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Government Notice

OFFICE OF THE PRIME MINISTER

No. 89

1993

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. 13 of 1993: Moratorium on the Payment of Stamp Duty or Transfer Duty in Respect of Rationalization Schemes Act, 1993.
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**MORATORIUM ON THE PAYMENT OF STAMP
DUTY OR TRANSFER DUTY IN RESPECT OF
RATIONALIZATION SCHEMES ACT, 1993**

ACT

To provide for the exemption from stamp duty or transfer duty in respect of certain acquisitions of marketable securities or property or the transfer of rights or obligations under mortgage bonds under a scheme for the rationalization of a group of companies and for the assessment of companies in any such group for income tax purposes in certain circumstances; and to provide for incidental matters.

(Signed by the President on 12 August 1993)

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

Definitions.

1. In this Act, unless the context indicates otherwise -

“controlled company” means a company in relation to which another company is the controlling company on the date of commencement of this Act and at the time of any agreement referred to in section 2;

“controlling company”, in relation to any other company, means a company which, on the date of commencement of this Act and at the time of any agreement referred to in section 2 to which such other company is a party, holds for its own benefit, whether directly or indirectly through one or more companies in the group of companies of which all the companies in question are members, shares in such other company which, together with shares in that other company held by a trustee under a scheme referred to in section 38(2)(b) of the Companies Act, 1973 (Act 61 of 1973), entitle the holders of such shares altogether to not less than seventy-five per cent of the voting rights of all the shareholders in the said other company;

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“group of companies” means a controlling company and one or more other companies which are controlled companies in relation to the controlling company on the date of commencement of this Act and at the time of any agreement referred to in section 2;

“marketable security” means a marketable security the registration of transfer of which would, but for the exemption under this section, be subject to stamp duty;

“member company” means the controlling company or any controlled company in the same group of companies;

“Permanent Secretary” means the Permanent Secretary: Finance;

“property” means property as defined in section 1 of the Transfer Duty Act, 1993;

“stamp duty” means the stamp duty leviable under Item 11(3) of Schedule 1 to the Stamp Duties Act, 1993 in respect of the registration of transfer of any marketable security or the stamp duty leviable under Item 5(3), (4) or (5) of the said Schedule in respect of the cession of a mortgage bond or the substitution of a debtor in respect of a mortgage bond;

“transfer duty” means the duty leviable under the Transfer Duty Act, 1993.

Exemption from stamp duty and transfer in respect of certain transactions under an approved scheme of rationalization of a group of companies.

2. (1) Where on or at any time after the date of commencement of this Act, but not later than 30 June 1995, and pursuant to a scheme for the rationalization of the activities of a group of companies, an agreement is concluded between companies which are members of such group whereby -

- (a) any marketable security or property is sold or otherwise disposed of by a member company to any other member company;
- (b) any mortgage bond is ceded by a member company to any other member company; or

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- (c) a member company is to be substituted as debtor under a mortgage bond for any other member company,

and such agreement has been approved by the Permanent Secretary in accordance with the provisions of subsection (3), there shall be exempt -

- (aa) from stamp duty, the consequent registration of transfer to the member company concerned of the marketable security, the cession of the mortgage bond or the substitution of the debtor under the mortgage bond in terms of the agreement;
- (bb) from transfer duty, the acquisition by the member company concerned of the property in terms of the agreement.

(2) An application for the approval of the Permanent Secretary of an agreement referred to in subsection (1) shall be made to the Permanent Secretary in writing by or on behalf of the controlling company of the group of companies concerned not later than 30 June 1995, and shall be accompanied by -

- (a) the written agreement in question;
- (b) a written statement setting forth details of the scheme of rationalization of the activities of such group; and
- (c) a written mandate from each controlled company in such group which is a party to the agreement to act on its behalf for the purposes of this section, supported by a resolution of the directors or shareholders of such company.

(3) Where in terms of subsection (2) an agreement is submitted to the Permanent Secretary for his or her approval for the purposes of subsection (1), the Permanent Secretary may in his or her discretion approve the agreement subject to such conditions as he or she may impose, but he or she shall not approve the agreement unless he or she is satisfied that -

- (a) the agreement was concluded pursuant to a scheme for the rationalization of the activities of the group of companies in question;

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(b) such scheme was devised solely or mainly for the purpose of achieving within the said group substantial and enduring savings in operational expenditure or substantial and enduring operational or administrative advantages; and

(c) under such scheme -

(i) a consideration became payable by the member company concerned in respect of its acquisition of the marketable security, property or cession of the mortgage bond or its release as debtor under the mortgage bond because of the substitution of debtor in terms of the agreement, and the value of such consideration is equal to -

(aa) the fair market value of such marketable security, property or bond, as the case may be, at the time of such agreement; or

(bb) such other value as may be agreed upon by the controlling company and the Permanent Secretary; or

(ii) such marketable security, property or bond is to be disposed of by the member company concerned to such other member company by way of a distribution of a dividend *in specie*.

(4) The Permanent Secretary shall, upon approving an agreement under subsection (3), issue to the applicant a certificate to the effect that -

(a) the registration of transfer of the marketable security, the cession of the mortgage bond, or the substitution of the debtor under the mortgage bond, as the case may be, is exempt from stamp duty under subsection (1); or

(b) the acquisition of the property is exempt from transfer duty under subsection (1).

(5) Any exemption under subsection (1) shall lapse unless registration of transfer of the relevant marketable security or the registration of the cession of the relevant bond or the substitution of the debtor under the relevant

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bond or the registration of the transfer of the relevant property, as the case may be, is effected not later than six months after the date of issue of the certificate referred to in subsection (4) or within such further period as the Permanent Secretary, having regard to the circumstances of the case, may approve.

(6) If the Permanent Secretary is satisfied that a certificate issued by him or her under subsection (4) was obtained by fraud or was issued in consequence of any misrepresentation or failure to disclose any material fact by the controlling company or any other person, he or she shall, if he or she is satisfied that in the light of the full facts the exemption in question should not have been granted, withdraw such certificate and the exemption from stamp duty, or transfer duty conferred by such certificate shall be deemed to have been withdrawn as from the date of issue of such certificate.

Value of marketable security, property or bond deemed to be trading stock or income.

3. For the purposes of the taxation levied under the Income Tax Act, 1981 (Act 24 of 1981), and notwithstanding anything to the contrary in that Act -

- (a) where any marketable security, property or bond is sold, disposed of or ceded as contemplated in section 2 by a member company which is chargeable with normal tax under the said Act to another member company which is so chargeable for no consideration or for a consideration the value of which is less than the fair market value of such marketable security, property or bond and immediately prior to the conclusion of the relevant agreement such marketable security, property or bond constituted trading stock of the transferor company -
- (i) such marketable security, property or bond shall be deemed to have been acquired by the transferee company as trading stock at the book value thereof as reflected in the books of the transferor company;
- (ii) any amount (including the value of any benefit or advantage) which is received by or accrues to the transferee company on the sale or disposal by such company of such marketable security or property or of a portion thereof shall be deemed to be income derived by such company in the course of a trade

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carried on by such company separately from any other trade carried on by it, and no losses incurred by the transferee company in connection with any other trade carried on by it shall be deductible from the income of such company derived from the sale or disposal of such marketable security or property or a portion thereof;

- (b) where any property sold or disposed under an agreement contemplated in section 2 includes any building in respect of which any allowance has been granted to the transferor company under the said Act, the transferor and the transferee company shall, for the purposes of calculating any allowance under the said Act granted to the transferee company in respect of such building or for the purpose of determining whether any amount has been recouped in respect of the allowances granted to the transferor and the transferee company in respect of such building, be deemed to be one and the same company and any amount so recouped shall be deemed to be income derived by the company in the course of a trade carried on by it separately from any other trade; and
- (c) where any business undertaking or part thereof is sold or disposed of under an agreement contemplated in section 2 which includes any asset in respect of which any deduction of expenditure has been allowed to the transferor company in terms of section 17(1)(e) of the Income Tax Act of 1981, the transferor company and the transferee company shall, for the purposes of calculating deductions in terms of the said section 17(1)(e) and for purposes of calculating any recoupment of deductions allowed in respect of such asset, be deemed to be one and the same company and any amount recouped by the transferee company shall be deemed to be income derived by the transferee company in the course of a trade carried on by it separately from any other trade.

Short title and commencement.

4. This Act shall be called the Moratorium on the Payment of Stamp Duty or Transfer Duty in respect of Rationalization Schemes Act, 1993 and shall come into operation on a date to be determined by the Minister of Finance by notice in the *Gazette*.
