

REPUBLIC OF NAMIBIA

NATIONAL ASSEMBLY

**INCOME TAX AMENDMENT
BILL**

(As read a First Time)

(Introduced by the Minister of Finance and Public Enterprises)

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.

BILL

To amend the Income Tax Act, 1981 so as to substitute the currency symbol “R” with the currency symbol “N\$” and to substitute the currency “Rand” with the currency “Namibia Dollar”; to provide for youth internship allowance; to provide for the limitation of the setting-off of assessed losses; to insert certain definitions; to exclude financial institutions, registered insurers and registered reinsurers from the application of section 95A; to increase the threshold on income tax payable by individuals; to reduce the tax rate payable by non-mining companies; and to provide for incidental matters.

(Introduced by the Minister of Finance and Public Enterprises)

BE IT ENACTED as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:

Amendment of Act No. 24 of 1981

1. The Income Tax Act, 1981 (Act No. 24 of 1984) (in this Act referred to as the “principal Act”) is amended by the substitution –

- (a) for the currency symbol “R” of the currency symbol “N\$”; and
- (b) for the currency “Rand” of the currency “Namibia Dollars”,

wherever it appears in that Act.

Insertion of section 17E in Act No. 24 of 1981

2. The principal Act is amended by the insertion after section 17D of the following section:

“Youth internship allowance

17E. (1) For the purposes of this section -

“registered internship agreement” means an agreement between an employer and an intern and certified by a designated authority; and

“designated authority” means any institution or organisation designated by the Minister, by notice in the *Gazette*, to be an institution or organisation that may certify an internship agreement.

(2) In addition to actual costs deductions allowable in terms of this Act, where an intern and employer are parties to a registered internship agreement during a year of assessment there shall, in that year of assessment, be allowed to be deducted an internship allowance from the income derived by such employer from the trade carried on by such employer.

(3) The internship allowance referred to subsection (2) shall be determined in accordance with the following formula:

$$(A/B) \times C - C = \text{Internship allowance}$$

in which formula -

- (a) "A" represents 50 per cent of the amount represented by "C";
- (b) "B" represents the corporate tax rate per cent; and
- (c) "C" represents the actual cost incurred per annum or N\$50 000, whichever is the lesser.

(4) Where a registered internship agreement is for a period of less than 12 months during the year of assessment, the amount of the internship allowance that is allowed to be deducted shall be limited to an amount which is proportionate to the number of months which the intern was a party to the agreement.

(5) An employer shall not claim an internship allowance for an internship period that exceeds 36 months of internship."

Amendment of section 21 of Act No. 24 of 1981, as amended by section 8 of Act No. 7 of 2002

3. Section 21 of the principal Act is amended –

(a) in subsection (1) by the substitution for paragraphs (a) and (b) of the following paragraphs –

“(a) any balance of assessed loss incurred by the taxpayer in any previous year which has been carried forward from the preceding year of assessment: Provided that the amount of such setoff does not exceed N\$1 million or 80 per cent of the amount of taxable income determined, whichever is the greater, before taking into account the provisions of this section and section 36 ;” [-

(i) **no person, whose estate has been voluntarily or compulsorily sequestrated, shall, unless the order of sequestration has been set aside, be entitled to carry forward any assessed loss incurred prior to the date of sequestration;**

(ii) **the balance of assessed loss shall be reduced by the amount or value of any benefit received by or accruing to a person resulting from a concession granted by, or a compromise made with his creditors**

whereby his liabilities to them have been reduced or extinguished, provided such liabilities arose in the ordinary course of trade;]

(b) any assessed loss incurred by the taxpayer during the same year of assessment in carrying on in Namibia any other trade either alone or in partnership with others, otherwise than as a member of a company the capital whereof is divided into shares: Provided that the amount of such setoff does not exceed N\$1 million or 80 per cent of the amount of taxable income determined, whichever is the greater, before taking into account the provisions of this section and section 36.”.

(b) by the insertion after subsection (1) of the following subsections:

“(1A) Notwithstanding subsection (1) and subject to section 21A, no assessed loss shall be carried forward as a deduction for more than five years in respect of any taxpayer or 10 years in respect of entities involved in the mining, petroleum or green hydrogen industry.

(1B) Where an assessed loss is determined in relation to any person in the carrying on of any trade, the limitation provided for in subsection (1A) shall not be affected by reason of only temporary discontinuance in the carrying on of that trade by such person.”; and

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

“(2) For the purposes of [subsection (1)] this section, “assessed loss” means any amount, as established to the satisfaction of the Minister, by which the deductions admissible under sections 17, 18 and 20, but excluding deductions admissible under section[s 17A, 17B,] 17C [and 17D], exceed the income in respect of which they are so admissible, or, if the context so requires, means an assessed loss as determined under section 29.”.

Amendment of section 48 of Act No. 24 of 1981

4. Section 48 of the principal Act is amended by the deletion of subparagraph (ii) of paragraph (a).

Amendment of section 95A of Act No. 24 of 1981, as inserted by section 9 of Act No. 4 of 2005 and amended by section 6 of Act No. 13 of 2022

5. Section 95A of the principal Act is amended –

(a) in subsection (1) by –

(i) the insertion before the definition of “goods” of the following definitions:

““connected person” means any person who, based on all the relevant facts and circumstances, has control over another person, or where both persons are under the control of the same person, and includes the following persons:

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- (a) in relation to a natural person -
 - (i) any relative; or
 - (ii) any trust of which such natural person or the relative is a beneficiary;
 - (b) in relation to a trust -
 - (i) any beneficiary of such trust;
 - (ii) any connected person in relation to any beneficiary of such trust; and
 - (c) in relation to a member of any partnership including a member of a foreign partnership -
 - (i) any other member of such partnership; and
 - (ii) any connected person in relation to any member of such partnership including a foreign partnership; and
 - (d) in relation to a company -
 - (i) any other company that is part of the same group of companies as that company;
 - (ii) any person, other than a company as defined in section 1 of the Companies Act, 2004 (Act No. 28 of 2004), that alone or together with any other connected person or persons, directly or indirectly controls at least 20 per cent of the voting power or equity share capital in that other company or the beneficial interest in that other company;
 - (iii) any other company if at least 20 per cent of the equity shares or voting rights in the company are held by that other company, and no holder of shares holds the majority voting rights in such company;
 - (iv) any other company in which the person referred to in (ii), directly or indirectly, controls at least 20 per cent of the equity share capital or voting rights in that other company or the beneficial interest in that other company; or
 - (v) any other company which is managed or controlled by the same person, either alone or together with other connected persons;
 - (e) in relation to a close corporation -
 - (i) any member of such close corporation;

- (ii) any relative of such member or any trust which is a connected person in relation to such member; and
 - (iii) any other close corporation or company which is a connected person in relation to any member or relative or trust contemplated in subparagraphs (i) and (ii); and
- (f) in relation to any person who is a connected person in relation to any other person in terms of paragraphs (a) to (e), such other person;

“control over another person”, in relation to a connected person, includes instances where -

- (a) a loan advanced by one person to another person constitutes at least 70 per cent of the book value of the total assets of the other person, excluding a loan from a financial institution where the person and the financial institution are not connected persons;
- (b) a guarantee for any form of indebtedness by one person to another person relates to at least 70 per cent of the total indebtedness of the other person, excluding a guarantee from a financial institution where such person and the financial institution are not connected persons;
- (c) a person appoints more than half of the board of directors of another person or at least one director or executive member of the governing board of such other person;
- (d) a person has ownership of, or exclusive rights over, the know-how, patent, copyright, trademark, licence, franchise or any other business or commercial right of a similar nature, or any data, invention, model, design, secret formula or process on which another person is wholly dependent for the manufacturing or processing of goods or articles or business carried on by such other person;
- (e) any person, including a person designated by that person, that –
 - (i) supplies at least 80 per cent of the purchases of another person; or
 - (ii) purchases at least 80 per cent of the sales of another person; or
- (f) a person has any other relationship, dealing, arrangement or undertaking with another person which effectively constitutes control;

“interest” includes -

- (a) interest on all forms of debts, loans, deposits, claims or other rights or obligations;
- (b) expenses incurred in connection with the raising of finance;
- (c) certain foreign exchange gains and losses on borrowing and any instrument connected with the raising of finance;
- (d) guarantee fees connected with financing arrangements;
- (e) arrangement fees and similar costs related to the borrowing of funds; and
- (f) any other payment economically equivalent to interest;

- (ii) the insertion after the definition of “international transaction” of the following definition:

“net interest expense” means the interest paid by or accrued to any person during the year of assessment less the amount of interest income received or accrued and included in the taxable income of such a person for that year of assessment;; and

- (iii) the insertion after the definition of “services” of the following definitions:

“tax amortisation” means deductions allowed in terms of section 17;

“tax depreciation” means allowances allowed in terms of sections 17 and 36;

“tax EBITDA” means taxable income before net interest expense, tax, tax depreciation and tax amortisation;

- (b) by the substitution for subsections (3), (4) and (5) of the following subsections:

(3) Notwithstanding any other provision of this Act, no deduction shall be allowed for the purposes of ascertaining the taxable income of any connected person in respect of any amount of net interest expense for any year of assessment that exceeds 30 per cent of such connected person’s tax EBITDA: Provided that this section shall not apply to net interest expense that does not exceed N\$3 000 000.

(4) Subsection (3) applies to the net interest expense of any person in respect of financial assistance granted by a non-connected person where such financial assistance is granted on the strength of a financial guarantee from a connected person to the person receiving the financial assistance.

(5) The net interest expense for which a deduction is not allowed under subsection (3) may be carried forward and treated as incurred during the next year of assessment and the net interest expense not allowed may be carried forward for five years in respect of any taxpayer or 10 years in respect of entities involved in the mining, petroleum or green hydrogen industry.”; and

(c) the addition after subsection (5) of the following subsections:

“(6) This section shall apply *mutatis mutandis* to the Petroleum (Taxation) Act, 1991 (Act No. 3 of 1991).

(7) This section shall not apply to –

(a) a banking institution as defined in section 1 of the Banking Institutions Act, 2023 (Act No.13 of 2023); and

(b) a registered insurer or registered reinsurer as defined in section 1 of the Long-term Insurance Act, 1998 (Act No. 5 of 1998).”.

Amendment of Schedule 4 to Act No. 24 of 1981, as added by section 21 of Act No. 25 of 1992 and amended by section 14 of Act No. 10 of 1993, section 10 of Act No. 17 of 1994, section 13 of Act No. 22 of 1995, section 28 of Act No. 12 of 1996, section 1 of Act No. 13 of 1998, section 1 of Act No. 7 of 1999, section 13 of Act No. 7 of 2002, section 1 of Act No. 11 of 2003, section 11 of Act No. 5 of 2007, section 8 of Act No. 5 of 2010, section 1 of Act No. 4 of 2013 and section 11 of Act No 13 of 2015

6. Schedule 4 to the principal Act is amended by –

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

“1. RATES OF NORMAL TAX

(Section 6)

Taxable amount	Rates of tax
Where the taxable amount –	
(a) does not exceed N\$100 000	no tax payable
(b) exceeds N\$100 000 but does not exceed N\$150 000	18 per cent of the amount which the taxable amount by exceeds N\$100 000
(c) exceeds N\$150 000 but does not exceed N\$ 350 000	N\$9 000 plus 25 per cent of the amount by which the taxable amount exceeds N\$150 000
(d) exceeds N\$350 000 but does not exceed N\$550 000	N\$59 000 plus 28 per cent of the amount by which the taxable amount exceeds N\$350 000

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| (e) | exceeds N\$550 000 but does not exceed N\$850 000 | N\$115 000 plus 30 per cent of the amount by which the taxable amount exceeds N\$550 000 |
| (f) | exceeds N\$850 000 but does not exceed N\$1 550 000 | N\$205 000 plus 32 per cent of the amount by which the taxable amount exceeds N\$850 000 |
| (g) | exceeds N\$1 550 000 | N\$429 000 plus 37 per cent of the amount by which the taxable amount exceeds <u>N\$1 550 000</u> "; |
- (b) the substitution for item (a) of subparagraph (1) of paragraph 3 of the following item:
- “(a) on each N\$ of taxable income derived from a source other than mining[, **32**] =
- (i) 31 cents in respect of the year of assessment on or after 1 January 2024; and
- (ii) 30 cents in respect of any year of assessment on or after 1 January 2025;”.

Short title and commencement

7. This Act is called the Income Tax Amendment Act, 2024, and comes into operation on the date of 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 2024; and
- (b) in the case of any taxpayer which is a company, at the commencement of the year of assessment of such company on or after 1 January 2024.