



GOVERNMENT GAZETTE

OF THE

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CONTENTS

	<i>Page</i>
GOVERNMENT NOTICE	
No. 73 Promulgation of Second Income Tax Amendment Act, 1991 (Act 12 of 1991), of the National Assembly	1

Government Notice

OFFICE OF THE PRIME MINISTER

No. 73

1991

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. 12 of 1991: Second Income Tax Amendment Act, 1991.

**SECOND INCOME TAX AMENDMENT ACT,
1991**

EXPLANATORY NOTE:

_____ Words underlined with solid line indicate insertions proposed.

[] Words in bold type in square brackets indicate omissions proposed.

ACT

To amend the Income Tax Act, 1981, so as to render taxable certain contributions refunded or paid over to an employee or employer from any pension fund upon or because of the termination or relinquishment of office or employment or upon or because of the winding-up of such pension fund; to delete and replace certain obsolete expressions; to introduce new rates of taxes and income rebates in respect of individuals; to further regulate the circumstances in which certain interests and dividends are deemed to have accrued from sources within Namibia; to increase the exemption allowable in respect of amounts received or accrued on Special Tax-Free Indefinite Period Shares; to do away with the exemption allowable in respect of an amount obtained by a wife independently of her husband; to provide for an exemption in respect of the capital element of certain annuities; and to abolish the undistributed profits tax; and to provide for incidental matters.

(Signed by the President on 25 June 1991)

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

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

(a) by the substitution in paragraph (d) of the definition of "gross income" for the words preceding the proviso of the following words:

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 and section 1 of Act 8 of 1991.

**SECOND INCOME TAX AMENDMENT ACT,
1991**

“any amount (being a refund or pay-out of contributions made by an employee, where the making of such contributions was a condition of the holding of such office or employment, to any pension fund and allowed as a deduction under this Act or any previous income tax law, or of contributions made by an employer to such pension fund, and interest on such contributions) received by or accrued to any employee or the holder of any office from such pension fund upon or because of the termination or relinquishment of the office or employment [where the making of such contributions was a condition of the holding of such office or employment] or upon or because of the winding-up of such pension fund:”.

- (b) by the insertion after the definition of “pension fund” of the following definition:

“‘Permanent Secretary’ means the Permanent Secretary: Finance;”;

- (c) by the deletion of the definition of “Secretary”;
and

- (d) by the deletion of the definition of “territory”.

(2) Subsection (1)(a) shall be deemed to have come into operation on 1 March 1990.

Amendment 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 13 of 1985, section 1 of Act 11 of 1986 and section 2 of Act 8 of 1987.

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

- (a) by the substitution for the second proviso to subsection (1) of the following proviso:

“Provided further that notwithstanding any provision to the contrary in this Act, no tax shall be levied in respect of the amount referred to in paragraph (a), if that amount does not exceed [R2 000] the amount referred to in the proviso to paragraph (a) of subsection (2) of section 7 or, as the case may be, an amount equal to the aggregate of the amount referred to in that proviso and the appropriate amount referred to in the proviso to subsection (3) of the said section 7.”.

- (b) by the substitution for the Schedule to subsection (1) of the following Schedule:

**SECOND INCOME TAX AMENDMENT ACT,
1991**

“SCHEDULE

Taxable amount	Rates of tax
Where the taxable amount -	
does not exceed R10 000	15 per cent of each R1 of the taxable amount;
exceeds R10 000, but does not exceed R14 000	R1 500 plus 20 per cent of the amount by which the taxable amount exceeds R10 000;
exceeds R14 000, but does not exceed R18 000	R2 300 plus 24 per cent of the amount by which the taxable amount exceeds R14 000;
exceeds R18 000, but does not exceed R22 000	R3 260 plus 27 per cent of the amount by which the taxable amount exceeds R18 000;
exceeds R22 000, but does not exceed R26 000	R4 340 plus 30 per cent of the amount by which the taxable amount exceeds R22 000;
exceeds R26 000, but does not exceed R30 000	R5 540 plus 33 per cent of the amount by which the taxable amount exceeds R26 000;
exceeds R30 000, but does not exceed R34 000	R6 860 plus 36 per cent of the amount by which the taxable amount exceeds R30 000;
exceeds R34 000, but does not exceed R40 000	R8 300 plus 38 per cent of the amount by which the taxable amount exceeds R34 000;
exceeds R40 000, but does not exceed R50 000	R10 580 plus 40 per cent of the amount by which the taxable amount exceeds R40 000;
exceeds R50 000, but does not exceed R60 000	R14 580 plus 41 per cent of the amount by which the taxable amount exceeds R50 000;
exceeds R60 000	R18 680 plus 42 per cent of the amount by which the taxable amount exceeds R60 000.”

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

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

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

**SECOND INCOME TAX AMENDMENT ACT,
1991**

- “(a) an amount of [**R6 000**] R8 000, if such person is a married person: Provided that, in the case of a taxpayer whose wife has earned a taxable income independently of him, an amount of R4 000 shall, for purposes of the separate calculation contemplated in section 6(1), be allowed in terms of this section in respect of the taxpayer and an amount of R4 000 in respect of the taxable income so earned by his wife; or”;
- (b) by the substitution for paragraph (b) of subsection (2) of the following paragraph:
- “(b) an amount of [**R4 000**] R6 000, if such person is not a married person; or”;
- (c) by the substitution for paragraph (c) of subsection (2) of the following paragraph:
- “(c) an additional amount of [**R500**] R1 000, if such person was, or would have been, had he lived to that date, over the age of 65 years on the last day of the year of assessment;”;
- (d) by the addition to subsection (3) of the following proviso:
- “Provided that, in the case of a taxpayer whose wife has earned a taxable income independently of him, an amount of R750, R1 250 or R1 500, as the case may be, shall, for purposes of the separate calculation contemplated in section 6(1), be allowed in terms of this section in respect of the taxpayer and an amount of R750, R1 250 or R1 500, as the case may be, in respect of the taxable income so earned by his wife.”.

Amendment of section 15 of Act 24 of 1981, as amended by section 4 of Proclamation AG. 10 of 1985 and section 4 of Act 8 of 1987.

4. Section 15 of the principal Act is hereby amended -

- (a) by the substitution for subsection (2) of the following subsection:

“(2) Any interest which has been received by or has accrued to any domestic company or any person who is ordinarily resident in [**the territory**]

**SECOND INCOME TAX AMENDMENT ACT,
1991**

Namibia in respect of any loan, ~~[to or]~~ deposit ~~[in any building society registered in the Republic of South Africa]~~, advance, participation bond, debenture or interest-bearing security, or any dividend ~~[or share of profits]~~ distributed by any ~~[such]~~ building society which has been received by or has accrued to any such domestic company or person, shall be deemed to have been derived from a source within ~~[the territory]~~ Namibia, wheresoever such loan, ~~[or]~~ deposit ~~or advance~~ is made or held ~~or participation bond is registered or debenture, interest-bearing security or any share to which such dividend [or share of profits] relates is subscribed for or issued or held or such interest or dividend [or share of profits] is payable.~~”; and

(b) by the deletion of subsection (3).

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

(a) by the substitution for subparagraph (iii) of paragraph (m) of subsection (1) of the following subparagraph:

“(iii) in the case of a taxpayer who is a natural person, so much of the aggregate of the amounts received or accrued as dividends on Special Tax-Free Indefinite Period Shares in building societies in ~~[the territory]~~ Namibia as does not in any year of assessment exceed so much of the dividends, including any bonus or other distribution of profits, on such shares as are derived in respect of that portion of the total amount invested in such shares which is equal to the amount of ~~[R20 000]~~ R100 000: Provided that this exemption shall not apply, unless -

(aa) such dividends are calculated at a rate not exceeding a rate determined by the Minister from time to time by notice in the *Gazette* for the purposes of this exemption; and

(bb) such Special Tax-Free Indefinite Period Shares are issued on such conditions, if any, as may be so determined by the Minister.”;

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

**SECOND INCOME TAX AMENDMENT ACT,
1991**

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

“(r) interest received by or accrued to any domestic company or any person who is ordinarily resident in **[the territory] Namibia** in respect of any loan, **[to or] deposit, [in any banking institution registered under the Banks Act, 1965 (Act 23 of 1965), of the Republic of South Africa, or any similar institution,] advance, participation bond, debenture or interest-bearing security, or any dividend distributed by any building society which accrues from a source outside Namibia to any such domestic company or person, if it is proved to the satisfaction of the [Secretary] Permanent Secretary -**

- (i) (aa) that such loan, **[or] deposit or advance has been made [through] and retained [in a branch of such institution] outside [the territory] Namibia or that such participation bond has been registered outside Namibia or that such debenture, interest-bearing security or share to which such dividend relates has been subscribed for or issued or held outside Namibia for the purposes of any business carried on by such company or person outside [the territory] Namibia; and**
- (bb) that the said interest **or dividend is subject to income tax under the laws of the country within which such loan, [or] deposit or advance has been made and [is] retained or such participation bond has been registered or that such debenture, interest-bearing security or share has been subscribed for or issued or held; or**
- (ii) that such loan, **[or] deposit or advance has been made [through] and retained [in a branch of such institution] outside [the territory] Namibia or that such participation bond has been registered**

Act No. 12, 1991

**SECOND INCOME TAX AMENDMENT ACT,
1991**

outside Namibia or that such debenture, interest-bearing security or share to which such dividend relates has been subscribed for or issued or held outside Namibia, and that the full capital for such loan, [or] deposit, advance, participation bond, debenture, interest-bearing security or share was obtained from a source outside [the territory] Namibia;”;

(c) by the deletion of paragraph (s) of subsection (1);
and

(d) by the deletion of paragraph (z) of subsection (1).

Insertion of section 16B in
Act 24 of 1981.

6. The following section is hereby inserted in the principal Act after section 16A:

“Exemption of
capital element
of purchased
annuities.

16B. (1) For the purposes of this section -

“annuity amount” means an amount payable by way of annuity under an annuity contract;

“annuity contract” means an agreement concluded between an insurer in the course of the business of such an insurer and a natural person (hereinafter referred to as the purchaser), in terms of which -

(a) the insurer agrees to pay to the purchaser or the purchaser’s spouse or surviving spouse an annuity or annuities (whether to one such person or to each of them) until the death of the annuitant or the expiry of a specified term;

(b) the purchaser agrees to pay to the insurer a lump sum cash consideration for such annuity or annuities;
and

(c) no amounts are or will be payable by the insurer to the purchaser or any other person other than amounts payable by way of such an-

**SECOND INCOME TAX AMENDMENT ACT,
1991**

nunity is payable for a minimum term and such annuity is in the event of the death of the annuitant before the end of such term to continue to be payable to some third person for the balance of that term, amounts which may be so payable to such third person by way of such annuity,

but does not include any agreement for the payment by any insurer of any annuity which is under the rules of a pension fund or of a provident fund or of a retirement annuity fund payable to a member of such fund or to the widow of such member or to any other person;

“commencement”, in relation to an annuity contract, means the date on which the annuity contract is concluded;

“expected return”, in relation to an annuity under an annuity contract, means an amount determined in a manner contemplated in this section as representing the sum of all the annuity amounts which may, as at the commencement of the annuity contract, be expected to become payable by way of the annuity from the said commencement;

“valuator”, in relation to an insurer, means the valuator of the insurer contemplated in section 10 of the Insurance Act, 1943 (Act 27 of 1943).

(2) There shall be exempt from normal tax so much of any annuity amount payable to a purchaser or his spouse or surviving spouse (as contemplated in paragraph (a) of the definition of “annuity contract” in subsection (1)) as is determined in accordance with subsection (3) to represent the capital element of such amount.

(3) The capital element of an annuity amount shall be -

**SECOND INCOME TAX AMENDMENT ACT,
1991**

- (a) a sum determined in accordance with the formula -

$$Y = \frac{A}{B} \times C,$$

in which formula -

Y, represents the sum to be determined;

A, represents the amount of the cash consideration paid by the purchaser under the annuity contract in question as contemplated in paragraph (b) of the definition of "annuity contract" in subsection (1);

B, represents the total expected returns of all the annuities provided for in the annuity contract in question;

C, represents the aforesaid annuity amount; or

- (b) where, by reason of any unpredictable contingency (other than the death or survival of any person), any amount payable by way of any annuity under the annuity contract in question is uncertain at the date on which the first payment by way of an annuity becomes due under that contract, such sum as may on the basis of a fair and reasonable calculation be taken to be the capital element of the aforesaid annuity amount: Provided that the said sum shall be determined in such manner that the capital element of all the an-

**SECOND INCOME TAX AMENDMENT ACT,
1991**

nuity amounts becoming due during any year of assessment in respect of all the annuities under the said contract does not in total exceed an amount determined in accordance with the formula -

$$Z = \frac{1}{N} \times A,$$

in which formula -

Z, represents the amount to be determined;

N, represents the probable number of years during which annuity amounts will be payable under the said annuity contract from the date on which the first of such amounts becomes due, due regard being had to the manner in which and the frequency with which such amounts are payable; and

A, represents the amount of the cash consideration paid by the purchaser under the said annuity contract as contemplated in paragraph (b) of the definition of "annuity contract" in subsection (1).

(4) The valuator of an insurer who is a party to an annuity contract shall, before payment of the first annuity amount is made under such contract, or, where such payment was made before the date on which this section comes into operation, within one month after that date, or in either case within such period as the Permanent Secretary may allow, make a calculation (with due regard to the provisions of subsection (5)) in the manner prescribed in paragraph (a) of subsection (3) or, if the pro-

**SECOND INCOME TAX AMENDMENT ACT,
1991**

visions of paragraph (b) of that subsection are applicable, in accordance with that paragraph, of the capital element of all the annuity amounts to be paid under the said contract: Provided that -

- (i) where the capital element is calculated under the said paragraph (a), it shall be sufficient if the capital element is calculated as a percentage to be applied to each of the said annuity amounts; or
- (ii) where the capital element is calculated under the said paragraph (b), it shall be sufficient if a calculation is made of the amount to be determined in accordance with the formula in the proviso to that paragraph.

(5) A valuator who makes any calculation as provided in subsection (4) or any recalculation as provided in subsection (6)(b), shall do so in accordance with generally accepted actuarial principles or practice, and where a determination has to be made of the life expectancy of any person for the purpose of a calculation of the expected return of any annuity or the probable number of years during which annuity amounts will be paid under any annuity contract, the mortality tables to be used for such determination shall be the select tables in the volume of tables published in 1953 at the University Press, Cambridge, for the Institute of Actuaries and the Faculty of Actuaries, entitled "*The a (55) Tables for Annuitants*", and the age of the person concerned shall for the purposes of such determination be taken to be his age on his birthday immediately preceding the commencement of the annuity contract in question.

- (6) (a) Where any annuity contract is varied so that it no longer conforms with the require-

**SECOND INCOME TAX AMENDMENT ACT,
1991**

ments prescribed in the definition of "annuity contract" in subsection (1), the exemption conferred by subsection (2) in respect of the capital element of annuity amounts under that contract shall not apply in respect of such amounts under that contract which become due on or after the date of such variation.

- (b) Subject to the provisions of paragraph (a), where any annuity contract is varied as to the payment of any annuity or consideration payable thereunder, the capital element of annuity amounts becoming due thereunder after such variation is effected shall, with due regard to the provisions of subsection (5), be recalculated by the valuator of the insurer concerned.
- (7) (a) Where the capital element of annuity amounts has been calculated as provided in subsection (4) or has been recalculated as provided in subsection (6)(b), the insurer concerned shall furnish each annuitant under the annuity contract in question, within one month after the date on which the calculation or recalculation is made, as the case may be, or within such further period as the Permanent Secretary may allow, with two copies of such calculation or recalculation, as the case may be.
- (b) An annuitant who has received the two copies referred to in paragraph (a) shall submit one of them to the Permanent Secretary as and when required by the Permanent Secretary.

**SECOND INCOME TAX AMENDMENT ACT,
1991**

(8) The Permanent Secretary shall, when making an assessment upon the taxpayer concerned for the year of assessment during which there has become payable the first annuity amount affected by a calculation referred to in subsection (4) or a recalculation referred to in subsection (6)(b), determine the capital element of annuity amounts received or accrued during such year and affected by such calculation or recalculation, as the case may be, in accordance with such calculation or recalculation of, if the Permanent Secretary is dissatisfied with such calculation or recalculation or is in doubt as to the correctness thereof, or if no such calculation or recalculation has been made, the Permanent Secretary may, having regard to any calculation or recalculation of the capital element made by a practising actuary at the Permanent Secretary's request or at the request of the taxpayer, calculate or recalculate the capital element and determine the capital element of the said annuity amounts accordingly.

(9) Any decision of the Permanent Secretary in the exercise of his discretion under the provisions of subsection (8) shall, in respect of a year of assessment referred to in that subsection, be subject to objection and appeal.

(10) Subject to the provisions of section 69, the final calculation or recalculation of the capital element as made in relation to the year of assessment referred to in subsection (8) shall, subject to the provisions of subsection (6)(b), be final and conclusive and shall apply in respect of all relevant annuity amounts which become due to any person under the annuity contract in question in any succeeding years of assessment."

Act No. 12, 1991

**SECOND INCOME TAX AMENDMENT ACT,
1991**

Substitution of certain
expressions in Act 24 of
1981.

8. The principal Act is hereby amended -

- (a) by the substitution for the word "Secretary", wherever it occurs, of the words "Permanent Secretary"; and
- (b) by the substitution for the words "the territory", wherever they occur, of the word "Namibia".

Short title and commence-
ment.

9. This Act shall be called the Second Income Tax Amendment Act, 1991, and the amendments effected to the principal Act shall be deemed to have come into operation, save in so far as it is otherwise provided in this Act, at the beginning of the year of assessment commencing on or after 1 March 1991.