

# INCOME TAX

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## Income Tax Agreement Ratification Ordinance 13 of 1959

**Summary:** This Ordinance ([OG 2194](#)) ratifies a double taxation treaty between South Africa and South West Africa.

**Amendments:** The Ordinance is amended by Ord. 4/1970 ([OG 3060](#)) and Ord. 7/1973 ([OG 3329](#)).

## Income Tax Act 24 of 1981

**Summary:** This Act ([OG 4580](#)) covers income tax comprehensively, repealing a number of South African and South West African enactments on income tax, including the Income Tax Ordinance 5 of 1974 ([OG 3404](#)). It was made applicable to the Rehoboth Gebiet by Act 5/1982 ([OG 4618](#)).

**Amendments:** This Act was amended prior to independence by Act 12/1982 ([OG 4656](#)), AG 10/1985 ([OG 5016](#)), Act 13/1985 ([OG 5115](#)), Act 11/1986 ([OG 5234](#)), Act 8/1987 ([OG 5400](#)), Act 1/1989 ([OG 5675](#)) and AG 25/1989 ([OG 5758](#)).

It has been amended since independence by the Acts listed. Note that many of these Acts incorporate complex provisions on when various amendments come into force, with some providing different commencement dates for different provisions and/or for different categories of taxpayers. These commencement dates are not recorded here.

- Act 3/1991 ([GG 179](#)) (re: petroleum)
- Act 8/1991 ([GG 222](#)) (re: housing benefits)
- Act 12/1991 ([GG 229](#)) (re: married women)
- Act 33/1991 ([GG 335](#)) (re: employees made redundant and removal of gender distinctions regarding age in the provision affecting applicability of exemption of lump sum paid to retrenched employee)
- Act 25/1992 ([GG 487](#)) (re: removal of remaining distinctions between men and women, and between married and single persons; tax exemptions for certain categories of persons; deductions relating to pensions and annuities; capital write-offs; and other matters)
- Act 10/1993 ([GG 693](#)) (various amendments)
- Act 17/1994 ([GG 932](#)) (various amendments)
- Act 22/1995 ([GG 1225](#)) (various amendments, including amendments on the taxation of pensions or annuities transferred from one fund to another, the income of unit trusts and deductions in respect of donations to registered welfare organisations and educational institutions)
- Act 12/1996 ([GG 1375](#)) (various amendments)
- Act 5/1997 ([GG 1680](#)) (various amendments)
- Act 13/1998 ([GG 1882](#)) (increase in rate of income tax)
- Act 7/1999 ([GG 2135](#)) (new tax rates)
- Act 21/1999 ([GG 2240](#)) (various amendments)
- Appeal Laws Amendment Act 10 of 2001 ([GG 2585](#)) (section 76)
- Act 7/2002 ([GG 2820](#)) (various amendments)
- Act 11/2003 ([GG 3049](#)) (amendment to Schedule 4 – rates of normal tax).
- Act 4/2005 ([GG 3428](#)) (various amendments)

Act 5/2007 ([GG 3964](#)) (various amendments; see GN 118/2009 ([GG 4270](#)) regarding commencement dates)

Act 5/2010 ([GG 4475](#)) (various amendments)

Act 3/2011 ([GG 4732](#)) (various amendments)

However, GN 79/2011 ([GG 4732](#)) which published this amending Act was withdrawn by GN 150/2011 ([GG 4787](#)).

Act 7/2011 ([GG 4755](#)) (adds a definition of “retirement annuity fund” to section 1)

Act 15/2011 ([GG 4864](#)) (various amendments)

Act 4/2013 ([GG 5206](#)) (amends Schedule 4 to alter tax rates and thresholds)

Act 13/2015 ([GG 5912](#)) (amends definition of “gross income”, provides for withholding tax on interest paid to non-residents, amends the withholding tax rate on certain fees paid to non-residents, provides a definition of “Namibia”, amends the royalty rate and provides for the allocation of tax payments and collection of tax)

Act 4/2016 ([GG 6044](#)) (amends section 35A)

Act 2/2020 ([GG 7249](#)) (repeals section 5A and 17C and inserts section 101A; it was brought into operation by GN 329/2020 ([GG 7431](#)) as follows:

- section 1(1) of the amending Act on the repeal of section 5A comes into force on 31 December 2020, provided that the special income tax incentives granted to registered manufacturers in terms of the Act continue to apply until the end of the first tax year after that date (section 1(2) of the amending Act)
- section 2 of the amending Act on the repeal of section 17C comes into force at the end of five years commencing on 31 December 2020 [31 December 2025]
- section 3 of the amending Act on the insertion of section 101A, which repeals certain provisions of the Export Processing Zones Act 9 of 1995, comes into force -
  - (i) at the end of five years commencing on 31 December 2020 [31 December 2025], in respect of an export processing zone enterprise that holds an export processing zone enterprise certificate issued under section 14 of the Export Processing Zones Act 9 of 1995 *on or before 31 December 2020*; and
  - (ii) on 31 December 2020, in respect of an export processing zone enterprise that obtains an export processing zone enterprise certificate issued under section 14 of the Export Processing Zones Act 9 of 1995 *after 31 December 2020*.

**Application of law:** The application of the Act was affected by AG Proc. 14/1982 (OG 4648), which was “abolished” (“afgeskaf”) by AG Proc. 31/1987.

The application of the Act in Export Processing Zones is affected by section 7 of the Export Processing Zones Act 9 of 1995 ([GG 1069](#)).

The application of the Act is also addressed in the Demutualisation Levy Act 9 of 2002 ([GG 2827](#)).

The administration of this Act is affected by the Namibia Revenue Agency Act 12 of 2017 ([GG 6486](#)).

**Regulations:** Pre-independence regulations have not been researched.

Regulations regarding the standard value of livestock are contained in GN 50/1995 ([GG 1037](#)), which replaced GN 1/1994 ([GG 772](#)), which in turn repealed AG GN 47/1982.

**Notices:** A special court for hearing income tax appeals is constituted in GN 320/1996 ([GG 1462](#)), replacing the court constituted in AG 31/1981 ([OG 5477](#)). Additional special courts for hearing income tax appeals are constituted in GN 222-223/1997 ([GG 1730](#)), GN 158/2000 ([GG 2361](#)), GN 88-90/2004 ([GG 3198](#)), GN 145-146/2010 ([GG 4530](#)), GN 190/2011 ([GG 4804](#)) and GN 321/2017 ([GG 6490](#)).

Rates for exemption under section 16(1)(m)(iii) are set in GN 115/1991 ([GG 287](#)), GN 21/1997 ([GG 1504](#)) and GN 102/1997 ([GG 1569](#)).

The most recent deduction tables for employees' tax (PAYE 10, VOLUME 18) were brought into force by GN 180/2009 ([GG 4337](#)).

The most recent tables for optional use by provisional taxpayers (PAYE 12, VOLUME 18) were brought into force by GN 181/2009 ([GG 4337](#)).

An amount in terms of section 73A(1) of the Act is fixed at N\$100 000 in GN 107/2006 ([GG 3672](#)).

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

**Cases:**

*Esselmann v Secretary of Finance* 1990 NR 250 (SC) (concerning previous Income Tax Ordinance 5 of 1974)

*Hindjou v The Government of the Republic of Namibia* 1997 NR 112 (SC) (sections 83(1)(b) and 84 not contrary to Articles 12 or 78 of Constitution)

*Oryx Mining and Exploration (Pty) Ltd v Secretary for Finance* 1999 NR 80 (SC)

*Minister of Finance v De Beers Marine (Pty) Ltd* 2007 (1) NR 17 (SC) (para 3(1) of Schedule 4)

*Fouche v Minister of Finance (Receiver of Revenue)* 2012 (1) NR 109 (SC) (Special Court For Income Tax Appeals) (section 15(1)(f))

*Du Preez v Minister of Finance* 2012 (2) NR 643 (SC) (sections 71 and 73; sections 56(1A) and 79(1); section 66; section 79(4) prior to amendment in 2009 by Act 5/2007).

*Merlus Seafood Processors (Pty) Ltd v Minister of Finance* 2013 (1) NR 42 (HC); ("manufacturer" in section 5A); overturned on appeal *Minister of Finance v Merlus Seafood Processors (Pty) Ltd* 2016 (4) NR 1042 (SC) (proper approach to challenging Minister's decision on "manufacturer" under sections 1 and 5A)

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](#) (which also contains “Proclamation 2/1999”) and one in [GG 2032](#). [GG 2033](#) contains Proclamation 4/1999, suggesting that the Proclamation in [GG 2032](#), which is the one referenced here, *should have been numbered as Proc. 3/1999* to be in sequence with the others. (To add more confusion, the Proclamation in question is listed as “Proclamation 9/1999” in the Quarterly Return for January-March 1999.)

*Agreement between the Government of the Republic of Namibia and the Government of the Republic of Mauritius for the avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, 4 March 1995*  
contained in the Schedule to Proclamation 5/1999 ([GG 2036](#))

*Convention between the Government of the Republic of Namibia and the Government of the French Republic for the avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital, 29 May 1996*  
contained in the Schedule to Proclamation 4/1999 ([GG 2033](#))

*Convention between the Government of the Republic of Namibia and the Government of the Republic of India for the avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, 15 February 1997*  
contained in the Schedule to Proclamation 6/1999 ([GG 2035](#))

*Convention between the Government of the Republic of Namibia and the Government of the Republic of Romania for the avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital, 25 February 1998*  
contained in the Schedule to Proclamation 7/1999 ([GG 2038](#))

*Convention between the Government of the Republic of Namibia and the Government of the Russian Federation for the avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, 30 March 1998*  
contained in the Schedule to Proclamation 4/1999 ([GG 2033](#))

*Agreement between the Government of the Republic of Namibia and the Government of the Republic of South Africa for the avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, 18 May 1998*  
contained in the Schedule to Proclamation 10/1999 ([GG 2037](#))

*Agreement between Namibian and Malaysia on the Avoidance of Double Taxation, 9 November 2001*  
source: Parliament.

*Agreement between Namibian and Malaysia on the Avoidance of Double Taxation and the prevention of fiscal evasion with respect to taxes on income, 28 July 1998.*  
contained in the Schedule to Proclamation 46/2004 ([GG 3284](#))

*Agreement between the Government of the Republic of Namibia and the Government of the Republic of Botswana for the avoidance of Double Taxation and Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, 16 June 2004*  
contained in the Schedule to Proclamation 13/2005 ([GG 3514](#))

**Commentary:** Loammi Wolf, “Namibian taxation procedure in the light of just administrative action”, *Namibia Law Journal*, Volume 4, Issue 1, 2012.