# GOVERNMENT GAZETTE

### OF THE

# REPUBLIC OF NAMIBIA

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**GOVERNMENT NOTICE**



# Government Notice

### OFFICE OF THE PRIME MINISTER

No. 79 2011

PROMULGATION OF ACT
OF PARLIAMENT

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

No. 3 of 2011: Income Tax Amendment Act, 2011.

**EXPLANATORY NOTE:**

| | |
|---|---|
| ___________ | Words underlined with a solid line indicate insertions in existing provisions. |
| [ ] | Words in bold type in square brackets indicate omissions from existing provisions. |

# ACT

**To amend the Income Tax Act, 1981, so as to amend the 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.**

*(Signed by the President on 24 May 2011)*

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

**Amendment of section 1 of Act No. 24 of 1981, as amended by section 1 of Proclamation AG. No. 10 of 1985, section 1 of Act No. 8 of 1987, section 1 of Act No. 1 of 1989, section 24 of Act No. 3 of 1991, section 1 of Act No. 8 of 1991, section 1 of Act No. 12 of 1991, section 1 of Act No. 25 of 1992, section 1 of Act No. 10 of 1993, section 1 of Act No. 17 of 1994, section 1 of Act No. 22 of 1995, section 1 of Act No. 12 of 1996, section 1 of Act No. 5 of 1997, section 1 of Act No. 21 of 1999, section 1 of Act No. 7 of 2002, section 1 of Act No. 4 of 2005 and section 1 of Act No. 5 of 2007**

**1.** Section 1 of the Income Tax Act, 1981 (hereinafter referred to as the principal Act) is amended –

(a) by the substitution for items (aa), (bb) and (cc) of subparagraph (iv) of paragraph (b) of the definition of "pension fund" of the following items:

"(aa) the total value of the annuity or annuities which an employee or other person referred to in paragraph (a) becomes entitled to exceeds **[N$20 000]** <u>N$50 000</u>, 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$20 000]** <u>N$50 000</u>, 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 the commencement of the Income Tax Second

Amendment Act, 1999, does not exceed **[N$20 000]** <u>N$50 000</u>, 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;";

(b) by the substitution for the definition of "person" of the following definition:

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

(c) by the substitution for items (aa) and (bb) of subparagraph (ii) of paragraph (b) of the definition of "preservation fund" of the following items:

"(aa) the total value of the annuity or annuities which a taxpayer referred to in paragraph (a)(i) becomes entitled to exceeds **[N$20 000]** <u>N$50 000</u>, not more than one-third of the total value of such annuity or annuities may be commuted for a single payment;

(bb) the total value of the annuity or annuities which a taxpayer referred to in paragraph (a)(i) becomes entitled to does not exceed **[N$20 000**] <u>N$50 000</u>, the total of such annuity or annuities may be commuted for a single payment;"; and

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

"(ii) that not more than one-third of the total value of any annuities to which any person becomes entitled, may be commuted for a single payment, except where such total value does not exceed **[N$20 000]** <u>N$50 000</u>;".

**Amendment of section 16 of Act No. 24 of 1981, as amended by section 5 of Proclamation AG. No. 10 of 1985, section 5 of Act No. 8 of 1987, section 5 of Act No. 12 of 1991, section 1 of Act No. 33 of 1991, section 6 of Act No. 25 of 1992, section 6 of Act No. 10 of 1993, section 4 of Act No. 17 of 1994, section 5 of Act No. 22 of 1995, section 8 of Act No. 12 of 1996, section 5 of Act No. 21 of 1999, section 3 of Act No. 4 of 2005 and section 3 of Act No. 5 of 2007**

**2.** Section 16 of the principal Act is amended –

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

"(o) so much of any amount (being a lump sum) referred to in paragraph (c) of the definition of "gross income" in section 1 or in section 13(3) as does not exceed **[N$100 000]** <u>N$300 000</u> less the sum of any other amounts which have been excluded from the taxpayer's income by virtue of the exemption conferred by this paragraph whether in the current or any previous year of assessment:";

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

"(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.".

**Amendment of section 18 of Act No. 24 of 1981, as amended by section 8 of Act No. 25 of 1992 and section 15 of Act No. 12 of 1996**

**3.** Section 18 of the principal Act is amended –

(a) by the deletion of paragraph (b) of subsection (1);

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

"(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, utilised for any purpose other than that mentioned in the said subsection, the amount so utilised shall be included in the taxpayer's income in the year of assessment within which the amount is so utilised.".

**Amendment of section 34A of Act No. 24 of 1981**

**4.** Section 34A of the principal Act is amended –

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

"(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 on negotiable instruments) accruing to or in favour of any person (other than a Namibian company) from -

(a) a Namibian banking institution registered under the Banking Institutions Act, 1998 (Act No. 2 of 1998); or

(b) a unit trust scheme as defined in paragraph (e) of the definition of "company" in section 1 [**of the principal Act**], 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.”.

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

“(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 -”;

(c) by the addition of the following subsections:

“(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.

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

“negotiable instrument” means an instrument 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, and excludes any unit in a unit trust scheme;

“stock broker” means any person who is a member of a stock exchange licensed in terms of the Stock Exchange Control Act (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.

**Amendment of section 34C of Act No. 24 of 1981**

**5.** Section 34C of the principal Act is amended -

(a) by the substitution for subsection (6) of the following subsection:

"(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 [**first**] 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."; and

(b) by the addition of the following subsection:

"(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.".

**Amendment of section 34D of Act No. 24 of 1981**

**6.** Section 34D of the principal Act is amended by the addition of the following subsection:

"(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.".

**Insertion of section 34E in Act No. 24 of 1981**

**7.** The following section is inserted in the principal Act after section 34D:

**"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.".

**Amendment of Schedule 4 to Act No. 24 of 1981, added by section 21 of Act No. 25 of 1992 and amended by section 14 of Act No. 10 of 1993, section 10 of Act No. 17 of 1994, section 13 of Act No. 22 of 1995, section 28 of Act No. 12 of 1996, section 1 of Act No. 13 of 1998, section 1 of Act No. 7 of 1999, section 13 of Act No. 7 of 2002, section 1 of Act No. 11 of 2003 and section 11 of Act No. 5 of 2007**

**8.** Schedule 4 to the principal Act is amended -

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

"**1. RATES OF NORMAL TAX**

*(Section 6)*

| *Taxable amount* | *Rates of tax* |
|---|---|
| Where the taxable amount – | |
| (a) does not exceed N$40 000 | no tax payable; |
| (b) exceeds N$40 000 but does not exceed N$80 000 | 27 per cent of the amount by which the taxable amount exceeds N$40 000 |

| | | |
|---|---|---|
| (c) | exceeds N$80 000 but does not exceed N$200 000 | N$10 800 plus 32 per cent of the amount by which the taxable amount exceeds N$80 000 |
| (d) | exceeds N$200 000 but does not exceed N$750 000 | N$49 200 plus 34 per cent of amount by which the taxable amount exceeds N$200 000 |
| (e) | exceeds N$750 000 | N$236 200 plus 37 per cent of the amount by which the taxable amount exceeds N$750 000; and |

(b) by the substitution for item (a) of subparagraph (1) of paragraph 3 of the following item:

"(a) on each N$ of taxable income derived from a source other than mining, [**35**] 34 cents;".

**Short title and commencement**

**9.** This Act is called the Income Tax Amendment Act, 2011, and commences on the date of its publication in the *Gazette*, but -

(a) in the case of a taxpayer other than a company, it commences at the beginning of the year of assessment commencing on or after 1 March 2009;

(b) section 1(a), (c) and (d) commence on the first day of the month in which this Act is published in the *Gazette*;

(c) section 3 commences at the beginning of the year of assessment of such company commencing on or after 1 January 2010; and

(d) section 8(b) commences at the beginning of the year of assessment of such company commencing on or after 1 January 2009.