

Tax Alert

January 2023

KPMG in Namibia



2022 Income Tax and VAT Amendment Acts

The Income Tax Amendment Act No 13 of 2022 and the Value-Added Tax Amendment Act No 14 of 2022 were published in the Government Gazette on 29 December 2022.

We set out a summary of the amendments below:

Income Tax Act:

Deemed Source

Amended Section 15 (9) to include paragraph (q) of the gross income definition.

- This addition deems any amount received from the sale of a petroleum licence or the right to mine petroleum, including any amount received from the sale of shares in a company which directly or indirectly owns such a licence or the right to mine petroleum, to be from a Namibian source.

Keyman Policy

Amended Section 17(1)(w) by deleting subsection (i), which provided for the deduction of premiums that were included in the taxable income of an employee or director of the taxpayer.

- This amendment has the effect of limiting the circumstances under which a deduction can be claimed under Section 17(1)(w) for expenditure incurred on a key man insurance policy. Deductions are only applicable under circumstances where the policy is:
 - a risk policy providing for cover against losses arising from the death, disablement or severe illness of an employee or director of the taxpayer;
 - a risk policy with no cash value or surrender value prior to maturity date of the policy or the death of the employee or director whose life is insured under the policy;
 - owned by the taxpayer at the time the premiums are paid, however should the policy be held by a creditor as security for a

- debt of the taxpayer, the deduction of the premiums are still deductible; and
- iv. no scheme exists in terms of which any amount recoverable under the policy is to be made over by the taxpayer to an employee or director, their estate or any dependants.

Contributions to pension fund, retirement fund and education policy

Amended Section 17(2) with effect from 1 March 2022, to increase the tax deductibility of total contributions to a pension fund, retirement fund and education policy contributions from N\$ 40 000 to N\$ 150 000 per annum.

Electronic Format

Amended Section 56 to provide for the electronic filing of returns and waive the requirement for the return to be signed by the person filing the return.

Amended Section 67(2) to allow for the electronic issuing of notices of assessment.

Payment Allocation

Amended Section 81(4) to provide for the allocation of the payment of any tax debt firstly to tax, followed by interest and lastly to penalties.

Thin Capitalisation Rules

Amended Section 95A to disallow the deduction of any interest expense paid to a non-resident investor and any realised currency exchange loss in respect of financial assistance granted to a resident company that exceeds the prescribed 3:1 ratio.

- The introduction of this section makes room for taxpayers to approach the Minister to exceed the 3:1 ratio where the circumstances and the associated business risks warrant the company to exceed the prescribed ratio.

All Income Tax amendments are effective from 1 January 2023.

Value-Added Tax Act:

General Amendment

Substituted the words “prescribe” or “prescribed” with the words ‘determine’ and ‘determined’, when used in relation to the Commissioner.

‘Assessment’ definition

Provided for a definition of ‘assessment’ in Section 1.

- The definition refers to the determination by the Commissioner of an amount upon which VAT is leviable under the VAT Act is chargeable or the amount of such tax, penalties, and interest.

VAT registration

Introduced Section 15(1)(c) to enable a person who is engaged in a taxable activity but not yet making a taxable supply to be registered for VAT. Such registration would take effect from the commencement of the taxable activity.

Claiming of a VAT refund

Amended Section 18(1)(a)(i) and (ii) to provide that the conducting of a taxable activity or the importation of goods by a registered person must be connected to the making of taxable supplies. In that regard, input tax can only be claimed in respect of a taxable activity that relates to the making of taxable supplies.

Introduced Sections 18(5)(a) and 18(5)(b) to allow taxpayers registered under Section 15(1)(c) to claim input VAT in respect of a taxable activity or the importation of goods carried on in connection with the intended future making of taxable supplies.

Assessments

Amended Section 25 to enable the Commissioner to determine the way a tax return or notice of assessment may be furnished or served.

Payment Allocation

Amended Section 31(6) to provide for the allocation of VAT payments, firstly to the tax balance, followed by interest and lastly to penalties, in line with the Income Tax Act.

Refund of tax

Introduced Section 38(1)(a) to allow for a claim of a refund of the total amount claimed under the new Section 18(5).

Interest on delayed refunds

Introduced Sections 39(2)(a) and 39(2)(b) disallowing the payment of interest on a refund amount if the registration was voluntary (based on the provisions of Section 15(4) enabling voluntary registration where a taxpayer does not meet the VAT threshold of N\$ 500 000).

Introduced Section 39(3) to make clear that the denial of the payment of interest does not apply to persons who are registered in terms of the new Section 15(1)(c) or Section 15(4), after introduction of this subsection.

Zero-rating

Introduced the zero rating of sanitary pads in Schedule III. Para1 of the VAT Act also now includes a comprehensive definition of ‘sanitary pads’.

All VAT amendments are effective as from 1 January 2023.

