

INCOME TAX

Income Tax Agreement Ratification Ordinance 13 of 1959

Summary: This Ordinance ([OG 2194](#)) ratifies a double taxation treaty between South Africa and South West Africa.

Amendments: The Ordinance is amended by Ord. 4/1970 ([OG 3060](#)) and Ord. 7/1973 ([OG 3329](#)).

Regulations: Section 2 authorises “rules, orders or regulations not inconsistent with the agreement” for “effectually carrying out and giving effect to the object and purposes thereof”. Pre-independence regulations have not yet been researched. No post-independence regulations have been enacted under the Ordinance.

Income Tax Act 24 of 1981

Summary: This Act ([OG 4580](#)) covers income tax comprehensively, repealing a number of South African and South West African enactments on income tax, including the Income Tax Ordinance 5 of 1974 ([OG 3404](#)).

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.

Amendments: This Act was amended prior to independence by Act 12/1982 ([OG 4656](#)), AG 10/1985 ([OG 5016](#)), Act 13/1985 ([OG 5115](#)), Act 11/1986 ([OG 5234](#)), Act 8/1987 ([OG 5400](#)), Act 1/1989 ([OG 5675](#)) and AG 25/1989 ([OG 5758](#)).

It has been amended since independence by the Acts listed. Note that many of these Acts incorporate complex provisions on when various amendments come into force, with some providing different commencement dates for different provisions and/or for different categories of taxpayers. These commencement dates are not recorded here.

Act 3/1991 ([GG 179](#)) (re: petroleum)

Act 8/1991 ([GG 222](#)) (re: housing benefits)

Act 12/1991 ([GG 229](#)) (re: married women)

Act 33/1991 ([GG 335](#)) (re: employees made redundant and removal of gender distinctions regarding age in the provision affecting applicability of exemption of lump sum paid to retrenched employee)

Act 25/1992 ([GG 487](#)) (re: removal of remaining distinctions between men and women, and between married and single persons; tax exemptions for certain categories of persons; deductions relating to pensions and annuities; capital write-offs; and other matters)

Act 10/1993 ([GG 693](#)) (various amendments)

Act 17/1994 ([GG 932](#)) (various amendments)

Act 22/1995 ([GG 1225](#)) (various amendments, including amendments on the taxation of pensions or annuities transferred from one fund to another, the income of unit trusts and deductions in respect of donations to registered welfare organisations and educational

institutions)

- Act 12/1996 ([GG 1375](#)) (various amendments)
Act 5/1997 ([GG 1680](#)) (various amendments)
Act 13/1998 ([GG 1882](#)) (increase in rate of income tax)
Act 7/1999 ([GG 2135](#)) (new tax rates)
Act 21/1999 ([GG 2240](#)) (various amendments)
Appeal Laws Amendment Act 10 of 2001 ([GG 2585](#)) (section 76)
Act 7/2002 ([GG 2820](#)) (various amendments)
Act 11/2003 ([GG 3049](#)) (amendment to Schedule 4 – rates of normal tax).
Act 4/2005 ([GG 3428](#)) (various amendments)
Act 5/2007 ([GG 3964](#)) (various amendments; see GN 118/2009 ([GG 4270](#)) regarding commencement dates)
Act 5/2010 ([GG 4475](#)) (various amendments)
Act 3/2011 ([GG 4732](#)) (various amendments)
However, GN 79/2011 ([GG 4732](#)) which published this amending Act was withdrawn by GN 150/2011 ([GG 4787](#)).
Act 7/2011 ([GG 4755](#)) (adds a definition of “retirement annuity fund” to section 1)
Act 15/2011 ([GG 4864](#)) (various amendments)
Act 4/2013 ([GG 5206](#)) (amends Schedule 4 to alter tax rates and thresholds)
Act 13/2015 ([GG 5912](#)) (amends definition of “gross income”, provides for withholding tax on interest paid to non-residents, amends the withholding tax rate on certain fees paid to non-residents, provides a definition of “Namibia”, amends the royalty rate and provides for the allocation of tax payments and collection of tax)
Act 4/2016 ([GG 6044](#)) (amends section 35A)
Act 2/2020 ([GG 7249](#)) (repeals section 5A and 17C and inserts section 101A); it was brought into force by GN 329/2020 ([GG 7431](#)) as follows:
- section 1(1) of the amending Act on the repeal of section 5A comes into force on 31 December 2020, provided that the special income tax incentives granted to registered manufacturers in terms of the Act continue to apply until the end of the first tax year after that date (section 1(2) of the amending Act, which was repealed by Act 5/2021 ([GG 7705](#)))
 - section 2 of the amending Act on the repeal of section 17C comes into force at the end of five years commencing on 31 December 2020 [31 December 2025]
 - section 3 of the amending Act on the insertion of section 101A, which repeals certain provisions of the Export Processing Zones Act 9 of 1995, comes into force -
 - (i) at the end of five years commencing on 31 December 2020 [31 December 2025], in respect of an export processing zone enterprise that holds an export processing zone enterprise certificate issued under section 14 of the Export Processing Zones Act 9 of 1995 *on or before 31 December 2020*; and
 - (ii) on 31 December 2020, in respect of an export processing zone enterprise that obtains an export processing zone enterprise certificate issued under section 14 of the Export Processing Zones Act 9 of 1995 *after 31 December 2020*.
- Act 5/2021 ([GG 7705](#)) (amends section 17(1)(f) and repeals sections 17A, 17B and 17D, with continued application of these sections as they stood previously in respect of registered manufacturers until the end of the 2025 tax year (see section 4 of Act 5/2021).

Note that several provisions of the Act were declared unconstitutional by *Kruger v Minister of Finance of the Republic of Namibia & Others* 2020 (4) NR 913 (HC):

- sections 73(3), (5)(a) and (b), and (9)
- section 83(1)(b).

The declaration of invalidity was suspended for 12 months from the date of the Court’s judgment (27 March 2020), to provide an opportunity for correction of their defects by the legislature. However, no changes were made to these provisions within that time period, meaning that they became invalid on 27 March 2021.

Regulations: Section 101(4) is a savings provision which provides that -

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.

Pre-independence regulations have not yet been comprehensively researched.

Regulations regarding the standard value of livestock were issued in GN 50/1995 ([GG 1037](#)), which replaced GN 1/1994 ([GG 772](#)), which in turn repealed AG GN 47/1982.

Application of law: The application of the Act was affected by AG Proc. 14/1982 (OG 4648), which was “abolished” (“afgeskaf”) by AG Proc. 31/1987.

The application of the Act in Export Processing Zones is affected by section 7 of the Export Processing Zones Act 9 of 1995 ([GG 1069](#)).

The application of the Act is also addressed in the Demutualisation Levy Act 9 of 2002 ([GG 2827](#)).

The administration of this Act is affected by the Namibia Revenue Agency Act 12 of 2017 ([GG 6486](#)), which was brought into force with effect from 6 April 2021 by GN 55/2021 ([GG 7496](#)).

Notices: A special court for hearing income tax appeals is constituted in GN 320/1996 ([GG 1462](#)), replacing the court constituted in AG 31/1981 ([OG 5477](#)). Additional special courts for hearing income tax appeals are constituted in GN 222-223/1997 ([GG 1730](#)), GN 158/2000 ([GG 2361](#)), GN 88-90/2004 ([GG 3198](#)), GN 145-146/2010 ([GG 4530](#)), GN 190/2011 ([GG 4804](#)) and GN 321/2017 ([GG 6490](#)).

Rates for exemption under section 16(1)(m)(iii) are set in GN 115/1991 ([GG 287](#)), GN 21/1997 ([GG 1504](#)) and GN 102/1997 ([GG 1569](#)).

The most recent deduction tables for employees’ tax (PAYE 10, VOLUME 18) were brought into force by GN 180/2009 ([GG 4337](#)).

The most recent tables for optional use by provisional taxpayers (PAYE 12, VOLUME 18) were brought into force by GN 181/2009 ([GG 4337](#)).

An amount in terms of section 73A(1) of the Act is fixed at N\$100 000 in GN 107/2006 ([GG 3672](#)).

Appointments: Legal practitioners are appointed to serve on the panel in terms of section 73A(4) in GN 108/2006 ([GG 3672](#)), GN 112/2013 ([GG 4941](#)) and GN 162/2018 ([GG 6666](#)).

Cases:

Esselmann v Secretary of Finance 1990 NR 250 (SC) (concerning previous Income Tax Ordinance 5 of 1974)

Hindjou v The Government of the Republic of Namibia 1997 NR 112 (SC) (sections 83(1)(b) and 84 not contrary to Articles 12 or 78 of Constitution)

Oryx Mining and Exploration (Pty) Ltd v Secretary for Finance 1999 NR 80 (SC)

Minister of Finance v De Beers Marine (Pty) Ltd 2007 (1) NR 17 (SC) (para 3(1) of Schedule 4)

Fouche v Minister of Finance (Receiver of Revenue) 2012 (1) NR 109 (SC) (Special Court For Income Tax Appeals) (section 15(1)(f))

Du Preez v Minister of Finance 2012 (2) NR 643 (SC) (sections 71 and 73; sections 56(1A) and 79(1); section 66; section 79(4) prior to amendment in 2009 by Act 5/2007).

Merlus Seafood Processors (Pty) Ltd v Minister of Finance 2013 (1) NR 42 (HC); (“manufacturer” in section 5A); overturned on appeal *Minister of Finance v Merlus Seafood Processors (Pty) Ltd* 2016 (4) NR 1042 (SC) (proper approach to challenging Minister’s decision on “manufacturer” under sections 1 and 5A)

See also *S v Koch* 2006 (2) NR 513 (SC) (section 76(2) of Act discussed in *dicta* at 526) and *Engelbrecht & Others v Hennes* 2007 (1) NR 236 (LC) (deductions from commissions made in terms of this Act not necessarily an indication of an employment relationship)

Mugimu v Minister of Finance & Others 2017 (3) NR 670 (HC) (right to approach court despite allegations of dishonesty in reporting income for tax purposes; sections 67 and 69; also some discussion of sections 76, 78, 86 and 91)

Kruger v Minister of Finance of the Republic of Namibia & Others 2020 (4) NR 913 (HC) (declaring sections 73(3), (5)(a) and (b), and (9) and section 83(1)(b) unconstitutional with effect from 27 March 2021)

TCIMS Industrial (Namibia) (Pty) Ltd v Minister of Finance & Others 2018 (3) NR 691 (HC), overturned on appeal by *Minister of Finance v TCIMS Industrial (Namibia) (Pty) Ltd* (SA 43-2018) [2020] NASC (31 March 2020) (section 1 (definition of “manufacturing activity”) and section 5A; Supreme Court holding that application for registration is a composite one requiring applicant to meet *all* the relevant statutory requirements).

Related international agreements:

Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income between Republic of South Africa, United Kingdom of Great Britain and Northern Ireland and Southwest Africa (Namibia), 1962

signed at Cape Town, on 28 May 1962; exchange of notes (with annex) constituting an agreement extending to South West Africa the above-mentioned Convention. Pretoria, 8 August, 1962; registered by the Republic of South Africa on 19 July 1963

Convention between the Government of the Republic of Namibia and the Government of the Kingdom of Sweden for the avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, 16 July 1993

contained in the Schedule to Proclamation 3/1999 ([GG 2034](#))

Agreement between the Republic of Namibia and the Federal Republic of Germany for the avoidance of Double Taxation with Respect to Taxes on Income and Capital, 2 December 1993

contained in the Schedule to Proclamation 1/1999 ([GG 2032](#))

Note: There are two Proclamations numbered “Proc. 1/1999” in the 1999 government gazettes – one in [GG 2022](#) (which also contains “Proclamation 2/1999”) and one in [GG 2032](#). [GG 2033](#) contains Proclamation 4/1999, suggesting that the Proclamation in [GG 2032](#), which is the one referenced here, *should have been numbered as Proc. 3/1999* to be in sequence with the others. (To add more confusion, the Proclamation in question is listed as “Proclamation 9/1999” in the Quarterly Return for January-March 1999.)

Agreement between the Government of the Republic of Namibia and the Government of the Republic of Mauritius for the avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, 4 March 1995

contained in the Schedule to Proclamation 5/1999 ([GG 2036](#))

Convention between the Government of the Republic of Namibia and the Government of the French Republic for the avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital, 29 May 1996

contained in the Schedule to Proclamation 4/1999 ([GG 2033](#))

Convention between the Government of the Republic of Namibia and the Government of the Republic of India for the avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, 15 February 1997

contained in the Schedule to Proclamation 6/1999 ([GG 2035](#))

Convention between the Government of the Republic of Namibia and the Government of the Republic of Romania for the avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital, 25 February 1998

contained in the Schedule to Proclamation 7/1999 ([GG 2038](#))

Convention between the Government of the Republic of Namibia and the Government of the Russian Federation for the avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, 30 March 1998

contained in the Schedule to Proclamation 4/1999 ([GG 2033](#))

Agreement between the Government of the Republic of Namibia and the Government of the Republic of South Africa for the avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, 18 May 1998

contained in the Schedule to Proclamation 10/1999 ([GG 2037](#))

Agreement between Namibian and Malaysia on the Avoidance of Double Taxation, 9 November 2001
source: Parliament.

Agreement between Namibian and Malaysia on the Avoidance of Double Taxation and the prevention of fiscal evasion with respect to taxes on income, 28 July 1998.

contained in the Schedule to Proclamation 46/2004 ([GG 3284](#))

Agreement between the Government of the Republic of Namibia and the Government of the Republic of Botswana for the avoidance of Double Taxation and Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, 16 June 2004

contained in the Schedule to Proclamation 13/2005 ([GG 3514](#))

Commentary: Loammi Wolf, “Namibian taxation procedure in the light of just administrative action”, *Namibia Law Journal*, Volume 4, Issue 1, 2012.