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Government Notice

OFFICE OF THE PRIME MINISTER

No. 418

2022

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. 13 of 2022: Income Tax Amendment Act, 2022.

Act No. 13, 2022

INCOME TAX AMENDMENT ACT, 2022**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 insert additional circumstances under which amounts are deemed to have accrued from a source within Namibia; to clarify the deduction of contributions made to company-owned policies; to increase tax deductibility of retirement fund and education policy contributions; to provide for the furnishing or serving of a tax return or notice of assessment in electronic format; to amend the rules relating to the allocation of tax payments; to provide for thin capitalisation rules; and to provide for incidental matters.

(Signed by the President on 29 December 2022)

BE IT ENACTED as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:

Amendment of section 15 of Act No. 24 of 1981 as amended by section 4 of Proclamation AG No. 10 of 1985, section 4 of Act No. 8 of 1987, section 5 of Act No. 10 of 1993, section 7 of Act No. 12 of 1996, Act No. 21 of 1999 and section 3 of Act No. 15 of 2011

1. Section 15 of the Income Tax Act, 1981 (Act No. 24 of 1981) (hereinafter referred to as the “principal Act”) is amended by the substitution for introductory sentence of subsection (9) of the following sentence:

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

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. 9 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, section 7 of Act No. 21 of 1999, section 5 of Act 7 No. of 2002, section 4 of Act No. 5 of 2007, section 5 of Act No. 15 of 2011, section 2 of Act No. 13 of 2015 and section 2 of Act No. 5 of 2021

2. Section 17 of the principal Act is amended by -

(a) the deletion of subparagraph (i) of subsection (1)(w); and

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

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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] 2022 in any year of assessment exceed the sum of [N\$40 000] N\$150 000.”.

Amendment of section 56 of Act No. 24 of 1981 as amended by section 10 of of Proclamation AG No. 10 of 1985, section 10 of Act No. 10 of 1993, section 8 of Act No. 22 of 1995, section 5 of Act No. 5 of 1997, section 9 of Act No. 21 of 1999, section 9 of Act No. 7 of 2002 and section 6 of Act No. 5 of 2007

3. Section 56 of the principal Act is amended by the insertion after subsection (2) of the following subsections:

“(2A) Notwithstanding subsections (1) and (2), a person liable to furnish a return of income pursuant to paragraph (a) of subsection (1) may furnish such return in electronic format and in that case subparagraph (i) of paragraph (a) of subsection (1) shall not apply to that person.”.

Amendment of section 67 of Act No. 24 of 1981 as amended by section 15 of Act No. 25 of 1992, section 6 of Act No. 5 of 1997 and section 10 of Act No. 7 of 2002

4. Section 67 of the principal Act is amended by the substitution for subsection (2) of the following subsection:

“(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, in writing or electronic format, stating -”.

Amendment of section 81 of Act No. 24 of 1981 as amended by section 25 of Act No. 12 of 1996 and section 7 of Act No. 13 of 2015

5. Section 81 of the principal Act is amended by the substitution for subsection (4) of the following subsection:

“(4) Where, in addition to any amount of tax which is due and payable by any person under this Act, any amount of interest or penalty is payable, any payment made by that person in respect of such tax, interest or penalty which is less than the total amount due shall be dealt as made -

- (a) in respect of such tax;
- (b) to the extent that such payment exceeds the amount of such tax, in respect of such [penalty] interest; and
- (c) to the extent that such payment exceeds the sum of such tax and [penalty] interest, in respect of such [interest] penalty.”.

Amendment of section 95A of Act No. 24 of 1981 as inserted by section 7 of Act No. 4 of 2005

6. Section 95A of the principal Act is amended by the insertion after subsection (3) of the following subsections:

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“(4) Notwithstanding the provisions of this Act, where a resident company in which any non-resident company or person has an interest of not less than 25 percent of the dividends, profits or capital of the recipient of the financial assistance contemplated in paragraph (c) of the definition of “services” under subsection (1), either alone or together with an associate, and the aggregate of all such financial assistance exceeds the ratio of three-to-one in relation to the fixed capital of the resident company at any time during a year of assessment, a deduction will be disallowed for -

- (a) any interest paid to the non-resident investor in respect of the financial assistance granted; and
- (b) any realised currency exchange loss incurred,

by the resident company during that period on that part of the financial assistance which exceeds the three-to-one ratio.

(5) The resident company referred to in subsection (4) may approach the Minister for permission to exceed the ratio stated in subsection (4), and the Minister must consider the circumstances and risks associated with the business of the taxpayer that warrant such a request being acceded to by the Minister.”

Short title and commencement

7. This Act is called the Income Tax Amendment Act, 2022 and comes into operation on the first day of the month following the month in which this Act is published in the *Gazette*.
