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Government Notice

OFFICE OF THE PRIME MINISTER

No. 165

2002

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. 7 of 2002: Income Tax Amendment Act, 2002.

Act No. 7, 2002

INCOME TAX AMENDMENT ACT, 2002

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 include in the definition of "gross income" certain amounts accrued from a pension preservation fund; to define and redefine certain expressions; to provide that only companies are eligible for registration as registered manufacturers and to replace existing incentives for registered manufacturers with an incentive tax rate; to allow financing costs incurred for the acquisition of certain assets for a taxpayer's trade to be deducted over the period of the finance agreement; to revise the incentives for the export of manufactured goods by registered manufacturers; to make provision for an additional deduction in respect of land-based transport costs incurred by registered manufacturers; to prescribe when income returns are to be furnished by different categories of taxpayers and when notices of assessment must be issued to them; to increase the limit of fines which may be prescribed for contravention of a regulation; to repeal the requirement that livestock be valued at standard livestock values and farm produce be valued for purposes of calculating tax; to prescribe the rates of normal tax applicable to different categories of companies; and to provide for incidental matters.

(Signed by the President on 27 September 2002)

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 and section 1 of Act No. 21 of 1999.

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

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

"(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.";

(b) by the insertion after the definition of "local authority" of the following definition:

“‘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 -
 - (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”;
- (c) by the insertion, after the definition of “nominal value” of the following definition:

“‘notice of assessment’ means a notice of assessment issued in terms of section 67(2)”;
- (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\$10 000] N\$20 000”;
- (2) (a) Paragraph (a) of subsection (1) shall be deemed to have come into operation on 1 March 1999; and
- (b) Paragraph (b) of subsection (1) comes into operation for a company at the beginning of the year of assessment of such company commencing on or after 1 January 2003.

Amendment of section 5 of Act No. 24 of 1981, as amended by section 1 of Proclamation AG. No. 25 of 1989, section 24 of Act No. 3 of 1991, section 2 of Act No. 25 of 1992, section 2 of Act No. 10 of 1993, section 2 of Act No. 17 of 1994, section 2 of Act No. 22 of 1995, section 3 of Act No. 12 of 1996 and section 2 of Act No. 21 of 1999.

2. Section 5 of the principal Act is amended -

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

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“(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.”; and

- (b) by the deletion of subsections (4) and (5).

Substitution of section 5A of Act No. 24 of 1981, as inserted by section 3 of Act No. 10 of 1993 and substituted by section 4 of Act No. 12 of 1996.

3. (1) The following section is substituted for section 5A of the principal Act:

“Registration of companies as registered manufacturers

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.”.

(2) Subsection (1) comes into operation for a company at the beginning of the year of assessment of such company commencing on or after 1 January 2003.

(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.

Amendment of section 14 of Act No. 24 of 1981, as amended by section 6 of Act No. 12 of 1996, section 2 of Act No. 5 of 1997 and section 3 of Act No. 21 of 1999.

4. Section 14 of the principal Act is amended by the substitution for subsection (4) of the following subsection:

“(4) There shall be included in the taxpayer’s income all amounts allowed to be deducted or set off under the provisions of **[subsection (1) of this section and of]** sections 17 to 21, inclusive, except section 17(1)(n), (qA) and (r) and section 18(1)(a), or under the corresponding provisions of any previous income tax law, whether in the current or any previous year of assessment, which have been recovered or recouped during the current year of assessment, including recovery or recoupment by means of the disposal, withdrawal from trade for use for non-trade purposes or 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: Provided that any item so disposed of, withdrawn from trade or removed from Namibia shall be valued at market value for the purpose of calculating the amount of any deduction recouped or recovered.”

Amendment of section 17 of Act No. 24 of 1981, as amended by section 2 of Act No. 12 of 1982, section 6 of Proclamation AG. No. 10 of 1985, section 6 of Act No. 8 of 1987, section 7 of Act No. 25 of 1992, section 7 of Act No. 10 of 1993, section 6 of Act No. 22 of 1995, section 11 of Act No. 12 of 1996, section 3 of Act No. 5 of 1997 and section 7 of Act No. 21 of 1999.

5. Section 17 of the principal Act is amended by the insertion in subsection (1) of the following paragraph after paragraph (e):

“(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).”

Amendment of section 17B of Act No. 24 of 1981, as inserted by section 8 of Act No. 10 of 1993 and amended by section 5 of Act No. 17 of 1994 and section 13 of Act No. 12 of 1996.

6. The following section is substituted for section 17B of the principal Act -

“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 -

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- (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.

Repeal and substitution of section 17D of Act 24 of 1981, as inserted by section 14 of Act No. 12 of 1996.

7. (1) Section 17D of the principal Act is repealed and the following section is substituted:

“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.

(2) Subsection (1) comes into operation on 1 January 2003.

Amendment of section 21 of Act No. 24 of 1981

8. Section 21 of the principal Act is amended by the substitution for subsection (2) of the following subsection:

“(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.”.

Amendment of section 56 of Act No. 24 of 1981, as substituted by section 5 of Act No. 5 of 1997 and as amended by section 9 of Act No. 21 of 1999.

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

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

“(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.”;

(b) by the insertion after subsection (1) of the following subsection:

“(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.”.

(2) The amendments effected by subsection (1), shall be deemed to have come into operation -

- (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.

Substitution of section 67 of Act No. 24 of 1981, as substituted by section 6 of Act No. 5 of 1997.

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

“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.

(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.”.

Amendment of section 99 of Act No. 24 of 1981, as amended by section 8 of Act No. 17 of 1994.

11. Section 99 of the principal Act is amended by the substitution for subsection (2) of the following subsection:

“(2) The regulations may prescribe penalties for any contravention thereof or failure to comply therewith, not exceeding a fine of **[one hundred rand]** N\$ 10 000.”

Amendment of Schedule 1 to Act No. 24 of 1981, as amended by section 3 of Act No. 12 of 1982, section 15 of Proclamation AG No. 10 of 1985, section 19 of Act No. 25 of 1992, section 12 of Act No. 10 of 1993, section 9 of Act No. 17 of 1994, section 11 of Act No. 22 of 1995, section 26 of Act No. 12 of 1996 and section 7 of Act No. 5 of 1997.

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

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

“(a) a reference to a year of assessment shall, in the case of any taxpayer who has under the provisions of subsection [(13)] (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

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

“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.”;

(c) by the substitution for paragraph 3 of the following paragraph:

“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.” and

(d) by the deletion of paragraphs 4, 5, 6, 6A, 7 and 8.

(2) The amendments effected by subsection shall be deemed to have come into operation -

(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.

Amendment of Schedule 4 to Act No. 24 of 1981, as added by section 21 of Act No. 25 of 1992 and amended by section 14 of Act 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 and section 1 of Act No. 7 of 1999.

13. Schedule 4 to the principal Act is amended by the substitution for paragraph 3 of the following paragraph:

“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, 35 cents;

(b) on each N\$ of taxable income derived from mining of a mineral or substance other than diamonds, 37,5 cents;

- (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.
- (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, 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
- (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.
- (3) Paragraph (b) of subsection (1) shall be deemed to have come into operation on 1 January 2000."

Short title and commencement

14. This Act shall be called the Income Tax Amendment Act, 2002, and shall be deemed to have come into operation, unless otherwise stated -

- (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.
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