



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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## Government Notice

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### OFFICE OF THE PRIME MINISTER

No. 257

2011

#### 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. 15 of 2011:    Income Tax Third Amendment Act, 2011.

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## Act No. 15, 2011 INCOME TAX THIRD AMENDMENT ACT, 2011

## 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.

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**ACT**

To amend the Income Tax Act, 1981, so as to provide for a definition of “education policy”, to amend the definition of “gross income” with regard to the specific inclusion of the gains of selling mineral rights and mineral licence; to clarify the exemption of proceeds of an education policy; to amend the building allowances; to clarify the deduction of contributions made to an education policy; to make export allowances only applicable to goods manufactured in Namibia; to provide for the administration of withholding tax on interest; to increase the rate on non-resident shareholders tax; to compel employers to issue declarations with regard to the maturity, payment, surrender or disposal of any education policy; to ring fence assessed losses for certain trades; to amend provisional tax provisions; to introduce a withholding tax on entertainment fees, management fees and consultancy fees paid to a non-resident; and to provide for incidental matters.

*(Signed by the President on 25 December 2011)*

**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, section 1 of Act No. 4 of 2005, section 1 of Act No. 5 of 2007, section 1 of Act No. 5 of 2010 and section 1 of Act No. 7 of 2011.**

1. Section 1 of the Income Tax Act, 1981 (*in this Act referred to as “the principal Act”*) is amended –

- (a) by the insertion after the definition of “benefit fund” of the following definition:

“boat” means any vessel used or capable of being used in, under or on the sea or internal waters, whether -

- (a) self-propelled or not; or
- (b) equipped with an inboard or outboard motor;”;

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- (b) by the insertion after the definition of “domestic company” of the following definition:

“‘education policy’ means a policy of insurance that is taken out by a tax payer exclusive and solely for the purpose of making provision for the future education or training of a child or step-child of the taxpayer contemplated by section 16(1)(ab)(ii);”;

- (c) by the substitution for paragraph (dC) of the definition of “gross income” of the following paragraph -

“(dC) any amount received or accrued under or upon the maturity, payment, surrender or disposal of any education policy if any premium paid in respect of such policy was allowed as a deduction in terms of section 17(1)(qA);”;

- (d) by the substitution for paragraph (m) of the definition of “gross income” of the following paragraph -

“(m) any amount received or accrued under or upon surrender or disposal of, or by way of any loan or advance granted by the insurer concerned under or upon the security of, any policy of insurance upon the life of any person who at any time while the policy was in force was an employee of the taxpayer or, where the taxpayer is a company, was a director or employee of the company, if any premium paid in respect of such policy is or was deductible from the income of the taxpayer, whether in the current or any previous year of assessment, under section 17, but -

(i) where any amount received or accrued under or upon the surrender or disposal of any such policy falls to be included in the gross income of the taxpayer, the amount so included in his or her gross income is reduced by the amount of any loan or advance under or upon security of that policy which has been included in his or her gross income, whether in the current or any previous year of assessment; or

(ii) where any such policy has been terminated by the insurer and a paid-up policy has been issued, the terminated policy and the paid-up policy is, for the purposes of this paragraph, deemed to be one and the same policy;”;

- (e) by the addition after paragraph (n) of the definition of “gross income” of the following paragraph:

“(o) any amount received or accrued from another person as consideration (or payment of like nature) or the open market value by way of a sale, donation, expropriation, cession, grant or other alienation or transfer of ownership of a mineral licence

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as defined in the Minerals (Prospecting and Mining) Act, 1992 (Act No. 33 of 1992), or right to mine minerals in Namibia, and includes a sale of shares in a company for a mineral licence or right to mine minerals in Namibia;”.

- (f) by the substitution for item (cc) of subparagraph (iv) of paragraph (b) of the definition of “pension fund” of the following item:

“(cc) the value of an existing annuity which any person is entitled to at the date of commencement of the Income Tax [**Second**] Amendment Act, [**1999**] 2010, does not exceed N\$50 000, irrespective of whether any portion of such annuity has before such date in terms of any provision of this Act been commuted for a single payment, the total of such annuity may be commuted, at the request of such person, for a single payment;”.

**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(1)(a) of Act No. 21 of 1999, section 4 of Act No. 7 of 2002, section 2 of Act No. 4 of 2005 and section 2 of Act No. 5 of 2007**

2. Section 14 of the principal Act is amended by the substitution for subsection (4) of the following subsection:

“(4) There must be included in the income of the taxpayer all amounts allowed to be deducted or set off under subsection (1) and sections 17 to 21, inclusive, except sections 17(1)(n), (q), (qA) and (s) and section 18(1)(a), or under the corresponding provisions of any previous income 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 -

- (a) the disposal or withdrawal from trade for use for non-trade purposes; or
- (b) the 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,

but any item so disposed of, withdrawn from trade or removed from Namibia is valued at market value for the purpose of calculating the amount of any deduction recouped or recovered.”.

**Amendment of section 15 of Act No. 24 of 1981, as amended by section 4 of Proclamation AG. 10 of 1985, section 4 of Act No. 8 of 1987, section 4 of Act No. 12 of 1991, section 5 of Act No. 10 of 1993, section 7 of Act No. 12 of 1996 and section 4 of Act No. 21 of 1999**

3. Section 15 of the principal Act is amended by the addition after subsection (8) of the following subsection:

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

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- (a) whether the transaction was concluded in or outside Namibia;
- (b) the place where payment of such amount is made; or
- (c) the place where the funds from which payment is made are held.”.

**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, section 3 of Act No. 4 of 2005, section 3 of Act No. 5 of 2007 and section 2 of Act No. 5 of 2010**

4. Section 16 of the principal Act is amended by the substitution for subparagraph (i) of paragraph (ab) of subsection (1) of the following subparagraph:

- “(i) so much of any amount received by or accrued to any taxpayer or any beneficiary nominated by the taxpayer, under or upon the maturity, payment, surrender or disposal of an education policy as is proved to the satisfaction of the Minister has been or is to be expended for providing for the education or training of a child or step-child of the taxpayer, and which education or training –
  - (aa) is provided or will be provided at an educational institution of a public character; and
  - (bb) is undergone or will be undergone by such child or step-child for the purpose of obtaining a post-school qualification;”.

**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, section 5 of Act No. 7 of 2002 and section 4 of Act No. 5 of 2007**

5. Section 17 of the principal Act is amended –

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

“(f) in respect of buildings used by the taxpayer for the purposes of such taxpayer’s trade, an allowance equal to 20 per cent of the cost of erection of such buildings in the year of assessment during which such buildings are brought into use, and four per cent of such costs for each of the 20 years following on the year of assessment during which such buildings are brought into use: Provided that in respect of any such buildings of which the erection is completed after the commencement of the Income Tax Amendment Act 2010, and which are brought into use, and used solely for manufacturing purposes, by a taxpayer who is a registered manufacturer, an allowance equal to 20 per cent of

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the cost of erection of such buildings is deductible in the year of assessment during which such buildings are brought into use and eight per cent of such cost for each of the 10 years following on the year of assessment during which such buildings are brought into use: Provided further that no allowance is made under this paragraph or the first proviso to this paragraph –

- (i) where any allowance in respect of such costs has already been granted under paragraph (h);
- (ii) in respect of buildings used or to be used by the taxpayer for the making available of housing or housing facilities to employees or, where the taxpayer is a company, to employees or directors or officials of such company;”;

- (b) by the substitution for paragraph (qA) of subsection (1) of the following paragraph:

“(qA) subject to subsection (2), so much of the total current premiums paid during the year of assessment in question [**under a policy of insurance**] for an education policy taken out by the taxpayer to provide funds at a future date for the education or training of a child or step child of such taxpayer as contemplated in paragraph (ab) of section 16(1);”;

- (c) by the addition of the following subparagraph:

“(w) expenditure incurred by a taxpayer in respect of any premiums payable under a long-term insurance policy of which the taxpayer is the policyholder, where –

- (i) the amount of expenditure incurred by the taxpayer in respect of the premiums payable under the policy is included in the taxable income of an employee or director of the taxpayer;
- (ii) the taxpayer is insured against any loss by reason of the death, disablement or severe illness of an employee or director of the taxpayer;
- (iii) the policy is a risk policy with no cash value or surrender value prior to the maturity date thereof or the death of the employee or director whose life is insured under the policy;
- (iv) the policy is not the property of any person other than the taxpayer at the time of the payment of the premium, but any premium paid is not disallowed as a deduction by reason of the policy being held by a creditor of the taxpayer other than any person contemplated in paragraph (v) as security for a debt of the taxpayer; and

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- (v) no transaction, operation or scheme exists in terms of which any amount recoverable under the policy or an amount equivalent to or in lieu of such amount is to be made over by the taxpayer to or in favour of -
- (aa) the employee or director or a connected person in relation to the employee or director;
- (bb) the estate of the employee or director; or
- (cc) any person who is or was wholly or partly dependent for his or her maintenance upon the employee or director;”; and
- (d) by the substitution for subsection (2) of the following subsection:

“(2) The aggregate of the amounts that may be deducted in terms of paragraph (n), (q), (qA) and (w) of subsection (1) shall not, as from the year of assessment commencing on or after 1 March **[2007]** 2011 in any year of assessment exceed the amount of N\$40 000.”.

**Amendment of section 17C of Act No. 24 of 1981**

**6.** Section 17C of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) Where a taxpayer’s taxable income has been derived, whether wholly or partly, from the export of goods manufactured [**goods**] in Namibia, but excluding fish or meat products, such taxable income is reduced by an allowance equal to 80% of the amount representing the taxable income so derived, but subject to subsection (3).”.

**Insertion of section 21A in Act No. 24 of 1981**

**7.** The following section is inserted in the principal Act after section 21:

**“Ring-fencing of assessed losses of certain trades**

**21A.** (1) Subject to subsection (3), where the circumstances in subsection (2) apply during any year of assessment in respect of any trade carried on by a natural person, any assessed loss incurred during that year in carrying on such trade may not be set off against any income of the person derived during that year otherwise than from carrying on such trade, despite section 21(1)(b).

(2) Subsection (1) applies where the sum of the taxable income of a person for a year of assessment determined without having regard to the other provisions of this section and any assessed loss and balance of assessed loss which were set off in terms of section 21 in determining the taxable income, equals or exceeds the amount of N\$200 000, and where -

- (a) the person, during the five year period ending on the last day of the year of assessment, has incurred an assessed loss in at least

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three years of assessment in carrying on the trade contemplated in subsection (1) (before taking into account any balance of assessed loss carried forward); or

- (b) the trade contemplated in subsection (1) in respect of which the assessed loss was incurred constitutes -
- (i) any sport practiced by the person;
  - (ii) any dealing in collectibles by the person;
  - (iii) the rental of residential accommodation unless at least 80 per cent of the residential accommodation is used by persons who are not relatives of the person for at least half of the year of assessment;
  - (iv) the rental of vehicles, aircraft or boats unless at least 80 per cent of the vehicles, aircraft or boats are used by persons who are not relatives of the person for at least half of the year of assessment;
  - (v) animal showing by the person;
  - (vi) farming or animal breeding unless the person carries on farming, animal breeding or activities of a similar nature on a full-time basis;
  - (vii) any form of performing or creative arts practiced by the person; or
  - (viii) any form of gambling or betting practiced by the person.

(3) Subsection (1) does not apply in respect of an assessed loss incurred by a person during any year of assessment from carrying on any trade contemplated in subsection (2)(a) or (b), where the trade constitutes a business in respect of which there is a reasonable prospect of deriving taxable income within a reasonable period having special regard to -

- (a) the proportion of the gross income derived from the trade in the year of assessment in relation to the amount of the allowable deductions incurred in carrying on the trade during that year;
- (b) the level of activities carried on by the person or the amount of expenses incurred by the person in respect of advertising, promoting or selling in carrying on the trade;
- (c) whether the trade is carried on in a commercial manner, taking into account -
  - (i) the number of full-time employees appointed for purposes of the trade (other than persons partly or



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wholly employed to provide services of a domestic or private nature);

- (ii) the commercial setting of the premises where the trade is carried on;
  - (iii) the extent of the equipment used exclusively for purposes of carrying on the trade; and
  - (iv) the time that the person spends at the premises conducting the business;
- (d) the number of years of assessment during which assessed losses were incurred in carrying on the trade in relation to the period from the date when the person commenced carrying on the trade and taking into account -
- (i) any unexpected events giving rise to any of those assessed losses; and
  - (ii) the nature of the business involved;
- (e) the business plans of the person and any changes thereto to ensure that taxable income is derived in future from carrying on the trade; and
- (f) the extent to which any asset attributable to the trade is used, or is available for use, by the person or any relative of the person for recreational purposes or personal consumption.

(4) Subsection (3) does not apply in respect of a trade contemplated in subsection (2)(b) carried on by a person during any year of assessment where the person has, during the 10 year period ending on the last day of the year of the assessment, incurred an assessed loss in at least six years of assessment in carrying on the trade (before taking into account any balance of assessed loss carried forward).

(5) Despite section 21(1)(a), any balance of assessed loss carried forward from the preceding year of assessment which is attributable to an assessed loss in respect of which subsection (1) applied in that preceding year or any prior year of assessment may not be set off against any income derived by the person otherwise than from carrying on the trade contemplated in subsection (1).

(6) For the purposes of this section and section 21, the income derived from any trade referred to in subsection (1) or (5), includes any amount which is included in the income of the person in terms of section 14 in respect of an amount deducted in any year of assessment in carrying on the trade.

(7) Despite anything to the contrary in this Act, all farming activities carried on by a person are deemed to constitute a single trade carried on by the person for the purposes of this section.

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(8) Where subsection (2) applies during any year of assessment in respect of any trade carried on by a person, the person must indicate the nature of the business in his or her return contemplated in section 59 for the year of assessment.

(9) For the purposes of subsections (2)(a) and (4), any assessed loss incurred in any year of assessment ending on or before 28 February 2011 is not taken into account.

(10) For the purposes of this section -

“assessed loss” means assessed loss as defined in section 21(2); and

“relatives” in relation to a person means a spouse, parent, child, stepchild, brother, sister, grandchild or grandparent of the person.”.

**Amendment of section 34A of Act No. 24 of 1981, as amended by section 4 of Act No. 5 of 2010**

8. Section 34A of the principal Act is amended –

(a) by the substitution for subsection (1) of the following subsection:

“(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, excluding interest **[on negotiable instruments]** from stock or securities, including Treasury Bills issued by the Government of Namibia, any regional council or local authority in Namibia, accruing to or in favour of any person, other than a Namibian company, from –

(a) a banking institution registered under the Banking Institutions Act, 1998 (Act No. 2 of 1998), but any amount of interest accruing to or in favour of any person in respect of any negotiable instrument issued by such banking institution is not subject to the withholding tax on interest as determined by this section; or

(b) a unit trust scheme as defined in paragraph (e) of the definition of “company” in section 1, which is registered in Namibia,

provided that where the interest accrues to or in favour of an undisclosed principal who is represented by an agent or any other person, excluding a stock broker, and which agent or any other person does not disclose the full name and further particulars required to assess whether the principal is a Namibian company, this section applies despite the fact that the undisclosed principal may be a Namibian company.”.

(b) by the substitution for subsection (5) of the following subsection:

“(5) For the purposes of this section and sections 34C and 34D -

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“gross interest” means interest excluding interest from stock or securities, including Treasury Bills issued by the Government of Namibia, a regional council or local authority in Namibia;

“negotiable instrument” means an instrument issued by a banking institution registered under the Banking Institutions Act, 1998 (Act No. 2 of 1998) that is capable of being transferred to a purchaser provided that the purchaser acquires it in good faith, and where payment in good faith to the holder discharges the instrument and parties to it [, and excludes any unit in a unit trust scheme];

“stock broker” means any person who is a member of a stock exchange licensed in terms of the Stock Exchange Control Act, 1985 (Act No. 1 of 1985), and is, under the rules of that stock exchange, authorised to carry on the business of buying and selling securities on behalf of other persons or on his or her own account;

“net interest” means gross interest accrued to or in favour of a unit trust scheme less allocated permitted expenses; and

“allocated permitted expenses” means all permitted expenditure incurred by a unit trust scheme multiplied with “A” where  $A = B/C$ , “B” equals gross interest received or accrued to or in favour of the unit trust scheme, and “C” equals gross income, including interest, received or accrued to or in favour of the unit trust scheme.”.

**Amendment of section 34D of Act No. 24 of 1981, as amended by section 6 of Act No. 5 of 2010**

9. Section 34D of the principal Act is amended by the addition after subsection (6) of the following subsection:

“(7) The withholding tax on interest referred to in section 34A(4) is payable within 60 days after the last day of the financial year of the unit trust scheme.”.

**Insertion of section 35A of Act No. 24 of 1981**

10. The following section is inserted in the principal Act after section 35:

**“Deduction or withholding of tax on services rendered by non-residents**

35A. (1) For the purposes of this section –

“entertainment fee” means any amount payable to an entertainer (including a cabaret, motion picture, radio, television or theatre artiste and any musician) or a sportsperson, and includes any payment made to any other person in relation to such activity;

“management or consultancy fee” means any amount payable for administrative, managerial, technical or consultative services or any similar services, whether such services are of a professional nature or not;

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“resident person” means -

- (a) the State, a regional council or a local authority in Namibia; or
- (b) a natural person ordinarily resident in Namibia; or
- (c) a company, partnership, board or trust which is formed or established or incorporated under the laws of Namibia or which is managed or controlled in Namibia.

(2) A resident person who becomes liable to pay, whether directly or indirectly, any management fee, consultancy fee, director’s fee or entertainment fee to a non-resident must deduct or withhold tax from such payment in accordance with subsection (3).

(3) The rate of tax is 25 per cent of any fees specified in subsection (1).

(4) For the purposes of this section, “non-resident” means –

- (a) a person, other than a company, not ordinarily resident or carrying on business in Namibia; or
- (b) a company neither managed nor controlled in Namibia.

(5) Despite subsection (3), a person or company to whom any payment is made to which this section applies is presumed, unless the contrary is proved, to be a non-resident if such payment is made to an address outside Namibia.

(6) Where a resident person pays withholding tax under subsection (2) at the rate specified in subsection (3), it is a final charge to tax and does not form part of the assessable income.

(7) A resident person who -

- (a) fails to deduct or withhold an amount of tax in terms of subsection (2) and (3) from any payment made to a non-resident; or
- (b) deducts or withholds an amount of tax but fails to pay that amount over in terms of subsection (8),

is liable for payment of the amount of tax which may be recovered from the resident person in terms of this Act as if it is a tax due by the resident person.

(8) The amount of withholding tax deducted or withheld in terms of subsection (2) is payable within 20 days after the end of the month during which the amount was deducted or withheld.

(9) A resident person paying the withholding tax must, together with the payment contemplated in subsection (2), submit to the Minister a

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return in the manner and form and containing the information as prescribed by the Minister.

(10) If a resident person fails to pay an amount for which he or she is liable under this section within the period allowable for payment thereof, in addition to any other penalty or charge for which he or she may be liable under this Act, is liable for a penalty equal to 10 per cent of the amount of withholding tax for each month or part thereof reckoned from the first day after the due date to the date of payment of such unpaid amount.

(11) A penalty imposed under subsection (10) –

(a) may not exceed the amount of withholding tax; and

(b) is in addition to interest payable in terms of subsection (13).

(12) A penalty paid by the resident person under subsection (10) must be refunded to such person to the extent that the tax to which it relates is subsequently determined not to have been due and payable.

(13) If a resident person fails to pay an amount for which he or she is liable under this section within the period allowable for payment thereof, in addition to any other penalty or charge for which he or she may be liable under this Act, is liable for interest on the outstanding withholding tax at the rate of 20 per cent per annum calculated as from the day immediately following such due date for payment until the day of payment.

(14) The interest levied may not exceed the amount of the withholding tax.”.

**Substitution of section 45 of Act No. 24 of 1981, as amended by section 9 of Proclamation AG No. 10 of 1985 and section 12 of Act No. 25 of 1992**

**11.** The principal Act is amended by the substitution for section 45 of the following section:

**“45.** The rate of tax is -

(a) 10 per cent of the amounts specified in section 42 if the beneficial owner is a company which holds directly or indirectly at least 25 per cent of the capital of the company paying the dividends; or

(b) 20 per cent of the amounts specified in section 42 in all other cases.”.

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**Amendment of Schedule 2 to Act No. 24 of 1981, as amended by section 16 of Proclamation AG. 10 of 1985, section 11 of Act No. 8 of 1987, section 20 of Act No. 25 of 1992, section 13 of Act No. 10 of 1993, section 12 of Act No. 22 of 1995, section 27 of Act No. 12 of 1996, section 11 of Act No. 5 of 1997 and section 14 of Act No. 21 of 1999**

12. Schedule 2 to the principal Act is amended -

(a) by the insertion after paragraph 11 of the following paragraph:

“11A. (1) An employer must issue a declaration to the Minister in the prescribed form within 30 days following the month in respect of which any amount received or accrued to a taxpayer under or upon the maturity, payment, surrender or disposal of an education policy to which paragraph (dC) of the definition of “gross income” applies.

(2) If an employer fails to submit a declaration in terms of subparagraph (1) within the period prescribed in that subparagraph he or she is liable to pay a penalty equal to 10 per cent of the amount received or accrued to a taxpayer under or upon the maturity, payment, surrender or disposal of the policy.

(3) Where good cause is shown in writing by the employer liable for the payment of a penalty under subparagraph (2), the Minister may remit any penalty in whole or in part.”; and

(b) by the substitution for subparagraph (1) of paragraph 19 of the following subparagraph:

“(1) Every provisional taxpayer must, during every period within which provisional tax is payable as provided in this part or any extension of such period granted in terms of paragraph 26(2), submit to the Minister, in such form as the Minister may prescribe, an estimate of the total taxable income which is derived by the taxpayer in respect of the year of assessment in respect of which provisional tax is payable.”;

(c) by the substitution for paragraph 20 of the following paragraph:

“20. (1) (a) If the estimate in terms of paragraph 22(1)(a) and paragraph 24(a) of his or her taxable income made in terms of paragraph 19(1) by a provisional taxpayer in respect of the first six months of any year of assessment discloses his or her estimated taxable income in respect of the first six months of that year of assessment in an amount which is less than 80 per cent of the amount of his or her taxable income as finally determined for that year, which represents 50 per cent of the taxable income for that year, the taxpayer is, subject to subparagraphs (2), (3) and (4), required to pay to the Minister, in addition to normal tax chargeable in respect of his or her taxable income

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for the year of assessment, an amount by way of additional tax equal to not more than 100 per cent of the amount of tax payable after taking into account the provisional tax and employees' tax paid for the first six months of the year of assessment in respect of his or her taxable income as finally determined for the year of assessment, which represents 50 per cent of the taxable income for that year.

- (b) If the final or last estimate of his or her taxable income made in terms of paragraph 19(1) by a provisional taxpayer in respect of any year of assessment discloses his or her estimated taxable income in respect of that year of assessment in an amount which is less than 80 per cent of the amount of his or her taxable income as finally determined for that year, the taxpayer is, subject to subparagraphs (2), (3) and (4), required to pay to the Minister, in addition to normal tax chargeable in respect of his or her taxable income for the year of assessment, an amount by way of additional tax equal to not more than 100 per cent of the amount of tax payable after taking into account the provisional tax and employees' tax paid in respect of his or her taxable income as finally determined for the year of assessment.

(2) Where the Minister is satisfied that the taxpayer has become liable to pay additional tax under subparagraph (1) by reason of the fact that his or her taxable income for the year of assessment in question is affected by circumstances of which he or she was not aware at the time of making the estimate referred to in subparagraph (1), the Minister may remit the additional tax in whole or a part thereof.

(3) Subparagraph (1) does not apply in any case where the Minister has, under paragraph 19(3)(b), increased the final or last estimate made by the taxpayer in respect of the relevant year of assessment.

(4) A decision of the Minister made under subparagraph (2) is subject to objection and appeal.”;

- (d) by the substitution for paragraph 21 of the following paragraph:

“21. (1) Subject to subparagraphs (2) and (3), where any provisional taxpayer has failed to submit an estimate of taxable income as required under paragraph 19(1) on or before the due date or, if the period for submission of the estimate has under paragraph 26(2) (b) been extended to a date later than the due date for submission of the return, on or before such date, the taxpayer is, unless the Minister has estimated the taxable income under paragraph 19(2), required to pay to the Minister, in addition to the normal tax chargeable in respect of such taxable income, if any, an amount by way of additional tax to

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an amount of N\$100 for each day during which the estimate of such taxable income remains outstanding reckoned from the day after such return becomes due until the date of submission or date of issue of original assessment for the year to which it relates, whichever is the earlier.

(2) The Minister may, if he or she is satisfied that the provisional taxpayer's failure to submit such an estimate timeously was not due to an intent to evade or postpone the payment of provisional tax or normal tax, remit the whole or any part of the additional tax imposed under subparagraph (1).

(3) A decision of the Minister made under subparagraph (2) is subject to objection and appeal.”; and

- (e) by the substitution for subparagraph (1) of paragraph 28 of the following subparagraph:

“(1) If any provisional taxpayer fails to pay any amount of provisional tax for which he or she is liable within the period allowed for payment thereof in terms of paragraph 22, 23 or 24, or paragraph 26(1), or within such extended period as the Minister may allow in terms of paragraph 26(2), he or she must, in addition to any other penalty or charge incurred by him or her under this Act, pay to the Minister a penalty equal to 10 per cent of the amount not paid for each month or part thereof reckoned from the first day after the due date to the date of payment of such unpaid amount, and the penalty may not exceed the amount of unpaid tax.”.

**Short title and commencement**

**13.** This Act is called the Income Tax Third Amendment Act, 2011, and comes into operation on the date of its publication in the *Gazette*, but -

- (a) in the case of any taxpayer other than a company, at the commencement of the year of assessment commencing on or after 1 March 2012;
- (b) in the case of any taxpayer which is a company, at the commencement of the year of assessment of such company commencing on or after 1 January 2012;
- (c) sections 8 and 9 are deemed to have come into operation at the beginning of the year of assessment commencing on or after 1 March 2009.
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