



Republic of Namibia
Annotated Statutes

Income Tax Agreement Ratification Ordinance 13 of 1959

(OG 2194)

Ordinance came into force on date of publication: 29 May 1959;
agreement to come into force "on the date on which the last of all such things shall have been done in both territories as are necessary to give the Agreement the force of law in each territory and shall thereupon have effect" (**Article XIII of AGREEMENT BETWEEN THE MINISTER OF FINANCE OF THE UNION OF SOUTH AFRICA AND THE ADMINISTRATOR OF THE TERRITORY OF SOUTH WEST AFRICA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION IN RESPECT OF TAXES ON INCOME**)

with amendments to the agreement in the Schedule as ratified by

Income Tax Agreement Amendment Ratification Ordinance 4 of 1970 (OG 3060)

Ordinance came into force on date of publication: 24 March 1970;
agreement containing amendments to come into force "on the date on which the last of all such things shall have been done in both territories as are necessary to give it the force of law in each territory and shall thereupon have effect in respect of interest which accrues on or after the date this Amendment comes into force" (**Article III of AMENDMENT OF THE AGREEMENT BETWEEN THE MINISTER OF FINANCE OF THE UNION OF SOUTH AFRICA AND THE ADMINISTRATOR OF THE TERRITORY OF SOUTH WEST AFRICA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION IN RESPECT OF TAXES ON INCOME SIGNED ON THE 13TH DAY OF FEBRUARY 1959**)

Income Tax Agreement Amendment Ratification Ordinance 7 of 1973 (OG 3329)

Ordinance came into force on date of publication: 20 June 1973;
agreement containing amendment to come into force "on the date on which the last of all such things shall have been done in both territories as are necessary to give it the force of law in each territory" (**according to untitled agreement contained in Schedule to Ord. 7 of 1973**)

ORDINANCE

To ratify an agreement entered into between the Administrator of South West Africa and the Minister of Finance of the Union of South Africa in regard to the avoidance of double taxation and the prevention of fiscal evasion in respect of taxes on income.

*(Assented to 27th May, 1959)
(Afrikaans text signed by the Administrator)*

ARRANGEMENT OF SECTIONS

[The provisions of this Ordinance have no headings.]

In that whereas on the thirteenth day of February 1959 an agreement was entered into at Cape Town between the Administrator of the Territory of South West Africa and the Minister of Finance of the Union of South Africa and whereas it is desirable that the aforesaid agreement should be ratified and confirmed;

BE IT ORDAINED by the Legislative Assembly for the Territory of South West Africa as follows:-

1. The agreement dated the thirteenth day of February 1959 between the Administrator of the Territory of South West Africa and the Minister of Finance of the Union of South Africa, a copy whereof is set out in the Schedule to this Ordinance, is hereby ratified and confirmed, and all the necessary powers and authority are hereby conferred upon the parties to the said agreement for giving full and complete effect to the provisions thereof.

2. The Administrator may make rules, orders or regulations not inconsistent with the agreement in the first section mentioned for effectually carrying out and giving effect to the object and purposes thereof.

3. This Ordinance shall be called the Income Tax Agreement Ratification Ordinance, 1959.

SCHEDULE

AGREEMENT BETWEEN THE MINISTER OF FINANCE OF THE UNION OF SOUTH AFRICA AND THE ADMINISTRATOR OF THE TERRITORY OF SOUTH WEST AFRICA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION IN RESPECT OF TAXES ON INCOME

The Minister of Finance of the Union of South Africa and the Administrator of the Territory of South West Africa, hereinafter referred to as the Contracting Parties, desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion in respect of taxes on income, have agreed as follows:-

ARTICLE I

1. The taxes which are the subject of this Agreement are:-
- (a) in the Union of South Africa: The normal tax, the supertax, non-resident shareholders' tax and non-residents' tax on interest (hereinafter referred to as "Union tax");

[subparagraph (a) amended by agreement ratified by Ord. 4 of 1970]

- (b) in the Territory of South West Africa: the normal tax, the supertax and the non-resident shareholders' tax (hereinafter referred to as "South West African tax").

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2. This Agreement shall also apply to any other taxes of a substantially similar character imposed by the Government of the Union and the Administration of South West Africa subsequent to the date of signature of this Agreement.

ARTICLE II

1. In this Agreement unless the context otherwise requires -
 - (a) “Union” means the Union of South Africa, excluding the Port and Settlement of Walvis Bay;
 - (b) “South West Africa” means the Territory of South West Africa and includes the Port and Settlement of Walvis Bay;
 - (c) “one of the territories” and “the other territory” mean the Union of South Africa or the Territory of South West Africa as the case may be;
 - (d) “tax” means Union or South West African tax, as the case may be;
 - (e) “person” includes any body of persons, corporate or not corporate;
 - (f) “company” includes any body corporate;
 - (g) “resident of the Union” and “resident of South West Africa” mean respectively any person who is ordinarily resident in the Union for the purposes of the Union tax and not ordinarily resident in South West Africa for the purposes of the South West African tax and any person who is ordinarily resident in South West Africa for the purposes of the South West African tax and not ordinarily resident in the Union for the purposes of the Union tax; and a company shall be regarded as ordinarily resident in the Union if it is incorporated in the Union or, unless it is incorporated in South West Africa, if its business is managed and controlled in the Union and ordinarily resident in South West Africa if it is incorporated in South West Africa, or, unless it is incorporated in the Union, if its business is managed and controlled in South West Africa;
 - (h) “company of one of the territories” and “company of the other territory” mean a company which is a resident of the Union or a company which is a resident of South West Africa, as the case may be;
 - (i) “Union enterprise” and “South West African enterprise” mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of the Union and an industrial or commercial enterprise or undertaking carried on by a resident of South West Africa; and “enterprise of one of the territories” and “enterprise of the other territory” mean a Union enterprise or a South West African enterprise, as the context requires;
 - (j) “industrial or commercial enterprise or undertaking” includes an enterprise or undertaking engaged in mining, fishing, agricultural or pastoral activities or in the business of banking, insurance or dealing in investments, and “industrial or commercial profits” includes profits from such activities or business. but does not include income in the form of dividends, interest, rents, royalties (including rent or royalties of cinematograph films), management charges, remuneration for personal services or profits from the operation of transport services;

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- (k) “permanent establishment” when used with respect to an enterprise of one of the territories means a branch, depot, management, factory, farm, mine, quarry or other fixed place of business including any place of natural resources subject to exploitation and a place where construction work or the installation of plant or machinery is carried on but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of the enterprise or has a stock of merchandise from which he regularly fills orders on its behalf.

In this connection -

- (i) an enterprise of one of the territories shall not be deemed to have a permanent establishment in the other territory merely because it carries on business dealings in that other territory through a *bona fide* broker or general commission agent acting in the ordinary course of his business as such;
- (ii) the fact that an enterprise of one of the territories maintains in the other territory a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute that fixed place of business a permanent establishment of the enterprise;
- (iii) the fact that a company which is resident in one of the territories has a subsidiary company which is a resident of the other territory or which is engaged in trade or business in that other territory (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary company a permanent establishment of its parent company;
- (l) “profits” mean “taxable income” as defined under the laws of the Union and of South West Africa relating to the taxes which are the subject of this Agreement;
- (m) “taxation authorities” mean the Commissioner for Inland Revenue or his authorised representative in the case of the Union and the Commissioner for Inland Revenue or his authorised representative in the case of South West Africa.

[Section 26 and section 39(11) of the Namibia Revenue Agency Act 12 of 2017 both provide that a reference in any law to the Commissioner of Inland Revenue must now be construed as a reference to the Commissioner of the Revenue Agency. This presumably also applies to references to the Commissioner for Inland Revenue.]

2. “Union tax” and “South West African tax” do not include any sum payable in respect of any default or omission in relation to the taxes which are the subject of this Agreement or which represents a penalty imposed under the law of either territory relating to those taxes.

3. In the application of the provisions of this Agreement by either the Union or South West Africa any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of the Union or South West Africa, as the case may be, relating to the taxes which are the subject of this Agreement.

ARTICLE III

1. The industrial and commercial profits of an enterprise in one of the territories shall not be subject to tax in the other territory unless the enterprise is engaged in trade or business in the other territory through a permanent establishment in that other territory. If it is so engaged tax may be imposed on those profits by the other territory but only on so much of them as is attributable to that permanent establishment.

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2. Where an enterprise of one of the territories is engaged in trade or business in the other territory through a permanent establishment situated therein:-

- (a) there shall be attributed to that permanent establishment the industrial or commercial profits which it might be expected to derive in that other territory if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment;
- (b) subject to the provisions of sub-paragraph (a) no profits derived from sources outside that other territory shall be attributed to that permanent establishment.

3. No portion of any profits arising from the sale of goods or merchandise by an enterprise of one of the territories shall be attributed to a permanent establishment situated in the other territory by reason of the mere purchase of the goods or merchandise within that other territory.

[The word "permanent" is misspelt in the *Official Gazette*, as reproduced above.]

4. This Article shall not apply in any case in which its application would have the result that income, which but for such application would be subject to tax in one of the territories, would not be subject to tax in either territory.

ARTICLE IV

Where

- (a) an enterprise of one of the territories participates directly or indirectly in the management, control or capital of an enterprise of the other territory;
- or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the territories and an enterprise of the other territory; and
 - (c) in either case conditions are made or imposed between the two enterprises, in their commercial or financial relations, which differ from those which would be made between independent enterprises,

then any profits which would but for those conditions have accrued to one of the enterprises but by reason of those conditions have not so accrued may be included in the profits of that enterprise and taxed accordingly.

ARTICLE V

Profits derived by the Government or Administration, as the case may be, of, or by a resident of, one of the territories from operating transport services in the other territory shall be exempt from tax in that other territory.

ARTICLE VI

Any royalty, rent (including rent or royalties of cinematograph films) or other consideration received by or accrued to a resident of one of the territories by virtue of the use in the other

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territory of, or the grant of permission to use in that other territory, any patent, design, trade mark, copyright, secret process, formula or any other property of a similar nature shall be exempt from tax in that first-mentioned territory if such royalty, rent or other consideration is subject to tax in the other territory.

ARTICLE VII

1. Any pension (other than a pension paid by the Government of the Union for services rendered to it in the discharge of governmental functions) and any annuity, derived or deemed to have been derived from sources within the Union by an individual who is a resident of South West Africa, shall be exempt from Union tax to the extent that it is included in income for South West African tax purposes.

2. Any pension (other than a pension paid by the Administration of South West Africa for services rendered to it in the discharge of governmental functions) and any annuity, derived or deemed to have been derived from sources within South West Africa by an individual who is a resident of the Union, shall be exempt from South West African tax to the extent that it is included in income for Union tax purposes.

3. The term "annuity" means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in consideration of money paid.

ARTICLE VIII

1. So much of any pension paid in respect of services rendered to either the Government of the Union or the Administration of South West Africa or to both as bears to the amount of such pension the same ratio as the period during which the recipient was stationed in South West Africa bears to the total period during which the services were rendered shall be exempt from Union tax.

2. So much of any pension paid in respect of services rendered to either the Government of the Union or the Administration of South West Africa or to both as bears to the amount of such pension the same ratio as the period during which the recipient was not stationed in South West Africa bears to the total period during which the services were rendered shall be exempt from South West African tax.

ARTICLE IX

1. An individual who is a resident of the Union shall be exempt from South West African tax on profits or remuneration in respect of personal (including professional) services performed within South West Africa in any year of assessment if -

- (a) he is present within South West Africa for a period or periods not exceeding in the aggregate 183 days during that year; and
- (b) the services are performed for or on behalf of a person resident in the Union; and
- (c) the profits or remuneration are subject to Union tax.

2. An individual who is a resident of South West Africa shall be exempt from Union tax on profits or remuneration in respect of personal (including professional) services performed within the Union in any year of assessment if -

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- (a) he is present within the Union for a period or periods not exceeding in the aggregate 183 days during that year; and
- (b) the services are performed for or on behalf of a person resident in South West Africa; and
- (c) the profits or remuneration are subject to South West African tax.

3. The provisions of this Article shall not apply to the profits or remuneration of public entertainers such as stage, motion picture or radio artists, musicians and athletes.

ARTICLE X

A student or business apprentice from one of the territories who is receiving full-time education or training in the other territory shall be exempt from tax in that other territory on payments made to him by persons in the firstmentioned territory for the purposes of his maintenance, education or training.

ARTICLE XI

1. Where Union tax is payable in respect of profits derived from sources within the Union by a person ordinarily resident in South West Africa, South West Africa shall either impose no tax on such profits or, subject to such provisions (which shall not affect the general principle hereof) as may be enacted in South West Africa, shall allow the Union tax as a credit against any South West African tax payable in respect of such profits.

2. Where South West African tax is payable in respect of profits derived from sources within South West Africa by a person ordinarily resident in the Union, the Union shall either impose no tax on such profits or, subject to such provisions (which shall not affect the general principle hereof) as may be enacted in the Union, shall allow the South West African tax as a credit against any Union tax payable in respect of such profits.

3. For the purposes of this Article profits or remuneration for personal (including professional) services performed in one of the territories shall be deemed to be profits from sources within that territory, and the services of an individual whose services are wholly or mainly performed in aircraft or other transport vehicles operated by a resident of one of the territories shall be deemed to be performed in that territory.

4.

**[paragraph 4 amended by agreement ratified by Ord. 4 of 1970
and deleted by agreement ratified by Ord. 7 of 1973]**

ARTICLE XII

The taxation authorities of the Union and South West Africa shall exchange such information (being information available under the respective taxation laws of the two territories) as is necessary for carrying out the provisions of this Agreement or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of this Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of this Agreement. No information shall be exchanged which would disclose any trade secret or trade process.

ARTICLE XIII

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This Agreement shall come into force on the date on which the last of all such things shall have been done in both territories as are necessary to give the Agreement the force of law in each territory and shall thereupon have effect -

- (a) in the Union, in respect of assessments for the year of assessment ended on the 30th June, 1955, and subsequent years;
- (b) in South West Africa, in respect of assessments for the year of assessment ended on the 30th June, 1955, and subsequent years.

ARTICLE XIV

This Agreement shall continue in effect indefinitely, but either of the contracting parties may, on or before the thirtieth day of September in any calendar year after the year 1958, give notice of termination to the other contracting party and, in such event, this Agreement shall cease to be effective -

- (a) in the Union, in respect of any year of assesment beginning on or after the first day of July in the calendar year next following that in which such notice is given;

[The word "assessment" is misspelt in the *Official Gazette*, as reproduced above.]

- (b) in South West Africa, in respect of any year of assessment beginning on or after the first day of July in the calendar year next following that in which such notice is given.

IN WITNESS WHEREOF the undersigned have signed this Agreement.

TEN BEWYSE WAARVAN die ondergetekende hierdie Ooreenkoms onderteken het.

DONE in duplicate in the English and Afrikaans languages, at Cape Town this thirteenth day of February nineteen hundred and fifty-nine.

GEDOEN in duplo, in die Afrikaanse en Engelse tale, te Kaapstad op hede die dertiende dag van Februarie negentienhonderd nege-en-vyftig.

T. E. DÖNGES,
Minister van Finansies van die Unie van Suid-Afrika.
Minister of Finance of the Union of South Africa.

D. T. DU P. VILJOEN,
Administrateur van die Gebied Suidwes-Afrika.
Administrator of the Territory of South West Africa.