, be deemed not to have been so repealed.

(3) Any tax or other amount which, but for the repeal of the laws specified in Schedule 3, would have been capable of being levied, assessed or recovered and which has, at the commencement of this Act, not been levied, assessed or recovered, may be levied, assessed or recovered as if such repeal had not been effected.

(4) Subject to the provisions of subsection (2), any notice or proclamation issued or regulation made or anything done under any provision of any law repealed by subsection (1), shall be deemed to have been issued, made or done in terms of the corresponding provisions of this Act.

[Act 5 of 1982 (Rehoboth) substitutes section 101 for the purpose of “the application of the Act and any amendment thereof to citizens of Rehoboth”, to read as follows:

“101. (1) (a) Subject to the provisions of subsections (2) and (3), such of the laws specified in Schedule 3 as apply to citizens of Rehoboth, are hereby repealed to the extent indicated in the third column of that Schedule.

(b) Subject to the provisions of subsections (2) and (3), the Income Tax Amendment Act, 1981 (Act 3 of 1981), is hereby repealed.

(2) Any tax or other amount which but for the repeal of the laws specified in subsection (1), would have been capable of being levied, assessed or recovered and which has, at the commencement of this Act, not been levied, assessed or recovered, may be levied, assessed or recovered as if such repeal had not been effected.

(3) Any notice or proclamation issued or regulation made or anything done under any provision of any law repealed by subsection (1) shall be deemed to have been issued, made or done in terms of the corresponding provisions of this Act.”]

Short title

102. This Act shall be called the Income Tax Act, 1981.

[Act 3 of 1991 provides the following transitional provisions in section 24:

“(2) Any tax or other amount which, but for the amendments referred to in subsection (1) **[all the amendments to Act 24 of 1981 made by Act 3 of 1991]** would have been capable of being levied, assessed or recovered and which has at the commencement of this Act not been levied, assessed or recovered, may be levied, assessed or recovered as if such amendments had not been effected.

(3) Notwithstanding the amendment of the provisions of the Income Tax Act in terms of subsection (1), such provisions shall continue to remain in force in respect of any person referred to in section 78(2) of the Petroleum (Exploration and Production) Act, 1991, until a date upon which a licence is issued to such person or any right referred to in that subsection has lapsed.”]

[The amending Acts are inconsistent in their use of terminology such as “item”, “paragraph” and “subparagraph” in respect of the Schedules.]

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SCHEDULE 1

COMPUTATION OF TAXABLE INCOME DERIVED
FROM PASTORAL, AGRICULTURAL OR OTHER
FARMING OPERATIONS

(Section 27 of this Act)

1. In this Schedule -

- (a) a reference to a year of assessment shall in the case of any taxpayer who has under the provisions of subsection (11) of section 56 of this Act been permitted to furnish accounts in respect of the income derived by him from pastoral, agricultural or other farming operations made up to a date other than the last day of the relevant year of assessment, be construed as a reference to the period covered by such accounts; and

[Subparagraph (a) is amended by Act 7 of 2002, with this amendment deemed to have come into force (a) in relation to a taxpayer other than a company, at the beginning of the year of assessment commencing on 1 March 2000; and (b) in relation to a company, at the beginning of the year of assessment of such company commencing on or after 1 January 2000 (section 12(2) of Act 7 of 2002).]

- (b) a reference to the end of a year of assessment includes, where the period assessed ends on a date other than the last day of the year of assessment, a reference to the end of that period.

2. Every farmer shall include in his or her return of income rendered for a tax year a reconciliation of livestock in the prescribed manner.

[Paragraph 2 is substituted by Act 7 of 2002, with this amendment deemed to have come into force (a) in relation to a taxpayer other than a company, at the beginning of the year of assessment commencing on 1 March 2000; and (b) in relation to a company, at the beginning of the year of assessment of such company commencing on or after 1 January 2000 (section 12(2) of Act 7 of 2002).]

3. The value of livestock or produce on hand at the end of the 2000 year of assessment shall be claimed as a deduction from income derived from farming in the 2001 year of assessment.

[Paragraph 3 is substituted by Act 7 of 2002, with this amendment deemed to have come into force (a) in relation to a taxpayer other than a company, at the beginning of the year of assessment commencing on 1 March 2000; and (b) in relation to a company, at the beginning of the year of assessment of such company commencing on or after 1 January 2000 (section 12(2) of Act 7 of 2002).]

4.

[Paragraph 4 is amended by Act 12 of 1982, AG 10 of 1985 (with this amendment deemed to have come into force on 1 March 1983), Act 10 of 1993 and Act 17 of 1994. It is also amended by Act 5 of 1997, with these amendments 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 1997; 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 1997 (section 12(a) of Act 5 of 1997). It is deleted by Act 7 of 2002, with this deletion deemed to have come into force (a) in relation to a taxpayer other than a company, at the beginning of the year of assessment

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commencing on 1 March 2000; and (b) in relation to a company, at the beginning of the year of assessment of such company commencing on or after 1 January 2000 (section 12(2) of Act 7 of 2002).]

5.

[Paragraph 5 is deleted by Act 7 of 2002, with this deletion deemed to have come into force (a) in relation to a taxpayer other than a company, at the beginning of the year of assessment commencing on 1 March 2000; and (b) in relation to a company, at the beginning of the year of assessment of such company commencing on or after 1 January 2000 (section 12(2) of Act 7 of 2002).]

6.

[Paragraph 6 is amended by Act 10 of 1993 and by Act 22 of 1995 and deleted by Act 7 of 2002, with this deletion deemed to have come into force (a) in relation to a taxpayer other than a company, at the beginning of the year of assessment commencing on 1 March 2000; and (b) in relation to a company, at the beginning of the year of assessment of such company commencing on or after 1 January 2000 (section 12(2) of Act 7 of 2002).]

6A.

[Paragraph 6A is inserted by Act 17 of 1994 and deleted by Act 7 of 2002, with this deletion deemed to have come into force (a) in relation to a taxpayer other than a company, at the beginning of the year of assessment commencing on 1 March 2000; and (b) in relation to a company, at the beginning of the year of assessment of such company commencing on or after 1 January 2000 (section 12(2) of Act 7 of 2002).]

7.

[Paragraph 7 is amended by Act 10 of 1993 and deleted by Act 7 of 2002, with this deletion deemed to have come into force (a) in relation to a taxpayer other than a company, at the beginning of the year of assessment commencing on 1 March 2000; and (b) in relation to a company, at the beginning of the year of assessment of such company commencing on or after 1 January 2000 (section 12(2) of Act 7 of 2002).]

8.

[Paragraph 8 is deleted by Act 7 of 2002, with this deletion deemed to have come into force (a) in relation to a taxpayer other than a company, at the beginning of the year of assessment commencing on 1 March 2000; and (b) in relation to a company, at the beginning of the year of assessment of such company commencing on or after 1 January 2000 (section 12(2) of Act 7 of 2002).]

9. If during any year of assessment livestock or produce has been donated by any farmer or has, for purposes other than that of the production to him of income from sources within Namibia, been removed by him from Namibia, there shall be included in the income of such farmer for that year of assessment an amount equal to the price which in the opinion of the Minister is the current market price of such livestock or produce.

10. (1) Subject to the provisions of subparagraphs (2), (3), (4), (5), (6), (7) and (8) there shall be allowed as deductions in the determination of the taxable income derived by any farmer, the expenditure incurred by him during the year of assessment in respect of -

- (a) dipping tanks;
- (b) dams, wells, drinking troughs, irrigation schemes, boreholes and pumping plants;
- (c) the prevention of soil erosion;

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- (d) the erection of buildings or acquisition of any structure used in connection with farming operations other than those used for domestic purposes of persons who are not employees of such farmer;

[Item (d) is amended by Act 5 of 2007 with effect from (a) in the case of a tax payer other than a company, at the beginning of the year of assessment commencing on or after 1 March 2007; and (b) in the case of a tax payer which is a company, at the beginning of the year of assessment of such company on or after 1 January 2007 (section 12(4) of Act 5 of 2007).]

- (e) wire and stone, brick or concrete kraals;
- (f) fences;
- (g) fire breaks;
- (h) the eradication of bush and noxious plants;
- (i) the establishment of orchards and vineyards;
- (j) the building of roads and bridges used for farming operations;
- (k)

[item (k) deleted by Act 25 of 1992]

- (l) The carrying of electric power from the main transmission lines to the farm apparatus or under an agreement concluded with a supplier of electricity in terms of which the farmer has undertaken to bear a portion of the cost incurred by the supplier in connection with the supply of electric power consumed by the farmer wholly or mainly for farming purposes.

[Item (l) is inserted by Act 5 of 2007 with effect from (a) in the case of a tax payer other than a company, at the beginning of the year of assessment commencing on or after 1 March 2007; and (b) in the case of a tax payer which is a company, at the beginning of the year of assessment of such company on or after 1 January 2007 (section 12(4) of Act 5 of 2007). The initial word "the" should not be capitalised.]

(2) Where any farmer (other than a company) would, in respect of the year of assessment ending 28 February, 1982, have been entitled under paragraph 10(1A) of Schedule 2 to the Income Tax Ordinance, 1974 (Ordinance 5 of 1974), to a deduction with regard to machinery, implements, utensils or articles, such deduction shall in respect of the said year of assessment be granted as though the said Ordinance were not repealed.

- (3) (a) Where any asset in respect of which any deduction has been allowed to a farmer under the provisions of subparagraph (1) or (2) or the corresponding provisions of any previous income tax law (whether in the current or any previous year of assessment) and which is or has become a movable asset, is disposed of by the farmer, there shall be included in his income so much of the amounts received by or accrued to or in favour of the farmer in respect of such disposal as does not exceed the expenditure in respect of such asset allowed under subparagraph (1) or the original cost to him of such asset taken into account under subparagraph (2), as the case may be.
- (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.

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[subparagraph (b) amended by Act 12 of 1996]

(4) For the purposes of this paragraph, where any asset in respect of which any deduction has been allowed to a farmer under the provisions of subparagraph (1) or (2) or the corresponding provisions of any previous income tax law (whether in the current or any previous year of assessment) and which is or has become a movable asset, is disposed of by the farmer to any other person by way of donation or for a consideration, which, in the opinion of the Minister, is not an adequate consideration or is not readily capable of valuation, a consideration equal in value to an amount determined by the Minister as the fair value of such asset shall be deemed to have been received by the farmer in respect of his disposal of the asset and to have been paid by such other person in respect of his acquisition of the asset: Provided that the amount so determined shall not exceed the cost to the farmer of such asset.

(4A) Where any asset in respect of which any deduction has been allowed to a farmer under subparagraph (1) or (2) or the corresponding provisions of any previous income tax law (whether in the current year or any previous year of assessment) and which is or has become a movable asset -

- (a) is withdrawn from farming operations for use for non-farming operations; or
- (b) is removed from Namibia,

there must be included in such farmer's income an amount which, to the satisfaction of the Minister, is the market value of such asset, but such amount may not exceed the amount that had been or will be allowed as a deduction.

[Subparagraph (4A) is inserted by Act 5 of 2007 with effect from (a) in the case of a tax payer other than a company, at the beginning of the year of assessment commencing on or after 1 March 2007; and (b) in the case of a tax payer which is a company, at the beginning of the year of assessment of such company on or after 1 January 2007 (section 12(4) of Act 5 of 2007).]

(5)

[subparagraph (5) substituted by Act 25 of 1992]

(6) The total amount allowable as deductions to any farmer under items (a) to (l), inclusive, of subparagraph (1) and under subparagraph (2) in any year of assessment shall not exceed the taxable income (as calculated before allowing the said deductions) derived by such farmer from farming operations during that year of assessment: Provided that the amount by which the total expenditure incurred by any farmer during any year of assessment in respect of the matters referred to in the said items exceeds the taxable income (calculated as aforesaid) derived by him from farming operations during that year of assessment shall be carried forward and be deemed for the purposes of subparagraph (1) to be expenditure which has been incurred by him during the next succeeding year of assessment and for the purposes of this proviso any amount which has been carried forward from the year of assessment ended the last day of February, 1981, in the case of a farmer that is not a company, or from the financial year ended before 1 March, 1982, in the case of a farmer that is a company, in terms of the corresponding provisions of any previous income tax law, shall be deemed to be an amount which has been so carried forward in terms of this proviso.

[Subparagraph (6) is substituted by Act 25 of 1992 and amended by Act 5 of 2007 (amendment markings incomplete), with effect from (a) in the case of a tax payer other than a company, at the beginning of the year of assessment commencing on or after 1 March 2007; and (b) in the case of a tax payer which is a company, at the beginning of the year of assessment of such company on or after 1 January 2007 (section 12(4) of Act 5 of 2007).]

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- (7) (a) For the purposes of this paragraph “employees”, in relation to any farmer, means persons employed by that farmer in connection with his farming operations, but does not include his relatives or, where the farmer is a company, the shareholders (or the relatives of shareholders) in that company or in any company which is associated with it by virtue of shareholding.
- (b) For the purposes of item (a) “shareholders” in relation to any company does not include persons who hold all their shares in that company solely because they are employed by that company and who will, in terms of the articles of association of that company, not be entitled to hold those shares after they cease to be so employed.

(8) The aggregate of all the deductions allowed under item (d) of subparagraph (1) or the corresponding provisions of any previous income tax law to any farmer in respect of the erection of any buildings or the acquisition of any structure used for the domestic purposes of any one of such farmer’s employees shall not exceed the sum of R\$50 000.

[Subparagraph (8) is amended by Act 10 of 1993 and by Act 5 of 2007, with effect from (a) in the case of a tax payer other than a company, at the beginning of the year of assessment commencing on or after 1 March 2007; and (b) in the case of a tax payer which is a company, at the beginning of the year of assessment of such company on or after 1 January 2007 (section 12(4) of Act 5 of 2007).]

11. (1) If it is proved to the satisfaction of the Minister that any farmer -
- (i) has in any year of assessment sold livestock on account of drought, stock disease or damage to grazing by fire or plague; and
- (ii) has within four years after the close of the said year of assessment purchased livestock to replace the livestock so sold,

the cost of the livestock so purchased shall notwithstanding anything in this Schedule contained, be allowed, at the option of such farmer, as a deduction in the determination of his taxable income for the year of assessment during which the livestock was so sold, provided the claim for such deduction is made within five years after the close of that year of assessment.

(2) The cost of livestock so allowed as a deduction shall not be allowed as a deduction in the year of assessment in which the purchases were made.

(3) Every farmer who desires to claim a deduction in terms of subparagraph (1), shall with his return of income for the year of assessment in which he sold livestock on account of drought, stock disease or damage to grazing by fire or plague or within such period as the Minister may allow notify the Minister accordingly and furnish full particulars in regard to the livestock so sold.

(4) Notwithstanding anything contained in the preceding provisions of this paragraph, the Minister shall, until proof has been submitted to him as provided in subparagraph (1), assess and recover any tax payable by a farmer in respect of any year of assessment in which livestock has been sold as aforesaid, as if the said paragraph had not been enacted: Provided that if proof is submitted to the satisfaction of the Minister in terms of the said paragraph he shall revise the assessment concerned and refund to the farmer so much of the amount paid by him as exceeds the amount found to be payable after allowing the deduction referred to in the said paragraph.

12.

[Paragraph 12 is amended by Act 5 of 1992 and deleted by Act 10 of 1993.]

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SCHEDULE 2

AMOUNTS TO BE DEDUCTED OR WITHHELD BY
EMPLOYERS AND PROVISIONAL PAYMENTS IN
RESPECT OF NORMAL TAX

(Section 80 of this Act)

Part I

Definitions

1. For the purposes of this Schedule, unless the context otherwise indicates -

“employee” means any person (other than a company) who receives any remuneration or to whom any remuneration accrues;

“employees tax” means the tax required to be deducted or withheld by an employer in terms of paragraph 2 from remuneration paid or payable to an employee;

“employees’ tax certificate” means a certificate required to be issued by an employer in terms of paragraph 13;

“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 regional council, or any administration or undertaking thereof) or out of funds voted by the National Assembly;

[The definition of “employer” is amended by Act 12 of 1996. Words appear to be missing between “Government of Namibia” and “regional council”.]

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

[The definition of “month” is inserted by Act 12 of 1996. The word “calendar” is misspelt in the *Government Gazette*, as reproduced above.]

“provisional tax” means any payment required to be made in terms of paragraph 17;

“provisional taxpayer” means -

- (a) any person (other than a company or a person referred to in paragraph 18) who derives by way of income any amount which does not constitute remuneration in terms of the definition of that expression in this paragraph;
- (b) unless the Minister in the particular case otherwise directs, any director of a company which is recognised as a private company under section 38 of this Act, if such director is ordinarily resident in Namibia or such company is managed or controlled or has a registered office in Namibia;
- (c) any person who is notified by the Minister that he is a provisional taxpayer; and

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- (d) any company;

“remuneration” means any amount of income which is paid or is payable to any person by way of any salary, leave pay, allowance, wage, overtime pay, bonus, gratuity, commission, fee, emolument, pension, superannuation allowance, retiring allowance or stipend, whether in cash or otherwise and whether or not in respect of services rendered, including -

- (a) any amount referred to in paragraph (a), (b), (c), (d), (dB) or (e) of the definition of gross income in section 1 of this Act.

[subparagraph (a) of definition of “remuneration” amended by Act 10 of 1993]

- (b) any amount required to be included in such person’s gross income under paragraph (g) of that definition,

but not including -

- (i)

[subparagraph (i) deleted by Act 12 of 1996]

- (ii) any amount paid or payable in respect of services rendered or to be rendered by any person (other than a person not ordinarily resident in Namibia) in the course of any trade carried on by him independently of the person by whom such amount is paid or payable and of the person to whom such services have been or are to be rendered: Provided that for the purposes of this paragraph a person shall be deemed not to carry on a trade independently as aforesaid-
- (aa) if he is subject to the control or supervision of any other person as to the manner in which his duties are performed or to be performed or as to his hours of work; or
- (bb) if the amounts paid or payable for his services consist of or include earnings of any description which are payable at regular daily, weekly, monthly or other intervals;
- (iii) any pension or allowance under the Social Pensions Act, 1973 (Act 37 of 1973), or any grant or contribution under the provisions of section 89 of the Children’s Act, 1960 (Act 33 of 1960);

[The Social Pensions Act 37 of 1973 has been repealed by the National Pensions Act 10 of 1992.]

- (iv) any amount paid or payable to any director referred to in paragraph (b) of the definition of “provisional taxpayer” in respect of services rendered or to be rendered by such director to a company referred to in that paragraph, unless the Minister in the particular case otherwise directs;
- (v) any amount paid or payable to any employee wholly in reimbursement of expenditure actually incurred by such employee in the course of his employment;

[subparagraph (v) amended by Act 8 of 1987]

- (vi)

[subparagraph (vi) deleted by Act 8 of 1987]

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- (vii) any amount of directors' fees paid or payable by a public company to any person who is ordinarily resident in Namibia, if no other amounts constituting remuneration in terms of this definition have been paid or become payable to such person by such company;
- (viii) any annuity under an order of divorce or a judicial order or written agreement of separation;

“representative employer” means -

- (a) in the case of any company, the public officer of that company, or, in the event of such company being placed in liquidation or under judicial management, the liquidator or judicial manager, as the case may be;
- (b) in the case of any municipality, village management board, the Peri-urban Development Board or like authority, or any body corporate or unincorporate (other than a company or a partnership) any town clerk, Minister, manager, officer or other person responsible for paying remuneration on behalf of such municipality, board, authority or body;
- (c) in the case of a person under legal disability, any guardian, curator, administrator or other person having the management or control of the affairs of the person under legal disability; or
- (d) in the case of any employer who is not ordinarily resident in Namibia, any agent of such employer having authority to pay remuneration,

but nothing in this definition shall be construed as relieving any person from any liability, responsibility or duty imposed upon him by this Schedule.

Part II

Employees' Tax

2. (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 Minister has granted authority to the contrary, deduct or withhold from that amount by way of employees' 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 Minister within 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 20 days after the day on which such person ceased to be an employer, or in either case within such further period as the Minister may approve.

[subparagraph (1) amended by Act 25 of 1992 and by Act 22 of 1995]

(2) Any employer may, at the written request of any employee, deduct or withhold from any amount of remuneration an amount by way of employees' tax greater than that required to be deducted or withheld in terms of subparagraph (1), and shall remit such amount to the Minister, and the provisions of this Schedule relating to employees' tax shall *mutatis mutandis* apply in respect of such amount.

(3)

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[subparagraph (3) deleted by Act 12 of 1996]

(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-a-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.

[Subparagraph (4) is amended by Act 25 of 1992 (amending markings incomplete). It is also amended by Act 5 of 1997, with this amendment deemed to have come into force (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 1997; 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 1997 (section 12(a) of Act 5 of 1997).]

3. (1) The liability of any employer to deduct or withhold any amount of employees' tax in terms of paragraph 2 shall not be reduced or extinguished by reason of the fact that the employer has a right or is otherwise than in terms of any law under an obligation to deduct or withhold any other amount from the employees' remuneration, and such right or obligation shall notwithstanding anything to the contrary in any other law contained, for all purposes be deemed to have reference only to the amount of the remuneration remaining after the amount of employees' tax referred to in that paragraph has been deducted or withheld.

(2) The provisions of paragraph 2 shall apply in respect of all amounts payable by way of remuneration, notwithstanding the provisions of any law which provide that any such amount shall not be reduced or shall not be subject to attachment.

4. Any amount required to be deducted or withheld in terms of paragraph 2 shall be a debt due to the Government of Namibia and the employer concerned shall, save as otherwise provided, be absolutely liable for the due payment thereof to the Minister.

5. (1) Subject to the provisions of subparagraph (6) any employer who fails to deduct or withhold the full amount of employees' tax as provided in paragraph 2 shall be personally liable for the payment to the Minister of the amount which he fails to deduct or withhold, and shall, subject to the provisions of subparagraph (2), pay that amount to the Minister not later than the date on which payment should have been made if the employees' tax had in fact been deducted or withheld in terms of paragraph 2.

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(2) Where the employer has failed to deduct or withhold employees' tax in terms of paragraph 2 and the Minister is satisfied that the failure was not due to an intent to postpone payment of the tax or to evade the employer's obligations under this Schedule, the Minister may, if he is satisfied that there is a reasonable prospect of ultimately recovering the tax from the employee, absolve the employer from his liability under subparagraph (1) of this paragraph.

(3) An employer who has not been absolved from liability as provided in subparagraph (2) shall have a right of recovery against the employee in respect of the amount paid by the employer in terms of subparagraph (1) in respect of that employee, and such amount may in addition to any other right of recovery be deducted from future remuneration which may become payable by the employer to that employee, in such manner as the Minister may determine.

(4) Until such time as an employee pays to his employer any amount which is due to the employer in terms of subparagraph (3), such employee shall not be entitled to receive from the employer an employees' tax certificate in respect of that amount.

(5) Any amount which an employer is required to pay in terms of subparagraph (1) and which he is entitled to recover from the employee in terms of subparagraph (3) shall, insofar as the employer only is concerned, be deemed to be a penalty due and payable by that employer.

(6) The provisions of subparagraph (1) shall not apply in respect of any amount or any portion of any amount of employees' tax which an employer has failed to deduct or withhold and in respect of which the provisions of paragraph 29(4) apply.

6. (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.

[subparagraph (1) amended by Act 12 of 1996]

(2) The Minister may, if he is satisfied that the employer's failure to pay the amount of employees' tax was not due to an intent to postpone payment of such tax or otherwise evade his obligations under this Act and was not designed to enable the employee concerned to evade such employee's obligations under this Act, remit the whole or any part of the penalty imposed under subparagraph (1).

(3) The penalty imposed under subparagraph (1) shall be paid to the Minister when payment is made of the amount of employees' tax to which it refers or within such further period as the Minister may approve.

7. Any agreement between an employer and an employee whereby the employer undertakes not to deduct or withhold employees' tax shall be void.

8. An employee shall not be entitled to recover from an employer any amount deducted or withheld by the employer from the employee's remuneration in terms of paragraph 2.

9. (1) The 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 Minister in his or her budget statement, 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

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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.

[subparagraph (1) amended by Act 12 of 1996]

(2) Any tables prescribed by the Minister in accordance with subparagraph (1) shall come into force on such date as may be notified by the Minister in the *Official Gazette*, and shall remain in force until withdrawn by the Minister.

(3) The amount to be deducted or withheld in respect of employees' tax from any lump sum to which paragraph (d) of the definition of "gross income" in section 1 of this Act applies, shall be ascertained by the employer from the Minister before paying out such lump sum, and the Minister's determination of the amount to be so deducted or withheld shall be final.

10. (1) If the Minister is satisfied that the circumstances warrant a variation of the basis provided in paragraph 9 for the determination of amounts of employees' tax to be deducted or withheld from remuneration of employees in the case of any employer he may agree with such employer as to the basis of determination of the said amounts to be applied by that employer, and the amounts to be deducted or withheld by that employer in terms of paragraph 2 shall, subject to the provisions of paragraphs 11 and 12, be determined accordingly.

(2) Any agreement made in terms of subparagraph (1) shall remain in force indefinitely, but the Minister or the employer concerned may give notice of termination thereof and upon the expiration of a period of three months from the date of such notice such agreement shall terminate.

11. In order to alleviate hardship to an employee due to illness or other circumstances or to correct any error in regard to the calculation of employees' tax, whether arising from the furnishing to an employer by an employee of a false or incorrect return of personal particulars or otherwise, or where the employee has in terms of paragraph 12(2) applied to the Minister for the issue of a directive to his employer, to enable the employer to deduct or withhold the correct amount by way of employees' tax, the Minister may, having regard to the circumstances of the case, issue a directive to the employer concerned authorizing the employer to refrain from deducting or withholding any amount under paragraph 2 by way of employees' tax from any remuneration due to the employee or to deduct or withhold by way of employees' tax a specified amount or an amount to be determined in accordance with a specified rate or scale, and the employer shall comply with such directive.

11A. (1) An employer must issue a declaration to the Minister in the prescribed form within 30 days following the month in respect of which any amount received or accrued to a taxpayer under or upon the maturity, payment, surrender or disposal of an education policy to which paragraph (dC) of the definition of "gross income" applies.

(2) If an employer fails to submit a declaration in terms of subparagraph (1) within the period prescribed in that subparagraph he or she is liable to pay a penalty equal to 10 per cent of the amount received or accrued to a taxpayer under or upon the maturity, payment, surrender or disposal of the policy.

(3) Where good cause is shown in writing by the employer liable for the payment of a penalty under subparagraph (2), the Minister may remit any penalty in whole or in part.

[Paragraph 11A is inserted by Act 15 of 2011.]

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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.

[Paragraph 12 is amended by Act 25 of 1992 and substituted by Act 21 of 1999, with the substitution deemed to have come into force at the beginning of the year of assessment commencing on or after 1 March 1998 (section 14(2)(a) of Act 21 of 1999).]

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.

[Paragraph 12A is inserted by Act 5 of 1997, with the insertion deemed to have come into force (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 1997; 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 1997 (section 12(a) of Act 5 of 1997).]

Furnishing and obtaining of employees' tax certificates

13. (1) Subject to the provisions of paragraphs 5 and 29, every employer who during the period of twelve months ending the last day of February, 1982, or any succeeding period of twelve months, deducts or withholds any amount by way of employees' tax as required by paragraph 2 shall within the time allowed by subparagraph (2) of this paragraph deliver to each employee or former employee to whom remuneration has during the period in question been paid or become due by such employer, an employees' tax certificate in such form as the Minister may prescribe or approve, which shall show the total remuneration of such employee or former employee and the sum of the amounts of employees' tax deducted or withheld by such employer from such remuneration during the said period, excluding any amount of remuneration or employees' tax included in any other employees' tax certificate issued by such employer unless such other certificate has been surrendered to such employer by the employee or former employee and has been cancelled by such employer and dealt with by him as provided in subparagraph (10).

(2) The employees' tax certificate referred to in subparagraph (1) shall be delivered -

(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 30 days after the end of the period to which the certificate relates;

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[subparagraph (a) amended by Act 12 of 1996]

- (b) if the said employer has ceased to be an employer in relation to the employee concerned but has continued to be an employer in relation to other employees, within fourteen days of the date on which he has so ceased; or
- (c) if the said employer has ceased to be an employer, within seven days of the date on which he has so ceased,

or in any particular case within such further period as the Minister may approve.

(3) For the purposes of subparagraph (2) an employer shall, if the Minister having regard to the circumstances of the case so directs be deemed not to have ceased to be an employer in relation to any of his casual employees who is likely from time to time to be re-employed by such employer.

(4) Notwithstanding the provisions of subparagraphs (1) and (2) any employer who has deducted or withheld employees' tax from the remuneration of any employee shall as and when required by the Minister deliver to such employee an employees' tax certificate in such form as the Minister may prescribe or approve, which shall show the total remuneration of such employee or former employee and the sum of the amounts of employees' tax deducted or withheld by such employer from such remuneration during any period specified by the Minister but excluding any amount of remuneration or employees' tax included in any other employees' tax certificate issued by such employer unless such certificate has been surrendered to such employer by the employee or former employee and has been cancelled by such employer and dealt with by him as provided in subparagraph (10).

(5) It shall be the duty of any employee or former employee who has not received an employees' tax certificate within the time allowed by subparagraph (2) forthwith to apply to the employer for such certificate.

(6) Every taxpayer shall when rendering a return of income under the provisions of section 56 of this Act, attach to such return all employees' tax certificates in his possession which disclose information in respect of the year of assessment to which the return relates.

(7) It shall be sufficient compliance with the provisions of subparagraph (1) or (4) in regard to the delivery of any employees' tax certificate to any employee or former employee if such certificate is delivered to the employee's authorised agent or the representative taxpayer in respect of the remuneration shown in such certificate or, where delivery cannot conveniently be effected by personal delivery, if such certificate is sent to the employee or former employee or such agent or representative taxpayer by registered post.

(8) An employer may at the request of the employee or former employee issue a duplicate employees' tax certificate but any such duplicate shall be clearly marked as such and shall disclose full details of the original certificate.

(9) Unless authorized thereto by the Minister no duplicate employees' tax certificate may be issued by an employer otherwise than as provided in subparagraph (8).

(10) Any cancelled or spoiled employees' tax certificate shall not be destroyed by the employer concerned but shall be retained by him until the Minister requires it to be surrendered to him.

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(11) The Minister shall control the issue to employers of stocks of unused employees' tax certificates and may prescribe conditions in regard to the manner in which such unused certificates may be used or as to the surrender of unused stocks of such certificates and every employer shall account to the Minister for used, unused, cancelled or spoiled certificates as and when required by the Minister.

(12) In the case of any employer who has a mechanised accounting system the Minister may subject to such conditions as he may impose approve the use by such employer of employees' tax certificates in a form other than the form prescribed for general use and if any such employer fails to comply with the conditions imposed by the Minister, the Minister may withdraw his consent for the use of such certificates and the employer shall forthwith or from any date specified by the Minister cease to use such certificates and shall within such period as the Minister may prescribe surrender to the Minister all unused stocks of such certificates.

(13) Every person who ceases to be an employer shall, unless the Minister otherwise directs, within fourteen days of his ceasing to be an employer surrender to the Minister all unused employees' tax certificates in his possession.

(14) If any person fails to surrender any unused employees' tax certificates as required by subparagraph (12) or (13), any officer or employee engaged in carrying out the provisions of this Act who has in relation to such person been authorized thereto by the Minister in writing or by telegram may without previous notice, at any time during the day enter any premises whatsoever and on such premises search for and seize such certificates and in carrying out such search, open or cause to be opened or removed and opened any article in which he suspects any such certificates to be contained.

(15) For the purposes of this Schedule any employees' tax certificate on which appears the name or any trade name of any employer shall until the contrary is proved be deemed to have been issued by such employer if such certificate is in a form prescribed by the Minister for general use and was supplied by the Minister to such employer for use by him or is in a form approved by the Minister under subparagraph (12) for use by such employer.

Employers to keep records and furnish returns

14. (1) Every employer shall in respect of each employee maintain a record showing the amounts of remuneration paid or due by him to such employee and the amount of employees' tax deducted or withheld from each such amount of remuneration, and such record or a duplicate original or a true copy thereof shall be retained by the employer at an address in Namibia and shall be available for scrutiny by the Minister.

(2) Every employer shall when making any payment of employees' tax submit to the Minister a declaration in such form as the Minister may prescribe.

(3) Every employer shall -

(a) in respect of the period of twelve months ending the last day of February, 1982, and each succeeding period of twelve months; and

(b) if he ceases to carry on any business or other undertaking in respect of which he has paid or becomes liable to pay remuneration to any employee or otherwise ceases to be an employer, in respect of the period from the first day of March immediately preceding the date on which he has ceased to carry on such business or other undertaking or to be an employer, as the case may be, to the date on which he has so ceased to carry on such business or undertaking or to be an employer, as the case may be,

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within thirty days after the end of the period in question, or within such longer time as the Minister may approve, render to the Minister a return in such form as the Minister may prescribe showing the names and addresses of all the persons who during such period were employees in relation to such employer and the total remuneration paid to or accrued to each employee in respect of such period and the total amount of employees' tax deducted or withheld from the remuneration of each such employee during such period.

[subparagraph (3) amended by AG 10 of 1985]

Registration of employers

15. (1) Every person who is an employer shall apply to the Minister in such form as the Minister may prescribe for registration as an employer within fourteen days after becoming an employer, or within such further period as the Minister may approve.

(2) Every person who has applied for registration under subparagraph (1) shall within fourteen days after changing his address or ceasing to be an employer, notify the Minister in writing of his new address or of the fact of his having ceased to be an employer, as the case may be.

(3) The Minister may at such times as he may decide issue public notices drawing attention to the provisions of this paragraph.

Liability of representative employers and others

16. (1) Every representative employer shall as regards the remuneration which he pays or is liable to pay to any employee in his representative capacity, be subject in all respects to the same duties, responsibilities and liabilities under this Schedule as if that remuneration were remuneration paid or liable to be paid by him in his personal capacity.

(2) Any employees' tax or interest on employees' tax or any penalty imposed under this Part shall be recoverable from the person who in terms of the definition of "employer" in paragraph 1 is an employer by virtue of his having paid or become liable to pay remuneration in a fiduciary capacity or in his 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, or from the representative employer, but to the extent only of any assets belonging to the person, body, trust, estate or fund represented or administered by him which may be in his possession or under his management, disposal or control, and the provisions of sections 88 and 89 of this Act shall *mutatis mutandis* apply in the case of such first-mentioned person or representative employer as if he were a representative taxpayer.

(3) The executor of the estate of any deceased employer or the trustee of the insolvent estate of any employer shall fulfil such obligations of the deceased or insolvent employer under paragraphs 13 and 14 as arise in consequence of that employer ceasing to be an employer because of his death or insolvency, or as have not been fulfilled by such employer before his death or insolvency.

Part III

Provisional Tax

Payment of provisional tax

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17. (1) Every provisional taxpayer shall in the manner provided in this Part make payments (called provisional tax) to the Minister in respect of his liability for normal tax in respect of every year of assessment to which this Act relates.

(2) Where for the purposes of determining any amount of provisional tax required to be paid by any provisional taxpayer in respect of any year of assessment the liability of such taxpayer for normal tax is required to be estimated in respect of such year, such liability shall be deemed to be the amount of normal tax which, calculated at the relevant rate referred to in subparagraph (3), would be payable by the provisional taxpayer in respect of the amount of taxable income estimated by such taxpayer in terms of paragraph 19(1) during the period prescribed by this Schedule for the payment of the said amount of provisional tax, or any extension of such period granted in terms of paragraph 26(2), or if the amount so estimated has been increased by the Minister in terms of paragraph 19(3), the amount of normal tax which, calculated at the said rate, would be payable by the provisional taxpayer in respect of the amount of taxable income as so increased, or if the Minister has estimated the provisional taxpayer's taxable income in terms of paragraph 19(2), the amount of normal tax which, calculated at the said rate, would be payable by the provisional taxpayer in respect of the amount of taxable income so estimated.

(3) For the purposes 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 Minister in his or her budget statement.

[subparagraph (3) amended by Act 12 of 1996]

(4) The 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 Minister in his or her budget statement, and to any other factors having a bearing upon the probable liability of taxpayers for normal tax, prescribe tables for optional use by provisional taxpayers falling within any category specified by the Minister, or by provisional taxpayers generally, for the purpose of estimating the liability of such taxpayers for normal tax, and the the Minister may prescribe the manner in which such tables shall be applied.

[Subparagraph (4) amended by Act 12 of 1996. The word "the" is repeated in the phrase "the Minister may prescribe..." in the *Government Gazette*.]

(5) Any tables prescribed by the Minister in accordance with subparagraph (4) shall come into force on such date as may be notified by the Minister in the *Official Gazette*, and shall remain in force until withdrawn by the Minister.

(6) The provisions of subparagraphs (2) and (3) shall not apply where the liability of a provisional taxpayer for normal tax is estimated in accordance with any tables prescribed for his use under the provisions of subparagraph (4) and not withdrawn under the provisions of subparagraph (5).

Exemptions

18. There shall be exempt from payment of provisional tax -

- (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

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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\$5 000;

[paragraph (a) amended by Act 21 of 1999]

- (b) any person in respect of whose liability for normal tax for the relevant year of assessment payments are required to be made under section 34 or 35 of this Act.

Estimates of taxable income to be made by Provisional Taxpayers

19. (1) Every provisional taxpayer must, 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 is derived by the taxpayer in respect of the year of assessment in respect of which provisional tax is payable.

[Subsection (1) is amended by Act 21 of 1999 (amendment markings incomplete), with this amendment deemed to have come into force on 1 December 1998 (section 14(2)(b) of Act 21 of 1999). It is then substituted by Act 15 of 2011.]

(2) If the provisional taxpayer fails to submit any estimate as required by subparagraph (1) the Minister may estimate the said taxable income, and such estimate shall be final and conclusive.

(3) The Minister may call upon any provisional taxpayer to justify any estimate made by him in terms of subparagraph (1), or to furnish particulars of his income and expenditure or any other particulars that may be required, and, if the Minister is dissatisfied with the said estimate, he may increase the amount thereof to such amount as he considers reasonable, and the estimate as increased shall be final and conclusive.

(4) For the purposes of subparagraph (1) the expression “year of assessment preceding” shall be deemed to include any year of assessment under any previous income tax law.

(5) Any estimate made by the Minister under the provisions of subparagraph (2) or (3) shall be deemed to take effect in respect of the relevant period within which the provisional taxpayer is required to make any payment of provisional tax in terms of this Part, or within any extension of such period granted in terms of paragraph 26(2).

Additional Tax in the event of Taxable income being Underestimated

20. (1) (a) If the estimate in terms of paragraph 22(1)(a) and paragraph 24(a) of his or her taxable income made in terms of paragraph 19(1) by a provisional taxpayer in respect of the first six months of any year of assessment discloses his or her estimated taxable income in respect of the first six months of that year of assessment in an amount which is less than 80 per cent of the amount of his or her taxable income as finally determined for that year, which represents 50 per cent of the taxable income for that year, the taxpayer is, subject to subparagraphs (2), (3) and (4), required to pay to the Minister, in addition to normal tax chargeable in respect of his or her taxable income for the year of assessment, an amount by way of additional tax equal to not more than 100 per cent of the amount of tax payable after taking into account the provisional tax and employees’ tax paid for the first six months of the year of assessment in respect of his or her taxable income as finally determined for the year of assessment, which represents 50 per cent of the taxable income for that year.

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(b) If the final or last estimate of his or her taxable income made in terms of paragraph 19(1) by a provisional taxpayer in respect of any year of assessment discloses his or her estimated taxable income in respect of that year of assessment in an amount which is less than 80 per cent of the amount of his or her taxable income as finally determined for that year, the taxpayer is, subject to subparagraphs (2), (3) and (4), required to pay to the Minister, in addition to normal tax chargeable in respect of his or her taxable income for the year of assessment, an amount by way of additional tax equal to not more than 100 per cent of the amount of tax payable after taking into account the provisional tax and employees' tax paid in respect of his or her taxable income as finally determined for the year of assessment.

(2) Where the Minister is satisfied that the taxpayer has become liable to pay additional tax under subparagraph (1) by reason of the fact that his or her taxable income for the year of assessment in question is affected by circumstances of which he or she was not aware at the time of making the estimate referred to in subparagraph (1), the Minister may remit the additional tax in whole or a part thereof.

(3) Subparagraph (1) does not apply in any case where the Minister has, under paragraph 19(3)(b), increased the final or last estimate made by the taxpayer in respect of the relevant year of assessment.

(4) A decision of the Minister made under subparagraph (2) is subject to objection and appeal.

[paragraph 20 substituted by Act 15 of 2011]

Additional Tax in the event of failure to submit an Estimate of Taxable Income timeously

21. (1) Subject to subparagraphs (2) and (3), where any provisional taxpayer has failed to submit an estimate of taxable income as required under paragraph 19(1) on or before the due date or, if the period for submission of the estimate has under paragraph 26(2) (b) been extended to a date later than the due date for submission of the return, on or before such date, the taxpayer is, unless the Minister has estimated the taxable income under paragraph 19(2), required to pay to the Minister, in addition to the normal tax chargeable in respect of such taxable income, if any, an amount by way of additional tax to an amount of N\$100 for each day during which the estimate of such taxable income remains outstanding reckoned from the day after such return becomes due until the date of submission or date of issue of original assessment for the year to which it relates, whichever is the earlier.

(2) The Minister may, if he or she is satisfied that the provisional taxpayer's failure to submit such an estimate timeously was not due to an intent to evade or postpone the payment of provisional tax or normal tax, remit the whole or any part of the additional tax imposed under subparagraph (1).

(3) A decision of the Minister made under subparagraph (2) is subject to objection and appeal.

[paragraph 21 substituted by Act 15 of 2011]

Payment of Provisional Tax by Provisional Taxpayers (other than Companies) whose Income is not normally derived wholly or mainly from Farming

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22. (1) Provisional tax shall be paid by every provisional taxpayer (other than a company) whose income is not normally derived wholly or mainly from farming in the following manner, namely -

- (a) within the period of six months reckoned from the commencement of the year of assessment in question, one half of an amount equal to the total estimated liability of such taxpayer (as determined in accordance with paragraph 17) for normal tax in respect of that year, less the total amount of any employees' tax deducted by the taxpayer's employer from the taxpayer's remuneration during such period; and
- (b) not later than the last day of the year of assessment in question, an amount equal to the total estimated liability of such taxpayer (as finally determined in accordance with paragraph 17) for normal tax in respect of that year, less the sum of the amounts of any employees' tax deducted by the taxpayer's employer from the taxpayer's remuneration during such year and the amount paid in terms of item (a).

(2) The provisions of this paragraph shall not apply in the case of any provisional taxpayer in respect of whom the Minister has under item (a) of paragraph 27 directed that the provisions of paragraph 23 shall apply.

Provisional Tax Payments by Provisional Taxpayers (other than Companies) whose Income is normally derived wholly or mainly from Farming

23. Every provisional taxpayer (other than a company) whose income is normally derived wholly or mainly from farming and in respect of whom the Minister has directed that the provisions of this paragraph shall apply, shall not later than the last day of the year of assessment in question pay by way of provisional tax an amount equal to the total estimated liability of such taxpayer (determined in accordance with paragraph 17) for normal tax in respect of that year, less the sum of the amounts of any employees' tax deducted by the taxpayer's employer from the taxpayer's remuneration during that year.

Provisional Tax Payments by Companies

24. Provisional tax shall be paid by every company which is a provisional taxpayer in the following manner, namely -

- (a) within six months of the commencement of the year of assessment in question, one half of an amount equal to the total estimated liability of such company (as determined in accordance with paragraph 17) for normal tax in respect of that year on taxable income so derived; and
- (b) not later than the last day of the year of assessment in question, an amount equal to the total estimated liability of such company (as finally determined in accordance with paragraph 17) for normal tax in respect of that year on taxable income so derived, less the amount paid in terms of item (a) of this paragraph.

25. The Minister may absolve any provisional taxpayer from making payment of any amount of provisional tax payable in terms of paragraph 22(1)(a) or paragraph 23 or paragraph 24(a), if he is satisfied that the taxable income which may be derived by such taxpayer for the year of assessment in question cannot be estimated on the facts available at the time when payment of the amount in question has to be made.

Extension of Time for Payment of Provisional Tax

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26. (1) If after the end of any period within which provisional tax is payable in terms of this Schedule the Minister has under the provisions of subparagraph (3) of paragraph 19 increased the amount of any estimate of taxable income submitted by any provisional taxpayer during such period, any additional provisional tax payable as a result of the Minister having made such increase shall, notwithstanding the provisions of paragraphs 22, 23 and 24, be payable within such period as the Minister may determine.

(2) The Minister may, having regard to the circumstances of the case, extend the period within which any amount of provisional tax is to be paid, or may agree to accept payment of any such amount in equal or varying amounts.

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.

[paragraph 27 substituted by Act 12 of 1996]

Penalty on Late Payment of Provisional Tax

28. (1) If any provisional taxpayer fails to pay any amount of provisional tax for which he or she is liable within the period allowed for payment thereof in terms of paragraph 22, 23 or 24, or paragraph 26(1), or within such extended period as the Minister may allow in terms of paragraph 26(2), he or she must, in addition to any other penalty or charge incurred by him or her under this Act, pay to the Minister a penalty equal to 10 per cent of the amount not paid for each month or part thereof reckoned from the first day after the due date to the date of payment of such unpaid amount, and the penalty may not exceed the amount of unpaid tax.

[subparagraph (1) substituted by Act 15 of 2011]

(2) The Minister may, if he is satisfied that the provisional taxpayer's failure to pay the amount of provisional tax is not due to an intent to evade or postpone payment of the tax, or otherwise evade his obligations under this Act, remit the whole or any part of the penalty imposed under subparagraph (1).

Part IV

General

Set-off of Employees' Tax and Certain Provisional Tax against Tax Liability

29. (1) There shall be set off against the liability of the tax-payer in respect of any taxes (as defined in subparagraph (9) due by the taxpayer, the amounts of employees' tax deducted or withheld by the taxpayer's employer during any year of assessment for which the taxpayer's liability for normal tax has been assessed by the Minister and the amounts of provisional tax paid by the taxpayer, and -

- (a) if in the case of a taxpayer who is not a provisional taxpayer, the sum of the said amounts of employees' tax exceeds the amount of the taxpayer's total liability for the said taxes the excess amount shall be refunded to the taxpayer;
- (b) if, in the case of any provisional taxpayer, the sum of the said amounts of employees' tax and provisional tax exceeds the taxpayer's total liability for the said

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taxes, the Minister shall not be required to make any refund of the excess amount (or any portion thereof) standing to the taxpayer's credit unless the Minister is satisfied, having regard to the circumstances of the case, that a refund of such excess amount (or a portion thereof) is warranted, and any amount (after the deduction of any amount refunded to the taxpayer) standing to the taxpayer's credit shall be set off against the taxpayer's liability for any of the said taxes for which he is subsequently assessed by the Minister or may be set off in whole or in part against any amount of provisional tax which the taxpayer is required to pay under this Schedule; and

- (c) if, in the case of any taxpayer, the taxpayer's total liability for the aforesaid taxes exceeds the sum of the said amounts of employees' tax and provisional tax, the amount of the excess shall be payable by the taxpayer to the Minister.

(2) The provisions of subparagraph (1) shall not be construed as requiring any amount of provisional tax paid in respect of any year of assessment to be set off against any liability of the taxpayer before the taxpayer's liability for normal tax in respect of that year is determined by the Minister or, where such last-mentioned liability has not been determined by the Minister, before the expiration of a period determined by the Minister.

(3) The burden of proof that any amount of employees' tax has been deducted or withheld by his employer shall be upon the taxpayer and any employees' tax certificate shall be prima facie evidence that the amount of employees' tax reflected therein has been deducted by the employer.

(4) if the Minister is satisfied that the amount or any portion of the amount of employees' tax shown in an employees' tax certificate has not been deducted or withheld by the employer and the amount of employees' tax shown in such tax certificate has been applied as provided in subparagraph (1), the employer and the employee shall be jointly and severally liable to pay to the Minister the amount which should not have been so applied and such amount shall be recoverable under this Act as if it were a tax.

(5) An employer who has under subparagraph (4) paid to the Minister an amount which has, but should not have been, applied under the provisions of subparagraph (1), may, if the amount was shown or included in the certificate because of a *bona fide* error, recover the amount so paid from the employee concerned, and in that case the provisions of subparagraph (3) of paragraph 5 shall *mutatis mutandis* apply.

(6) No employees' tax certificate shall be issued by the employer in respect of any amount recovered by him from the employee in terms of subparagraph (5) nor shall any such amount be included in any return rendered in terms of subparagraph (3) of paragraph 14.

(7) If the Minister is satisfied that the employee to whom an employees' tax certificate refers was directly or indirectly responsible for an incorrect amount being shown on such certificate he may absolve the employer from the liability imposed upon him by subparagraph (4), and in that case the employee shall be solely liable under that subparagraph.

(8) If the Minister, purporting to act under the provisions of this paragraph, pays to any person by way of a refund any amount which was not properly payable to that person under those provisions or which was in excess of the amount due to such person by way of a refund under those provisions, such amount or the excess, as the case may be, shall forthwith be repaid by the person concerned to the Minister and shall be recoverable by the Minister under this Act as if it were a tax.

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(9) For the purposes of this paragraph “taxes” means the normal taxes levied under this Act and the normal and super taxes levied under any previous income tax law.

30. No refund of any amount of employees’ tax or provisional tax shall be made to the taxpayer concerned otherwise than as provided in paragraph 29.

Offences

31. (1) Any person who -
- (a) makes or becomes liable to make any payment of remuneration and who fails to deduct or withhold therefrom any amount of employees’ tax or to pay such amount to the Minister as and when required by paragraph 2; or
 - (b) uses or applies any amount deducted or withheld by him by way of employees’ tax for purposes other than the payment of such amount to the Minister; or
 - (c) makes or issues or causes or allows to be made or issued or knowingly possesses or uses or causes to be used any employees’ tax certificate which is false; or
 - (d) without just cause shown by him fails to comply with any directive issued to him by the Minister in terms of paragraph 11; or
 - (e) furnishes to his employer or the Minister a false or misleading return of personal particulars or gives any false information or misleads his employer in relation to any matter affecting the amount of employees’ tax to be deducted in his case; or
 - (f) fails or neglects to deliver to any employee or former employee any employees’ tax certificate as required by paragraph 13; or
 - (g) fails to comply with any condition prescribed by the Minister in terms of subparagraph (11) of paragraph 13 in regard to the manner in which employees’ tax certificates may be used or as to the surrender of unused stocks of such certificates, or to account for used, unused or spoiled employees’ tax certificates when required by the Minister under that paragraph or on ceasing to be an employer fails to surrender unused employees’ tax certificates in his possession as required by subparagraph (13) of that paragraph; or
 - (h) fails to comply with any condition prescribed by the Minister by which he is bound in terms of subparagraph (12) of paragraph 13; or
 - (i) fails or neglects to maintain any record as required by paragraph 14 or to retain such record or a duplicate original or a true copy thereof at an address in Namibia for a period of five years from the date of the last entry therein or to furnish to the Minister any declaration as required by that paragraph; or
 - (j) fails or neglects to apply to the Minister for registration as an employer as required by subparagraph (1) of paragraph 15, or having so applied fails or neglects to notify the Minister of any change of his address or the fact of his having ceased to be an employer as required by subparagraph (3) of that paragraph; or
 - (k) alters any employees’ tax certificate made or issued by any other person or falsely pretends be the employee named in any employees’ tax certificate or for his own advantage or benefit obtains credit with respect to or payment of the whole or any

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part of any amount of employees' tax deducted or withheld from remuneration received by another person; or

- (l) not being an employer and without being duly authorized by any person who is an employer, issues or causes to be issued any document purporting to be an employees' tax certificate; or
- (m) fails to submit to the Minister any estimate of his taxable income as required under paragraph 19,

shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred rand or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(2) For the purposes of item (b) of subparagraph (1) an amount which has been deducted or withheld by any person from remuneration shall until the contrary is proved be deemed to have been used or applied by such person for purposes other than the payment of such amount to the Minister if such amount is not paid to the Minister within the period allowed for payment under paragraph 2.

Recovery of Employees' Tax, Provisional Tax, Penalty, Additional Tax and Interest

32. Any amount of employees' tax, provisional tax, penalty or additional tax payable in terms of this Schedule, and any amount of interest payable in terms of section 80 of this Act shall when it becomes due or is payable be a debt due to the Government of Namibia and may be recovered by the Minister in the manner prescribed in section 83 for the recovery of tax and interest due or payable under this Act.

Extension of Scope of Certain Provisions of Act for Purposes of this Schedule

33. For the purposes of this Schedule -
- (a) any reference in subsection (1) or (2) of section 64 of this Act to the income of any person shall be deemed to include a reference to any remuneration paid or payable by any employer and to any employees' tax required to be deducted or withheld and paid by any employer;
 - (b) any reference in subsection (4) of section 87 of this Act to any tax payable in respect of any assessment shall be deemed to include a reference to any provisional tax payable in terms of this Schedule and any reference in subsection (5) of that section to any tax payable in respect of any assessment made upon any public officer in his capacity as such shall be deemed to include a reference to any provisional tax payable by any public officer in his capacity as such.
 - (c) any reference, in sections 88 to 92 of this Act, to tax shall be deemed to include a reference to provisional tax.

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SCHEDULE 3

LAWS REPEALED

Number and year of Law	Short Title	Extent of Repeal
Act 58 of 1962	Income Tax Act, 1962	The whole
Act 90 of 1962	Income Tax Amendment Act, 1962	The whole
Act 6 of 1963	Income Tax Amendment Act, 1963	The whole
Act 72 of 1963	Income Tax, 1963	The whole
Act 90 of 1964	Income Tax Act, 1964	The whole
Act 88 of 1965	Income Tax Act, 1965	The whole
Act 55 of 1966	Income Tax Act, 1966	The whole
Act 95 of 1967	Income Tax Act, 1967	The whole
Act 76 of 1968	Income Tax Act, 1968	The whole
Act 89 of 1969	Income Tax Act, 1969	The whole
Act 52 of 1970	Income Tax Act, 1970	The whole
Act 88 of 1971	Income Tax Act, 1971	The whole
Act 90 of 1972	Income Tax Act, 1972	The whole
Act 65 of 1973	Income Tax Act, 1973	The whole
Act 85 of 1974	Income Tax Act, 1974	The whole
Ordinance 5 of 1974	Income Tax Ordinance, 1974	The whole
Act 69 of 1975	Income Tax Act, 1975	The whole
Ordinance 6 of 1975	Income Tax Amendment Ordinance, 1975	The whole
Act 103 of 1976	Income Tax Act, 1976	The whole
Ordinance 3 of 1976	Income Tax Amendment Ordinance, 1976	The whole
Act 113 of 1977	Income Tax Act, 1977	The whole
Act 114 of 1977	Revenue Laws Amendment Act, 1977	The whole
Ordinance 2 of 1977	Income Tax Amendment Ordinance, 1977	The whole
Act 101 of 1978	Income Tax Act, 1978	The whole
Proclamation AG. 44 of 1978	Rates of Normal Tax (Companies) Proclamation, 1978	The whole
Proclamation AG. 58 of 1978	Income Tax (Eastern Caprivi Zipfel) Proclamation, 1978	The whole
Proclamation AG. 67 of 1978	Income Tax Amendment Proclamation, 1978	The whole
Proclamation AG. 72 of 1978	Income Tax Amendment Proclamation, 1978	The whole
Ordinance 6 of 1979	Income Tax Amendment Ordinance, 1979	The whole
Act 11 of 1979	Rates of Normal Tax (Companies) Act, 1979	The whole
Ordinance 3 of 1980	Income Tax Amendment Ordinance, 1980	The whole
Ordinance 8 of 1980	Second Income Tax Amendment Ordinance, 1980	The whole
Act 16 of 1980	Rates of Normal Tax (Companies) Act, 1980	The whole
Act 1 of 1981	Income Tax Amendment Act, 1981	The whole

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Proclamation AG. 1 of 1981	Income Tax Ordinance (Whites) Amendment Proclamation, 1981	The whole
Proclamation AG. 2 of 1981	Income Tax Ordinance (Coloureds) Amendment Proclamation, 1981	The whole
Proclamation AG. 3 of 1981	Income Tax Ordinance (Namas) Amendment Proclamation, 1981	The whole

Schedule 4

[Schedule 4 inserted by Act 25 of 1992]

1. RATES OF NORMAL TAX
(Section 6)

[It is not clear why the heading is numbered "1". There are no other headings in Schedule 4.]

<i>Taxable amount</i>	<i>Rates of tax</i>
Where the taxable amount -	
(a) does not exceed N\$50 000	no tax payable
(b) exceeds N\$50 000 but does not exceed N\$100 000	18 per cent of the amount by which the taxable amount exceeds N\$50 000
(c) exceeds N\$100 000 but does not exceed N\$300 000	N\$9 000 plus 25 per cent of the amount by which the taxable amount exceeds N\$100 000
(d) exceeds N\$300 000 but does not of exceed N\$500 000	N\$59 000 plus 28 per cent of the amount by which the taxable amount exceeds N\$300 000
(e) exceeds N\$500 000 but does not exceed N\$800 000	N\$115 000 plus 30 per cent of the amount by which the taxable amount exceeds N\$500 000
(f) exceeds N\$800 000 but does not exceed N\$1 500 000	N\$205 000 plus 32 per cent of the amount by which the taxable amount exceeds N\$800 000
(g) exceeds N\$1 500 000	<u>N\$429 000 plus 37 per cent of the amount by which the taxable amount exceeds N\$1 500 000</u>

[Paragraph 1 is substituted by Act 10 of 1993, Act 17 of 1994, Act 22 of 1995, Act 12 of 1996, Act 13 of 1998, Act 7 of 1999, Act 11 of 2003 and by Act 5 of 2007, with effect from the beginning of the year of assessment commencing on or after 1 March 2007 (section 12(3) of Act 5 of 2007). It is also amended by Act 5 of 2010. and Act 4 of 2013.]

2. If any income has been derived by a married person (hereinafter referred to as the first spouse) -

- (a) from his or her spouse (hereinafter referred to as the second spouse);
- (b) from any trade practised by the first spouse in partnership or association with the second spouse, or which trade is in any way connected with any trade practised by the second spouse; or

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- (c) from any partnership of which the second spouse was at the time such income was derived a member; or
- (d) from any private company of which the second spouse was at such time the sole or main shareholder or one of the principal shareholders,

and if such income exceeds the amount of income to which the first spouse would reasonably be entitled, having regard to the nature of the relevant trade, partnership or company, the extent of the first spouse's participation therein and the services rendered by the first spouse, such excess amount as determined by the Minister, shall be deemed to be income of the second spouse.

3. (1) Subject to subparagraph (2), the rates of normal tax to be levied in respect of the taxable income derived by a company shall be as follows:

- (a) on each N\$ of taxable income derived from a source other than mining, 33 cents;

[Item (a) is amended by Act 5 of 2010, with effect from the beginning of the year of assessment commencing on or after 1 January 2009 in respect of a taxpayer which is a company (section 9(d) of Act 5 of 2010), and by Act 4 of 2013.]

- (b) on each N\$ of taxable income derived from mining of a mineral or substance other than diamonds, or from services rendered by such company in connection with such mining on behalf of any person licensed to conduct such mining operations, 37,5 cents;

[Item (b) is amended by Act 5 of 2007, with effect from the beginning of the year of assessment commencing on or after 1 January 2008 (section 12(2) of Act 5 of 2007).]

- (c) on each N\$ of taxable income derived from the mining of 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, 50 cents: Provided that there shall be added to the amount of tax determined in accordance with this paragraph a surcharge equal to 10% of that amount.

[Subparagraph (c) should end with a semicolon rather than a full stop now that it is no longer the last subparagraph in subparagraph (1).]

- (d) any amount referred to in paragraph (h) of the definition of "gross income" in section 1, section 14(4) and section 18(2) which is received or recouped by a company referred to in items (b) and (c) shall be taxed at the same rate which is applicable to the taxable income of such company.

[Item (d) is inserted by Act 5 of 2007, with this insertion deemed to have commenced from the beginning of financial years ending on or after 1 January 1981 (section 12(7) of Act 5 of 2007).]

(2) Notwithstanding subparagraph (1)(a), the rate of normal tax to be levied in respect of the taxable income derived by a registered manufacturer from the manufacturing activity in respect of which the taxpayer is registered, including any amount recovered or recouped referred to in section 14(4) that relates to that activity, is 18 cents on each N\$ of taxable income so derived during the following periods:

- (a) in the case of a company so registered on or after 1 January 2003, for the year of assessment during which registration is effected and for each of the following 9 years of assessment; and

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- (b) in the case of a taxpayer so registered before 1 January 2003, for the remaining number years of assessment of a period of ten years reckoned from, and inclusive of, the year of assessment during which the taxpayer was registered.

[Subparagraph (2) is amended by Act 5 of 2007, with effect from the beginning of the year of assessment commencing on or after 1 January 2008 (section 12(2) of Act 5 of 2007).]

- (3) Paragraph (b) of subsection (1) shall be deemed to have come into operation on 1 January 2000.

[Paragraph 3 is amended by Act 10 of 1993, Act 22 of 1995, Act 13 of 1998 and Act 7 of 1999, and substituted by Act 7 of 2002.]

4. The tax determined in accordance with any of the subparagraphs of paragraph 3 shall be payable in addition to the tax determined in accordance with any other of the said subparagraphs.