

# Tax First

## Special Edition 3

Special Edition  
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### Draft legislation tabled

*On the 17th of November the VAT Amendment Bill, the Income Tax Third Amendment Bill and the Stamp Duty Amendment Bill was read in parliament by the Minister of Finance.*

The following is a summary of the draft legislation included in the Bill, compared to the proposed changes announced in August 2011:

<i>Proposed changes during August 2011: Income tax</i>	<i>Bill</i>	<i>Reference</i>
Introduce tax on income from sale of mining licenses	Yes	Pg 3
Limitation on tax concessions to only Namibian manufactured exported goods	Yes	Pg 3
Remove IR discretion to accept lower value than market value for recoupment	Yes	Pg 3
Ensure exemption of withholding tax on interest should only apply to financial institutions and not Unit Trust Schemes	Yes	Pg 3
Investment by undisclosed investors by the agents will be treated the same by financial institutions and Unit Trust Schemes	Yes	Pg 3
Unit Trust Schemes who do not distribute in a financial year, should declare a non-distribution within 60 days after year-end and pay over the withholding tax on interest	Yes	Pg 3
Introduce a withholding tax (final tax) on entertainment fees, management fees or consultancy fees paid to non-resident persons of 25%	Yes	Pg 4
Ring-fence losses from certain trades	Yes	Pg 4
Clarify provisions of withholding tax, including a definition for "gross interest"	Yes	Pg 4
Ensure that the initial 20% building allowance will only be applicable to the person who has erected the building to be used for trade. Annual 4% allowances will be claimable for 20 years following the year a building is taken into use (vs. the year of erection)	Yes	Pg 4
Clarify deductibility of contributions to educational policies	Yes	Pg 5
Increase the rate of non-resident shareholders tax from 10% to 20%	Yes	Pg 5
Simplify calculations of penalties and additional tax for provisional tax purposes	Yes	Pg 5
Effectively and efficiently administer the deductibility of contributions to company owned policies to determine taxable income	Yes	Pg 6

## *Draft legislation tabled*

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<i>Value-Added Tax</i>	<i>Bill</i>	<i>Reference</i>
Increase the VAT threshold from N\$ 200,000 to N\$ 500,000	No	
Abolish voluntary VAT registration	No	
Provide for the Tax tribunal to be established by the Minister of Finance to consider VAT appeal cases	Yes	Pg 6
Remove the supply of medical, paramedical services and services/rooms provided by registered hospitals from the zero-rate schedule to the exempt schedule	Yes	Pg 6
Introduce a standard rate (15%) on supply of livestock as is the case with game	No	
<i>Stamp Duties</i>	<i>Bill</i>	<i>Reference</i>
Introduce an exemption on the payment of stamp duty when immovable property is purchased by a natural person and where the value is less than N\$400,000 and to levy stamp duty of N\$10.00 per N\$1,000 where the value of the immovable property exceeds N\$ 400,000.	Yes	Pg 7
Juristic persons (including trusts) will pay a flat rate of N\$12.00 per N\$1,000 irrespective of the value of the immovable property.	Yes	Pg 7
<i>Transfer Duties</i>		
The Transfer Duty Amendment Bill has not been tabled yet		
<i>Export Levy</i>		
The Customs & Excise Tax Amendment Bill has not been tabled yet		

## Income Tax Third Amendment Bill

*Our team summarized the detail of the amendments tabled in comparison to those changes proposed by the Minister in July and August.*

*The following amendments on 17 August 2011 were proposed:*

The Income Tax Act, 1981 (24 of 1981) as amended will be amended to:

Introduce taxation on income from the alienation of a right or license to explore, mine or retrieve natural resources in Namibia, irrespective where the transaction is concluded or where the payment is made. The income on the sale of shares in companies that hold such a right will also be taxable.

Limit tax concessions granted on exports of manufactured goods to goods manufactured in Namibia.

Remove the discretion that the Minister has to accept a lower value than the market value of assets for recoupment purposes;

Ensure that the exemption on withholding tax on interest with regard to negotiable instruments should only apply to financial institutions and not Unit Trust Schemes. This means that Unit Trust Schemes should charge a withholding tax on interest with regard to negotiable instruments;

Clarify that an undisclosed principal who is represented by an agent or any other person (excluding a stock broker), for withholding tax on interest purposes will apply to both financial institutions and Unit Trust Schemes. This means that investments by undisclosed investors through their agents will be treated the same by financial institutions and Unit Trust Schemes. Previously the treatment of undisclosed investors was only applicable to financial institutions.

Ensure that a Unit Trust Scheme, who does not make distributions to its members during a financial year of the Unit Trust Scheme, declare a non-distribution within 60 days after the end of the said financial year.

*The following draft legislation is included in the Income Tax Third Amendment Bill for 2011:*

The Income Tax Act, 1981 (24 of 1981) as amended will be amended to:

Any sale/donation/ expropriation cession, grant or other alienation or transfer of ownership of a licence or right to mine minerals have been included in the definition of gross income. The definition also specifically includes a sale of shares in a company for a licence or right to mine minerals in Namibia. It therefore seems that a shareholder should only be subject to this capital gains tax when selling a controlling interest that will enable the purchaser to indirectly acquire a licence or right to mine.

The draft legislation only covers mining licenses/rights whereas the original proposal referred to "natural resources" that could impact other industries as well.

Section 15 as proposed deems these profits to be from a Namibian source irrespective of:

- whether the transaction is concluded in or outside Namibia,
- the place where the payment of such amount is made
- the place where the funds from which the payment is made are held.

Section 17C of the Act dealing with the export allowance for manufactured goods was amended to include only goods manufactured in Namibia.

This discretion was removed from the legislation and therefore the taxpayer has to recoup at the market value of the assets disposed / taken out of use.

The reference to unit trust schemes was removed from the new definition of "negotiable instrument".

Based on this withholding tax will be due from interest of any negotiable instrument issued by unit trust schemes.

Interest on negotiable instruments issued by a banking institution would not be subject to withholding tax on interest.

This change was effected

Section 34D was amended to include subsection 7 that requires the withholding tax on interest from a deemed distribution (i.e. non distribution) to be paid within 60 days after the financial year end.

# Income Tax Third Amendment Bill

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<p>Introduce a withholding tax (final tax) on entertainment fees, management fees or consultancy fees paid by Namibian resident to a non-resident person, who does not have a permanent establishment in Namibia or services rendered by the non-resident person in Namibia or outside Namibia to the Namibian resident. The rate will be 25% on the amount payable.</p>	<p>Section 35A introduces a 25% withholding tax on entertainment fees, consultancy fees, management and directors fees paid to a non-resident for administrative, managerial, technical, consultative or any similar services.</p> <p>The resident person making the payment to the non resident is liable to withhold and pay the tax within 20 days from the end of the month during which the amount was withheld.</p> <p>Where the resident fails to pay over such tax, the resident would become liable for the amount of tax.</p>
<p>Improve the integrity of the tax system by preventing expenditure and losses normally associated with suspect activities (disguised hobbies, etc) from being deducted as a means to reduce taxable income;</p>	<p>Ring fencing entails that a taxpayer may not offset losses from certain trades against income from other trades.</p> <p>The amended section proposes to ring fence the following types of loss making trades:</p> <ul style="list-style-type: none"> <li>- S 21A (2)(a) trades: trades incurring losses for at least 3 of 5 years from 1 March 2011 onwards OR</li> <li>- Section 21A(2)(b) trades: <ul style="list-style-type: none"> <li>• sporting activities;</li> <li>• dealing in collectibles;</li> <li>• rental of residential accommodation, unless 80% is used by non-relatives for at least half the year of assessment;</li> <li>• rental of vehicles, aircraft and boats, unless 80% is used by non-relatives for at least half the year of assessment;</li> <li>• animal showing;</li> <li>• farming or animal breeding unless carried on full time basis;</li> <li>• carrying on of creative arts;</li> <li>• gambling or betting.</li> </ul> </li> </ul> <p>The ring fencing will only apply to natural persons with taxable income in excess of N\$200,000 per year (disregarding any losses).</p> <p>Ring fencing could be avoided where a taxpayer can prove that:</p> <ul style="list-style-type: none"> <li>• his/her trade constitutes a business with a prospect of being profitable (conditions described in s21(3)) AND</li> <li>• the trade generated taxable profits for at least 5 years out of 10 years from 1 March 2011.</li> </ul>
<p>Clarify the provision dealing with withholding tax on interest by inserting a definition of "gross interest". The new definition will ensure that interest from stock or securities (including treasury bills) issued by the Government of Namibia, or any regional council or local authority should not form part of the gross interest to calculate withholding tax on interest;</p>	<p>Gross interest is defined as follows: "gross interest means: interest excluding interest from stock or securities [which includes] ... Treasury Bills issued by the Government of Namibia, a regional council or local authority"</p>
<p>Ensure that the initial 20% building allowance will only be applicable to the person who has erected the building to be used for trade purposes and that the 4% building allowance runs from the date when the building is brought into use and not from the year that the building is erected. The same will apply with regard to the 20% and 8% building allowances in respect of buildings used solely for manufacturing.</p>	<p>The initial 20% building allowance will only be applicable on the cost of erection of the building used for purpose of trade and only in the year the building is brought into use. The 4% allowance is only claimable in the year following the year in which the building was brought into use.</p> <p>The same applies with regards to the 20% and 8% building allowance in respect of buildings used solely for manufacturing.</p>

# Income Tax Third Amendment Bill

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<p>Regulate the deductibility of contributions to educational policies, the subsequent taxation or exemption of proceeds from these policies and to require insurance companies to apply for a tax directive when these policies mature or are cancelled;</p>	<p>The draft legislation includes the following additional definitions in section 1:</p> <p>Educational Policy: An insurance policy taken out by a tax payer for the exclusive and sole purpose of making provision for future education or training of a child or step-child.</p> <p>Subsequent to the above definition the gross income definition paragraph (dC) was changed to replace “policy of insurance” with “educational policy”, thus including any amount received on the maturity, payment, surrender or disposal of an educational policy as part of taxable gross income.</p> <p>Section 16 (1) (ab) dealing with exemptions from taxable income has been altered to replace “policy of insurance” with “educational policy”, indicating that any amount received as payout from such an educational policy is exempt from taxable income if such a payout is expended for the provision of education or training of the taxpayer child at:</p> <ul style="list-style-type: none"> <li>- an educational institution of public character; and</li> <li>- for the purpose of such child obtaining a post-school qualification.</li> </ul> <p>Section 17 (1) (qA) regulating general deductions allowed in the determination of taxable income has been altered to replace “policy of insurance” with “educational policy”, which allows for the deduction of premiums paid to such an educational policy during the year of assessment. This deduction is however limited to N\$ 40,000 for the combined individual contributions made to pension, retirement annuity and educational policies.</p> <p>The N\$ 40,000 limitation remained unchanged and is effective for the year of assessment commencing on or after 1 March 2011.</p> <p>In terms of schedule 2 of the Act regulating Employees’ tax and the employer’s administrative responsibilities in this regard. Paragraph 11A has been inserted detailing the following:</p> <ul style="list-style-type: none"> <li>- The employer (note not “insurer”) must issue a declaration to Minister within 30 days following the month in which any payout is received by an employee in terms of an educational policy.</li> <li>- If the employer fails to submit such a declaration the employer will be liable to pay a penalty of 10% of the amount received by the employee.</li> <li>- Where good cause is shown in writing by the employer, the Minister may waive the penalty in whole or partly.</li> </ul>
<p>Increase the rate of non-resident shareholders tax from 10% to 20%. The 10% rate would still be applicable to investors holding at least 25% of the share capital in the Namibian company.</p>	<p>This change was effected</p>
<p>Simplify calculations of penalties and additional tax for provisional tax purposes.</p>	<p>Underestimation penalties (limited to 100% of the underpaid tax) and interest will be levied on both first and second provisional payments where the estimate is less than 40% and 80% respectively of the actual taxable income for the year.</p> <p>Late submission provisional returns will be subject to a penalty of N\$100 per day that the form is late.</p> <p>Late payment of provisional tax will further be subject to a penalty of 10% per month (limited to the tax payable). Previously this was a once off 10% penalty.</p>

## Income Tax Third Amendment Bill

*Continues from page 5*

Effectively and efficiently administer the deductibility of contributions to company owned policies to determine the taxable income of a person and the subsequent taxation or exemption of proceeds from these policies.

The gross income definition paragraph (m) will be extended to include the following in taxable income:

An amount received, including a loan or advance by an insurer for any policy of insurance, on the life of an employee or director, if the premiums made to such a policy was allowed as a tax deduction.

A new section 17 (w) will allow a tax deduction for a taxpayer (employer) for any premiums paid under a long-term insurance policy, where the taxpayer (employer) is the policy holder. This deduction is allowed provided that all the following requirements are met:

- The premium expended by the taxpayer (employer) is included in the taxable income of the employee for fringe benefit purposes;
- The taxpayer (employer) is insured against any loss due to death, disablement or severe illness of an employee or director;
- The policy is a risk policy with no cash value prior to occurrence of payment.
- The policy is not the property of any other person i.e. ceded to a creditor or financial institution as security for debt or loan;
- No transaction or arrangement exist where the taxpayer (employer) will pay any amount over to an employee or representative.

## Value Added Tax Amendment Bill

*The Minister of Finance made the following announcements and the Value-Added Tax Amendment Bill was introduced in Parliament.*

*The Bill provides for the following amendments:*

1. Currently, The Commissioner of Inland Revenue could only approve a tax period which ends 10 days before the last day of a month.

The Commissioner may upon written application approve a tax period which ends 10 days before or after the last day of a calendar month.

2. Although announced earlier this year that voluntary VAT registration will fall away and that the VAT registration threshold will be increased to N\$500,000, the VAT Amendment Bill, 2011 does not incorporate these changes and the current position therefore remains as is.

3. Secondly, a person dissatisfied with an objection decision by the Commissioner in terms of the Value-added Tax Act will have the choice of either lodging an appeal to the Special Income Tax Court or a Tax Tribunal constituted under section 73A of the Income Tax Court.

4. The supply of medical and paramedical services by the following persons will revert back to the exempt schedule of the Value-added Tax Act and will not be zero rated:

- A person referred to in section 17(1) of the Medical and Dental Act, 2004 (Act no 10 of 2004);
- A person who holds a written authority under the Medical and Dental Act, 2004; (Act no 10 of 2004);
- A nurse or midwife registered under the Allied Health Professions Act (Act No. 7 of 2004); and
- A practitioner or paramedic registered under the Allied Health Professions Act (Act No 7 of 2004)

Note further that the supply of rooms and services supplied by a private hospital, clinic, maternity home, nursing home, convalescent home or hospice will also fall back to the exempt schedule of the Value-added Tax Act.



## Stamp Duties Amendment Bill

The following changes were tabled per the Amendment Bill as was originally proposed in the press release.

The Stamp Duty Act, 1993 (15 of 1993) as amended will be amended to introduce an exemption on the payment of stamp duty when *immovable property* is purchased by a *natural person* and where the value is less than N\$400,000 and to levy stamp duty of N\$10.00 per N\$1,000 where the value of the immovable property exceeds N\$400,000.

*Juristic persons* (including trusts) will pay a flat rate of N\$12.00 per N\$1,000 irrespective of the value of the immovable property.

## Effective Dates of draft Bills

- Changes to the withholding tax on interest sections of the Act is applicable retrospectively from 1 March 2009
- The sale of mining licences and its related tax effects are applicable from 1 April 2010
- Changes in respect of educational policies and policies of insurance are applicable from 1 March 2011
- In the case of any taxpayer other than a company, the changes will come be applicable on or after 1 March 2011 (according to the Bill) or 1 March 2012 (according to the Minister's speech)
- In the case of any taxpayer which is a company, the changes will come be applicable on or after 1 March 2011 (according to the Bill) or 1 March 2012 (according to the Minister's speech)
- The VAT Amendment Act will be effective on the first day of the month following the month of its publication in the Government Gazette
- Changes in respect of the Stamp Duties Act will be effective once published in the Government Gazette

## Comment?

Please email *Harrison Kavikairiua* ([harrison.kavikairiua@na.pwc.com](mailto:harrison.kavikairiua@na.pwc.com)) with your concerns and comments.

We will incorporate these in feedback to the Minister of Finance on the Bills where appropriated.

Should you need any help please feel free to contact one of our tax specialists.

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