



INCOME TAX AMENDMENTS

Tax Alert 2/2022 - Namibia

The 2022 Income Tax amendments have been passed in Parliament in late November 2022. The Amendment Act is now being prepared for the President's signature and will then be gazetted. We anticipate that the Income Tax Amendment Act will be gazetted by 31 December 2022, but this still needs to be confirmed. The amendments discussed here will be effective from the first day of the month after the Act is gazetted (except where otherwise indicated), i.e., if the Act is gazetted on or before 31 December 2022, the amendments will be effective from 1 January 2023.

The Income Tax Amendment Act includes the following amendments:

Contributions to pension funds, provident funds, retirement annuity funds and educational policies

The Income Tax Act allows for a deduction of contributions made to registered Namibian pension funds, provident funds or retirement annuity funds and premiums paid to education policies.

The current aggregate maximum deduction to such funds and policies is N\$ 40 000 per annum. This maximum deduction is now increased for the first time in eleven years to N\$ 150 000 per annum.

The increased deduction will be effective from 1 March 2022. As the Income Tax Amendment Act is only expected to be gazetted during late December 2022, this will mean that a deduction adjustment will have to be made in January and February 2023 for those employees that contribute more than N\$ 40 000 per annum. If such an adjustment is not made employees that contribute more than N\$ 40 000 will be in a tax refund position.

Keyman policies

The current Income Tax Act allows for the deduction of premiums to keyman policies. The deduction is however limited to N\$ 40 000 per annum and is only allowed if the premium is included in the relevant employee's taxable income. This latter requirement has been removed. The amendment discussed above, is also applicable to premiums paid in respect of keyman policies. This means that premiums up to a maximum of N\$ 150 000 per annum may be deducted. Also such premiums do not need to be included in the employee's taxable income anymore for the amount to qualify as a deduction .

Deemed source provision – petroleum licences or rights

From 30 December 2015, the sale of any petroleum licence or right or the sale of shares in a company that, directly or indirectly, owns a petroleum licence or right, became subject to corporate income tax.

A similar provision is applicable for the sale of a mineral licence or right or shares in a company that, directly or indirectly, owns such a licence or right. The provision relating to mineral licences or rights was introduced into the Income Tax Act from 30 December 2011 together with a deemed source provision. The deemed source provision states that such a transaction is deemed to be of a Namibian source irrespective of where the transaction was concluded, the place where payment is made or where funds from the payment is held. As the Namibian tax system is sourced based, this deemed source provision confirms and ensures that transactions of this nature are taxed in Namibia.

The section in the Income Tax Act that deals with petroleum licences or rights currently did not have a similar deemed source provision. The 2022 amendment is now aligning petroleum related transactions to mineral related transactions by extending the deemed source provisions to petroleum related transactions. It follows that any sale of petroleum licences or rights or shares in companies that directly or indirectly owns such licences or rights will be deemed to be of a Namibian source irrespective of where the transaction was concluded, the payment is made or the funds are held.

Thin capitalisation

Thin capitalisation provisions allow the Namibian Revenue Agency ("NamRA") to disallow the deduction of interest paid by a Namibian taxpayer to a non-Namibian related party where the financial assistance is regarded as excessive. The current Income Tax Act is silent on what is being regarded as excessive financial assistance. The 2022 amendment now introduces a safe harbour ratio of 3:1, i.e., if the ratio between debt and equity of the Namibian taxpayer is above 3:1, the entity will be thinly capitalised and interest deductions will be limited.

The 2022 amendments further allow for a Namibian taxpayer to apply to the Minister of Finance (we assume to NamRA) for a higher ratio. Such a request will be accepted where the circumstances and risks associated with the business of the applicant warrant such a request.

The Amendment Act does not contain any further guidance as to what circumstances and risk factors would be taken into account by the Ministry/ NamRA in considering an application of this nature. We hope that clear guidance will be provided in due course.

Administrative provisions

The Amendment Act announces a number of administrative provisions including:

- Submission of tax returns in electronic format;
- Issuing of assessments in writing or electronic format; and
- The application of any payment made by a taxpayer to tax first, then interest and lastly penalties. This amendment is welcomed because at this point in time payments are absorbed by tax and penalties before they are allocated to interest. If one then submits a request for the waiver of penalties manual intervention is required for the penalty payment allocation to be reversed before the waiver request can be considered. Also, NamRA normally requires all tax and interest balances to be cleared before waiver requests are entertained. With the introduction of this provision, these administrative issues will be eliminated.

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