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Government Notice

OFFICE OF THE PRIME MINISTER

No. 230

2007

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. 5 of 2007: Income Tax Amendment Act, 2007.

Act No. 5, 2007 INCOME TAX AMENDMENT ACT, 2007**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 exclude the interest portion distributed out of the assets of Unit Trust Schemes in the definition of "dividends"; to further define the expression "person" to specifically include a trust; to correct reference for recoupment purposes; to delete the exemption of interest derived by natural persons, so as to exempt from tax interest received by an individual from a trust if such interest was subjected to withholding tax in the hand of the trust; to increase the allowable deductions of contributions made to retirement funds; to provide for a withholding tax on interest derived by natural persons, deceased estates, trusts and non-Namibian companies from Namibian banking institutions, Namibian unit trust schemes and the Namibian Post Savings Bank; to change the compound interest payable on outstanding amounts to a simple interest, to limit interest levied not to exceed the original tax amount, and not to levy interest on additional tax and penalties; to empower the Minister to appoint debt collectors; to make provision to deduct costs incurred in connection with the supply of electric power consumed by farmers; to increase the deduction for tax purposes of expenditure incurred relating to erection or acquisition of buildings or structures used for the domestic purposes of farmers' employees; to increase the threshold on income tax payable by individuals and to ensure that recoupments of expenditure by mining and manufacturing companies are taxed at the rates of tax applicable to such companies; and to provide for incidental and connected matters.

(Signed by the President on 21 December 2007)

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, section 1 of Act No. 21 of 1999, section 1 of Act No. 7 of 2002 and section 1 of Act No. 4 of 2005

1. Section 1 of the Income Tax Act, 1981(Act No. 24 of 1981)(hereinafter referred to as "the principal Act") is amended -

- (a) by the substitution for the words preceding paragraph (a) in the definition of "dividend" of the following words:

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“‘dividend’ means any amount distributed by a company (not being a building society or an association or institution to which section 16(1)) ((d) applies) to its shareholders or any amount (excluding interest) distributed out of the assets pertaining to any portfolio referred to in paragraph (e) of the definition of ‘company’ in this section to shareholders in relation to such unit portfolio (including, in the case of any co-operative society or company referred to in section 31, any amount distributed to its members, whether divided among the members in accordance with their rights as shareholders or according to the value of business transactions between individual members and such society or company or in some other basis), and in this definition the expression ‘amount distributed’ includes -”;

- (b) by the substitution for paragraph (h) in the definition of “gross income” of the following paragraph:

“(h) (i) any amount received or accrued during any year of assessment by way of the disposal of any asset previously acquired if the expenditure relating to the acquisition of such asset was allowed to be deducted as capital expenditure in terms of section 18(1)(a) or the corresponding provisions of any previous income tax law, less such portion of the amount of such capital expenditure not as yet deducted by virtue of the provisions of section 36(1);

(ii) any other expenditure deducted in terms of section 18(1)(a) or the corresponding provisions of any previous income tax law, which have been recovered or recouped during the current year of assessment, including recovery or recoupment by means of the withdrawal from development or exploration operations for use for non-development, exploration or mining operations or removal from Namibia of any asset, less such portion of that expenditure not yet deducted by virtue of the provisions of section 36(1): Provided that any asset so withdrawn from development, exploration or mining operations or removed from Namibia or disposed at a consideration, which is less than the fair value of such asset, shall be valued at market value for the purpose of determining the amount recovered or recouped.”; and

- (c) by the substitution for the definition of “person” of the following definition:

“‘person’ includes any trust and the estate of a deceased person and such estate shall be deemed to have come into existence at the moment of death of the deceased person;”.

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, section 3 of Act No. 21 of 1999, section 4 of Act No. 7 of 2002 and section 2 of Act No. 4 of 2005

2. 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 provision of subsection (1) of this section and of section 17 to 21, inclusive, except section 17(1)(n), (q), (qA) and ~~[(r)]~~ (s) and section 18(1)(a), or under the corresponding provisions of any previous income

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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 deductions recouped or recovered: Provided further that the Minister may, upon request in writing by a taxpayer, determine a lesser value than the market value, for purposes of this subsection, if the circumstances of the case warrant a concession.”.

Amendment of section 16 of Act No. 24 of 1981, as amended by section 5 of Proclamation AG. No. 10 of 1985, section 5 of Act No. 8 of 1987, section 5 of Act No. 12 of 1991, section 1 of Act No. 33 of 1991, section 6 of Act No. 25 of 1992, section 6 of Act No. 10 of 1993, section 4 of Act No. 17 of 1994, section 5 of Act No. 22 of 1995, section 8 of Act No. 12 of 1996, section 5 of Act No. 21 of 1999 and section 3 of Act No. 4 of 2005

3. Section 16 of the principal Act is amended -
- (a) by the deletion of subparagraph (iv) of paragraph (m) of subsection (1); and
- (b) by the addition to subsection (1) of the following paragraph:

“(ag) interest received by or accrued to any person (other than a Namibian company) from a trust that received interest, which is proved to the satisfaction of the Minister that tax was withheld in terms of section 34A.”.

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, section 7 of Act No. 21 of 1999 and section 5 of Act No. 21 of 1999.

4. Section 17 of the principal Act is amended by the substitution for subsection (2) of the following subsection:

“(2) The aggregate of the amounts that may be deducted in terms of paragraphs (n), (q) and (qA) of subsection (1) shall not, as from the year of assessment commencing on or after 1 March [1999] 2007, in any year of assessment exceed the sum of [N\$ 30 000] N\$40 000.”.

Insertion of section 34A, 34B, 34C and 34D in Act No. 24 of 1981

5. The following sections are inserted in the principal Act after section 34:

“Withholding tax on interest

34A (1) There must be paid for the benefit of the State Revenue Fund a tax (in this Act referred to as *withholding tax on interest*) equal to 10 per cent of any amount of interest accruing to or in favour of any person (other than a Namibian company) from -

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- (a) a Namibian banking institution registered under the Banking Institutions Act, 1998 (Act No. 2 of 1998);
 - (b) a unit trust scheme as defined in paragraph (e) of the definition of "company" in section 1 of the principal Act, which is registered in Namibia; or
- (2) The tax withheld in terms of subsection (1) is a final tax as the interest on which it is paid is not added to or set-off against any other income.
- (3) If the tax withheld in terms of subsection (1) is in respect of interest in favour of a trust of which a Namibian company is a beneficiary -
- (a) so much of the tax withheld on the interest which is paid to the Namibian company is not a final tax;
 - (b) any interest received by a Namibian company must be included in the taxable income of the company and taxed at the rates as prescribed by Schedule 4 of the Act; and
 - (c) any tax which is proved to the satisfaction of the Minister to be withheld must be set-off against the tax payable.

Person liable for withholding tax on interest

34B The person liable for withholding tax on interest is the person to whom or in whose favour the amounts referred to in section 34A accrue.

Deduction or withholding of tax on interest

34C (1) Despite section 34B, the withholding tax on interest is deducted or withheld by any Namibian banking institution or Namibian unit trust scheme from any amount referred to in section 34A and paid to the Minister in terms of section 34D.

(2) A banking institution or unit trust scheme which is required to make a payment to the Minister in terms of subsection (1) is personally liable for making such payment, and the amount so payable -

- (a) is, for the purposes of this section, deemed to be a tax due by such institution or scheme; and
 - (b) is recoverable from such institution or scheme in the manner prescribed in section 83.
- (3) The banking institution or unit trust scheme from whom the tax in subsection (2) is recovered in terms of section 83 has the right of recovery from the person who is liable for the tax in terms of section 34B.

(4) Any amount which is paid by the banking institution or unit trust scheme and which is in excess of the withholding tax due may be set-off against future withholding tax payable, and if such excess amounts cannot be set-off against future payments, the Minister must refund the excess payments to the institution or scheme.

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(5) Any tax withheld by the banking institution or unit trust scheme which is in excess of the withholding tax due must be refunded or credited by the institution, scheme or savings bank to the person from whose interest it was deducted or withheld.

(6) The banking institution or unit trust scheme must issue a certificate in a prescribed form to every person to whom or in whose favour amounts referred to in section 34A were paid or have accrued, and the certificate must show -

- (a) the total amounts of interest paid or accrued; and
- (b) the amounts of tax withheld on or after first March of any year and ending on the last day of the first February following that date.

When withholding tax on interest is payable

34D. (1) The withholding tax on interest is payable within 20 days after the month following the month in which the interest accrued or was received or within such further period as the Minister may approve.

(2) A person paying the withholding tax must at the time of payment submit to the Minister a declaration in a prescribed form.

(3) If a banking institution or unit trust scheme fails to pay any amount of tax withheld within the prescribed period allowed for payment thereof in terms of subsection (1), such institution or scheme must pay a penalty equal to 10 per cent of such amount for each month or part thereof that the payment remains unpaid, reckoned from the first day of the month following the due date for payment, but such penalty may not exceed the amount of tax withheld.

(4) If the Minister is satisfied that the failure of the banking institution or unit trust scheme to pay the amounts withheld was not due to an intent to evade or postpone payment of tax or otherwise to evade its obligations under this Act, the Minister may cancel the whole or part of the penalty imposed under subsection (3).

(5) If a banking institution or unit trust scheme fails to pay any amount of tax withheld within the prescribed period allowed for payment thereof in terms of subsection (1), interest must be paid by such institution or scheme on the outstanding balance of such tax at the rate of 20 per cent per annum calculated as from the day immediately following the expiry of the period for payment so prescribed until the day of payment.

Amendment of section 56 of Act No. 24 of 1981, as amended by section 10 of Proclamation AG. 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 and section 9 of Act No. 7 of 2002

6. Section 56 of the principal Act is amended by the substitution for subparagraph (ii) of paragraph (b) of subsection (4) of the following subparagraph:

- “(ii) the whole of whose income for the year of assessment consisted solely from remuneration as defined in paragraph 1 of Schedule 2 paid by the employer referred to in subparagraph (i)[, **and interest not exceeding N\$ 500**] ; and”

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Amendment of section 79 of Act No. 24 of 1981, as amended by section 12(1)(a) and (b) of Proclamation AG 10 of 1985, section 9(b) of Act No. 22 of 1995, section 23 of Act No. 12 of 1996 and section 12(1)(a) of Act No. 21 of 1999

7. Section 79 of the principal Act is amended -
- (a) by the substitution for subsection (2) of the following subsection:

“(2) If the tax payer fails to pay any tax in full on or before the due date for payment of such tax as specified in the Act or any extension of such due date which the Minister may grant in terms of paragraph (a) of subsection (3) of section 56, as the case may be, interest shall be paid by the taxpayer on the outstanding balance of such tax at the rate of 20 percent per annum [calculated daily as from such due date for payment and compounded monthly during the period which any portion of the tax remains unpaid] calculated as from the day immediately following such due date for payment until the day of payment.”.

- (b) by the substitution for subsection (4) of the following subsection:

“(4) The amount that may be accumulated and be recovered in respect of interest levied in accordance with this section may not exceed the amount of the original tax.”.

- (c) by the addition after subsection (4) of the following subsection:

“(5) For the purposes of this section “tax” does not include any additional tax levied in terms of section 66.”.

Amendment of section 80 of Act No. 24 of 1981, as amended by section 13 of Proclamation AG. 10 of 1985, section 13 of Act No. 22 of 1995 and section 24 of Act No. 12 of 1996

8. Section 80 of the principal Act is amended -
- (a) by the substitution for subsection (1) of the following subsection:

“(1) Payments by way of employee’s tax and provisional tax shall be made in accordance with the provisions of Schedule 2 and shall be made at such place as may be notified by the Minister, and any such payments which relate to a taxpayer shall, for the purposes of this Act and subject to the provisions of paragraph 29 of the said Schedule, be deemed to have been made in respect of [his] such taxpayer’s liability for taxes as defined in subsection [(3)] (4), whether or not such liability has been ascertained or determined at the date of any payment.”;

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

“(2) If any amount of employee’s tax is not paid in full within the period of 20 days prescribed for the payment of such amount by subparagraph (1) of paragraph 2 of Schedule 2, or if any amount of provisional tax is not paid in full within the relevant period prescribed for payment of such amount by paragraph 22, 23, or 24 or by subparagraph (1) of paragraph 26 of that

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Schedule, interest shall be paid by the person liable to pay the amount in question at the rate of 20 per cent per annum, **[calculated daily and compounded monthly as from the day immediately following the expiry of the period for payment so prescribed, unless the Permanent Secretary having regard to the circumstances of the case otherwise directs]** calculated as from the day immediately following the expiry of the period for payment so prescribed until the day of payment, unless the Minister having regard to the circumstances of the case otherwise directs.”;

- (c) by the substitution for subsection (4) of the following subsection:

“(4) For the purposes of this section “taxes” means the taxes comprehended in the definition of “tax” in section 1, excluding **[non-resident shareholders’ tax and undistributed profits tax]** any additional tax or penalty levied in terms of Schedule 2.”; and

- (d) by the substitution for subsection (5) of the following subsection:

“(5) The amount that may be accumulated and be recovered in respect of interest levied in accordance with this section may not exceed the original amount of employee’s tax or provisional tax.”.

Insertion of section 83A in Act No. 24 of 1981

9. The following section is inserted in the principal Act after section 83:

“Recovery of outstanding tax, penalty or interest by debt collector

83A. Despite anything to the contrary in this Act, but subject to section 4, the Minister, if he or she considers it necessary, may make arrangements with any person to recover outstanding tax, penalty or interest on behalf of the Minister on such terms and conditions as agreed upon between the Minister and such person.”.

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, section 7 of Act No. 5 of 1997 and section 12 of Act No. 7 of 2002.

10. Schedule 1 to the principal Act is amended -

- (a) by the substitution for item (d) of subparagraph (1) of paragraph 10 of the following item:

“(d) the erection of buildings or acquisition of any structure used in connection with farming operations other than those used for domestic purposes of persons who are not employees of such farmer;”;

- (b) by the addition to subparagraph (1) of paragraph 10 of the following item:

“(f) The carrying of electric power from the main transmission lines to the farm apparatus or under an agreement concluded with a supplier

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of electricity in terms of which the farmer has undertaken to bear a portion of the cost incurred by the supplier in connection with the supply of electric power consumed by the farmer wholly or mainly for farming purposes.”;

- (c) by the insertion of subparagraph (4A) after subparagraph (4) of paragraph 10:

“(4A) Where any asset in respect of which any deduction has been allowed to a farmer under subparagraph (1) or (2) or the corresponding provisions of any previous income tax law (whether in the current year or any previous year of assessment) and which is or has become a movable asset -

- (a) is withdrawn from farming operations for use for non-farming operations; or
 (b) is removed from Namibia,

there must be included in such farmer’s income an amount which, to the satisfaction of the Minister, is the market value of such asset, but such amount may not exceed the amount that had been or will be allowed as a deduction.”;

- (d) by the substitution for the words preceding the proviso in subparagraph (6) of paragraph 10 of the following words:

“(6) The total amount allowable as deductions to any farmer under items (a) to [(j)] (l), inclusive, of subparagraph (1) and under subparagraph (2) in any year of assessment shall not exceed the taxable income (as calculated before allowing the said deductions) derived by [him or her] such farmer from farming operations during that year of assessment.”; and

- (e) by the substitution for subparagraph (8) of paragraph 10 of the following subparagraph:

“(8) The aggregate of all the deductions allowed under item (d) of subparagraph (1) or the corresponding provisions of any previous income tax law to any farmer in respect of the erection of any buildings or the acquisition of any structure used for the domestic purposes of any one of such farmer’s employees shall not exceed the sum of [R 15 000] N\$50 000.”.

Amendment of Schedule 4 to Act No. 24 of 1981, added by section 21 of Act No. 25 of 1992 and amended by section 14 of Act No. 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, section 1 of Act No. 7 of 1999, section 13 of Act No. 7 of 2002 and section 1 of Act No. 11 of 2003

11. Schedule 4 to the principal Act is amended -

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

Act No. 5, 2007 INCOME TAX AMENDMENT ACT, 2007**"1. RATES OF NORMAL TAX**
(Section 6)

<i>Taxable amount</i>	<i>Rates of tax</i>
Where the taxable amount -	
does not exceed N\$36 000	no tax payable;
exceeds N\$36 000 but does not exceed N\$40 000	17,5 per cent of the amount by which the taxable amount exceeds N\$36 000
exceeds N\$40 000 but does not exceed N\$80 000	N\$700 plus 29,5 per cent of the amount by which the taxable amount exceeds N\$40 000
exceeds N\$80 000 but does not exceed N\$200 000	N\$12 500 plus 34,5 per cent of amount by which the taxable amount exceeds N\$80 000
exceeds N\$200 000	N\$53 900 plus 35 per cent of the amount by which the taxable amount exceeds N\$200 000.";
(b) by the substitution for item (b) of subparagraph (1) of paragraph 3 of the following item:	
<p style="margin-left: 40px;">"(b) on each N\$ of taxable income derived from mining of a mineral or substance other than diamonds, <u>or from services rendered by such company in connection with such mining on behalf of any person licensed to conduct such mining operations</u>, 37,5 cents;"</p>	
(c) by the insertion after item (c) of subparagraph (1) of paragraph 3 of the following item:	
<p style="margin-left: 40px;"><u>"(d) any amount referred to in paragraph (h) of the definition of "gross income" in section 1, section 14(4) and section 18(2) which is received or recouped by a company referred to in items (b) and (c) shall be taxed at the same rate which is applicable to the taxable income of such company."</u></p>	
(d) by the substitution for the words in subparagraph (2) of paragraph 3 preceding item (a) of the following words:	
<p style="margin-left: 40px;">"(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, <u>including any amount recovered or recouped referred to in section 14(4) that relates to that activity</u>, is 18 cents on each N\$ of taxable income so derived during the following periods:"</p>	

Act No. 5, 2007 INCOME TAX AMENDMENT ACT, 2007**Short title and commencement**

12. (1) This Act is called the Income Tax Amendment Act, 2007, and, subject to subsections (2) to (8), commences on the date of its publication in the *Gazette*.

(2) Section 11(b) and (d) commences at the beginning of the year of assessment commencing on or after 1 January 2008.

(3) Sections 2, 4, and 11(a) commence at the beginning of the year of assessment commencing on or after 1 March 2007.

(4) Sections 1(b) and 10 commence -

(a) in the case of a tax payer other than a company, at the beginning of the year of assessment commencing on or after 1 March 2007; and

(b) in the case of a tax payer which is a company, at the beginning of the year of assessment of such company on or after 1 January 2007.

(5) Section 1(a) commences on 1 March 2008.

(6) Sections 1(c), 3, 5 and 6 commence on 1 March 2009.

(7) Section 11(c) is deemed to have commenced from the beginning of financial years ending on or after 1 January 1981.

(8) Sections 7 and 8 commence on a date determined by the Minister by notice in the *Gazette*.
