



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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## Government Notice

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### OFFICE OF THE PRIME MINISTER

No. 81

2001

#### 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. 2 of 2001:     Agricultural (Commercial) Land Reform Second Amendment Act, 2001.

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**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 Agricultural (Commercial) Land Reform Act, 1995 so as to insert a certain definition; to further regulate the appropriation of the moneys of the Fund; to provide for a further restriction on the transfers of agricultural land; to make provision for further matters relating to the imposition and collection of land tax; to provide for the delegation of powers and the assignment of duties; and to provide for matters incidental thereto.**

*(Signed by the President on 10 April 2001)*

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

**Amendment of section 1 of Act No. 6 of 1995, as amended by section 1 of Act No. 16 of 2000**

1. Section 1 of the Agricultural (Commercial) Land Reform Act, 1995 (hereinafter referred to as the principal Act) is hereby amended by the addition of the following definition:

“ ‘this Act’ includes the regulations made thereunder.”

**Substitution of section 13B of Act No. 6 of 1995, as inserted by section 4 of Act No. 16 of 2000**

2. The following section is hereby substituted for section 13B of the principal Act:

**“Appropriation of the Fund**

**13B.** There shall be defrayed from the Fund -

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| <p>(a) any amount which becomes payable in terms of this Act to meet any liability of the State -</p> <p>(i) arising from the exercise of any power or the performance of any function or duty conferred or imposed on the Minister by this Act in relation to the acquisition or development of agricultural land, or any right or interest in such land, including the payment of compensation, interest, costs and other moneys incidental to the exercise or performance of any such power, function or duty; or</p> <p>(ii) for the payment of compensation in connection with any termination or cancellation of a lease in terms of this Act;</p> |
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- (b) any amount which the Fund is liable to be charged with in terms of the regulations made pursuant to section 76.”.

**Substitution of section 18 of Act No. 6 of 1995**

3. The following section is hereby substituted for section 18 of the principal Act:

**“Restriction on transfers of agricultural land**

**18.** (1) The Registrar shall not register any transfer of agricultural land unless -

- (a) a certificate of waiver; and  
(b) a land tax clearance certificate,

in respect of such land is submitted to the Registrar.

(2) The provisions of paragraph (a) of subsection (1) shall not apply where -

- (a) agricultural land has been alienated by or to the State;  
(b) agricultural land has been alienated in any of the circumstances contemplated in section 17(3);  
(c) agricultural land is to be transferred otherwise than by virtue of an alienation; or  
(d) the Minister in writing directs otherwise.

(3) The provisions of paragraph (b) of subsection (1) shall not apply where agricultural land has been alienated by the State.

(4) For the purposes of subsection (1) “land tax clearance certificate” means a statement in writing by the Minister certifying that all land taxes imposed under this Act on the agricultural land in question have been paid.”.

**Substitution of certain heading in Act No. 6 of 1995**

4. The following heading is hereby substituted for the heading to Part VIII of the principal Act:

**“LAND TAX AND GENERAL”.**

**Insertion of section 75A in Act No. 6 of 1995**

5. The following section is hereby inserted in Part VIII before section 76 of the principal Act:

**“Definition for purposes of Part VIII**

**75A.** In the application of the provisions of this Part and of any regulations made pursuant to section 76 “owner” shall, to the extent that those provisions relate to land tax, include a representative referred to in paragraph (bb) of the proviso to section 76A.”.

**Amendment of section 76 of Act No. 6 of 1995**

6. The following section is hereby substituted for section 76 of the principal Act:

**“Land tax**

76. (1) Notwithstanding any other law to the contrary, the Minister, with the concurrence of the Minister responsible for Agriculture, and the Minister responsible for Finance, may -

- (a) for the benefit of the Fund by regulations made under section 77, impose a land tax to be paid by every owner of agricultural land on the value of such land, the amount of which shall be calculated in accordance with the following formula:

$$T = V \times R,$$

in which formula -

"T" represents the land tax payable;

"V" represents the unimproved site value as determined under those regulations; and

"R" represents the rate of land tax as determined under paragraph (b); and

- (b) by notice in the *Gazette* determine the rate of such land tax, which rate may be a progressive rate increasing in proportion as the size of a farm, and the number of farms owned by a particular owner, increases.

(2) For the purposes of imposing land tax the regulations referred to in subsection (1) may also provide for -

- (a) the method of calculating such tax and the due date for payment and manner of collection and recovery of such tax (including the payment of interest on such tax);
- (b) the valuation of agricultural land by a valuer and the manner in which such valuation shall be carried out;
- (c) the appointment and functions of a valuer;
- (d) the preparation of a valuation roll by a valuer, the contents of such valuation roll and the manner in which an objection or appeal against such roll may be lodged by an owner;
- (e) the constitution of a valuation court and its powers;
- (f) the remuneration and allowances (if any) payable to a valuer, and the members and assessors of the valuation court, and for the payment of any expenditure incidental to the performance of the functions of such valuer and valuation court;
- (g) the probative value of copies of or extracts from documents relating to the imposition of land tax;
- (h) any other matter which in the opinion of the Minister is necessary for the effective imposition of land tax.

(3) Regulations made pursuant to the provisions of this section may provide for a penalty for any contravention of or failure to comply with any provision of such regulations, including a penalty for a continuous offence.

(4) No notice shall be issued under section (1)(b) without the approval, by resolution, of the National Assembly.

**Insertion of sections 76A and 76B in Act No. 6 of 1995**

7. The following sections is hereby inserted after section 76 of the principal Act:

**“Representatives of owners of agricultural land**

**76A.** The person responsible for exercising any power or performing any duty relating to land tax conferred or imposed by or under this Act on an owner shall -

- (a) where such owner is not ordinarily resident in Namibia, be any agent of such owner controlling his or her affairs in Namibia;
- (b) where such owner is deceased, be the executor or administrator of the deceased owner's estate;
- (c) where such owner's estate has been sequestrated, be the trustee or the administrator of such insolvent owner's estate;
- (d) where such owner is a body of persons corporate or unincorporate (other than a company or close corporation), be any person responsible for accounting for the receipt and payment of moneys on behalf of any such body;
- (e) where such owner is a company -
  - (i) be the public officer thereof contemplated in section 93 of the Income Tax Act, 1981 (Act No. 24 of 1981); or
  - (ii) be the liquidator of such company where it has been wound up;
- (f) where the owner is a close corporation -
  - (i) be any member thereof standing in a fiduciary relationship contemplated in section 42 of the Close Corporations Act, 1988 (Act No. 26 of 1988); or
  - (ii) be the liquidator of such close corporation where it has been wound up;

Provided that nothing in this subsection contained shall be construed as relieving any owner from having to exercise or perform any power or duty relating to land tax conferred or imposed on such owner, by or under this Act -

- (aa) where circumstances other than those contemplated in paragraphs (a) to (f) prevail;
- (bb) which any person mentioned in paragraphs (a) to (f) (also to be known as the representative) has failed to perform.

Act No. 2, 2001      **AGRICULTURAL (COMMERCIAL) LAND REFORM SECOND  
AMENDMENT ACT, 2001**

**Exemption from land tax**

**76B.** (1) The Minister may on application made to him or her by an owner of agricultural land, exempt by notice in the *Gazette* for such period as may be specified in that notice from land tax imposed pursuant to section 76 -

- (a) any agricultural land of such owner, but only if he or she is a person belonging to the category of persons contemplated in Article 23 of the Namibian Constitution;
- (b) any agricultural land that is primarily used for the activities of -
  - (i) a church, mission, hospital, school or hostel, provided such activities shall not be for profit or gain;
  - (ii) any state-aided institution, or any charitable institution as defined in section 1 of the Sales Tax Act, 1992 (Act No. 5 of 1992).

(2) An application referred to in subsection (1) shall be in such form as the Minister may determine and shall specify the agricultural land to which it relates.

(3) The Minister may revoke any exemption granted under subsection (1) if the reason for granting such exemption ceases to exist, but shall do so only after having afforded the owner concerned an opportunity to be heard.”

**Insertion of section 79A in Act No. 6 of 1995**

8. The following section is hereby inserted after section 79 of the principal Act:

**“Delegation of powers and assignment of duties**

**79A.** (1) The Minister may in writing delegate or assign to any staff member in the Ministry of Lands, Resettlement and Rehabilitation any power or duty conferred or imposed on the Minister by this Act, except the power granted under sections 76, 76B and 77.

- (2) A delegation or assignment by the Minister under subsection (1) -
  - (a) may be effected subject to such conditions as the Minister may determine;
  - (b) may be withdrawn or varied by the Minister; and
  - (c) shall not preclude the Minister from exercising or performing any power or duty so delegated or assigned.”

**Short title**

9. This Act shall be called the Agricultural (Commercial) Land Reform Second Amendment Act, 2001 and shall come into operation on a date to be determined by the Minister by notice in the *Gazette*.

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