THE NAMIBIAN TAX CONSORTIUM

REPORT ON TAXATION

IN NAMIBIA

DECEMBER 2002

RESEARCH DOCUMENTS

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Directorate: Customs and Excise - Namibia

Background

We have conducted a five-day Customs and Excise review on the Directorate: Customs and Excise in Namibia during the period 14 October 2002 to 18 October 2002.

The review included the following:

- Interviews with various Officers within the divisions Administration, Operation and Legal & Technical Services.
- Revision of working documents.
- Revision of structures.
- Inspections of activities and premises.
- The following Customs and Excise offices formed part of the review:
- Windhoek Head Office.
- Windhoek Regional Office.
- Hosea Kutako International Airport.
- Buitepos Border Post (Trans Kalahari).
- Walvis Bay Regional Office, including the harbour and the airport.

The objectives

The objectives of the review were as follows:
To evaluate the Directorate: Customs and Excise system from a management perspective.

- To review collection procedures and practices and to benchmark them with reference to effectiveness and efficiency.

- To identify factors that may lead to tax evasion.
- To determine structural changes that may be required to improve the system.
- To assess the adequacy of the existing system.
- To assess management information and risk management.
- To determine whether there are adequate resources and the skills level of resources.
- To recommend a plan of action for improvement.
- Assess the desirability of uniting Customs and Excise and Inland Revenue in one revenue authority.

The Directorate: Customs and Excise mission statement

"Our purpose in Customs and Excise is to protect society with respect to the international movement of goods and people, to collect and secure revenue, facilitate trade whilst exercising appropriate control, and to advance Namibia's interest regionally and internationally in these areas".

The strategic goals of the Directorate: Customs and Excise

The strategic goals of the Directorate are as follows:

- Maximise voluntary compliance through clear Customs procedures.
- Optimise revenue collection through efficient controls.
- Deter tax evasion.
- Enhance staff development and performance.
- Improve ability to gather and analyse trade statistics.
- Active participation in regional and international organizations.

Below are our findings as a result of the interviews/observations/inspections of the various sections within the Directorate: Customs and Excise.

Findings at Windhoek Head Office and Regional Office

The Customs and Excise Act, No 20 of 1998 ("the Act") was published in the Government Gazette of the Republic of Namibia on 30 June 1998 in Windhoek. The Act is therefore applicable and used by the Directorate: Customs and Excise.

Public awareness campaign

We have observed that the Directorate: Customs and Excise is participating in a public awareness campaign. Their motto is "Happy to serve". The vision goals of the awareness campaign are as follows:

- To inform the public in respect to its obligations under the law in order to achieve voluntary compliance.
- To foster progressive partnerships based on mutual trust.

Various brochures have been printed and it focuses on:

- The Namibian Customs and Excise Charter.
- General information on customs procedures.
- An easy and economical way of clearance of goods.
- Automated System for Customs Data ("ASYCUDA").
- Public information.

We are of the opinion that the public awareness campaign brings Customs and Excise to the public and provides them with general information and procedures on customs related matters. The information is clearly illustrated and understandable. The awareness campaign should contribute to a positive image of Customs and Excise.

Technical services

Under the Controller: Technical Services, four sections exist, they are:

- Technical Control.
- Audit of enterprises.
- Classification/Valuation.
- Origin.

During our meetings it was observed that the ASYCUDA system has been introduced to Customs and Excise and it is going to be upgraded and will be known as the "ASYCUDA + +" system. The United Nations Conference on Trade and Development ("UNCTAD") has developed the computer system by using harmonized customs documents and codes, to enable the community to verify the application of preferential rates within the member countries.

It was observed that various offices are not linked to the ASYCUDA system and Officers have no computers at all.

The following other key issues were identified:

- The Officers have expressed a concern with regards to the interpretation of financial statements and audit procedures from a risk management perspective.
- List of prohibited and restricted goods are not generally updated.
- The Officers have expressed a concern that expertise is required in the fields of customs valuation and tariff classification.
- The Officers have expressed a concern that there is a lack of transport in order to conduct inspections (for example vehicles).
- The Officers have expressed a concern that there is a lack of equipment in order to profile companies.
- The IT system is only linked to Head Office and the border posts are not linked at all.
- The Commissioner does tariff rulings and determinations.
- No specific targets are set.
- A shortage of manpower is experienced as a result of losses to the private sector.
- The Customs and Excise system is not integrated with Inland Revenue.

We have reviewed the post clearance audit manual and it needs improvement.

The Windhoek Regional Office

The railway station and Eros Airport fall under the Windhoek Regional Office. The Windhoek Regional Office is also responsible for the Customs warehouses.

The following issues were identified:

- The Officers have expressed a concern that there is lack of manpower.
- The Officers have expressed a concern that there is a lack of specialised skills in tariff classification and checking procedures.
- Lack of equipment, for example forklifts, scanners and manual scanning is required to scan passengers and baggage.
- The warehouse section is not linked to ASYCUDA.
- Illegal importation of vehicles in transit.
- Deferment of VAT. There is no mechanism in place in order to follow-up whether the VAT is paid.
- No control mechanisms are put in place to deter corruption by Customs Officers.
- No validation of duty credit rebate certificates, therefore it could lead to abuse of the rebate provision.

Training

The training division in the Directorate: Customs and Excise is responsible for all the relevant training of specific technical procedures within Customs and Excise. The training courses are conducted at Head Office in Windhoek and also in South Africa. The duration of the courses are between 3 to 30 days.

We were provided with an annual training plan for the period April 2002 to March 2003. The training courses include the following:

- Basic training.
- ODS.
- AGOA – Origin.
- Checking Officer course.
- Train the trainer course.
- Intermediate course.
- Customer care course.
- Export Processing Zone ("EPZ").
- Advance course.
- Valuation course.
- Intermediate course.
- Review and planning.
- The following key issues were identified with regards to training:
- A lack of computers and training facilities.
- Few requests are received from managers for training of Officers, therefore a lack of policy from Head Office in this regard.
- No feedback from the managers is received regarding training courses completed by Officers.
- The Officers have expressed a concern that Managers do not have a valuation programme in place in order to monitor Officers' performance.
- The training materials have been evaluated. We recommend that the training materials be improved in such a way that theory can be related to practice.
- Officers mentioned that Officers experience a delay in decision-making and implementation of decisions.

Functional Services

The Functional Services division consists of the following sections:

- Revenue Control.
- Information Technology (newly established section).
- Logistics.

The Revenue Control section is also responsible for refund and drawback applications. The Logistics section manages the pool of vehicles allocated to the Directorate: Customs and Excise.

The flowing issues were identified:

- A constrained budget. The demand for computers by Officers exceeds the budget allocated.
- The Officers have expressed a concern that there is a lack of financial accounting skill of Officers.
- The Officers have expressed a concern that there are no VAT refund facilities available at exit points.
- The Officers have expressed a concern that there is a delay in decision-making and implementation of decisions are experienced by Officers.
- We were informed that Officers are not evaluated on their performance.
- It was a concern for Officers that they have to apply for an advertised position to move up in the ranks.
- The idea of Inland Revenue merging with the Directorate: Customs and Excise is supported, because Customs and Excise is involved in collecting VAT on behalf of Inland Revenue.

Human Resources

The following key issues were identified:

- The Officers have expressed a concern that there is a lack of computers.
- Shortage of skilled manpower specific with a financial background.

- Backlog of processing entries at ports due to manual processing.
- Restructuring of staff (transfers). A concern has been expressed that Officers are not consulted.
- The filing systems are not up to standard. There is a shortage of storage facilities.
- Trade statistics are done manually (lack of communication).
- It was furthermore indicated that there are 40 positions vacant within the Directorate: Customs and Excise.

Legal services

The legal services division is divided into three sections. They are:

- Preventative measures and investigations.
- Legislation and litigations.
- International matters.

The following issues were identified:

- There are no Officers with legal qualifications or background. Therefore the interpretation and the litigation of the Act are not possible.
- The Officers have expressed a concern that the delegation of work is non-existing due to the fact that junior Officers have no experience.
- The division is responsible for the tariff amendments. The process for gaze ting and publishing the amendments takes long. The amendments are obtained from the Internet, the South African Revenue Service's web page. The amendments are not sent to the border posts promptly.
- The Officers have expressed a concern that Officers are transferred without consultation.

Hosea Kutako International Airport

The Hosea Kutako International Airport was visited. Officers were interviewed and observations were made.

The following issues were identified:

- The Officers have expressed a concern of a shortage of manpower. Officers are overloaded with work. Traders and clearing agents are complaining about the slow service.
- The Officers have expressed a concern of a lack of adequate office space.
- The Officers brought a shortage of computers to our attention.
- The Harmonized Customs Tariff book is not updated.
- The x-ray machine was not working therefore smuggling of goods may occur.
- The cameras were not functioning.
- The trade statistics are done manually and sent to Head Office.
- It was observed that there is no adequate security when cashiers take payments to the bank.
- The Officers have expressed a concern that there is a lack of customs knowledge by the Officers despite having attended the customs courses.
- It was expressed that the public cannot differentiate between immigration and Customs and Excise.
- There were no screening machines and dogs to help with the examination process.
- The Officers indicated that they rely on profiling passengers in order to examine their baggage.
- The Customs and Excise Officers do not support the transfer policy.
- There is no rotation of Officers.
- The Customs Officers are demoralized because of a lack of equipment and low remunerations.

- The Officers are experiencing problems in terms of relating theoretical training with the practical implementation of the knowledge.
- There are no VAT refund facilities at the airport.
- There is a lack of specialized knowledge and expertise to detect fraudulent transactions.
- The export verifications are not done presently because of a lack of facilities, manpower and room.
- It was observed that the purchaser's travel information is not verified prior to the sale at the duty free shop. We therefore conclude it is possible for duty free sales to be made to purchasers who are not entitled to such sales.

Buitepos Border Post (Trans Kalahari)

An interview was conducted with the Acting Chief of Customs and Excise and two Customs and Excise Officers. The procedures used to clear goods and existing equipment were evaluated. The Officers were also tested on their knowledge with regards to Customs and Excise matters.

The following issues were identified:

- The Officers have expressed a concern that there is a lack of specialized skills.
- The Officers have expressed a concern of a shortage of manpower and equipment.
- The Harmonized Customs Tariff Book is not updated. Tariff amendments are not received from Head Office on a regular basis, if received at all.
- It was observed that the computers were not working during our visit.
- An examination facility was erected last year without any examination equipment. The facility is unutilized at the moment.
- It was observed that the room, which the cashier occupies, is not adequately secured.

- It was observed that the Customs documents were not properly stored. There are no storage facilities.
- The Officers have expressed a concern that a lot of informal traders from Zimbabwe are smuggling goods into Namibia.
- The border post is situated at a remote area, with the nearest town being 110 km away. There are also no recreational facilities or amenities (clinics and schools) available for Officers.
- Trade statistics are done manually.
- The Officers have expressed a concern that there is a lack of feedback from Head Office regarding issues referred to them.
- Bonds which are lodged to secure the payment of VAT which are deferred, are not linked with the other border posts to ensure that the same bonds are used elsewhere. Therefore, the amount deferred exceeds the bond amount.
- There is a shortage of stationery. It takes some time to receive stationery from Head Office.
- Examinations of cargo are not being done due to a lack of equipment and manpower and, therefore, examinations are minimal.
- The Officers have expressed a concern that they do not agree with the transfer policy.

Walvis Bay Regional Office ("Western Regional Office")

We have visited the Customs and Excise office in Walvis Bay on 16 and 17 October 2002. We have met with various officials from the Walvis Bay Customs and Excise office. Our findings and recommendations are based on the information that we obtained through interviews with the Customs and Excise officials and through practical inspections and observations.

Current structure

The Controller of Customs and Excise heads the Customs and Excise office in Walvis Bay ("the Controller"). Under the Controller two Chief Customs and Excise Officers' positions exist, one is currently acting Chief Customs Officer responsible for administration. Under administration the Chief Officer's responsibilities are:

- Clearance Control (Imports and Exports) (7 officers).
- Excise (1 officer).
- Refund and drawbacks (1 officer).
- Depot Control (1 officer).
- Inspections and warehouses (2 officers).
- Swakopmund Station (2 officers).

The other position is the Chief Customs and Excise Officer responsible for outdoor control. Under outdoor control the Chief Officer's responsibilities are:

- Harbour and Airport.
- Shipping.
- State Warehouse and Examination.
- Terminal Control (1 official).

1 Senior Customs and Excise Officer and 4 Customs and Excise Officers

Management procedures

We were informed that a management workshop meeting takes place bi-annually at a different regional office. The Controllers of the different regional offices represent their offices at the meeting. The Deputy Directors and Director of Customs and Excise represent Head Office in Windhoek. During the meeting the proposals of the previous meetings are discussed and it is determined whether the goals have been met. New action plans and objectives are proposed for the following period.

Action plan

The action plan is divided in six activities namely, task; results wanted; steps to take; responsible party; starting date and completion date.

The annual action plan task list for the period 2002/3 consists of the following:

- Inspection of all warehouses and rebate stores.
- Inspection of all Export Production Zone ("EPZ") enterprises.
- Collection of taxes and duties on foreign registered vehicles.
- Follow-up on time expired temporary imports through "carnet de passages".
- Public auction on forfeiture goods in the State Warehouse.
- The replacement of a redundant vehicle.
- Creation of offices.
- Renovations of building and parking space/driveway.
- Repair of broken and falling fence.
- Asycuda system for Swakopmund.
- Attachment of members of management to South Africa's harbours and airports.
- Follow-up refreshment training session for staff members.
- Revision of establishment for the region.

It should be noted in terms of the action plan for the period 2002/3 only 38% of the abovementioned tasks focus on customs and excise functions, i.e. risk management, whereas 62% of the tasks focus on "soft issues".

We therefore recommend that the focus should be extended to more Customs and Excise related matters, for example excise duty on fuel, obtaining information with regards to the

Motor Industry Development Programme ("MIDP"). Monitoring of imported vehicles cleared as remove in transit ("RIT").

In terms of the abovementioned tasks, a task is, "follow – up refreshment training sessions for staff". In this regard we recommend specialist training on technical issues for example, tariff classification, customs valuation, the duty structure, normal customs duty under Schedule 1 Part 1, excise duty under Schedule 1 Part 2A, ad valorem duty under Schedule 1 Part 2B, anti-dumping duty under Schedule 2.

Tariff classification

The correctness of classifying a product under a tariff heading is important due to the fact that if a product is classified under a "duty free" heading whereas it should have been a dutiable heading, it will result in a loss of revenue to Customs and Excise. A Customs and Excise Officer should be in a position to classify any imported/exported product.

Customs valuation

The steps of valuation are a critical aspect within Customs and Excise. If an imported product is under declared for customs duty purposes, it will result in a loss of revenue, i.e. customs duty and Value-Added Tax ("VAT") for Customs and Excise. It should be noted that various costs and charges could be included or excluded in the customs value. The point of evaluation is a critical factor in determining the customs value. A Customs and Excise Officer must be in a position to identify a cost or a charge on a commercial invoice to be included or excluded in the customs value.

Rebate stores/Manufacturing warehouses inspections

In terms of the action plan for the period 2002/3 only three months have been allocated for inspections of all registered rebate stores and bonded warehouse facilities.

In terms of the information provided to us the following numbers of rebate stores, ordinary warehouses, manufacturing warehouses and clearing agents are registered with Customs and Excise:

- Rebate stores – 27.
- Ordinary storage warehouse – 25.
- Manufacturing warehouse – 4.
- Clearing agents – 26.
- EPZ registrants – 7.

We therefore recommend that the inspections of the rebate stores/manufacturing warehouses should be conducted on an ad hoc basis throughout the year as may be identified by the Controller or Chief of Customs and Excise. In terms of the abovementioned quantities of registrations, a period of three months will not be adequate to entertain a full inspection on all registrants.

The action plan 2002/3, inspectorate section has only identified 10 rebate stores to be inspected for the period. Therefore only 37% of the rebate stores will be inspected. We, therefore recommend that a policy procedure be implemented to address this issue.

Findings

During our visit we have been taken to the following facilities:

- The clearance control of Customs and Excise, Walvis Bay.
- The Customs and Excise State Warehouse.
- A Customs Warehouse facility.
- An EPZ registrant.
- The harbour.
- Walvis Bay International Airport.

The purpose of the visits was to observe the activities that took place and also to identify procedures and systems. Our findings are as follows:

The clearing control

It has been observed that the clearing control process is as follows:

- The input officer will capture the information of, for example the bill of entry, import ("NA500") on the computer.
- A "Customs Control Advice" will be printed and it contains the information relating to the tariff heading, customs duty and VAT payable.
- The clearing agents for each consignment produce a Customs Worksheet.
- The checking officer will then check the information on the bill of entry.
- The VAT number is verified. (Linked with Inland Revenue).
- A release order will then be issued if all documents are in order.

During the observation it was identified that the checking officer has the necessary "customs books" available to conduct the checking, they are:

- The Harmonized Customs Tariff.
- Prohibited and Restricted book.
- Explanatory Notes.
- Alphabetical Index.

There is no register in terms of documentation received by Customs and Excise. We were also informed that the amendments of the tariffs are received late. If a tariff amendment is published in the Government Gazette in South Africa, normally on Fridays, the information is not immediately available in the Customs and Excise office, Walvis Bay. The clearing agents inform Customs and Excise of the amendments and only when the information is confirmed by Customs and Excise's ASYCUDA system, it is effective. The information is provided as it is published in South Africa. The amendments are not published in Namibia.

It was mentioned that if there were a problem with for example a bill of entry (incorrect tariff classification) at the checking point, an assessment would be issued which include a penalty as determined by the Controller.

It was furthermore noted that the clearing control section has problems in printing the "Customs Control Advice". No printer was available during our visit. The result is a backlog of processing entries. The documents are presented with the advice to the checking Officer.

Payment of customs duty and VAT

The clearing agents normally submit the completed bills of entry and other customs documents. They are registered for VAT and the relevant VAT number is indicated on the bill of entry. The VAT number is verified by the checking officer and the payment of the customs duty and VAT will be deferred (payment after 20 days every month).

If, for example, an importer is not registered for VAT and the importer is not a clearing agent, payment of the customs duty and VAT will take place at the office. A bank guarantee cheque or a cash payment will be accepted. A Customs and Excise Officer use a cashbook to enter the payment and to keep record of the payment.

The Chief Customs and Excise Officer, Administration then verifies the cashbook and payments received. Verification takes place on a daily basis and it was identified that Internal Audit has verified the cashbook during May 2002. It was also mentioned that the Internal Audit takes place annually. We did not review the verification procedure.

It should be noted that there is not enough columns in the cashbook to accommodate the various entries. The following payments are indicated in the cashbook:

- Customs duty.
- Excise duty.
- Ad valorem duty.
- VAT.
- Provisional payment.
- Special attendance.
- State warehouse rent.

- Penalties.
- Additional duty.

Special attendance is where Officers have to conduct after hour inspections. A fee is charged at N$50 per hour per officer. Normally these investigations are conducted on farms and when consignments are escorted to border posts, for example vehicles.

The additional duty includes a milk, fuel and pasta levy.

Refunds

The Controller approves the payment of refunds. For example if the quantity of goods imported is less than indicated on the bill of entry, the following documentation is submitted to Customs and Excise for a refund:

- Voucher of Correction (to amend the quantity on the bill of entry).
- An explanation in terms of the letter for the reasons of the application for a refund.
- A credit note (if applicable).
- A NA66 (application for a refund).

The Customs State Warehouse ("CSW")

We have observed the CSW and the a few goods were stored in the CSW. The reason for this was that the goods in the SCW were auctioned. It was also observed that a stolen vehicle is stored in the CSW for the Namibian Police. It should be noted that only goods detained by Customs and Excise should be stored in a CSW.

The record keeping of the CSW should be improved. A record should be kept of all goods entered the CSW and when the goods are released from the CSW, i.e. when provisional payments are paid to release the goods and if not cleared, the goods are auctioned.

Customs warehouse facility

We have visited a registered customs warehouse facility. Various goods are entered into the warehouse and the goods are released for home consumption in Namibia or for export. No prior meeting was scheduled with the registrant. The warehouse manager ("WM") welcomed us. The warehouse register is kept by the WM and is called "bonded warehouse clearance sheet". A date, bill of entry number, description of goods and the quantity appeared in the register for imports. The same information appeared for exports or it is indicated that the customs duty and VAT have been paid (C470) when goods are cleared for home consumption.

We have reviewed the abovementioned register and it was found that Customs and Excise has inspected the warehouse on 24 September 2002. A Customs and Excise stamp appeared on the register.

We have identified one import entry that was indicated in the register with a balance. A balance of 5 boxes was indicated on the register. We were taken into the warehouse and the 5 boxes of goods were in the warehouse. A warehouse stock control sheet was also on the boxes that indicated the details of the import transaction. The goods were entered into the warehouse on 16 September 2002.

The warehouse is fenced off and the gate has a lock on. We conclude that the registrant of the customs warehouse keeps effective records of goods that are cleared into the

warehouse and when it is cleared out of the warehouse. Customs and Excise has conducted reviews of this warehouse on a quarterly basis.

EPZ registrant

We have visited an EPZ registrant. The registrant manufactures automotive components for the export market. No appointment was made to review the registrant's records.

During our visit it was also identified that the registrant is registered in terms of the Motor Industry Development Programme ("MIDP"). In terms of the EPZ, no customs duty and VAT is payable on imported goods. The imported goods have to be used in the manufacturing of products for the export market.

The registrant keeps records of all the import and export documentation. Due the nature of the business it is not always possible to prove that the imported goods were exported. According to the registrant a Customs Officer paid them a visit the previous day regarding the record keeping. Balances should be kept of the imported goods that are used in the manufacture process of exported goods.

It was furthermore identified that raw materials are scrapped and sold to the domestic market and faulty goods not fit for the export market are sold to the domestic market. The registrant was informed that permission has to be obtained from Customs and Excise before the goods are sold locally. Customs duty and VAT has to be accounted for when goods are then cleared for home consumption. The registrant has to keep record of goods sold to the domestic industry.

The registrant's export documentation was reviewed. In terms of the MIDP all exports have to be under Customs supervision. If a Customs and Excise Officer is not available

for an inspection, a declaration has to be signed by the registrant that an Officer was contacted, the date of the call and a reference number has to be declared. It was found that no reference is made of an attempt to contact Customs and Excise for supervision. Customs and Excise only indicated on the declaration, "EPZ export". We therefore recommend that the correct procedures be followed.

In terms of the MIDP, it was observed that Customs and Excise has no copies of the information document on the MIDP. The MIDP has been implemented in South Africa. The requirements and procedures are indicated in the information document. Customs and Excise has to increase their knowledge on the MIDP in order to enforce the rules and requirements of the MIDP.

A stock list has been prepared when the registrant initially applied for registration in terms of the EPZ. Vehicles and machinery can be imported under the EPZ without paying customs duty and VAT. We recommend that Customs and Excise review the registrant's entire original stock list to ensure it is not sold for home consumption. If a vehicle has to be replaced, Customs and Excise's permission has to be obtained and the customs duty and VAT has to be accounted for.

The harbour

Oil depots

During our visit there were no oil vessels in the harbour and therefore verification on the process was not possible.

We however understand that the process that is followed by Customs and Excise is before gas oil is released from the tanker, a "dip" is taken of the specific container at the harbour to establish the balance in the container. After the gas oil has been transferred from the

vessel to the tanker at the harbour another "dip" by Customs and Excise is taken in order to confirm the quantity transferred.

We were furthermore informed that a registrant accounts for their excise duty on a monthly basis at Customs and Excise Head Office in Windhoek.

We have not reviewed the registrant's record keeping with regards to their excise duty accounts and therefore cannot express our opinion on the correctness of it. In terms of interviews conducted with Customs and Excise Officers at Walvis Bay, specific training on excise duty was required and needed.

In terms of the risk management procedures a verification process is required to verify that the correct excise duty is paid in Windhoek on the goods that are cleared in Walvis Bay. Effective communication (an audit trail) should be improved between the Head Office in Windhoek and the Walvis Bay Regional Office with regards to the excise duty accounts.

Containers in the harbour

One Customs and Excise Officer is responsible at the harbour gate to verify the movement of containers. The clearing agent presents a manifest of the shipment three days prior to the arrival of a ship. The container numbers are indicated on the relevant customs documents and when a container exits the harbour, the Customs and Excise Officer marks off the container number. Namport will not authorise the removal of a container before Customs and Excise has stamped the required customs documentation.

When the Customs and Excise Officer identifies a container for inspection, a stop note is released. A copy of the stop note is forwarded to the clearing agent. The container will

then be examined and if in order be released. If any irregularities are identified a penalty will be imposed.

The Customs and Excise Officers have identified that the lack of equipment, for example scanning machines and forklifts are preventing them to examine the containers effectively.

Walvis Bay International Airport

Scheduled and unscheduled flights arrive and depart at the Walvis Bay International Airport on a daily basis. Customs and Excise is informed prior to the arrival of a scheduled flight. Only one Customs and Excise Officer is responsible for customs control at the airport. The following issues were identified during our visit of the Walvis Bay International Airport:

- The infrastructure of the airport does not allow for effective examinations to be conducted by Customs and Excise. Customs and Excise Officers and the police share one office.
- There are no scanners available to scan incoming luggage.
- The clearance of any imported goods takes place at Customs and Excise in Walvis Bay.
- There are Customs and Excise boards which instruct passengers to follow the green line or the red line on arrival. The boards are stored in another room next to the arrival point. There is also no suitable room available in the arrival hall to set up the boards.

We recommend that attention be given to the infrastructure of the International Airport to accommodate Customs and Excise. Smuggling and the illegal entry of goods can take

place on a daily basis if there are not proper control measures in place by Customs and Excise.

Recommendations

We have set out below our recommendations.

Human Resources

Suitable qualified staff needs to be recruited and existing Customs Officers have to be trained properly on Customs and Excise related matters. In this regard we recommend that external consultants with technical knowledge on Customs and Excise related matters be engaged to assist with the training and transferring of skills to Customs Officers in specialised customs areas.

The credentials of external consultants should be considered carefully and it should be based on practical experience and focusing on delivery.

We however recommend that a survey of existing skills and a training needs assessment be conducted.

The training programme should be practical and various practical examples should be utilised in order to train Officers effectively.

Training is also required on general accounting procedures in order to equip Officers to understand financial statements.

Areas of focus should be on tariff classification, customs valuation, checking procedures and specific excise duty.

The problem of retaining Officers once they have been trained in the specialised customs areas arises. Due to the costly investment involved in training specialised Officers, an appropriate salary policy needs to be implemented to prevent the movement of trained Officers to the private sector. A bonus structure based on performance should also be considered.

The recruitment of qualified Officers presents many problems. There are also no experienced Customs and Excise Officers available to recruit from outside Customs and Excise. Salary scales have to be sufficiently attractive to attract the calibre of qualified personnel necessary, for example in the legal section. This can, of course, be a source of conflict between the new staff and the existing staff and can have a negative effect on the morale of Officers.

In order to avoid conflict, we recommend that the salary scales of all Officers be revised in order to accommodate experienced professional qualified Officers. We recommend that a position be created in order to accommodate the professional qualified Officer. A formal qualification should be a requirement for the position. It will also encourage junior Officers to obtain formal qualifications on a part time basis.

Information Technology ("IT")

During our review it was noted that the Directorate: Customs and Excise is in the process of upgrading the ASYCUDA system. Changes are time consuming and expensive. When change is spread over a long period of time, it can loose focus, funding and momentum. The system is effective as long as it can be implemented in such a way that it is tailored to meet the requirements of and addresses the problems of the existing system.

We, therefore, recommend that the newly established IT division within the Directorate: Customs and Excise should ensure that the system runs smoothly and the infrastructures are serviced and maintained on a regular basis. This might eliminate some of the IT problems presently experienced, for example at one of the border posts where the computers have not been working since July 2002 and to date it has not been fixed.

During our review we noted that a number of Customs and Excise Officers are not aware of the new system i.e. the ASYCUDA ++ system, which is in the process of being implemented. The ASYCUDA ++ system cannot be developed successfully, without the co-operation and goodwill of all the Customs and Excise Officers. In introducing any computer system, there is always the possibility of user resistance.

Effective Customs control in order to prevent customs duty/tax evasion; fraud or smuggling is the main criteria of Customs. Due to the limitation of Customs and Excise resources it is not possible, or feasible, to examine every consignment that enters a country. Therefore in carrying out their control functions, a Customs and Excise Officer must be selective. Risk assessment and the selective criteria being used in order to identify consignments for examination of documents for checking purposes are currently done, manually. If such processes are automated the selection process can be done on a much more informed and thorough basis.

Intelligence gathered by Customs and Excise Officers can be fed into the system and can be taken into account when the selection process is taking place. The probability of uncovering fraudulent practices is therefore increased where selective processing is taking place. The probability of uncovering fraudulent practices is therefore increased where selective files can be analysed more systemically, accurately and in a timelier manner.

Without over emphasising the benefits of utilising an automated Customs procedure, we observed during our review that information held manually is bulky and time consuming to evaluate and organise them properly. It is almost impossible to extract meaningful and related data from a variety of files without a very labour intensive exercise in light of the limited resources available.

Again this could be eliminated by the automation of Customs procedures and systems. Furthermore, Customs and Excise has also the responsibility of collecting trade statistics

which plays a vital role in revenue sharing between the South African Customs Union ("SACU") members. Data for the compilation of external trade statistics is generally extracted from import and export goods declarations. Where goods declarations are not processed by computer for clearance purposes, which is the case, the capture of the data takes place at a later time thereby delaying compilation of the statistics. If the declaration process is automated, the trade statistics will be structured in such a way that when the data is captured at the point of importation and exportation, the trade statistics are also compiled automatically.

The automation of Customs procedures will eliminate most of the problem areas experienced by Customs officers, for example, it will reduce congestion at border posts and airports, it will expedite the release of goods and more accurate and timely information will be available. It will furthermore strengthen resources and increase enforcement capabilities.

We furthermore recommend that the most labour incentive procedures be given first priority when the automation process takes place.

Evasion of customs duty and VAT

During the review we have identified the following areas and factors that may or are leading to customs duty evasion.

- There are no effective control mechanisms in place at all the airports. At, for example, Walvis Bay International Airport goods can be entered into Namibia without the payment of customs duty and VAT.
- There is no equipment available, for example scanners to scan passenger's luggage on arrival at International Airports in Namibia. Forklift trucks are not available to remove goods from a container.
- The lack of necessary equipment will result directly in the evasion of customs duty and goods may, therefore, be smuggled.

We therefore recommend that an analysis should be undertaken at each airport, harbour and border post to establish the necessary needs of equipment in order to enhance the effective control mechanisms by Customs and Excise Officers.

- The knowledge on tariff classification and customs valuation is not sufficient and it therefore leads to abuse by traders. We recommend that specialised training be conducted on custom valuation to Officers who assess entries in conjunction with in job training.
- Vehicles are imported in transit for export and they could enter the country again without paying customs duty and VAT. The information regarding the engine numbers should be computerised and effective procedures should be in place to identify those vehicles that re-enter the border posts.

A concern has been expressed that Customs and Excise Officers are also experiencing problems when clearing imported motor vehicles. They indicated that most of the values are under declared and the customs officials do not have means or mechanism and resources to confirm such values. We recommend that the standard uniform valuation of the motor vehicles be followed and in particular second-hand motor vehicles.

Illegal smuggling of goods into Namibia

Because of lack of examination equipment i.e. scanners, forklifts, x-rays machine, Customs and Excise officers are not able to examine the goods which are entering the country to ensure that the goods are declared on the customs documents. For example at the Hosea Kutako Airport there is no x-ray machine or any dogs available to assist Officers in examining the goods.

We therefore recommend that priority be given to equip the offices with the necessary equipment as also explained in paragraph 6.3 above.

Cabinet Ministers and Senior Government Officials

The Officers at Hosea Kutako International Airport have expressed their concern that they experienced problems with Cabinet Ministers and Senior Government Officials who import goods into the country and evade paying customs duty by requesting Diplomatic Officials to clear the goods on their behalf so that they do not have to pay customs duty because of their diplomatic status. We recommend that the matter be addressed with the parties mentioned above.

Inspection of bonded warehouse facilities

We have noted during our visit to the Windhoek Regional Office that they are experiencing problems with regards to the ratio of Customs Officers to the number of bonded warehouses which have to be inspected on quarterly basis. The present the ratio is 1:25. In most cases they are not able to inspect all the bonded warehouse facilities in one quarter and this could lead to goods going out of the bonded warehouse without customs duty being accounted for.

The payment of the excise duty on fuel in Windhoek and the actual quantities removed from the depots should be investigated in order to establish that the relevant excise duty is accounted for.

We recommend that manpower be increased and the quarterly inspection system be reviewed to address the issue.

Special investigation and audit unit

We recommend that a unit be established that will concentrate solely on collecting revenue on behalf of the Revenue Authorities. This unit will be concentrating on all taxes and conducting integrated audits. The objectives of the unit will be:

- Combat white-collar crime.
- Close loopholes in both Inland Revenue and Customs and Excise.
- Encourage tax awareness to the public and promote compliance.
- Maximise revenue collection and increase the tax base.
- Perform integrated audits.
- Identify and report unprofessional conduct.

We recommend that qualified financial professional staff with high skills and expertise be employed at market related packages. This will enable them to carry out auditing processes. We further recommend that at least a Chartered Accountant head this unit.

Application of the legislation

Customs Officers find it difficult to be certain that they have taken all existing regulations into account when processing import and export transactions because of lack of knowledge in interpreting the customs legislation. The problem can be addressed by training and the implementation of the new ASYCUDA ++ system, which is in the process of being implemented. This will ensure that all transactions are processed in a consistent manner, and also ensuring a uniform application of the legislation and the equitable treatment of the external stakeholders.

Export incentives

It has been observed that there is a lack of knowledge on the export incentives, specific the Motor Industry Development Programme and also the Duty Credit Certificate Scheme for the Textile and Clothing Industry.

We recommend extensive training on the abovementioned incentives in order to equip Customs and Excise Officers to enforce the rules and requirements of the schemes effectively.

Management procedures and processes

There is a lack of risk management procedures from Senior management, for example there is no monitoring and review of activities and processes at the border posts and ports to determine the accuracy of planning assumptions and the effectiveness of the measures and procedures which have been implemented.

We have noted that there is no methodology applied by Senior managers to use the available resources at their disposal. We recommend that measures should be taken to assist Senior managers to match customs priorities to resources.

It is recommended that meetings with Senior Officers should take place on a weekly basis within the Regional Offices in order to discuss current issues that need attention and prioritise them, for example inspections of a bonded warehouse. Availability of human resource and training should also be discussed during the meeting.

The Controller of the Regional Office should then report to Head Office on a monthly basis with regards to the status of activities within that office.

It is furthermore recommended that Controllers be empowered to deal with immediate situations, while working within the set parameters and to approve procedures.

Controllers should also concentrate on making decisions and action plans on measures to be taken to deal with issues of concerns and problem areas for example deployment of resources and to monitor activities.

Management should improve the quality of Customs control in areas like information and accountability for example, the valuation of data, compliance measures and regular audits.

Focus should be placed on high risk areas and deploying limited resources in those areas.

We evaluated current procedures and we have identified potential control weaknesses. The following areas need to be improved:

- The development of risk profiles.
- Company audits.
- Random examinations and inspections.
- Target selection (select transaction for specific checks according to trader, agent, origin of goods, tariff heading, duty rate and value).
- Physical examination (lack of equipment).

We recommend that Head Office introduce a policy document based on the requirements of the Act and Customs and Excise procedures. The Regional Offices should then follow these procedures.

The desirability of uniting the Directorate: Customs and Excise and Inland Revenue in one Revenue Authority

We have noted that all the Officers agree that uniting Customs and Excise and Income Tax into one Revenue Authority will be acceptable to them. The benefits of uniting should be carefully weighed up against the shortcomings. A shortcoming could be that staff moral is affected and the benefits of a single Revenue Authority are not fully comprehended.

The Directorate Customs and Excise is responsible for collecting VAT on behalf of Inland Revenue, therefore assisting Inland Revenue in their function.

Inland Revenue can then concentrate on an integrated audit, whereby a company's activities are going to be integrated. The accounting systems of the company will be used to verify, for example where a company is registered under a rebate provision and it will be verified how they account for those rebates which are based on their export performance. It will be reconciled with their income statement.

General concession has been expressed that the integration of the two directorates will benefit all Officers. There will be one budget and funds should be spread evenly to address shortcomings. Both directorates will report to one authority that will enhance efficiency.

General

It was furthermore observed that the Windhoek Head Office's furniture is in a far better state than those at the Regional Offices and at the border posts. In order to be consistent and to create an equal work environment and atmosphere, we recommend that the policy of upgrading offices should be consistent.

Conclusion

We wish to thank all the Customs and Excise Officers that participated in the review by sharing their knowledge and information. The Officers' friendliness and wiliness to contribute illustrated their commitment to enhance the efficiency of Customs and Excise.

In the light of the abovementioned recommendations, we recommend that steps be taken to address the key issues as soon as possible. The more effective Customs and Excise operates, the more revenue will be generated and it will contribute to a healthy economy in Namibia.

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Deemed Source

Introduction

Although there is no definition of the expression 'source within Namibia', the Act is helpful in that it deems certain receipts or accruals to be from a source within Namibia, irrespective of their actual source. In certain of these instance the legislature has departed completely from the fundamental principle of taxing only income that has its source in Namibia. In other instances the Act deems certain receipts or accruals to be from a Namibian source where the determination of the actual source presents considerable practical difficulties.

Section 15 set out the various items of income that are deemed to be from a source within Namibia, but two items are expressly dealt with in the definition of 'gross income' in s 1, namely, dividends (para (i)) and recoupments (para (n)).

In terms of para (i) dividend from sources outside Namibia are deemed to have been received by or to have accrued from a source within Namibia if they are received by or accrue to a person, other than a company who is ordinary resident in Namibia. Nevertheless, almost all dividends are today exempt from tax.

Recoupment of expenditure previously allowed as a deduction must be included in the taxpayer's income in terms of s 14 (4) and thus in his gross income under para (n). But the wording of para (n) ensure that all amounts required to be included in the taxpayer's income in terms of s 14 (4) will be deemed to have been derived from a Namibian source even though they might have been recovered or recouped outside Namibia.

Review Of Current Legislation

Sale of Goods

S 15 (1) (a) Any contract made by him within Namibia for the sale of goods, whether such good have been delivered or are to be delivered in or out of Namibia.

This provision applies even though the seller has no connection with, and does nothing more than conclude the contract of sale in Namibia.

South-Africa has the same provision in its Act, and it has been criticized by the Margo Commission and the Katz Commission. The Katz Commission is of the opinion that the provision is an example of lack of clarity and futility. It is easily and formalistically circumvented. Meyerowitz also questions the wisdom of this provision, stating that it depends upon legal subtleties as to the place of conclusion and that in any event, it can be easily circumvented.

It should be noted, however, that in terms of double taxation agreements negotiated with certain other countries, residents of such countries are exempted from Namibian tax on trading profits unless they are derived from a permanent establishment in the Namibian. The mere conclusion of a contract of sale in Namibia is therefore not sufficient to attract a liability for tax on the part of a non-resident from such a country, who does not have a permanent establishment in the Namibia.

It is suggested that this section be reconsidered and possibly be scrapped from the statute.

Royalties

S 15 (1)(b) The use or right of use in Namibia, or the grant of permission to use in Namibia (i). Any patent or design as defined in the Patents and Designs Proclamation,

1923 (Proclamation 17 of 1923), or any trade mark as defined in the Trade Marks in South West Africa Act, 1973 (Act 48 of 1973), or any copyright as defined in the Copyright Act, 1965 (Act 63 of 1965), or any model, pattern, plan, formula or process or any other property or right of a similar nature, or (ii) any motion picture film, or any film or video tape or disc for use in connection with television, or any sound recording or advertising matter used or intended to be used in connection with such motion picture film, film or video tape or disc.

Wheresoever such patent, design, trade mark, copyright, model, pattern, plan, formula process, property, right, motion picture film, film, video tape or disc, sound recording or advertising matter has been produced or made or such right of use or permission has been granted or payment for such use, right of use or grant of permission has been made or is to be made and whether such payments has been made or is to be made by a person resident in or outside Namibia: Provided that the provision of this paragraph shall not apply in respect of any amount which is received by or accrued to any person (other than a company) who is not ordinarily resident in Namibia, or to any external company, in respect of the use (otherwise than for advertising purposes in connection with any motion picture film or otherwise than in connection with television) in any printed publication of any copyright as aforesaid.

This provision does not apply to income received by a natural person not ordinarily resident in Namibia, or to an external company in respect of the use in any printed publication of such copyright, otherwise than for advertising purpose in a motion picture film or television. It is suggested that any printed publication that is subsequently also available digitally, i.e. books and magazines, should also qualify for the exclusion. The justification of this exclusion could be questioned in a tax system that seeks neutrality.

Furthermore, this provision also excludes consideration for the outright disposal of the things enumerated, as the provision only refers to the 'use or right of use…or the grant of permission to use'.

Where any of the things enumerated is assigned outright the consideration therefore, whether it takes the form of a lump-sum payment or periodical payments, is taxable in Namibia only if the natural source of the income is in Namibia.

South Africa has the same provision in their Act, and the Katz Commission has criticizes this provision , referring to the possibility that currently exists that royalty payments my be classified as such under South African law, but not covered by South African tax treaties. For example, in the commentary to the tax treaty between South Africa and the United States it is stated that as the term royalties is defined in the Convention it is therefore independent of domestic law. The Commission recommended that, for ease of understanding and international compatibility, the OECD Model Convention definition of royalty should be used.

In the case of royalties or know-how payments received by a non-resident or an external company from a deemed Namibia source, section 35 applies to subject the royalty to a withholding tax. The tax is withheld by the person paying the royalty and is paid to Inland Revenue.

Know-How Payments

S 15 (1) (c) The imparting of or the undertaking to impart any scientific, technical, industrial or commercial knowledge or information to use in Namibia, or the rendering of or the undertaking to render, any assistance or service in connection with the application or utilization of such knowledge or information, wheresoever such knowledge or information has been obtained or such knowledge or information has been imparted or is to be imparted or such assistance or services has been rendered or is to be rendered or any such undertaking has been given, and whether payment for such knowledge, information, assistance, service or undertaking has been made or is to be made by a person resident in or out of Namibia.

This section differs from the section on royalties in that it is not confined to any limited use, it includes consideration for the outright and once and for all passing on of know how. The provision also applies wherever the know -how has been obtained or has been or is to rendered or the undertaking has been give, and whether the payment have been or are to be made to a resident or non-resident. The fact that the parties concerned are non residents and that the know-how is not put into use in Namibia does not render the provision inapplicable.

In South Africa, where this same provision applies, the Katz Commission has criticize this provision, recommending that the OECD Model Convention definition of royalties should also replace this provision. The OECD definition makes no reference to services and the Commission recommended that the inclusion of services is inconsistent with the basic distinction between active and passive income. By removing services from the provision current uncertainties would be reduced and the system would find a functional resonance with international norms and practices.

The IFA, during its 51st annual congress in New Delhi (October 1997), adopted a final resolution calling on international organizations (like the OECD and the UN) to formulate guidelines to distinguish between know-how, technical services and other services. Therefore the international trend seems to be to include know-how in a wider royalties definition and to exclude services form such a definition.

It is suggested that section 15 (1 (b) and (c) be incorporated in to one definition and one section.

Royalties Flowing Into Namibia

Under the Namibian tax law income received on accrued from the exploitation of intangible property is regarded as sourced in Namibia if the intangible property was developed in Namibia, irrespective of where the asset is used to generate royalties.

(Millim CIM 1928 AD 207). The result is that royalty income generated by a Namibian resident is largely taxed on a worldwide basis under the current system.

An appropriate foreign tax credit mechanism should apply. Section 10 of the Act currently provides such credit relief in respect of royalty income.

The anti-avoidance sections in the Act should be reviewed to curb the practices whereby the taxation of royalties are avoided through their transmutation into dividends through offshore structures.

Royalties Flowing From South Africa

Where non-residents receives or accrues royalties from Namibia which are not of a Namibian sources, but which relate to the use in Namibia of the relevant intangible, the deemed source provision and withholding tax mechanism apply (S 15 (1) (b) & (c) & S 35)

Where a non-resident derives Namibian source royalties, normal tax principles apply to determine normal tax liability as well as the withholding tax mechanism apply.

The withholding tax on royalties should be simplified. The withholding tax should be calculated as a percentage of the gross royalty.

The current royalty withholding tax is for all practical purposes a final withholding tax and it is suggested that this be formalized by removing section 35 (2) (e) whereby a subsequent return can be filed in respect of a royalty.

Ship-Owners and Aircraft-Owners

S 15 (1) (d) Any business carried on by any such person who is ordinarily resident in Namibia or in the case of a company is a domestic company, as owner or charterer of any ship or aircraft, or the disposal by such person of any commodity acquired in connection with the operation of such ship or aircraft, wheresoever such ship or aircraft may be operated or such disposal of the commodity may be effected.

The South African Act constains a similar section in respect of ships and aircraft-owners.

Services Rendered

15 (1) (e) Any services rendered or work or labour done by such person in the carrying on in Namibia of any trade, whether the payment for such service or work or labour is or is to be made by a person resident in or out of Namibia and wheresoever payment for such services or work or labour is or is to be made.

South African legislation contains the same provision. This provision came under attack from the Katz commission for inhibiting the smooth flow of trade and investment across South African borders. It stated that:

This provision seeks to extend the source of active or business income and has become all but unused in view of restrictive court interpretations of its terms. As will appear it also runs counter to the notion proposed in this report.

It is suggested that this section should be scrapped from the statute.

Services Rendered

15 (1) (f) Any service rendered or work or labour done by such person outside Namibia, during any temporary absence of such person from Namibia, if such person is ordinarily

resident in Namibia and such service is rendered or such work or labour is done for or on behalf of any employer by whom such person is employed in Namibia, whether the payment for such service or work or labour is or is to be made by a person resident in or out of Namibia and wheresoever payment for such service or work or labour is or is to be made.

The South African Act contains the same provision.

Services Rendered

15 (1) (g) Any service rendered by such person to, or work or labour done by such person for or on behalf of, the Government of Namibia or a regional council or any local authority in Namibia, notwithstanding that such service are rendered or that such work or labour is done outside Namibia.

Provided that such services are rendered or such work or labour is done in accordance with a contract of employment entered into with such Government, regional council or local authority: Provided further that nothing in this paragraph shall be construed as imposing liability for taxation under this Act upon any salary or emolument paid to any person in the employment of the Government of Namibia in respect of any period for which such person is stationed in the Republic of South Africa.

The South African Act contains the same provision.

Services Rendered

S 15 (1) (h) Any services rendered or work or labour done by any such person who is ordinarily resident in Namibia, as an officer or a member of the crew of any ship or aircraft, notwithstanding that such services are rendered or work or labour is done outside Namibia and wheresoever payment for such services or work or labour is made or is to be made.

The South African Act contains the same provision.

Pensions

S 15 (1) (i) Any pension or annuity granted to such person, wheresoever payment of that pension or annuity is made and wheresoever the funds from which payment is made are situate, by:

i) The government of Namibia, or by any regional council or local authority in Namibia, or

ii) The Government of the Republic of South Africa, including the Railway Administration, if any portion of the service in respect of which that pension or annuity was granted performed within Namibia, or

iii) Any person whether residing or carrying on business in Namibia or not, if the service in respect of which that pension or annuity was granted were performed within Namibia for at least two years during the ten years immediately preceding the date from which the pension or annuity first became due:

Provided that if the pension or annuity was granted in respect of services which were rendered partly within and partly outside Namibia, only so much of such pension or annuity as bears amount of such pension or annuity the same ratio as the period during which the services were rendered in Namibia bears to the total period during which the services were rendered, shall be deemed to be derived from a source within Namibia.

The South Africa Act contains a section which is similar to this section except for part (ii) This part of the section should be reconsidered.

Interest

S 15 (2) Any interest which has been received by or has accrued to any domestic company or any person who is ordinarily resident in Namibia in respect of any loan, deposit, advance, participation bond, debenture or interest-bearing security, or any dividend distributed by any 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 Namibia wheresoever such loan, deposit or advance is made or held or participation bond is registered or debenture, interest-bearing security or any share to which such dividend relates is subscribed for or issued or held or such interest or dividend is payable.

The act, however, exempts interest :

- On investments made for business purposes and the interest or dividend is subject to tax in the foreign country or
- The capital for the investment was obtained from sources outside Namibia.

Interest Flowing Into Namibia

Due to modern technology and sophisticated financial systems investment capital has become very mobile and can be moved easily between countries not only with reference to investment advantages, but also according to tax advantages. Therefore, that is the reason why most tax systems tend to tax interest on a worldwide basis. Due to exchange controls before July 1997 Namibia has not been exposed to any material tax driven outflow of domestic capital. In view of the relaxation of exchange controls as from July 1997 there has been a significant outflow of domestic investment capital from Namibia. The essential provision is section 15 (2) in the Act which deems a wide range of offshore investments to give rise to Namibian source income. It is essential that section 15 (2) be reviewed to cover all forms of investment income.

In the Second Interim Report of the Katz Commission it was recommended that the tax system should protect the tax base independently of any exchange control measures. Failure to ensure this would make exchange controls hostage to deficiencies in the tax system.

To counter the avoidance of tax on offshore income by routing income through offshore entities, the anti-avoidance sections in the Act should be reviewed.

Interest Flowing From Namibia

Interest received or accrued to non-residents are taxed according to the real source principle (Lever Brother case that the source of interest was the making available of the credit) Certain interest are exempt in terms of section 16 of the Act.

The absence of a statutory definition of the primary source of interest has for many years created uncertainty in our tax law. In South Africa an amendment which came into operation on 1 July 1998 contained rules for the determining the source of interest.

Section 9 (6) of the South African Act deems any interest to be received or accrued from a South African source where such interest is derived from the utilization or application in the Republic by any person of any funds on credit obtained in terms of any interest-bearing arrangement. The place of utilization or application of funds in deemed to be:

- In the case or a natural person, the place where the person is ordinary resident or
- Other than a natural person, the place of effective management.

This deeming provision do not override the normal source rules, but add to them and seems to be in line with the recommendation of the 5th report of the Katz Commission which recommended that the source of interest should be statutorily defined as the

location where the credit on funds are being applied, which in most cases would be where the debtor is located.

Interest exemptions in respect to non-residents include interest received on Government, Regional council or Local authority stocks as well as certain Post Office and Building Society investments.

The South African Act however contains an exemption in Section 10 (1) (h) which exempt interest claimed by or accrued to a person who is not resident in South Africa and not carrying on business in South Africa, or any company which is not a resident and does not carry on business in South Africa. (Except for residents of neighbouring states)

To ensure that Namibia is in a position to attract foreign loan capital and stays competitive with South Africa it is suggested that the current exemptions be expanded.

Currently non-residents earning interest in Namibia are suppose to file a return to be assessed for normal tax. There is doubt of how many non-residents escapes the tax net by simply not filling a tax return. It is therefore suggested that non-residents tax on interest (NRTI) be reintroduced as a final tax on interest.

Purchased Annuities

S 15 (3) Any annuity which has in respect of any purchased annuity contract as contemplated in section 16B been received by or has accrued to any natural person who is ordinarily resident in Namibia, shall be deemed to have been derived from a source within Namibia, irrespective of where such purchased annuity contract was entered into or where the annuity is payable.

In the South African Act annuities are deemed to be South African source income under section 9 C an 9 D, which deals with investment income. In South Africa all annuities (excluding pension in respect of past employment or payment made under the social security system of any other country) from foreign sources are taxable.

It is suggested that this section be reconsidered to include all annuities from foreign sources.

Refunds of Pension Contributions

S 15 (4) Any amount referred to in paragraph (d) of the definition of "gross income" in section 1 shall be deemed to have been received by or to have accrued to any employee or the holder of any office from a source within Namibia, wheresoever the funds from which payments is made are situate.

This section is not in the South African Act.

Annuities From Retirement Annuity Funds

S 15 (5) Any amount received or accrued by way of annuity in terms of the rules of any retirement annuity fund in respect of which any contribution was allowed as a deduction under the provisions of section 17 in determining the taxable income derived by any person, shall be deemed to have been received or accrued from a source within Namibia, irrespective of when the funds from which such payments is made are situate.

This section is not in the South African Act.

If the definition of annuities are expanded as suggested it seems that this section can be scrapped.

Insurance Policies

S 15 (6) Any amount received by or accrued to any person who is ordinarily resident in Namibia or in the case of a company is a domestic company, under or upon the surrender or disposal of any policy of insurance, shall be deemed to have been received or accrued from a source within Namibia if any premium in respect of such policy has been allowed as a deduction under the provision of section 17.

The South African Act does not contain such a section.

Single Premium Endowment Policy, Provident Fund and Education Policy

15 (7) Any amount referred to in paragraph (dA), (dB) or (dC) of the definition of "gross income" in section 1 shall be deemed to have been received or accrued from a source within Namibia, irrespective of where payment of such amount is made and irrespective of where the funds from which payment is made are situate.

The South African Act does not contain such a provision

Retirment Annuit Fund: Accrued Benefits

S 15 (8) Any amount received by or accrued to a member of a retirement annuity fund shall be deemed to have been so received or accrued from a source within Namibia, irrespective of where payment of such amount is made and irrespective to where the funds from which payment is made are situate, if such member's contribution to such retirement annuity fund was made by or on behalf of such member through the payment or transfer to such retirement annuity fund of a lump sum representing his or her accrued benefit in a pension fund, because:

- Such pension fund ceased to exist; or

- The member, while being a member of such pension fund, elected that his or her accrued benefit in the pension fund be transferred to such retirement annuity fund or be appropriated to purchase an annuity with.

The South African Act does not contain such a provision**.**

Dividend

S 1 (i) Any amounts received or accrued by way of dividends, including any dividends distributed by a private company out of, or by way of the capitalization of, any profits of such company which had previously been apportioned among its shareholders in terms of the provisions of any previous income tax law as the taxable income or the income subject to super tax of such company: Provided that all dividends from sources outside Namibia received by or accrued to or in favour of any person who is ordinary resident in Namibia shall be deemed to have been received by or to have accrued to or in favour of such person from a source within Namibia.

Dividends from sources outside Namibia are deemed by the provision of para (i) of the definition of 'gross income' to be from Namibian source when received by or accrued to a person other than a company, ordinarily resident in Namibia. This provision therefore does not apply to non-residents, even though they may be carrying on business in Namibia. Almost all dividends are however today exempt form normal tax.

It seems that part of paragraph (i) above - or by way of capitalization ……. to super tax of such company - is outdated and can be scrapped.

Comparison of Deemed Source Sections Between Namibia, South Africa & Botswana

	NAMIBIA	SOUTH AFRICA	BOTSWANA
Alimony		X	
Bankers Acceptances		X	
Containers		X	
Contracts of Sale	X	X	X
Dividends	X	X	
Interest	X	X	
Investment income abroad		X	X
Know-how payment	X	X	
Mining leases		X	
Pensions	X	X	X
Prospecting leases		X	
Recoupments	X	X	
Services rendered abroad in carrying on a trade	X	X	
Services rendered abroad during temporary absence	X	X	X
Services rendered abroad by seamen and airmen	X	X	X
Services rendered abroad by government and other bodies	X	X	X
Ship-owners and aircraft-owners	X	X	X
Use of patents, copyrights and similar rights (ROYALTIES)	X	X	
Purchased annuities	X		
Refund of pension contributions	X		
Annuities from retirement annuity funds	X		
Amounts received upon surrender or disposal assurance policies	X		

Amounts received in terms of single premium endowment policy, provident fund and education policy	X		
Any amount received from a retirement annuity fund	X		
Services rendered in the country			X
Disposal of mineral rights			X
Mining and prospecting rights			X
Business income abroad			X

Summary of Differences

Alimony

Only applicable on divorces before 1962. Seems that this South African section is outdated.

Bankers Acceptances

Section 9 (5) of the South African Act. It is suggested that this section could be included in the Namibian Act.

Containers

Section 9 (1) (cB) of the South African Act. It is suggested that this section could be included in the Namibian Act.

Mining Leases

Section 9 (1) (cA) of the South African Act. This provision is applicable mainly to income from mining operations conducted beyond the territorial waters of the Republic.

This section, together with section 9 (1) (fA) should be researched for possible inclusion in the Namibian Act.

Disposal of Mining, Mineral and Prospecting Rights Oven Earnd Situated in Botswana

It seems that the principle which was laid down in the case Liquidator Rhodesian Metals Ltd v COT 1938 AP would apply in this circumstances and that this section could be superfluous.

Remuneration of Employees With Regard To Contract Work Performed in Namibia

Contractors and sub-contractors who participate in projects in Namibia and earn income in the form of fees, management fees or consulting fees, but who often fail to make their presence known to the tax authorities, have always been a problem to the system.

In South Africa the 1986 Margo Report recommended that a form of withholding tax should be investigated. It recommend further that details of foreign contractors and individual job seekers and employees entering the country should be made available by the Department of Home Affairs to enable Revenue to register them as taxpayers and, in the case of independent contractors, as employees for PAYE purposes.

It is suggested that the recommendations in the Margo Report should be investigated for possible implementation in Namibia.

Anti-Avoidance Measures

It would be easy for a taxpayer to change certain deemed income into exempt dividends by re-routing the income through and offshore company. Furthermore, taxation can be deferred by accumulating income in offshore entities.

Such schemes have to be countered by specific anti-avoidance rules, since the general anti-tax avoidance provision of section 95 (i) of the Act would often not apply, for example, such an offshore company may also function to avoid or reduce foreign taxes.

Furthermore it is envisaged that there will be more relaxation of exchange controls in the future. This will result in cross-border investment increase in quantum, sophistication and variety to a level where current measures will be inadequate.

The Katz Commission's 5th report included specific anti-avoidance provisions of Australia, the UK and Germany as it indicate representative examples of anti-avoidance systems ranging from a highly complex anti-avoidance regime to a less ambitious one that is from an administrative perspective perhaps more realistic and efficacious.

It is suggested that anti-avoidance measures should be reviewed to cover offshore investments.

The Electronic Future

The Katz Commission in its 5th report included the following on the electronic future:

The Commission received much evidence regarding a not too distant future where international trade investment will increasingly become a function of global electronic communication such as through the Internet. There is no doubt that these developments will greatly impact some of the basic tenets of international taxation as they exist today. Examples include the irrelevance of physical presence in order to trade (impacting on "permanent establishment" concepts), the ease with which current residence notions can be manipulated through hyper-mobility of an entire office and trading or management capacity, and the manner in which goods or services can be contracted for, advertised and even delivered via electronic means.

The Commissions has found no precedents around the world, nor even proposals, which purport to deal with these likely developments. This is a matter that will affect all economies, and no doubt measures will be developed as the impact increase. The Commission is of the view that it would be premature now to introduce an entirely new regime of international taxation which seeks to cope with these developments; indeed, to seek a pioneering role here would be both arrogant and dangerous.

On the other hand, by the major thrust of integrating South Africa's international tax arrangement as closely as proposed with international tax conventions and concepts, the South African system should be better placed than most to absorb technical tax changes as they develop between trading nations. For example, it can be reasonably assumed that much of this tax evolution will take place through treaty negotiations around concepts like permanent establishment definitions, attribution rules, or exemptions or credits affecting passive income. By incorporating many of these international concepts into our national law, successful development internationally will make our options clear and facilitate their implementation where it is felt they have sufficient merit.

As Namibia is in regard to the electronic future in the same position as South Africa the view of the Katz Commission could be well taken.

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Double Taxation Agreements

Introduction

All the 9 tax agreements that the Republic of Namibia has signed with other countries, except the one signed with the United Kingdom of Great Britain are modelled on the OECD model and conform to the principles of a good Double Taxation Agreement (DTA). However, changes in the global economy demands that a country should have 'internationally competitive' double taxation agreements and should, therefore, seize any opportunity that may arise to review its DTAs.

Principles of a good Double Taxation Agreement

A good DTA that the Republic of Namibia would like to have in place should:

1. Prevent tax evasion and tax avoidance.
2. Obtain a more effective relief from double taxation compared to relief provided under unilateral measures.
3. Create a favourable climate for the inflow of foreign investment into the country.
4. Make special tax incentives provided by the Republic of Namibia fully effective for taxpayers of capital exporting countries.
5. Provide for exchange of information between the contracting states regarding tax evasion and tax avoidance.
6. Provide for tax credits or exemptions to eliminate double taxation.

Assumptions

In carrying out this review, it is assumed that:

1. The OECD (1977), UN (1980) and the U.S. Treasury Department (1981) model income tax conventions provide a good basis for a DTA.
2. A developed country is more likely to sign a balanced DTA with another developed country than it is likely to sign with a developing country. Therefore, a DTA between a developed country and another developed country forms the basis

of each country's agreement with the Republic of Namibia. On the other hand, an agreement between a developed country and a developing country is likely to be imbalanced in favour of the developed country and against the developing country.

3. That a country with greater political and economic influence is likely to exert more influence in signing the agreement and thus tilt the agreement to its favour than to a country with less comparative economic influence. Therefore to ensure that the agreement is balanced, if not, imbalanced to Namibia's favour, it is compared with an agreement between two developed countries of near equal economic and political influence.
4. The principles of a good DTA outlined in this paper are the ones that the Republic of Namibia intends to pursue.
5. That an agreement must meet the country's current needs.

Recommendations

1. The issue of taxation of E-Commerce should be addressed in any new DTA.
2. The Republic of Namibia should negotiate a new agreement with the United Kingdom and renegotiation portions of its agreement (Article 11) with South Africa.
3. The Republic of Namibia should have a DTA with each of its neighbours, if not, with each of the SADC countries.
4. Namibia should use the recommendations raised in this review to renegotiate its DTAs with the other countries when any of the countries express interest in revisiting their agreement.
5. Any DTA should not leave a person worse off than the person would be without the agreement.
6. The OECD model treaty and the model treaty to be used for negotiations within SADC should be the starting point for all future DTAs.

Tax Issues

Royalties, Permanent Establishment, Taxation of consultancy services, Taxation of Namibia's Base and Special Industries Transfer Pricing and Harmonization of DTAs in the SADC Region are some of the issues that need attention.

Royalties

The definition of royalties used in the agreements (except the definition used in the agreement with the United Kingdom which excludes any amount paid in respect of the operation of a mine, oil well or quarry or of any other extraction of natural resources) are based of the OECD Model definition of royalty contained in Article 12 (2) of the model. This definition has a fairly wide coverage and should be harmonized with the current implied definitions of royalties contained in the Income Tax Act in section 10.

Permanent Establishment

Article 5, which defines "Permanent Establishment" – a key element of taxation based on residence, does not explain how to deal with double taxation of electronic commerce especially in cases where E- commerce enables companies to trade in a country without setting up a permanent establishment in that country. For example a company in the US may sell a computer package worth thousands of dollars through the Internet to a Namibian company or vice versa. There is need to define permanent establishments of such companies in Article 5 of the DTAs.

Implications: The changes that have taken place and are taking place in the business environment due to technological developments, and the Internet in particular, require that Article 5 (4) (a) & (b) in the agreements with France, Germany, South Africa, Romania, India, and United Kingdom be amended to eliminate the words "occasional delivery or delivery."

That any of the following additions or complementary definition of "Permanent Establishment" that are not in any of the 9 DTAs should be added to the agreement:

1. A building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than six months
2. An installation or structure used for the exploration of natural resources, provided that the installation or structure continues for a period of not less than six months
3. The furnishing of services, including consultancy services, by an enterprise of a contracting state through employees or other personnel engaged in the other contracting state, provided that such activities continue for the same project or a connected project for a period or periods aggregating more than six months
4. A warehouse, where storage facilities are provided to parties other than the enterprise
5. A guest farm in the case of Namibia
6. A farm, a plantation, an orchard or vineyard
7. The use of facilities for the purpose of delivery pursuant to a sale contract of goods or merchandise.

There is need for the Republic of Namibia to sign a Protocol dealing with taxation of E-Commerce with each of the countries with which it has DTA. Such a Protocol would then form part of the DTA.

Taxation of Consultancy Services

The Republic of Namibia should reserve, in each agreement, the right to tax imported services provided to any person in Namibia in the jurisdiction in which the services are consumed, that is, in the jurisdiction to which they are imported. This proposal is consistent with the accepted OECD framework for consumption taxes and the OECD's more recent guidelines on the appropriate place of taxation for internationally traded services. This means that tax, for example, VAT should be deducted on imported services (consultancy) fees at the time of paying for the services. The importer of consultancy services should then be provided with a tax return form which indicates the gross consultancy fee, the tax, and the net consultancy fee among other things. This tax

return should be signed by both the consultant and the importer of the services should be filed by both parties, independent of each other, with the tax authorities.

Taxation of Namibia's Base and Special Industries

The Republic of Namibia should reserve, in each agreement, the right to vary the mode of taxing non-resident persons engaged in, or employed in its base industries of mining, fishing, and shipping & Transport in the same way that Sweden as reserved some of these rights in parts of the DTA. Sweden in relation to SAS in Article 15 (3) of its DTA with the Republic of Namibia provides that "where a resident of Sweden derives remuneration in respect of an employment exercised aboard an aircraft operated in international traffic by the air transport consortium Scandinavian Airlines System (SAS), such remuneration shall be taxable only in Sweden."

Transfer Pricing

Namibia should reduce its corporate tax rate to a level that the difference between its corporate tax rate and the lowest corporate tax rate in the SADC region does not encourage transfer of profits with countries with lower corporate tax rates in the region. Corporate tax rate is the basic rate that investors consider while identifying potential areas of investment.

Although a lower corporate tax rate is likely to attract more investors, Namibia should not engage in tax wars with her neighbours. One-way of solving the problem of lower tax rates in other countries is to set competitive tax rates for industries where Namibia is likely to compete for investment resources with her neighbours.

Harmonization of Double Taxation Agreements in the SADC Region

The SADC region is moving towards tax harmonization. There is need, therefore, to harmonize DTAs that affect a number of countries within the SADC region so as to facilitate the flow of capital within the region.

There is need to sign a DTA with every SADC country since much of the tax avoidance and tax evasion is more likely to occur among corporations that have subsidiaries and parent companies in the neighbouring countries.

Agreements that should be renegotiated

The Republic of Namibia should renegotiate its agreement with the United Kingdom of Great Britain and portions of its agreement with the Republic of South Africa.

Double Taxation Agreement with South Africa

Since there are many South African enterprises operating in Namibia, the temptation to transfer goods at prices that would minimize taxes in Namibia is likely to be high. There is need, therefore, to determine the extent of the problem and then write a protocol agreement that would cover the Republic of Namibia against the same. However, one should note that South Africa might be reluctant to the idea of setting control transfer prices, because such an arrangement would reduce its tax revenue.

Since South Africa has a corporate tax rate of 30% and Namibia a corporate tax rate of 35% there is a high chance that companies which have their subsidiaries or parent companies in South Africa may transfer profits to South Africa in order to gain from the 5% difference in corporate tax.

Namibia is disadvantaged by the fact that Article 11 of the agreement entitles South Africa to tax investments made by Namibian residents in South Africa at a rate of 10%. This rate should be revised to zero.

Double Taxation Agreement with the United Kingdom of Great Britain

The agreement with the United Kingdom is remarkably different from the other 8 agreements in that it is based on the Model Convention of London of 1946. This means that it is out of line with the rest of the agreements. Besides, given that this agreement

was not only signed before independence but was also signed by another country, not the Republic of Namibia, it is heavily imbalanced in favour of Britain and against the Republic of Namibia. The Republic of Namibia needs to renegotiate a new DTA with the United Kingdom as will be explained later in the paper.

A major weakness of this agreement is: there is no formal DTA between the Republic of Namibia and the United Kingdom. The current DTA between Namibia and the United Kingdom is an extension to Namibia of the DTA between the Government Republic of South Africa and the Government of the United Kingdom signed in Cape Town on 28 May 1962 many years before Namibia became an independent state. The extension took effect, in general, from the year 1962/3.

Given the dynamic nature of the international business environment today, and changes that have occurred, since 1962, in the way business is done there is need for Namibia to renegotiate a new agreement or negotiate for amendments to the current agreement with the United Kingdom. This would give the two countries a chance to update the DTA to reflect the environment under which the two governments operate today.

This agreement is outdated and should be replaced with a modern agreement that reflects the changes that have taken place over the last four decades including the fact that Namibia is now a sovereign state.

The Republic of Namibia should negotiate a new DTA with the United Kingdom based on the OECD Model with selected modifications based on the UN Model.

Conclusions

Amending a DTA would be a prolonged and protracted approval process requiring subsequent ratification by the parliaments of the countries involved, as they are treaties signed under international law. Realistically, it would take a number of years to renegotiate all the 9 DTA. Given the protracted negotiations that it would take to change any provisions in the existing DTAs, it is advisable to retain the existing DTAs in their present form, except the ones with the United Kingdom of Great Britain, and South

Africa. And, instead, use these recommends as a pointer to issues to be considered when signing any new DTA. Any new DTA that the Republic of Namibia signs should address the E-Commerce taxation issue and eliminate double taxation through tax credit.

Income Tax – Section By Section Review

The proposed amendments are based on the ACT as it stands now. However, if any of the proposals discussed are accepted, the amendments are to be formulated in terms of the accepted proposals and the possible consolidation of all the taxation Acts. Amendments replacing the "Minister", "Permanent Secretary" etc with "Commissioner of Revenue Management" and other similar replacements are to be made.

IRD should thoroughly research/review all the sections and the proposals when the ACT is rewritten.

Section 1 - Definitions

Agent:

No amendment required.

Annuity:

To be defined.

Assessment:

No amendment required.

Benefit Fund*:*

This definition needs to be carefully reconsidered by IRD to ensure that all scenarios are catered for.

Bonus debentures or securities:

No amendment required.

Building Society*:*

Retain definition and repeal once Swabou does not exist anymore.

Capitalization shares:

No amendment required.

Company:

Retain this definition, but specifically include close corporations in the definition.

Date of assessment:

No amendment required.

Dividend*:*

Retain the definition but reword in a tabular manner to make it more readily understandable by all.

Domestic company:

No amendment required.

Equity share capital:

No amendment required.

Executor:

No amendment required.

External company:

No amendment required.

Financial-Year:

Amend (ii) to clearly indicate how changes in a year-end may be made with reference to the last day of the year of assessment – also refer to the practice note that has been issued and to indicate that the year-end for trusts is 28 February – necessary because beneficiaries are individuals.

Gross Income:

a) Paragraph dC – The administration thereof causes problems. There is no such thing as a study policy but rather policies that are ceded to children.

b) Paragraph b and e – Could probably be combined because of the duplicating effect.

c) Paragraph h – Could probably be removed to section 14(4), which deals with recoupments.

d) Paragraph i – Dividends are currently exempt from tax – provision probably absolute.

e) It is recommended that paragraph d(A) be reconsidered.

f) Paragraph iA – repeal once Swabou ceases to exist.

g) Paragraph m – Company owned policies – include maturity in the case of endowment policies; IRD to reword to address problems experienced.

h) Paragraph n – IRD should consider addressing this paragraph under section 14(4), which deals with recoupments.

i) Amend this definition to clearly state that the pay-out from both a pension fund and a provident fund at death should either not be or should be included in gross income.

j) Inclusion of disability benefits and income continuation benefits to be considered.

Income:

No amendment required.

Local authority*:*

Cross-references should be checked.

Married person:

Not required anymore – repeal.

Married person:

Not required anymore – repeal.

Master:

Check references and retain.

Member:

Define a member of a close corporation.

Mining operations and mining:

No amendment required.

Minister:

No amendment required.

Namibia:

To be defined

Namibian company:

No amendment required.

Nominal value:

No amendment required.

Pension Fund, Retirement Annuity Fund, Provident Fund and Preservation Fund:

Consolidate these definitions into one as a definition of "Retirement Funding" & consult with industry. Also exclude the words "of providing benefits other than annuities etc" from par (a). Update any cross references and only allow contributions to funds registered in Namibia.

Person:

Include trusts as well.

Petroleum:

No amendment required.

Prescribed:

No amendment required.

Regional Council:

No amendment required.

Registered Manufacturer:

No amendment required

Regulation:

No amendment required.

Relative:

No longer required – repeal.

Representative taxpayer:

No amendment required.

Scientific research:

Limit scope to research in Namibia.

Shareholder:

No amendment required.

Specified date:

No amendment required.

***Specified Period**:*

References should be checked.

"Tax" or "the tax" or "taxation":

Retain, amend references if necessary.

Taxable amount:

No longer required – repeal.

Taxable income:

No amendment required, amend references if required.

Taxpayer:

Amend references if required.

This Act:

No amendment required.

Trade:

Review references; include the earning of interest and the receipt of benefits when declared medically unfit to continue in employment

Trading stock:

No amendment required.

Trustee:

No amendment required.

Year of assessment:

No amendment required. However, provide for rules elsewhere in ACT for changes of year of assessment with regard to companies only.

Section 2 – Administration of the Act

This section states that the Minister shall be responsible for the administration of the Act.

Recommended that this section be amended so that the Commissioner of Revenue Management administers the Act.

Section 3 – Exercise of Powers and Performance of Duties

In terms of this section the powers conferred and the duties imposed upon the Minister may be exercise by himself or by any officer or employee under his control.

This section needs to be reviewed if Section 2 is amended as recommended.

Section 4 – Preservation of Secrecy.

This section deals with the secrecy rules in respect of the matters and information of the taxpayer.

Punitive measures should be reviewed.

Section 5 – Levy of Normal Tax

In terms of this section, an income tax, refer to as normal tax, shall be levied annually on taxable income.

Section 5(3) should be reworded to make it more readily understandable.

Section 5A – Registration of Taxpayer as Manufacturer.

The section contains the requirements for registration of a taxpayer as a manufacturer.

No amendment required.

Section 6 – Rates of Normal Tax

The rates of normal tax shall be set out in schedule 4

No amendment required.

Section 8 – Rebates in Respect of Taxes on Dividends

This section allows a rebate in respect of taxes on dividends payable to the government of any country other than Namibia.

Repeal, no longer required.

Section 9 – Rebate in Respect of Non-Residents Shareholders Tax

This section allows a rebate in respect of non-residents shareholders tax already been paid by the taxpayer

Retention of this section to be considered by IRD.

Section 10 – Rebate in Respect of Foreign Taxes on Royalties and Similar Income

This section allows a rebate in respect of foreign income taxes paid on royalties and similar income.

References to be reviewed.

Section 11 – Rebate in Respect of Diamond Profit Tax

This section allows a rebate in respect of diamond profit tax paid.

Repeal; the diamonds profit tax does not exist anymore.

Section 12 – When Income Is Deemed To Have Accrued or Have Been Received

This section deals with the accrual concept of income and include specific anti-avoidance sub-sections.

Provision to be made for trusts, the conduit principle to be made clear and whether a trust could enjoy assessed losses and deductions.

Section 13 – Antedated Salaries

This section deals with the date of receipt or accrual of anti-dated salaries or pensions and of certain retirement gratuities.

Section 13 should be repealed –

S13(2) Antedated salaries are spread 'backwards' over the relevant years for assessment. This means a revision of years previously assessed which causes unnecessary work. It should be assessed on receipt.

S13(3) The amounts referred to are spread over 3 years at the discretion of the taxpayer. It is difficult to keep track of a spread of income, particularly if the taxpayer does not declare the successive installments.

In view of the difficulties caused by this section it is recommended that it be repealed.

Section 14 – Certain Amounts to be Included in Income or Taxable Income

This section deals with the inclusion as income of reimbursement expenses, capitalization shares, recoupment of deductions under section 17 – 21 and certain withdrawals from preservations funds.

Section 14(1): To be amended to require that such allowances be declared as income and that no expenses defrayed from the allowance be allowed as an expense.

Section 14(2) & (3):are not relevant anymore; to be repealed.

Section 14(4): to be amended to clearly show which recouped allowances are dealt with and clearly show how the recoupment is to be calculated. Recoupment of farming capital allowances and par 10 allowances recommended to be allowed under section 17(1)(e) and (f) to be dealt with clearly (consider the event where a farm is sold without specifying values for the assets for which an allowance was made. Also recoupments by way of donations or consideration that is not adequate – deem it to be made at market value.

Section 14(5) The wording is to be simplified.

Section 14(6) No amendment required.

Section 15 – Deemed Source

Section 15(1)(a) The sale of goods.

Income derived from any contract of sale of goods concluded within Namibia, irrespective where the goods are delivered, is deemed to be from a Namibian source.

The wording needs to be simplified.

Section 15(1)(b) Royalties

Income derived from the use or right to use of any patent etc. is deemed to be from a Namibian source irrespective where such patent were produced.

The wording needs to be simplified.

Section 15(1)(c) Imparting of knowledge.

Income derived from imparting of knowledge is deemed to be from a Namibian source irrespective where payment is made.

The wording needs to be simplified.

Section 15(1)(d) Ships and Aircraft

Income derived by Namibian residents or domestic companies as owners or charterers of ships and aircraft is deemed to be from a Namibian source.

The wording needs to be simplified.

Section 15(1)(e) Services rendered.

Income derived from services rendered by any person in the carrying on in Namibia of any trade is deemed to be from a Namibian source irrespective by whom and where payments are made.

The wording needs to be simplified.

Section 15(1)(f) Services rendered during temporary absence.

Income derived by Namibian residents from any services rendered outside Namibia during temporary absence by a Namibian resident on behalf of a Namibian employer is deemed to be from a Namibian source irrespective where payment of such services are made.

The wording needs to be simplified.

Section 15(1)(g) Services rendered on behalf of the government.

Income derived in respect of services rendered outside Namibia on behalf of the government, regional council or local authority is deemed to be from a Namibian source.

The wording needs to be simplified.

Section 15(1)(h) Services rendered as crewmembers of ships and aircraft.

Income derived by Namibian residents from services rendered inside and outside Namibia as crewmembers of ships and aircrafts is deemed to be from a Namibian source irrespective where payment of such services are made.

The wording needs to be simplified.

Section 15(1)(i) Pensions

Any pension or annuity, granted by the Namibian or the South African Government including the South African railway administration is deemed to be from a Namibian source.

Subsection (1)(i) To be reviewed in terms of the Double Taxation Agreement and subparagraph (i)(ii) to be evaluated whether still relevant.

Section 15(2) Interest and Building Society Dividends

This section deems foreign interest to be from a Namibian source.

No amendment required.

Section 15(3) Purchased annuities

Any annuity purchased by a person ordinary resident in Namibia irrespective where the contract was concluded or where the annuity is payable.

No amendment required.

Section 15(4) Pension Contributions

This section deems any refund of pension contributions to an employee, which were allowed as a deduction, to be from a Namibian source.

No amendment required.

Section 15(5) Retirement Annuity Fund Annuities

This section deems all amounts received or accrued by way of an annuity from a retirement annuity fund to be from a Namibian source if any contribution was allowed as a deduction in terms of section 17.

No amendment required.

Section 15(6) Insurance policies

This section deems any income accrued upon the surrender or disposal of any insurance policy to be from a Namibian source if any premium in respect of such policy had been allowed as a deduction under the provisions of section 17.

No amendment required.

Section 15(7) Single premium endowment policy (dA), provident fund (dB) and education policy payout (dC)

This section deems any amount referred to in paragraph (dA), (dB) or (dC) of the definition of "gross income" to be from a Namibian source.

No amendment required.

Section 15(8) Retirement Annuity Fund payouts

This section deems any amount received from a retirement annuity fund to be from a Namibian source if the contribution was made from accrued benefits from a Pension Fund.

No amendment required.

Section 16 – Exemptions

S 16(1)(a) Government of Namibia and any State.

The revenues of the Government and any state.

No amendment required.

S16(1)(b) Local Authorities

Local Authorities.

No amendment required.

Section 16(1)(c) Foreign Subjects

The income of non-residents in the service of the United Nations.

To be expanded to cover other groups of people such as expatriates who are stationed in Namibia by virtue of technical assistance agreements. Number of days to be used as a cut- off to eliminate shorter periods. To be subject to proof that they are taxed in the country of origin to bring it in line with standard provisions of a treaty.

Section 16(1)(d) Certain Funds and Associations

The income of certain Funds and associations i.e. Pension Funds, Provident Funds, Retirement Annuity Funds etc.

No amendment required.

Section 16(1)(e) and (f) Certain Institutions and Associations

The income of institutions conducting scientific, technical or industrial research and Companies and associations promoting common interest of people or societies i.e. blood transfusion services etc.

To be combined

Section (1)(g) Amateur Sporting Associations

The income of Amateur Sporting Associations.

To be combined with section 16(1)(d)

Section 16(1)(i) Certain Associations

Companies and associations doing business with its own members.

Check cross-references.

Section 16(1)(j) Ecclesiastical, charitable and educational institutions

The income of ecclesiastical, charitable and educational institutions.

No amendment required.

Section 16(1)(k) War pension

Any amount received as a war pension.

Should be investigated whether the exemption about war pension is outdated.

Section 16(1)(l) Government Stock

Interest received by natural persons or external companies on government stock.

No amendment required.

Section 16(1)(m) Post office savings Bank, Subscription shares, Special Tax-free indefinite period shares & General Interest exemption

Interest received by a natural person from any deposit in the Post Office Savings Bank, dividend received by natural persons from a building society on subscription shares, dividend received by natural persons on special tax free indefinite period shares in a building society with a maximum investment of N$100 000 per person and a General interest exemption of N$500 per natural person or interest received from a financial institution in Namibia

No amendment required except to be revised once Swabou investments "run" out and to repeal Section 16(1)(m)(iv)

Section 16(1)(n) Dividends

Any dividends received or accrued in respect of any taxpayer. A 10% NRST is deductible from dividends payable to non-residents

No amendment required.

Section 16(1)(o) Lump Sum from employer

Any amount referred to in paragraph (c) of the definition of gross income with a aggregate maximum of

N$100 000.

To be amended:

in respect of sub-paragraphs (i) and (ii): to include any leave paid out plus any other voluntary award.

In respect of sub-paragraph (iv): to only refer to a voluntary award (excluding notice pay, leave paid out, any bonuses paid and the payment of 1 week salary for each completed year of service)

Section 16(1)(p) Special uniform

The value of any special uniform supplied by the employer.

No amendment required.

Section 16(1)(q) Alimony

Any amount received as a alimony.

No amendment required.

Section 16(1)(r) Foreign Interest

Foreign interest if the investment was made for business purposes and the interest is subject to tax in the foreign country or the capital for the investment was obtained from sources outside Namibia.

No amendment required.

Section 16(1)(t) Labour promotion Fund

The receipts and accruals of the Labour Promotion Fund

To be repealed.

Section 16(1)(v) Higher academic qualification

Any amount received as a single grant on obtaining a higher academic qualification.

To be repealed (not given in respect of first qualification which may be more warranted!)

Section 16(1)(w) Bursary

Any amount in respect of a bona fide bursary.

It is recommended that any income earned from a bursary trust be exempted, provided that it is used for study and the expense is certified by a recognized education institution.

Section 16(1)(y) Occupation allowance

Any amount received in respect of an occupation allowance in terms of the Promotion of the Density of Population in Designated Areas Act.

To be repealed.

Section 16(1)(z) Withdrawal Benefits : Pension and Provident Funds

Any withdrawal proceeds from a pension, provident or preservation fund which have been paid into another retirement fund.

No amendment required.

Section 16(1)(aa) Death and Retirement Benefits: Provident Fund and Preservation Funds

One third of the proceeds from any provident or preservation fund.

Reword to clarify and include as an exclusion under the definition of gross income.

Section 16(1)(ab) Education Policies

Any amount received by the taxpayer from an education policy, which has been expended for providing education or training at a recognized educational institution.

If the study policy deduction is retained, amend to require payment to educational institution (with proof) to qualify for exemption.

Section 16(1)(ac) Unit Trust Company

Any income derived by a company referred to in paragraph (e) of the definition of company in section 1.

To be repealed.

Section 16 (1)(ad) Foreign Purchased Annuities

Any amount paid by a foreign insurer to any natural person who is ordinarily resident in Namibia if the contract was entered into outside Namibia and the capital was obtained from foreign sources.

No amendment required.

Section 16 (1)(ae) Foreign Managed Retirement Funds

The receipts of retirement funds managed in a foreign country provided that the receipts of similar funds managed in Namibia are exempt from tax in such foreign country.

No amendment required.

Section 16(2) General

Although certain amounts in respect of interest and dividends are exempted in terms of section 16, it should still be disclosed in the tax return and such exemptions shall not apply to any portion of an annuity.

No amendment required.

Section 16(3)

No amendment required.

Section 16A – Taxation of Housing Benefits

The exemption of housing benefits provided in terms of an approved housing scheme is based on the remuneration of the employee. If the remuneration is less N$15 000 per annum, the whole benefit is exempt from tax. If the remuneration is

between N$15 000 and N$30 000, the benefit is taxed in terms of a formula. If the remuneration exceeds N$30 000, one third of the benefit is exempted.

A schedule of fringe benefits reflecting the taxable amounts is to be created. This section to be included in the schedule and it is recommended to increase the threshold to N$24 000 and above N$24 000 tax 2/3 of the value.

Section 16B – Purchased Annuities

The capital element of purchased annuities is exempt from tax.

Simplification of wording to be considered.

Section 17 – Deductions

Section 17(a) and (b) Expenditure and Losses incurred in and outside Namibia in the production of Income provided it is not of a capital nature.

No amendment required.

Section 17(1)(c) Legal Expenses

Any legal fees in respect of any claim, dispute or action at law arising from normal business operations in the carrying on of a trade.

No amendment required.

Section 17(1)(d) Repairs

Any repairs in respect of capital assets.

No amendment required.

Section 17(1)(e) Wear-and-Tear Allowance

An allowance of one third of the cost of acquisition of movable assets used by the taxpayer in his trade.

To be reworded to make it more understandable and to repeal the second proviso re 1 March 1992. Also consider to extend the period over which the allowance may be claimed to 5 years.

Section 17(1)(e)(A) *Amend to refer to day to day basis*

Section 17(1)(f) Building allowance

The cost of erection in respect of buildings which are used for purposes of the taxpayer's trade, can be written off over a period of 20 years and buildings used for manufacturing purposes can be written off over a period of 10 years. Buildings used as employees housing do not qualify.

Recommended that consideration be given to replace the word building with the word permanent structure and that the 4% be increased to 5% and 8% to 10% respectively. Ensure that later owners can claim balance of allowances.

Section 17(1)(g) Premium Allowance

Lease premiums on assets can be written off over the lifetime of the lease agreement with a maximum of 25 years.

No amendment required.

Section 17(1)(h) Lease improvements

Lease improvements can be written off over the lease period with a maximum of 25 years.

To be reworded to make it more understandable.

Section 17(1)(i) Patents, Designs, Trade marks and copy rights

Expenditure incurred in developing or obtaining any patent etc., can be written off over the duration of the use of the patent etc. with a maximum of 25 years. If the expenditure is less than N$200, the full amount is deductible.

To be reworded to make it more understandable and references to be checked.

Section 17(1)(j) Renewal of a Trade Mark

Expenditure in respect of the renewal of any trade mark etc. is deductible in full.

References to be checked.

Section 17(1)(k) Relief for the Lessor

This section offers some relief to lessors who receive lump sum payments in respect of lease premiums and lease improvements.

Wording to be reviewed and necessity of the clause to be reviewed.

Section 17(1)(l) Bad Debts

Any amounts of debts due to the taxpayer and which are proved to be bad and which were included in the taxpayer's income at some point in time.

Criteria to determine when debt could be regarded as doubtful debt for the purposes of the Act to be inserted.

Section 17(1)(m) Doubtful debts

This is an allowance in respect of debtors whom the taxpayer considers doubtful.

Criteria to determine when debt could be regarded as doubtful debt for the purposes of the Act to be inserted.

Section 17(1)(n), (q) & (qA) Retirement Contributions

Current contributions in respect of Pension, Provident and Retirement annuity funds as well as Education policies are allowed with an aggregate amount of N$30 000 for any year of assessment.

No amendment required; deduction of contributions to benefit funds and income continuation policies to be considered.

Section 17(1)(o) Employer's Contribution

Contributions made by the employer in respect of pension, benefit and provident funds with a maximum of 10% of approved remuneration of each employee.

Limits to be reviewed, discretionary powers contained in the provision to be removed and to be reworded in a more understandable language.

Section 17(1)(p) Annuities to former Employees

Annuities paid on the grounds of old age, ill health or infirmity to former employees are fully deductible and to dependants of former employees deductible to a maximum of N$2 000 per employee per annum.

The limit of N$ 2 000 to be reviewed.

Section 17(1)(r) Scientific Research

Non-capital expenditure on scientific research as well as contributions to any association, institute, college or university, to be used in scientific research relating to the taxpayer's own business.

Capital expenditure to be clearly defined; determine whether there is a Council for Industrial Research in Namibia or whether the RSA one is acceptable and reword to make it more understandable.

Section 17(1)(s) Donations

Donations to Welfare and Educational Institutions.

References to be checked.

Section 17(1)(u) Scrapping allowance

An allowance on movable assets where the scrap value or selling price is less than the tax value of the asset.

This paragraph should be made clearer; in conjunction with section 14(4) where recoupments are to be codified.

Section 17(1)(v) Any amounts which, in terms of any other provision, are allowed to be deducted from the income of the taxpayer.

Consider the effect of this paragraph to ensure that it does not confer any unintended deduction.

Section 17(2) The aggregate of the amounts that may be deducted in terms of paragraphs (n),(q) and (qA) shall not exceed N$30 000.

The provisions contained in this section are possibly outdated because it was last amended in 1999.

Section 17A, 17B, 17C And 17D Remuneration and Training Allowance, Exporter's Marketing Allowance, Exporter's Allowance & Special Deduction for Registered Manufacturers

An additional 25% of the remuneration and training expenses in respect of employees directly engaged in the manufacturing process, an allowance of between 25% and 75% of marketing expenditure in respect of registered manufacturers, an allowance equal to 80% of the net income, after other allowances the taxpayer is entitled to in terms of S17, were deducted and an allowance of 50% of the net income for the first five years of assessments, which is fased out over a period of nine years at a rate of 5% per year.

No amendment required.

NOTE: New manufacturing incentives will apply to any additional investment, this means that the low rate will also apply to the old investment which may have had the benefit of an earlier incentive – apportionment to be considered.

Section 18 – Deductions From Income Derived From Mining Operations

Amounts in respect of capital expenditure to be ascertain under the provisions of section 36, in lieu of the allowances in sections 17(1)(e),(f),(g) and (i).

Consider consolidating this paragraph with sections 36 & 37

Section 19 - Soil Erosion Works

This section deals with a deduction of expenses incurred by a lesser of land let for farming purposes, in respect of soil erosion works.

Amend to allow deduction in full in the year incurred.

Section 20 – Deductions and Set-Off From Income Derived From Dividends.

Section 20(1), (2) and (3). – allows a deduction of 1/3 of dividends received from a building society.

This section needs to be revised once SWABOU share investments cease to exist.

Section 20(4) This section deals with a deduction in respect of income received in the form of dividends by long term insurance companies.

No amendment required.

Section 20(6) Annuities

Consideration should be given to the inclusion of subsection (6), regarding the nature of an annuity, in par (a) of the definition of gross income.

Section 21 – Assessed Losses

This section deals with the set-off of Assessed losses against income.

Reconsider this section carefully.

Section 22 – Trading Stock

This section deals with the handling and valuation of trading stocks.

Review to simplify and reconsider whether subsection subsections (4) & (5) should be retained; remove LIFO method..

Section 23 – Schemes of Arrangement Involving Trading Stock

This section regulates schemes of arrangements between two companies sanctioned by court regarding transfer of stocks between companies.

Review to simplify.

Section 24 – Deductions Not Allowed In Determination Of Taxable Income

This section lists all the deductions specifically not allowed in the determination of taxable income.

Par (d) to be amended to include land tax.

Section 25 – Credit Agreements Providing For The Postponement Of The Passing Of Ownership

This section lays down a fixed rule regarding the time of accrual when property is sold.

Amend to require that the income from the credit agreements shall constitute trading (taxable) income.

Section 25A – Foreign Exchange

This section deals with the Income Tax rules regarding gains or losses on foreign exchange transactions.

This section should be simplified.

Section 26 - Deceased Estates

This section contains the rules regarding the taxation of income of beneficiaries and estates of deceased persons.

Consider whether all income and expenditure accrued or received after the death of a taxpayer should not be dealt with in the name of the deceased taxpayer as opposed to dealing with it in his/her estate. In any event repeal clause relating to a heir /legatee.

Section 27 – Determination Of Taxable Income Derived From Farming

In terms of this section the taxable income of farmers will be determined according to the provisions of the Act but subject to the provision of schedule 1 of the Act.

Repeal.

Section 29 – Business Which Extends Beyond The Territory

This section deals with the rules in respect of persons carrying on business which extends beyond the territory.

Assets to be defined. Simplify..

Section 30 - Film Business

This section contains the rules in respect of a assessment of persons not ordinarily resident in the territory who derive income from the film business.

No amendment required

Section 31 - Co-Operative Societies

This section contains special rules for the determination of taxable income of co-operative societies and companies.

Review references and simplify wording. Review bases against the current co-operative legislation.

Section 32 – Insurance Business

This section contains special rules for the determination of taxable income derives from the insurance business.

The long-term and short-term should be dealt with separately. Wording should be simplified.

The deemed 40% for long-term insurers should be reviewed.

The allowances for short-term insurers should be reconsidered – par (d) appears to duplicate par (f)

Section 33 – Transfer Of Business By Foreign Company To Namibian Subsidiary

This section contains arrangements of assessments on transfer of a business undertaking by a foreign company to a South West African subsidiary.

To be reconsidered.

Section 34 – Charterers Of Ships Or Aircraft

This section determines the assessment of owners or charterers of ships or aircrafts not ordinarily resident or registered, managed or controlled in the territory.

Currently not applied. Enforcement to be reconsidered or the repealing of the section to be considered.

Section 35 - Royalties

This section determines the assessment of persons not ordinarily resident or registered, managed or controlled in the territory who derives income from royalties or similar payments.

To be converted to a final withholding tax; wording to be simplified.

Section 36 – Mining Operations

This section contains the rules and regulations in respect of the calculation of redemption allowances of capital expenditure in connection with mining operations.

Simplify wording and consider incorporating in section 18

Section 37 - Change Of Ownership Of Mining Companies

This section deals with the calculation of capital expenditure on change of ownership of mining property.

Simplify wording and consider incorporating in section 18

Section 38 – Classification of Companies

This section contains the rules for the classification of companies as private or public companies for income tax purposes.

Consolidate with sections 39 & 40; review to eliminate clauses which are not necessary.

Section 39 - Re-Determination Of Company's Status.

This section refer to circumstances where a company's status could re-determined by the Minister.

Consolidate with sections 38 & 40; review to eliminate clauses which are not necessary.

Section 40 – Objection And Appeal

A decision by the Minister in terms of section 38 shall be subject to objection and appeal.

Consolidate with sections 39 & 38; review to eliminate clauses which are not necessary.

Section 41 - Levy On Non-Resident Shareholder's Tax

Non-resident shareholder's tax

No amendment required.

Section 42 - Income Subject To Tax

Non-resident shareholder's tax

Subsection (1)(iv) to be repealed

Section 43 – Person Liable For Tax

Non-resident shareholder's tax

No amendment required

Section 44 – Recovery Of Tax

Non-resident shareholder's tax

No amendment required.

Section 45 – Rate Of Tax

Non-resident shareholder's tax

No amendment required

Section 46 – Determination Of Tax If Company Operates Outside Namibia

Non-resident shareholder's tax

No amendment required.

Section 47 – Date Of Payment Of Tax

Non-resident shareholder's tax

No amendment required

Section 48 – Exemptions

Non-resident shareholder's tax

No amendment required

Section 55 – Returns To Be In Form Prescribed By Minister

No amendment required

Section 56 – Taxpayer Responsible To Furnish A Return Of Income And A Computation Of The Taxable Income And To Pay The Tax So Payable, And The Manner Of Furnishing Returns And Interim Returns

No amendment required

Section 58 Returns

No amendment required

Section 59 – Duty To Furnish Returns As To Employees, Their Earnings And Other Matters

No amendment required

Section 60 – Duty To Companies To Furnish Returns

To be revised in conjunction with the revision of the definition of dividends.

Section 61 – Return Of Payments In Respect Of Bearer Warrants

To be revised in respect of the requirements as to declaration of dividends.

Section 62 – Return As To Shareholdings

To be revised in respect of the requirements as to declaration of dividends.

Section 62A – Power Of Permanent Secretary To Requires Submission Of Certified Financial Statements In Support Of Returns

No amendment required.

Section 63 – Duty Of Persons Submitting Accounts In Support Of Returns Or Preparing Accounts For Other Persons

Amend to make the certificate compulsory.

Section 64 – Production Of Documents And Evidence On Oath

Update the section to provide for computer technology.

Section 65 – Penalty On Default

Update the section to provide for computer technology, and revise the fine/replace with penalty.

Section 66 – Additional Tax In The Event Of Default Or Omission

This section should be divided into different components. Insert a provision for a fixed penalty on late rendition of the income tax return. A penalty structure similar to that contained in the VAT Act, allowing for the period of default, is to be considered. Provision should be made for defaults regarding PAYE, NRST etc. The calculation of penalties reflected on tax assessments should be examined.

Section 67 – Examination Of Computation Of Taxable Income And Amount Of Tax Payable

Income tax rules in respect of assessments.

No amendment required

Section 68 – Estimated Assessments

Income tax rules in respect of assessments.

No amendment required.

Section 69 – Additional Assessments

Income tax rules in respect of assessments.

Revise wording.

Section 70 – Inspection of Record of Assessment

Income tax rules in respect of assessments.

No amendment required.

Section 71 – Time And Manner Of Lodging Objections

Income Tax rules regarding objections and appeals.

No amendment required.

Section 72 – Burden Of Proof in Respect Of Exemptions, Deductions And Rebates

Income Tax rules regarding objections and appeals.

No amendment required.

Section 73 – Appeal To Special Court Against Minister's Decision

Income Tax rules regarding objections and appeals.

There is a need for a Special Board, similar to the one in South Africa. The purpose of such a board is to consider all appeals and if necessary could still be referred to the Special Court.

Section 74 – Summoning Of Witnesses And Penalty For Non-Attendance

Income Tax rules regarding objections and appeals.

No amendment required except simplification of wording.

Section 75 – Contempt Of Special Court

Income Tax rules regarding objections and appeals.

No amendment required except simplification of wording.

Section 76 – Appeals Against Decisions Of Special Court

Income Tax rules regarding objections and appeals.

No amendment required except simplification of wording.

Section 77 – Members Of Court Not Disqualified From Adjudicating

Income Tax rules regarding objections and appeals.

No amendment required.

Section 78 – Payment Of Tax Pending Appeal

Income Tax rules regarding objections and appeals.

No amendment required.

Section 79 – Appointment Of Day For Payment Of Tax And Interest On Overdue Payments

Income tax rules in respect of payment and recovery of tax.

Interest on credit balances to be considered.

Section 80 – Payment Of Employees' Tax And Provisional Tax And Interest On Overdue Payments Of Such Taxes

Income tax rules in respect of payment and recovery of tax.

Amend to only charge interest to previous month end – to be same as for VAT

Section 81 – Accounts And Recovery Proceedings In Respect Of Certain Taxes

Income tax rules in respect of payment and recovery of tax.

Delete the words "and undistributed profits tax" from subsection (3).

Section 82 – Persons By Whom Normal Tax Is Payable

Income tax rules in respect of payment and recovery of tax.

Delete the words "and undistributed profits tax" .

Section 83 – Recovery Of Tax

Income tax rules in respect of payment and recovery of tax.

Check references, also widen the scope of assets which may be attached to all or any assets in subsections (4) and (5).

Section 84 – Correctness Of Assessment Cannot Be Questioned

Income tax rules in respect of payment and recovery of tax.

No amendment required.

Section 85 – Collection Of Taxes Under Arrangements Made Under Section 100

Income tax rules in respect of payment and recovery of tax.

Review and reword.

Section 86 – Evidence As To Assessments

Income tax rules in respect of payment and recovery of tax.

No amendment required.

Section 87 – Liability Of Representative Taxpayer

Income tax rules in respect of representative taxpayers.

No amendment required.

Section 88 – Right Of Representative Taxpayer To Indemnity

Income tax rules in respect of representative taxpayers.

No amendment required.

Section 89 – Personal Liability Of Representative Taxpayer

Income tax rules in respect of representative taxpayers.

No amendment required.

Section 90 – Company Regarded As Agent For Absent Shareholder

Income tax rules in respect of representative taxpayers.

Consider whether this section is necessary in view of dividends being tax free – possibly still required in respect of NRST?

Section 91 – Power To Appoint Agent

Income tax rules in respect of representative taxpayers.

No amendment required.

Section 92 – Remedies Of Secretary Against Agent Or Trustee

Income tax rules in respect of representative taxpayers.

No amendment required.

Section 93 – Public Officers Of Companies

Income tax rules in respect of representative taxpayers.

Subsection (4) insert the words "officer" after "secretary or".

Subsection (8): Review the penalty of N$2 per day.

Subsection (9): Insert the words "is instituted" after the words "process or proceeding which".

Section 94 - Refunds

No amendment required.

Section 95 - Transactions, Operations Or Schemes For Purposes Of Avoiding Or Postponing Liability For Or Reducing Amount Of Taxes On Income

Insert anti avoidance rules regarding thin capitalisation and transfer pricing. Consider appropriate amendment in respect of individuals who have set-up an individual service company where services are rendered mainly to one client.

Section 96 – Offences And Penalties

Revise the fine and term of imprisonment.

Section 97 – Jurisdiction Of Courts

No amendment required.

Section 98 – Authentication And Service Of Documents

No amendment required.

Section 99 – Authority Of The Minister To Make Regulations

Delete par (1)(e); revise penalty.

Section 100 – Prevention Of Or Relief From Double Taxation

No amendment required.

Schedule 1 – Computation Of Taxable Income Derived From Pastoral, Agricultural Or Other Farming Operations

Repeal this Schedule

Accommodate requirements regarding livestock numbers on hand in the Act

Include stock of produce under provisions dealing with trading stock on hand.

Par 9: Incorporate these requirements under definition of gross income.

Par 10(1)expenditure incurred in respect of:

(a) dipping tanks: include under section 17(1)(e) ;

(b) dams, wells etc: include under section 17(1)(e);

(c) prevention of soil erosion: Provide for full deduction under section 17(1);

(d) erection of buildings and other structures and housing for employees: Provide for under section 17(1)(f) with a limit of N$50 000 per house per employee – over 21 years, also include par (7) in relation to employee housing;

(e) wire and stone, brick or concrete kraals: include under section 17(1)(e);

(f) fences: Provide full deduction under section 17(1);

(g) fire breaks: Provide full deduction under section 17(1);

(h) eradication bush and noxious plants: Provide full deduction under section 17(1);

(i) establishment of orchards and vineyards: Provide full deduction under section 17(1);

(j) the building of roads and bridges used for farming operations: include under section 17(1)(e).

Provide for drought relief to farmers who:

(i) farm in an area declared drought stricken, and

(ii) has sold livestock because of the drought after the area was declared as drought stricken, and

(iii) deposited an amount, not exceeding the proceeds of livestock sold after the area was declared drought stricken, with Agribank for a period not exceeding 5 years from the date the deposit was made,

by allowing as deduction from income the amount of such deposit.

On withdrawal or maturity, the full deposit and the interest is to be included in the farmer's income for that year of assessment. Formulate requirements that have to met by Agribank in this regard.

Schedule 11 – Amounts To Be Deducted Or Withheld By Employers And Provisional Payments In Respect Of Normal Tax

Par 1: definitions:

Remuneration:

Subparagraph (b)(iii): Check references.

Subparagraph (iv): Repeal.

Par 2:

No amendment required

Par 3:

No amendment required

Par 4:

No amendment required.

Par 5:

Subparagraph (5): Insert the words: “insofar as he has not recovered the amount from the employee, and” before the words “insofar as the employer”

Par 6:

Subparagraph (1): Consider increasing the penalty from 10% to 20%.

Subparagraph (2): Does not say anything, delete.

Par 7:

No amendment required.

Par 8:

Insert the word “correctly” “after the words “an employer any amount”

Par 9:

No amendment required.

Par 10:

No amendment required.

Par 11:

No amendment required.

Par 12:

Subparagraph (2): The “penalty” of the maximum marginal rate does not appear to be effective, especially as the employee will ultimately receive a credit for it. A penalty in the true sense should be introduced, which has to be paid over to the Fiscus.

Par 12A:

No amendment required.

Par 13:

No amendment required, except a high penalty per day for each day that the employer remains in default if due date
not met.

Par 14:

No amendment required except a high penalty per day for each day that the employer remains in default if due date
not met.

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Par 15:

No amendment required except a high penalty per day for each day that the employer remains in default if due date
not met.

Par 16:

No amendment required

Par 17 to 28: Provisional tax:

Provisional tax is to be redesigned totally and simplified at the same time. Consideration should be given to a quarterly payment system.

Par 29:

Subparagraph (1)(b) to be amended to require a refund of any credit after assessment (on same basis as for PAYE).

Par 30:

No amendment required.

Par 31:

See penalties recommended under paragraphs 13, 14 & 15. Also introduce a penalty for the other defaults in this paragraph (on a daily basis if appropriate) and repeal the fine and imprisonment clauses.

Par 32:

Amend terminology re territory etc.

Par 33:

No amendment required.

Schedules 3

No amendment required.

Schedules 4

Recommended that separate lower rates should be considered for pensioners and receivers of retirement annuity fund annuities.

New issues to be addressed in Act

1. The need for a prescription period of 5 years in respect of the Income Tax Act.

2. It is recommended that consideration should be given to implement some form of withholding tax on amounts paid to foreign enterprises for services rendered in Namibia to a Namibian enterprise.

3. It is recommended to consider an allowance whereby future expenditure is claimed against current income. The allowance should only be applicable to payments received in the two months prior to the end of the year of assessment.