

TAX AMENDMENTS

December 2022



Highlights

The following amendments to the income tax and VAT Act was published December 2022.

- Act No. 13 of 2022, which amends the Income Tax Act, Act 24 of 1981.
- Act No. 14 of 2022, which amends the Value-Added Tax Act, Act 10 of 2000.
- Act No. 10 of 2022, which amends the Stamp Duties Act, Act 15 of 1993.

Overview

Income Tax

December 2022



General deductions allowed in determination of taxable income (Section 17(1)(w)(i)):

Section 17(1)(w)(i) was **deleted**. The requirement of this section was that, in order for premiums paid toward a long-term insurance policy to be deductible, it should be included in the taxable income of an employee or director of the taxpayer.

In other words, long-term insurance policy premiums paid by an employer (taxpayer) on behalf employees no longer have to form part or be included in the taxable income of the employee, in order for it to be deductible for the employer.

General deductions allowed in determination of taxable income (Section 17(2)):

The aggregate of the amounts that may be deducted for contributions towards pension funds, provident funds, retirement annuity funds, education policies and long-term insurance policies were amended from N\$40,000 to N\$150,000.

This amendment is applicable for the year of assessment commencing on or after 1 March 2022.

Taxpayer responsible to furnish a return of income(Section 56):

Section 56 adds subsection 2(A) to make provision for the submission of a return on income in electronic format.

Examination of return and assessment (Section 67):

Section 67(2) makes provision for the notice of assessment issued to the taxpayer to be provided in electronic format.

Accounts and recovery proceedings in respect of certain taxes (Section 81):

Section 81 now distinguishes between penalty and interest and allocation of payment. Payments by a taxpayer will first be allocated to the tax liability, interest and then payment of the penalty. Before the amendment, payments were first allocated to the tax liability, penalty and then interest.

Overview

Income Tax (continued)

December 2022



Determination of taxable income of certain persons in respect of international transactions (Section 95A):

Section 95A inserts Subsections (4) and (5), which disallows tax deductions for the interest payable or any realized currency exchange loss resulting from the granting of financial assistance by a non-resident company who owns 25% or more in a resident company, to such resident company, where the ratio of financial assistance to fixed capital of the resident company exceeds 3:1, and only for the part of the financial assistance which exceeds this ratio. However, the right to deduct interest expense or currency exchange loss can be granted on application to NamRA.

All of the above income tax amendments are effective 1 January 2023, except for section section 17(2) amendment, where this amendment is applicable for the year of assessment commencing on or after 1 March 2022.

Overview

Value Added Tax

December 2022



Registrations (Section 15):

Section 15(1)(c) was inserted to make allowance for the registration of persons who *intend* to carry on a taxable activity and is *likely* to make taxable supplies, but only after a period of time. Such registration shall take effect only from the commencement of the taxable activity.

Calculation of tax payable by registered person for a tax period (Section 18):

Section 18(a)(i) and (ii) was amended that the taxable activity conducted and importation of goods by the registered person during the tax period or preceding tax periods should be connected with the making of taxable supplies by the registered person. Input tax is therefore only deductible should it comply with this provision.

The addition of Section 18(5) sets out the circumstances in which a person who registers under Section 15(1)(c) may claim input tax. *A registered person can therefore claim the input tax paid in respect to taxable supplies made, where the taxable activity is directly connected to the intended making of future taxable supplies.*

Refund of tax (Section 38):

Section 38(1)(a) now includes refunds to persons registered under the new Section 18(5) for input tax.

This means that a person *intending* to claim input taxes may now only do so if the taxable activity they are conducting is connected with the *intended* taxable supplies.

Tax as a debt due to the state (Section 31):

Section 31 now states that payments by a registered person will first be allocated to tax liability, interest and thereafter to any penalty payable.

Interest on delayed refunds (Section 39):

Section 39 now adds Section 39(2) which determines that interest on delayed refunds will not be paid to a registered person who became registered in terms of Section 15(4) (*i.e. where taxable supplies are made after a period only and is estimated to be between N\$200,000 – N\$500,000*), or whose refund claim was placed on hold or rejected prior to the commencement of this Section 39(2).

Section 39(3) determines that Section 39(2) does not apply to a person who is registered under the provisions of Sections 15(1)(c) (*i.e. a person who intends to carry on a taxable activity/or likely to make taxable supplies*) or 15(4) after the commencement of this Section 39(2).

Schedule III is amended to include sanitary pads and the supply of sanitary pads as one of the items which VAT should be at 0%

Overview

Stamp Duty

December 2022



A **N\$100.00** stamp duty is now payable on an existing bond that is transferred to a special purpose entity for securitisation or for Bank of Namibia regulatory purposes.

Section 23 now includes the definitions of "assets" "securitisation" and "special purpose entity".

Amendment of section 23 of Act No. 15 of 1993

1. Subsection (1) of section 23 of the Stamp Duty Act, 1993 (Act No. 15 of 1993) (hereinafter referred to as the "principal Act") is amended by -

- (a) the insertion of the following definition after the definition of "arbitrage transaction":

“assets”, for the purpose of securitisation transaction assets, means those assets with generally predictable revenue streams or similar features and can be transformed into a marketable debt security and these assets may be in the form of mortgage loans, auto loans, credit cards, trade receivable and other loans;” and

- (b) the insertion of the following definitions after the definition of "nominee company":

“securitisation” means the process by which assets originally made by a banking institution or non-bank financial institution are pooled and sold to a special purpose entity that issues marketable or tradable securities against the pooled assets;

“special purpose entity” means a company, trust or insolvency remote entity, incorporated, created or used solely for the purpose of implementation and operation of traditional or synthetic securitisation schemes.”.