



GOVERNMENT GAZETTE
OF THE
REPUBLIC OF NAMIBIA

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No. 487

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 130

1992

**PROMULGATION OF ACT OF
THE NATIONAL ASSEMBLY**

The following Act which has been passed by the National Assembly and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 25 of 1992: Income Tax Amendment Act, 1992.

INCOME TAX AMENDMENT ACT, 1992**EXPLANATORY NOTE:**

- _____ Words underlined with solid line indicate insertions in existing enactments.
- [] Words in bold type in square brackets indicate omissions from existing enactments.

ACT

To amend the Income Tax Act, 1981, so as to remove differentiations in the Act between married and unmarried and between male and female taxpayers; to extend the definition of "gross income" to include amounts derived from a provident fund; to increase the aggregate amount deductible in respect of pension fund, provident fund and retirement annuity fund contributions; to make contributions to benefit funds and provident funds by employers on behalf of employees deductible; to make different provision for capital write-off allowances; to exempt from taxation certain officials of foreign governments and of Specialized Agencies of the United Nations stationed in Namibia; to introduce new rates of normal tax, income rebates and exemption margins; to exempt certain dividends from the tax; to decrease the rate of non-resident shareholders' tax; to remove the surcharge payable by companies; to make other provision relating to mining taxation; and to provide for incidental matters.

(Signed by the President on 18 September 1992)

BE IT ENACTED by the National Assembly of the Republic of Namibia, as follows:-

Amendment of section 1 of Act 24 of 1981, as amended by section 1 of Proclamation AG. 10 of 1985, section 1 of Act 8 of 1987, section 1 of Act 1 of 1989, section 1 of Act 8 of 1991 and section 1 of Act 12 of 1991.

1. Section 1 of the Income Tax Act, 1981 (hereafter referred to as the principal Act), is hereby amended -

- (a) by the insertion after the definition of "assessment" of the following definition:

“benefit fund” means -

- (a) any friendly society registered under the Friendly Societies Act, 1956 (Act 25 of 1956) and which is approved by the Permanent Secretary;

- (b) any medical scheme registered under the Medical Schemes Act, 1967 (Act 72 of 1967);
or
- (c) any fund (other than a pension fund, provident fund or retirement annuity fund) which, in respect of the year of assessment in question, the Permanent Secretary is satisfied is a permanent fund *bona fide* established for the purpose of providing sickness, accident or unemployment benefits for its members, or mainly for any such purpose, and also for the purpose of providing benefits for the spouses, children, dependants or nominees of deceased members;”;
- (b) by the insertion after the definition of “bonus debentures or securities” of the following definition:
- “ ‘building society’ means a building society registered in terms of the Building Societies Act, 1986 (Act 2 of 1986);”;
- (c) by the substitution in the definition of “dividend” for the words preceding paragraph (a) of the following words:
- “ ‘dividend’ means any amount distributed by a company (not being a [permanent] building society or an association or institution to which section 16(1)(d) applies) to its shareholders or any amount distributed out of the assets pertaining to any unit 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 on some other basis), and in this definition the expression “amount distributed” includes -”;
- (d) by the substitution for the definition of “domestic company” of the following definition:

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“ ‘domestic company’ means a [South West African] Namibian company or a company which is managed and controlled in Namibia;”;

- (e) by the substitution for the proviso to paragraph (c) of the definition of “gross income” of the following proviso:

“Provided that the provisions of this paragraph shall not apply to any lump sum award from any pension fund, [**provident fund,**] retirement annuity fund or benefit fund;”;

- (f) by the deletion of subparagraphs (iii) and (iv) of the proviso to paragraph (d) of the definition of “gross income”;

- (g) by the insertion after paragraph (dA) of the definition of “gross income” of the following paragraph:

“(dB) any amount received or accrued under the rules of a provident fund upon -

(i) the death or the relinquishment of office or employment of any member of the provident fund due to superannuation, ill-health or other infirmity; or

(ii) the termination of such a member’s employment due to dismissal or resignation;”;

- (h) by the insertion after paragraph (i) of the definition of “gross income” of the following paragraph:

“(iA) any amount derived from a building society by way of dividends or interest;”;

- (i) by the substitution for the definition of “married” of the following definition:

“ ‘married’ includes a marriage by customary law and “spouse” shall be construed accordingly;”;

- (j) by the deletion of the definition of “mining for gold”;

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- (k) by the insertion after the definition of "mining operations" of the following definition:

" 'Minister' means the Minister of Finance;";

- (l) by the insertion after the definition of "mining operations" of the following definition:

" 'Namibian company' means any association, corporation, company or body corporate referred to in paragraph (a) of the definition of "company" or any association referred to in paragraph (d) of that definition or any unit portfolio referred to in paragraph (e) of that definition;";

- (m) by the substitution for the words preceding the proviso to the definition of "pension fund" of the following words:

" 'pension fund' includes a superannuation, widows' and orphans' fund and any pension scheme established by or under any law and any other fund (other than a provident fund or a retirement annuity fund) which is approved by the Permanent Secretary in respect of the year of assessment in question;";

- (n) by the substitution for subparagraph (iv) of paragraph (b) of the definition of "pension fund" of the following subparagraph:

"(iv) that not more than one-third of the total value of the annuity or annuities to which any employee becomes entitled may be commuted for a single payment, except where [the annual amount of such annuity or annuities] such total value does not exceed [one hundred and twenty rand] R5 000;";

- (o) by the insertion after the definition of "prescribed" of the following definition:

" 'provident fund' means any fund (other than a pension fund, benefit fund or retirement annuity fund) which is approved by the Permanent Secretary in respect of the year of assessment in question: Provided that the Permanent Secretary may approve a fund subject

to such limitations or conditions as he or she may determine, and shall not approve a fund in respect of any year of assessment unless he or she is in respect of that year of assessment satisfied -

- (a) that the fund is a permanent fund *bona fide* established solely for the purpose of providing benefits for employees on retirement from employment or solely for the purpose of providing benefits for the spouses, children, dependants or nominees of deceased employees or deceased former employees, or solely for a combination of such purposes;
 - (b) that the rules of the fund contain provisions similar in all respects to those required to be contained in the rules of a pension fund in terms of subparagraphs (i), (ii), (iii), (v) and (vi) of paragraph (b) of the definition of "pension fund"; and
 - (c) that the rules of the fund have been complied with;
- (p) by the substitution for paragraph (a) of the definition of "retirement annuity fund" of the following paragraph:
- "(a) that the fund is a permanent fund *bona fide* established solely for the purpose of providing life annuities for the members of the fund or annuities for the [widows] spouses, children, dependants or nominees of deceased members; and";
- (q) by the substitution for subparagraph (ii) of paragraph (b) of the definition of "retirement annuity fund" of the following paragraph:
- "(ii) that not more than one-third of the total value of any annuities to which any person becomes entitled, may be commuted for a single payment, except where [the annual amount of such annuities] such total value does not exceed [one hundred and twenty rand] R5 000";
- (r) by the substitution for subparagraph (iii) of paragraph (b) of the definition of "retirement annuity fund" of the following subparagraph:

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“(iii) that no portion of any annuity payable to the [**widow**] spouse, child, dependant or nominee of a deceased member may be commuted later than six months from the date of the death of such member;”;

- (s) by the substitution for subparagraph (vi) of paragraph (b) of the definition of “retirement annuity fund” of the following subparagraph:

“(vi) that where a member dies before he or she becomes entitled to the payment of an annuity, the benefits shall not exceed a refund to his or her estate or to his or her [**widow**] spouse, children, dependants or nominees of the sum of the amounts (with or without reasonable interest thereon) contributed by him or her and an annuity or annuities to his or her [**widow**] spouse, children, dependants or nominees;”;

- (t) by the substitution for subparagraph (vii) of paragraph (b) of the definition of “retirement annuity fund” of the following subparagraph:

“(vii) that where a member dies after he or she has become entitled to an annuity no further benefit shall be payable other than an annuity or annuities to his or her [**widow**] spouse, children, dependants or nominees;” and

- (u) by the deletion of the definition of “South West African company”.

2. Section 5 of the principal Act is hereby amended -

- (a) by the substitution for subsection (3) of the following subsection:

“(3) For the purpose only of determining the rate of normal tax payable by any person (other than a person referred to in subsection (5)) whose income for the year of assessment in question includes any amount referred to in paragraph (d) or (dB)(ii) of the definition of “gross income” in section 1, there shall be deducted from the taxable income of such person for such year of assessment the amount so included in his or her income, but in no case shall the rate of normal tax be less than

Amendment of section 5 of Act 24 of 1981, as amended by section 1 of Proclamation AG. 25 of 1989.

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that applicable to the first rand of taxable income and this subsection shall not be construed as relieving any person from liability for taxation in terms of this Act upon any portion of his or her taxable income.”; and

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

“(b) ‘B’ represents the amount of normal tax calculated at the relevant rate prescribed in [section 6] Schedule 4 in respect of a taxable amount equal to the amount represented by the expression ‘C-D-E’ in the formula;”.

Substitution of section 6 of Act 24 of 1981, as amended by section 1 of Act 12 of 1982, section 2 of Proclamation AG. 10 of 1985, section 1 of Act 11 of 1986, section 2 of Act 8 of 1987 and section 2 of Act 12 of 1991.

3. The following section is hereby substituted for section 6 of the principal Act:

“Rates of normal tax.

6. The rates of normal tax chargeable in respect of taxable income referred to in section 5(1) shall be as set out in Schedule 4.”.

Substitution of section 7 of Act 24 of 1981, as amended by section 3 of Proclamation AG. 10 of 1985, section 3 of Act 8 of 1987 and section 3 of Act 12 of 1991.

4. The following section is hereby substituted for section 7 of the principal Act:

“Income rebates.

7. (1) In determining the taxable amount derived during any year of assessment by a taxpayer who is a natural person, there shall be deducted from his or her taxable income for the year of assessment an amount equal to the sum of the amounts allowed to the taxpayer by way of income rebates under subsections (2) and (3), but not exceeding such taxable income.

(2) Subject to the provisions of subsection (4), there shall, for the purposes of this section in respect of every taxpayer who is a natural person, be allowed by way of income rebate -

- (a) an amount of R5 000 if such person is not the sole breadwinner;
- (b) an amount of R8 000 if such person is the sole breadwinner;

(c) an additional amount of R1 000 if such person, on the last day of the year of assessment, was or would, had he or she been alive, have been over the age of sixty-five years.

(3) Subject to the provisions of subsection (5), there shall be allowed by way of income rebate in respect of a taxpayer's children or step-children who were alive during any part of the year of assessment, an amount of R1 000 in respect of one child, R1 500 in respect of two children and R2 000 in respect of three or more children, if such a child or every one of such children -

(a) was on the last day of the said year of assessment unmarried, and -

(i) was not or would not, had he or she been alive, have been over the age of eighteen years;

(ii) was not or would not, had he or she been alive, have been over the age of twenty-one years and was wholly or partially dependent for his or her maintenance upon the taxpayer and not liable for the payment of normal tax in respect of such year; or

(iii) was not or would not, had he or she been alive, have been over the age of twenty-six years and was wholly or partially dependent for his or her maintenance upon the taxpayer, was not liable for the payment of normal tax in respect of such year, and satisfied the Permanent Secretary that he or

she was a full-time student at an educational institution of a public character; or

(b) was because of mental or physical infirmity incapable of maintaining himself or herself, was wholly or partially dependent for his or her maintenance upon the taxpayer, and was not liable for the payment of normal tax in respect of such year of assessment.

(4) For the purposes of paragraphs (a) and (b) of subsection (2), "sole breadwinner" means any married person whose spouse's income during the year of assessment in question did not exceed R3 000.

(5) Where the period assessed is less than twelve months, the amount of any rebate to be allowed under subsection (2) or (3) shall be such amount as bears to the full amount of such rebate the same ratio as the period assessed bears to twelve months, unless, where such period terminates at the death of the taxpayer, the Permanent Secretary under the special circumstances of the case otherwise directs."

Amendment of section 12 of Act 24 of 1981.

5. Section 12 of the principal Act is hereby amended -

- (a) by the deletion of subsection (2);
- (b) by the addition to subsection (3) of the following proviso:

"Provided that if both the parents had contributed to such donation, settlement or other disposition, such income shall be deemed to have been received by the parents in the same ratio as the amounts of their respective contributions bear to the whole amount of such donation, settlement or other disposition."

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

“(4) Any income received by or accrued to or in favour of any minor child of any person by reason of any donation, settlement or other disposition made by any other person, shall be deemed to be the income of the parent of such minor child, if such parent [or his spouse] has made a donation, settlement or other disposition or given some other consideration in favour directly or indirectly of the said other person or his or her family: Provided that if both the parents had contributed to such donation, settlement or other disposition or consideration in favour of such other person or his or her family, such income shall be deemed to have been received by the parents in the same ratio as the amounts of their respective contributions bear to the whole amount of such donation, settlement or other disposition or consideration in favour of such other person or his or her family.”; and

- (d) by the addition of the following subsection:

“(7) Any amount received by or accrued to or in favour of any person from a provident fund by reason of the death of a member of such a fund shall be deemed to have accrued to the estate of the deceased member.”

Amendment of section 16 of Act 24 of 1981, as amended by section 5 of Proclamation AG. 10 of 1985, section 5 of Act 8 of 1987, section 2 of Act 8 of 1991, section 5 of Act 12 of 1991 and section 1 of Act 33 of 1991.

6. Section 16 of the principal Act is hereby amended -

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

“(a) the revenues of the Government of Namibia and of any other state;”;

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

“(c) the salaries and emoluments payable to any person who holds office in Namibia as an official of any government, other than the government of Namibia, or any Specialized Agency of the United Nations contemplated in the Convention on the Privileges and Immunities of the Specialized Agencies as

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approved by the General Assembly of the United Nations on 21 November 1947, provided such person is stationed in Namibia for that purpose by virtue of an agreement between such government or such a Specialized Agency and the Government of Namibia, is not a Namibian citizen or ordinarily resident in Namibia, and the salaries and emoluments concerned are paid from a source outside Namibia.”;

- (c) by the substitution for subparagraph (i) of paragraph (n) of subsection (1) of the following sub-paragraph:

“(i) subject to the provisions of subparagraph (iii) and of section 42, dividends received by or accrued to or in favour of any person **[not ordinarily resident nor carrying on business in Namibia]**”;

- (d) by the deletion of subparagraphs (ii) and (v) of paragraph (n) of subsection (1);

- (e) by the deletion of subparagraph (iii) of paragraph (o) of subsection (1);

- (f) by the addition of the following paragraphs to subsection (1):

“(z) so much of any amount derived by the taxpayer from any pension fund or provident fund upon or because of the termination or relinquishment of the office or employment held by the taxpayer and as is proved to the satisfaction of the Permanent Secretary to have been paid during the year of assessment in question to any pension fund, provident fund or retirement annuity fund for the benefit of such taxpayer:

- (aa) an amount equal to one-third of any amount derived from a provident fund, except where such amount is so derived as a consequence of the termination of the taxpayer's office or employment due to dismissal or resignation.”;

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

“(4) There shall be exempt from the tax [(a) every **married person (other than a married woman in respect of whose taxable income separate calculations are to be made in terms of section 6(1))**] taxpayer who is a natural person whose taxable income does not exceed **[six thousand rand] R5 000** in any year of assessment, or, if the period of assessment is less than a full year, an amount which bears to **[six thousand rand] R5 000** the same ratio as the period assessed bears to one year **[and (b) every other person, except a company, whose taxable income does not exceed four thousand rand in any year of assessment, or, if the period of assessment is less than a full year, an amount which bears to four thousand rand the same ratio as the period assessed bears to one year].**”

Amendment of section 17 of Act 24 of 1981, as amended by section 2 of Act 12 of 1982, section 6 of Proclamation AG. 10 of 1985 and section 6 of Act 8 of 1987.

7. Section 17 of the principal Act is hereby amended -

(a) by the substitution for paragraph (e) of the following paragraph:

“(e) **[save as provided in subparagraph (5) of paragraph 10 of Schedule 1,]** expenditure incurred during the year of assessment in respect of the acquisition of motor vehicles, machinery, implements, utensils and articles **[(excluding any motor vehicle the sole or primary function of which is the conveyance of persons otherwise than for reward)]** used by the taxpayer for the purpose of **[his] the taxpayer's trade: Provided that the amount of any such expenditure shall not be fully deductible in the same year of assessment, but shall be deducted, one-third in the year of assessment in which the expenditure is incurred, one-third in the first ensuing year of assessment and one-third in the second ensuing year of assessment: Provided further that where, at the commencement of the year of assessment ending on **[28 February 1982] 28 February 1993**, or, in the case of a company, at the commencement of the financial year ending on or after **[1 March 1982] 1 March 1992**, a taxpayer holds for purposes of **[his] such taxpayer's trade any motor vehicles, machinery, implements, utensils or articles [(excluding any motor vehicle the sole or****

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primary function of which is the conveyance of persons otherwise than for reward)] not previously disposed of or scrapped by [him] the taxpayer, the original cost to [him] the taxpayer of such asset less any deductions allowed to [him] the taxpayer in respect thereof in terms of sections 11(e), 12(1), 12A(2), 14 and 14 *bis* of the Income Tax Act, 1962 (Act 58 of 1962), [and] sections 14(e) and 15(2) of the Income Tax Ordinance, 1974 (Ordinance 5 of 1974), or the provisions of this paragraph before its amendment, or paragraph (t) of this section before its deletion, by the Income Tax Amendment Act, 1992, shall be deemed to be expenditure incurred in respect of the acquisition of such motor vehicles, machinery, implements, utensils and articles during that year of assessment;”;

- (b) by the substitution for subparagraph (i) of paragraph (n) of the following subparagraph:

“(i) subject to subsection (2), any sum contributed during the year of assessment by way of current contributions to any pension fund or provident fund by any person holding any office or employment where the making of such a contribution is a condition of the holding of such office or employment [Provided that the total deduction to be allowed in respect of contributions to a pension fund or funds not established by law or for the benefit of employees of any local authority shall not in the year of assessment exceed the sum of three thousand rand];”;

- (c) by the deletion of subparagraph (ii) of paragraph (n);

- (d) by the substitution in paragraph (o) for the words preceding subparagraph (i) of the following words:

“(o) any sum contributed by the taxpayer during the year of assessment for the benefit of [his] the taxpayer’s employees to any pension fund, benefit fund or provident fund: Provided that -”;

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- (e) by the substitution for paragraph (q) of the following paragraph:

“(q) subject to subsection (2), so much of the total current contributions to any retirement annuity fund or funds made by any person as a member of such fund or funds during a year of assessment during which such person has carried on any trade;”;

- (f) by the deletion of paragraph (t);

- (g) by the substitution for paragraph (u) of the following paragraph:

“(u) an allowance in respect of any motor vehicle, machinery, implements, utensils or articles referred to in paragraph [(t)] (e) equal to the amount by which the original cost to the taxpayer of such motor vehicle, machinery, implements, utensils or articles exceeds the total amount arrived at by adding the allowances granted in respect of such motor vehicle, machinery, implements, utensils or articles under paragraph [(t)] (e) to the amount or the value of any consideration accruing to the taxpayer in respect of the sale or disposal of such motor vehicle, machinery, implements, utensils or articles;”; and

- (h) by the addition of the following subsection, the existing section becoming subsection (1):

“(2) The aggregate of the amounts that may be deducted in terms of paragraphs (n) and (q) of subsection (1) shall not in any year of assessment exceed the sum of R15 000.”.

Substitution of section 18 of Act 24 of 1981.

8. The following section is hereby substituted for section 18:

“Deductions from income derived from mining operations.

18. (1) There shall be allowed to be deducted from the income derived by the taxpayer from mining operations -

- (a) an amount in respect of capital expenditure to be ascertained under the provisions of

section 36, in lieu of the allowances in section 17(e), (f), (g) and (i);

(b) such amount as the taxpayer during the year of assessment has -

(i) expended; or

(ii) in a manner approved by the Permanent Secretary, made provision for in order to provide funds at a future date to defray expenses,

in connection with remedying, to the reasonable satisfaction of the Minister of Mines and Energy and the Minister of Wildlife, Conservation and Tourism, upon the cessation of mining operations, any damage caused by such mining operations to the surface of, and the environment on, the land in question.

(2) Any amount provided for in terms of subsection (1)(b)(ii) that is not utilized for the purpose mentioned in that subsection, shall be included in the taxpayer's income in the year of assessment following the year of assessment within which the taxpayer ceases with mining operations, but if the amount so provided for or any part thereof is at any time, before the cessation of mining operations, utilized for any purpose other than that mentioned in the said subsection, the amount so utilized shall be included in the taxpayer's income in the year of assessment within which the amount is so utilized."

Amendment of section 20 of Act 24 of 1981 as amended by section 7 of Act 8 of 1987.

9. Section 20 of the principal Act is hereby amended -

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

“(1) The provisions of section 17(a) and (b) and section 21 shall, subject to the provisions of subsection (2) of this section, *mutatis mutandis* apply in relation to any income derived by any person in the form of dividends distributed by a building society.”;

(b) by the deletion of subsection (1A);

(c) by the substitution for subsection (2) of the following subsection:

“(2) In respect of expenditure and losses not of a capital nature incurred by any person in the production of his or her income from dividends, the amounts to be deducted under section 17(a) and (b), as applied by subsection (1) of this section, **[and the amount to be deducted under subsection (1A) of this section shall in total be an amount which bears to the sum of expenditure, losses and the amount which but for this subsection would have been allowed to be deducted, the same ratio as the amount of such dividends as calculated after allowing the deduction under subsection (3) bears to the amount of such dividends as calculated before allowing such deduction]** shall be an amount equal to two-thirds of the expenditure and losses so incurred.”;

(d) by the substitution for subsection (3) of the following subsection:

“(3) In respect of income in the form of dividends derived by any person from a building society there shall be allowed as a deduction in the determination of the taxable income of such person an amount representing one-third of the amount of such dividends.”; and

(e) by the deletion of subsection (5).

Substitution of section 36 of Act 24 of 1981.

10. The following section is hereby substituted for section 36:

“Calculation of redemption allowances of capital expenditure in connection with mining operations.

36. (1) The capital expenditure to be deducted under section 18(1)(a) from income derived during a year of assessment from the working of a mine may consist of either exploration expen-

diture or development expenditure or both exploration expenditure and development expenditure incurred during the year of assessment in question, but subject to subsections (2) and (3).

(2) Where a mine commences with production for the first time in a year of assessment all exploration expenditure incurred before such year of assessment shall for the purposes of subsection (1) be deemed to have been incurred in that year of assessment.

(3) The amount of any development expenditure incurred during a year of assessment shall not be fully deductible in the same year of assessment, but shall be deducted, one-third in the year of assessment in which such expenditure is incurred, one-third in the first ensuing year of assessment and one-third in the second ensuing year of assessment: Provided that where a mine commences with production for the first time in a year of assessment all development expenditure incurred before such year of assessment shall for the purposes of this subsection be deemed to have been incurred in that year of assessment.

(4) For the purposes of this section -

“development expenditure” means expenditure actually incurred, whether directly or indirectly, in or in connection with the carrying out of development operations in any area in Namibia, including expenditure incurred in respect of -

(a) the acquisition of motor vehicles, machinery, implements, utensils and other articles used for purposes of such operations, including pipes, units for purposes of

production, treatment and processing, wellhead equipment, subsurface equipment, enhanced recovery systems, onshore and offshore drilling;

- (b) the acquisition of furniture, tools and equipment used in offices and accommodation referred to in paragraph (c) of the definition of "development operations" and in warehouses, export terminals, harbours, piers, marine vessels, vehicles, motorised rolling equipment, aircraft, fire and security stations, water and sewage plants and power plants;
- (c) labour, fuel, haulage, supplies, materials and repairs in connection with development operations;
- (d) charges, fees or rent for, or in respect of, land or buildings occupied for purposes of carrying out development operations;
- (e) the general administration and management directly connected with development operations;

"development operations" means operations carried out for or in connection with the development of a mine and includes -

- (a) the sinking of shafts;
- (b) the installation of machinery, implements, utensils and other articles required for the purpose of mining operations;

(c) the construction and erection of -

(i) facilities for production, storage, gathering and conveyance of minerals;

(ii) offices and residential accommodation for the use by persons employed in or in connection with mining operations, or facilities for purposes of health, education and recreation;

(d) the construction of roads in or to the area where mining operations are or will be carried out;

“exploration expenditure”, means expenditure actually incurred, whether directly or indirectly, in or in connection with the carrying out of exploration operations in any area in Namibia, including expenditure actually incurred in respect of -

(a) the acquisition of motor vehicles, machinery, implements, utensils and other articles employed for purposes of such operations, including pipes, wellhead equipment and subsurface and drilling equipment;

(b) labour, fuel, haulage, supplies, materials and repairs in connection with exploration operations;

(c) charges, fees or rent for, or in respect of, land or buildings occupied for purposes of carrying out exploration operations;

(d) the general administration and management directly connected with exploration operations;

“exploration operations” means any operations carried out for or in connection with the exploration for minerals, and includes -

(a) geological, geophysical, geochemical, palaeontological, aerial, magnetic, gravity or seismic surveys;

(b) the study of the feasibility of any mining operations or development operations to be carried out or of the environmental impact of such operations.”.

Amendment of section 42 of Act 24 of 1981.

11. Section 42 of the principal Act is hereby amended by the substitution for paragraph (ii) of subsection (1) of the following paragraph:

“(ii) a deceased estate [**referred to in section 16(1)(n)(ii) and such dividend is in terms of that section exempt from normal tax**] of any person who at the date of his or her death was not ordinarily resident nor carrying on business in Namibia; or”.

Substitution of section 45 of Act 24 of 1981 as amended by section 9 of Proclamation AG. 10 of 1985.

12. The following section is hereby substituted for section 45 of the principal Act:

“Rate of tax. **45.** The rate of tax shall be [**fifteen**] ten per cent of the amounts specified in section 42.”.

Repeal of section 57 of Act 24 of 1981.

13. Section 57 of the principal Act is hereby repealed.

Amendment of section 58 of Act 24 of 1981.

14. Section 58 of the principal Act is hereby amended -

(a) by the deletion of subsections (1) and (2); and

(b) by the substitution for subsection (3) of the following subsection:

“(3) (a) Every parent shall be required to include in his or her return any income received by or accrued to or in favour of, or deemed to have been received by or accrued to or in favour of any of his or her minor children either directly or indirectly from himself or [his wife] herself, as the case may be, together with such particulars as may be required by the Permanent Secretary.

(b) Every parent shall be required to include in his or her return any income deemed to be his or hers in terms of section 12(3) or (4).”.

Amendment of section 67
of Act 24 of 1981.

15. Section 67 of the principal Act is hereby amended by the deletion of subsection (5).

Amendment of section 82
of Act 24 of 1981.

16. Section 82 of the principal Act is hereby amended by the deletion of paragraph (b).

Amendment of section 83
of Act 24 of 1981.

17. Section 83 of the principal Act is hereby amended by the deletion of subsection (3).

Amendment of section
100 of Act 24 of 1981.

18. Section 100 of the principal Act is hereby amended -

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

“(1) Where, pursuant to Article 32(3)(e) of the Namibian Constitution, an agreement has been entered into with the government of any other country providing for arrangements with a view to the prevention, mitigation or discontinuance of the levying under the laws of Namibia and of such other country of income tax in respect of the same income, or to the rendering of reciprocal assistance in the administration of and the collection of taxes under the income tax laws of Namibia and of such other country, the arrangements thereby made shall be notified by proclamation by the President in the *Gazette*, and any amendment to, or termination of, any such agreement shall be notified in like manner.”;

(b) by the deletion of subsections (2), (3) and (4); and

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

“(5) The provisions of section 4 and of any other law imposing a duty to preserve secrecy with regard to income tax shall not prevent the disclosure to any authorized officer of a country with which an agreement referred to in subsection (1) has been entered into of the facts, knowledge of which is necessary to enable such country to determine whether immunity, exemption or relief ought to be given or which is necessary to be disclosed in order to render or receive assistance in accordance with such an agreement.”.

Amendment of Schedule I to Act 24 of 1981, as amended by section 3 of Act 12 of 1982 and section 15 of Proclamation AG. 10 of 1985.

19. Schedule I to the principal Act is hereby amended -

- (a) by the deletion of item (k) of subparagraph (1) of paragraph 10;
- (b) by the deletion of subparagraph (5) of paragraph 10;
- (c) by the substitution in subparagraph (6) of paragraph 10 for the words preceding the proviso of the following words:

“(6) The total amount allowable as deductions to any farmer under items (a) to [(k)] (j) 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 from farming operations during that year of assessment.”;

- (d) by the substitution in subparagraph (1) of paragraph 12 for the words following on subparagraph (1)(b) of the following words:

“has derived taxable income from farming operations during any period of assessment commencing on or after the first day of March, 1975 (hereinafter referred to as the relevant period) during which such person [or his wife] or such estate, as the case may be, has carried on farming operations or has derived income from the operations so carried on, and such taxable income exceeds the taxpayer’s average taxable income from farming (as determined in relation to the relevant period in accordance with subparagraph

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(2)), the normal tax chargeable in the case of the taxpayer for the relevant period shall, subject to the provisions of section 5 of this Act, be determined in accordance with the provisions of subsection (5) of that section.”;

- (e) by the substitution for subparagraph (2) of paragraph 12 of the following subparagraph:

“(2) For the purposes of subparagraph (1) the taxpayer’s average taxable income from farming in relation to the relevant period shall be deemed to be -

- (a) where the taxpayer [or his wife] carried on farming operations before the commencement of the relevant period, such amount as the Permanent Secretary may determine as representing the taxpayer’s annual average taxable income (if any) from farming in respect of the periods of assessment -

(i) for which the taxpayer was assessable under this Act or any previous income tax law [but excluding in the case of a woman any period assessable under section 67(5) of this Act or the corresponding provisions of any previous income tax law] and which fall within the period of five years ending on the last day of the relevant period; and

(ii) during which such farming operations were carried on or farming income was derived by the taxpayer:

Provided that in the case of the estate of a deceased person or of an insolvent natural person any farming operations carried on by such person prior to [his] the taxpayer’s death or insolvency, any income derived by him or her from such operations and any deductions allowable against such income under this Act or any previous income tax law shall, so far as such estate is concerned, be deemed for the purposes of this item to be respectively operations, income or deductions of such estate, and the annual average taxable income derived by such estate from farming

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shall be determined accordingly but subject to such adjustments as the Permanent Secretary may make; or

(b) where the taxpayer is a natural person and **[neither he nor his wife carried] did not carry** on farming operations **[(whether before or after their marriage)]** before the commencement of the relevant period and -

(i) the taxpayer's taxable income from farming for the relevant period does not exceed three thousand rand, the amount of such taxable income; or

(ii) the taxpayer's taxable income from farming for the relevant period exceeds three thousand rand but not four thousand five hundred rand, the amount of three thousand rand; or

(iii) the taxpayer's taxable income from farming for the relevant period exceeds four thousand five hundred rand, an amount equal to two-thirds of such taxable income."

Amendment of Schedule 2 to Act 24 of 1981, as amended by section 16 of Proclamation AG. 10 of 1985 and section 11 of Act 8 of 1987.

20. Schedule 2 to the principal Act is hereby amended -

(a) by the substitution for subparagraph (1) of paragraph 2 of the following subparagraph:

"(1) Every employer (whether or not registered as an employer under paragraph 15) who pays or becomes liable to pay any amount by way of remuneration to any employee shall, unless the Permanent Secretary has granted authority to the contrary, deduct or withhold from that amount by way of employees' tax an amount which shall be determined as provided in paragraph 9, 10, 11 or 12, whichever is applicable, in respect of the liability for normal tax of that employee **[or, if such remuneration is paid or payable to an employee who is a married woman and such remuneration is under the provisions of section 12(2) of this Act deemed to be income of her husband and she is not separately assessed from**

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her husband in terms of section 67(5) of this Act, in respect of such liability of her husband,] and shall pay the amount so deducted or withheld to the Permanent Secretary within seven days after the end of the month during which the amount was deducted or withheld, or in the case of a person who ceases to be an employer before the end of such month, within seven days after the day on which [he] such person ceased to be an employer, or in either case within such further period as the Permanent Secretary may approve.”;

- (b) by the substitution for subparagraph (4) of paragraph 2 of the following subparagraph:

“(4) Any amount required to be deducted or withheld from any amount of remuneration under this Schedule by way of employees’ tax shall be calculated on the balance of such amount of remuneration remaining after deducting any current contribution by the employee concerned to any pension fund, provident fund or retirement annuity fund [~~excluding so much of such contribution to a pension fund not established by law or for the benefit of employees of any local authority as is made at a rate exceeding two thousand rand per annum and so much of such contribution to a retirement annuity fund as, taken together with any current contribution to any pension fund deducted as aforesaid, is made at a rate exceeding three thousand rand per annum~~] which is calculated with reference to such amount of remuneration or to a portion of that amount or to the period in respect of which the amount of remuneration is paid or payable and which the employer is *vis-a-vis* the employee concerned, entitled or required to deduct or withhold from such amount of remuneration.”;

- (c) by the substitution for subparagraph (3) of paragraph 12 of the following subparagraph:

“(3) If an employer has not at any time received any return of personal particulars whatsoever from an employee as required by subparagraph (1), or has not in respect of that employee received a directive from the Permanent Secretary as provided in paragraph 11.

[he] the employer shall, until such return or directive is received, deduct or withhold employees' tax under the provisions of paragraph 9 or 10, whichever may be applicable, at the rate applicable to a person who is not [a married person and who is not] entitled to have any child or stepchild taken into account in the determination of the amount of employees' tax to be deducted or withheld."; and

(d) by the deletion of subparagraph (4) of paragraph 12.

Addition of Schedule 4 to Act 24 of 1981.

21. The following Schedule is hereby added to the principal Act:

"Schedule 4

1. RATES OF NORMAL TAX
(Section 6 of this Act)

<u>Taxable Amount</u>	<u>Rates of Tax</u>
Where the taxable amount -	
does not exceed R10 000	14 per cent of each R1 of the taxable amount;
exceeds R10 000, but does not exceed R15 000	R1 400 plus 19 per cent of the amount by which the taxable amount exceeds R10 000;
exceeds R15 000, but does not exceed R20 000	R2 350 plus 24 per cent of the amount by which the taxable amount exceeds R15 000;
exceeds R20 000, but does not exceed R25 000	R3 550 plus 28 per cent of the amount by which the taxable amount exceeds R20 000;
exceeds R25 000, but does not exceed R30 000	R4 950 plus 31 per cent of the amount by which the taxable amount exceeds R25 000;

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exceeds R30 000, but does not exceed R40 000	R6 500 plus 34 per cent of the amount by which the taxable amount ex- ceeds R30 000;
exceeds R40 000, but does not exceed R50 000	R9 900 plus 36 per cent of the amount by which the taxable amount ex- ceeds R40 000;
exceeds R50 000, but does not exceed R60 000	R13 500 plus 37 per cent of the amount by which the taxable amount ex- ceeds R50 000;
exceeds R60 000, but does not exceed R70 000	R17 200 plus 38 per cent of the amount by which the taxable amount ex- ceeds R60 000;
exceeds R70 000, but does not exceed R80 000	R21 000 plus 39 per cent of the amount by which the taxable amount ex- ceeds R70 000;
exceeds R80 000	R24 900 plus 40 per cent of the amount by which the taxable amount ex- ceeds R80 000.

2. If any income has been derived by a married person (hereinafter referred to as the first spouse) -

- (a) from his or her spouse (hereinafter referred to as the second spouse);
- (b) from any trade practised by the first spouse in partnership or association with the second spouse, or which trade is in any way connected with any trade practised by the second spouse; or
- (c) from any partnership of which the second spouse was at the time such income was derived a member; or
- (d) from any private company of which the second spouse was at such time the sole or main shareholder or one of the principal shareholders.

and if such income exceeds the amount of income to which the first spouse would reasonably be entitled, having regard to the nature of the relevant trade, partnership or company, the extent of the first spouse's participation therein and the services rendered by the first spouse, such excess amount as determined by the Permanent Secretary, shall be deemed to be income of the second spouse.

3. The rates of normal tax to be levied in respect of the taxable income derived by any company shall be as follows:

- (a) on each rand of the taxable income of any company (excluding taxable income derived from mining operations and taxable income referred to in paragraph (c)), forty cents;
- (b) on each rand of the taxable income derived by any company from mining other than mining for diamonds, a percentage determined in accordance with the formula:

$$y = 60 - \frac{480}{x}$$

in which formula y represents such percentage and x the ratio expressed as a percentage which the taxable income so derived bears to the income so derived: Provided that the percentage so determined shall be subject to a minimum percentage of twenty-five per cent;

- (c) on each rand of the taxable income derived by any company from mining for diamonds, fifty cents: Provided that there shall be added to the amount of tax determined in accordance with this paragraph, a surcharge equal to ten per cent of such amount.

4. The tax determined in accordance with any of the subparagraphs of paragraph 3 shall be payable in addition to the tax determined in accordance with any other of the said subparagraphs."

Short Title and commencement.

22. (1) This Act shall be called the Income Tax Amendment Act, 1992, and the amendments effected to the principal Act, shall, subject to subsection (2), be deemed to have come into operation -

- (a) in the case of any taxpayer other than a company, at the beginning of the year of assessment commencing on or after 1 March 1992;
 - (b) in the case of any taxpayer which is a company, at the beginning of the financial year of such company ending on or after 1 March 1992.
- (2) The amendments effected by section 12 shall come into operation on the day of promulgation of this Act.
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