



Tax First Namibia Newsletter

**Retrospective
application of laws**





Taxation

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Can tax legislation apply retrospectively?

Legislative uncertainty continues to pose challenges for taxpayers, particularly as the annual budget speech often introduces amendments to key tax laws. These changes are sometimes gazetted after their intended effective dates, leaving taxpayers with limited time to interpret and apply the new provisions.

For example, several amendments announced in the 2024 budget only appeared in the Government Gazette on 16 September 2024, yet were deemed effective from 1 January 2024.

This effectively created a retrospective application of the law. One notable impact was on the insurance industry, where the exemption from Non-Resident Shareholders' Tax (NRST) was removed. Dividends had already been declared to non-residents under the assumption that the exemption still applied. However, once the legislation was gazetted with retrospective effect, insurers found themselves liable to withhold NRST on those dividends.

Arguments against retrospective application

There is a general presumption in law that legislation should apply prospectively. This principle is rooted in the rule of law and the principle of legality, which aims to protect individuals from being unfairly penalized by changes they could not have anticipated.

The Namibian High Court, in *Maletsky* (HC-MD-CIV-MOT-GEN 148 of 2017) [2019] NAHCMD 142 (2 May 2019), although not a tax case, reaffirmed this principle. The court emphasized that laws are presumed to operate prospectively unless there is clear legislative intent to the contrary. It also outlined factors courts should consider when evaluating retrospective application, including:

- The state of the law before the amendment
- The mischief the law seeks to address,
- The nature of the remedy introduced,
- The rationale behind the remedy.

Additionally, Article 25 of the Namibian Constitution protects fundamental rights from being abolished by legislation unless explicitly permitted. However, in the *Maletsky* case, the applicants were unsuccessful in arguing that their rights had been infringed, as they could not demonstrate a clear deprivation of constitutional freedoms.

Arguments Supporting Retrospective Application

Despite the presumption against retrospectivity, legislation may be drafted to apply retroactively if Parliament clearly expresses that intention. In the context of tax, retrospective amendments may be justified to close loopholes, prevent tax avoidance, or align the law with policy objectives announced in the budget speech.





Navigating the Uncertainty

Taxpayers who feel aggrieved by the retrospective application of tax legislation may seek recourse through the courts. However, constitutional challenges can be difficult to sustain, particularly where no clear infringement of rights can be shown. Importantly, the burden of proof lies with the taxpayer. Legal challenges should therefore be carefully considered and supported by strong factual and legal grounds.

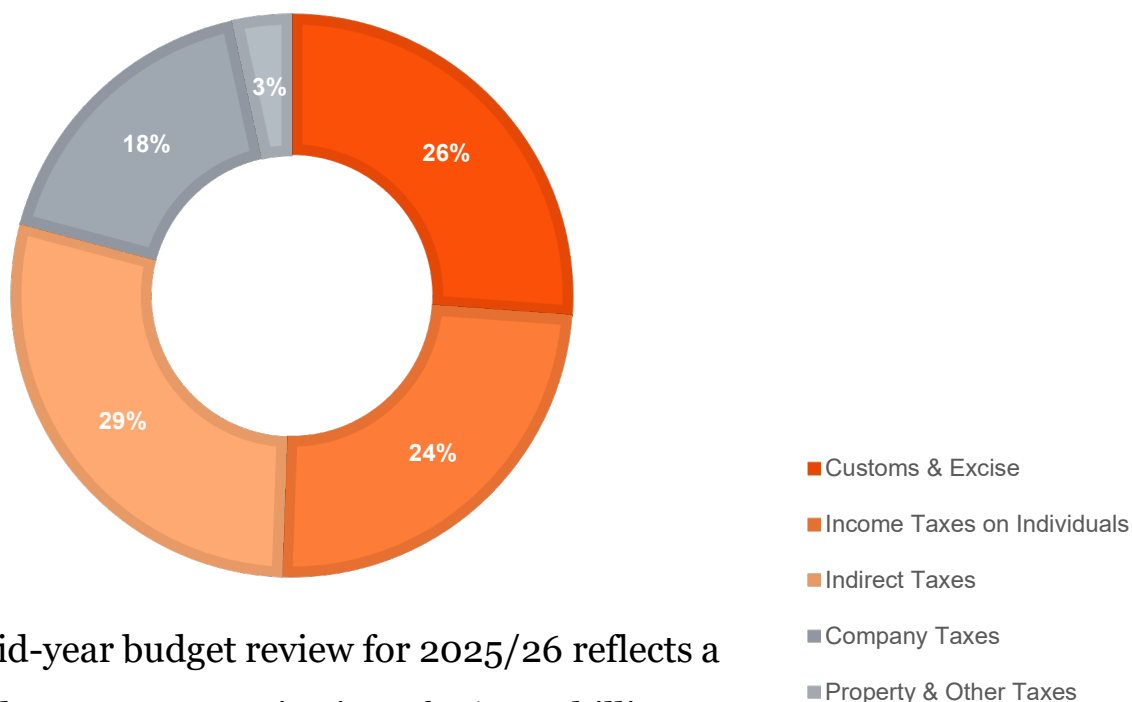
We acknowledge and appreciate the Tax Policy Unit and Ministry of Finance's proactive approach in aiming to have the proposed amendments gazetted within the 2025 calendar year, ahead of the anticipated commencement date of 1 January 2026.

Early publication would go a long way in reducing legislative uncertainty and allowing taxpayers sufficient time to prepare for and comply with the new provisions.

Revised Tax Composition

Mid-year budget 2025/26 review

REVISED TAX REVENUE COMPOSITION



- The mid-year budget review for 2025/26 reflects a revised tax revenue projection of N\$83.4 billion, with an additional N\$6.0 billion expected from non-tax sources.
- The largest contributors to tax revenue remain Indirect Taxes (N\$23.8 billion) and Customs & Excise (N\$21.8 billion), followed by Income Tax on Individuals and Company Taxes.
- These figures highlight the continued reliance on consumption-based taxes and border duties to support fiscal targets.

Follow link for our depth analysis of the Mid-year Budget Speech :
<https://www.pwc.co.m/na/en/publications/budget/mid-year-budget.html>

PwC Business School

Upcoming Training Dates | November 2025

Date	Training	Type
5-12 November	Annual Tax Symposium \ Coastal	In person session
5-7 November	Basic VAT Training	In person session
10 November	Introduction to Corporate Income Tax Training	In person session
11 November	Employee Pay & Taxes training	In person session
12 November	ITAS system Training	In person sessions



Link to Business school Website :

<https://www.pwc.com/na/en/events.html>

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Link to PwC Tax Web page :

<https://www.pwc.com/na/en/services/tax.html>

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