

INCOME TAX

Income Tax Agreement Ratification Ordinance 13 of 1959

Summary: This Ordinance (originally published in [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”. No pre-independence regulations have been located. No post-independence regulations have been enacted under the Ordinance.

Income Tax Act 24 of 1981

Summary: This Act (originally published in [OG 4580](#)) covers income tax comprehensively. It 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.

Repeals: The Act repeals a number of South African and South West African enactments on income tax, including the Income Tax Ordinance 5 of 1974 ([OG 3404](#)), as amended, which in turn repealed the Income Tax Ordinance 10 of 1961, as amended.

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)

Act 13/2022 ([GG 7992](#)) (amends sections 15, 17, 56, 67, 81 and 95A; came into force on 1 January 2023 in terms of section 7 of Act 13/2022)

Act 13/2022 omits to cite Act 12/1991 as a previous amendment to section 15.

Act 13/2022 cites Act 9 of 1987 as a previous amendment to section 17. This is an error; the amending Act was actually Act 8 of 1987.

Act 4/2024 ([GG 8442](#)) (amends sections 21, 48 and 95A and Schedule 4; inserts section 17E; and makes a global substitution to change references to South African rand to references to the Namibia dollar).

The Repeal of Obsolete Laws Act 12 of 2022 ([GG 7991](#)), which was brought into force on 15 February 2023 by GN 21/2023 ([GG 8031](#)), repeals section 16(1)(y) (concerning an exemption related to the

Promotion of the Density of Population in Designated Areas Act 18 of 1979, which is repealed by Act 12 of 2022).

The Abolition of Payment by Cheque Act 16 of 2022 ([GG 7995](#)), which was brought into force on 15 March 2023 by GN 47/2023 ([GG 8050](#)), amends sections 44, 47 and 65.

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), and section 83(1)(b). However, the holding on the unconstitutionality of section 83(1)(b) was overturned on appeal in *Minister of Finance of the Republic of Namibia NO & Others v Kruger & Another* 2022 (3) NR 785 (SC). The High Court's declaration of invalidity was suspended for 12 months from the date of its judgment (27 March 2020) to provide an opportunity for correction of the defects by the legislature. However, no changes were made to the provisions unaffected by the appeal (sections 73(3), (5)(a) and (b), and (9)), meaning that they became invalid on 27 March 2021.

The Supreme Court judgment states as follows at para 20: "It may also be mentioned in passing that it is not apparent from the judgment of the High Court on what conceivable basis s 83(1)(a) was also declared invalid. It is mentioned in passing, because the decision declaring ss 73 and 83(1)(a) unconstitutional has not been appealed against and therefore the validity or otherwise of those sections is not an issue before us. As noted earlier, the appeal concerns a sole and confined issue of the finding of the invalidity of s 83(1)(b)."

With respect, the order issued by the High Court mentions only section 83(1)(b): "The Applicant's application challenging the constitutionality of sections 73(3); 73(5)(a) and (b); 73(9) and section 83(1)(b) of the Income Tax Act, 24 of 1981, as amended, is hereby upheld."

Thus, there appears to be no finding on section 83(1)(a) by either court.

Savings: Section 101(4) of this Act 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.

Section 86(2) of the repealed Income Tax Ordinance 5 of 1974 contained a similar savings clause:

Any notice or proclamation issued or regulation (other than a regulation specified in Schedule 1) made or anything done under any provision of a law repealed by subsection (1) shall be deemed to have been issued, made or done under the corresponding provision of this Ordinance.

Regulations: Regulations are authorised by section 99 of the current Act. However, no regulations issued under the current Act appear to have any current relevance.²⁴⁹

No regulations issued under the Income Tax Ordinance 5 of 1974 (which was repealed by this Act) have been located.

No regulations issued under the Income Tax Ordinance 10 of 1961 (which was repealed by the Income Tax Ordinance 5 of 1974) appear to have any current relevance.²⁵⁰

Application of law: The application of the Act was affected by AG Proc. 14/1982 ([OG 4648](#)), which

²⁴⁹ Regulations regarding the standard value of livestock for the 1994-1995 tax year were issued in GN 50/1995 ([GG 1037](#)), which replaced GN 1/1994 ([GG 772](#)), which in turn repealed AG GN 47/1982 ([OG 4613](#)).

A Standard Values of Livestock Regulation is contained in GN 157/1961 ([OG 2319](#)). This regulation was issued in terms of section 93(1) of the Income Tax Ordinance 10 of 1961, which was repealed by the Income Tax Ordinance 5 of 1974, which was repealed in turn by the Income Tax Act 24 of 1981. No repeal of GN 157/1961 has been located.

²⁵⁰ Regulations made in terms of section 11C(4) of the Income Tax Ordinance 10 of 1961 are contained in GN 73/1971 ([OG 3184](#)). No repeal of these regulations has been located, but there appears to be no corresponding authority in the current Income Tax Ordinance – which would mean that they do not survive pursuant to the chain of savings clauses.

Regulations under the Income Tax Ordinance 1961 were contained in GN 156/1961 ([OG 2319](#)) but these were repealed by the Income Tax Ordinance 5 of 1974 ([OG 3404](#)).

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](#)).

GN 397/2024 ([GG 8551](#)) lists institutions or organisations approved as designated authorities that may certify a registered internship agreement in terms of section 17E(1) of the Act.

Appointments: Legal practitioners are appointed to serve on the panel referred to in section 73A(4) in GN 108/2006 ([GG 3672](#)), GN 112/2013 ([GG 4941](#)), GN 162/2018 ([GG 6666](#)), GN 257/2023 ([GG 8177](#)) and GN 296/2023 ([GG 8214](#)).

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).

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)

Minister of Finance v TCIMS Industrial (Namibia) (Pty) Ltd 2020 (2) NR 319 (SC), overturning *TCIMS Industrial (Namibia) (Pty) Ltd v Minister of Finance & Others* 2018 (3) NR 691 (HC) (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 statutory requirements in section 5A(3)(a)-(b))

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); the finding in respect of section 83(1)(b) was overturned on appeal in *Minister of Finance of the Republic of Namibia NO & Others v Kruger & Another* 2022 (3) NR 785 (SC) on the grounds that the constitutional validity of that section had previously been considered and decided by the Supreme Court in *Hindjou v Government of the Republic of Namibia* 1997 NR 112 (SC)

Tuzembeho & Others v Namibia Revenue Agency & Others 2023 (4) NR 1020 (HC) (application for interim relief staying deductions from salaries by Namra pending the outcome of a constitutional challenge to certain provisions of the Act is denied, on the grounds that the law remains in force unless and until it is declared unconstitutional)

Commentary: Loammi Wolf, “Namibian taxation procedure in the light of just administrative action”, *Namibia Law Journal*, Volume 4, Issue 1, 2012, available [here](#).

Related international agreements:

Convention on Mutual Administrative Assistance in Tax Matters as amended by its Protocol, 2010

****Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI Convention), 2016**

***SADC Agreement on Assistance in Tax Matters, 2012**

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](#))