

# **INCOME TAX**

---

## **Income Tax Agreement Ratification Ordinance 13 of 1959.**

**Summary:** This Ordinance ratifies a double taxation treaty between South Africa and South West Africa.

**Amendments:** The Ordinance is amended by Ord. 4/1970 and Ord. 7/1973.

## **Rehoboth Gebiet Income Tax Proclamation 92 of 1961.**

**Summary:** This Proclamation has been superseded by the Income Tax Act 24 of 1981.

## **Income Tax Act 24 of 1981.**

**Summary:** This Act covers income tax comprehensively.

**Amendments:** This Act was amended prior to independence by Act 12/1982, AG 10/1985, Act 13/1985, Act 11/1986, Act 8/1987, Act 1/1989 and AG 25/1989.

It has been amended since independence by-

- Act 3/1991 (re: petroleum)
- Act 8/1991 (re: housing benefits)
- Act 12/1991 (re: married women)
- Act 33/1991 (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 (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 (various amendments)
- Act 17/1994 (various amendments)
- Act 22/1995 (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 (various amendments)
- Act 5/1997 (various amendments; note that this amending act contains different commencement dates for different sections and for different categories of taxpayers)
- Act 13/1998 (increase in rate of income tax)
- Act 7/1999 (new tax rates)
- Act 21/1999 (various amendments)
- Appeal Laws Amendment Act 10 of 2001 (section 76)
- Act 7/2002 (various amendments)
- Act 11/2003 (amendment to Schedule 4 - rates of normal tax).
- Act 4/2005 (various amendments; note that this amending act contains different commencement dates for different sections and for different

categories of taxpayers)  
Act 5/2007 (various amendments; note that this amending act contains different commencement dates for different sections and for different categories of taxpayers; see GN 118/2009, GG 4270 regarding commencement dates)  
Act 5/2010 (various amendments; note that this amending act contains different commencement dates for different sections and for different categories of taxpayers).

**Regulations:** Regulations regarding the standard value of livestock are contained in GN 1/1993 (GG 772) and GN 50/1995 (GG 1037).

A special court for hearing income tax appeals is constituted in GN 320/1996 (GG 1462), replacing the court constituted in AG 31/1981. Additional special courts for hearing income tax appeals are constituted in GN 222/1997, GN 223/1997 (GG 1730), GN 158/2000 (GG 2361), and GN 88-90/2004 (GG 3198).

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).

Legal practitioners are appointed to serve on the panel in terms of section 73A(4) in GN 108/2006 (GG 3672).

The application of the Act is affected by AG 14/1982 and GN 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. The application of the Act is addressed in the Demutualisation Levy Act 9 of 2002.

**Cases:**

*Esselmann v Secretary of Finance* 1990 NR 250 (SC)

*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).

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).

**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 and one in GG 2032. The Proclamation pertaining to double taxation and fiscal evasion with respect to Germany 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)