



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 168 2002

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 9 of 2002: Demutualisation levy Act, 2002.

ACT

To provide for a levy on the free reserves of mutual insurers in respect of their demutualisation; and to provide for matters connected therewith.

(Introduced by the Minister of Finance)

ARRANGEMENT OF SECTIONS

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BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

Definitions

1. For the purposes of this Act, a word or expression to which a meaning has been assigned in the Income Tax Act, bears that meaning and, unless the context indicates otherwise -

“affected company” means a company with a share capital to which the Namibian portion of the long-term insurance business of a mutual insurer has been transferred consequent upon a demutualisation scheme effected by that mutual insurer;

“Companies Act” means the Companies Act, 1973 (Act No. 61 of 1973);

“demutualisation scheme” means a transaction, sanctioned in terms of the applicable laws of Namibia or another country, which results in-

- (a) the transfer of the business of a mutual insurer to a company with a share capital; or
- (b) the conversion of a mutual insurer into a company with a share capital; or
- (c) a combination of paragraphs (a) and (b);

“free reserves” means the funds accumulated by a mutual insurer which represent the excess of assets over liabilities and as determined in accordance with section 4;

“free shares” means shares issued in terms of a demutualisation scheme, other than shares issued to raise capital;

“holding company” means a holding company as defined in section 1 of the Companies Act;

“Income Tax Act” means the Income Tax Act, 1981 (Act No. 24 of 1981);

“Levy” means the demutualisation levy imposed by section 3(1);

“Minister” means the Minister of Finance;

“mutual insurer” means an insurer which is not a company with a share capital, and which has carried on insurance business in Namibia in terms of the Insurance Act, 1943 (Act No. 27 of 1943);

“Namibian members” means -

- (a) natural persons who are ordinarily resident in Namibia; or
- (b) persons other than natural persons that are effectively managed in Namibia; or
- (c) persons, where the Minister is satisfied that it is not possible for the affected company to determine where they are ordinarily resident or where they are effectively managed, whose only or last recorded address in the records of a mutual insurer is in Namibia,

to whom free shares are issued, in respect of the insurance business carried on by a mutual insurer in Namibia, in terms of a demutualisation scheme effected by the mutual insurer;

“share” means a security, stock, share, debenture or other interest capable of being sold in a share market or exchange or otherwise.

Administration of Act

2. The Minister of Finance must administer this Act.

Imposition of levy, and rate thereof

3. (1) A levy to be known as the demutualisation levy must be paid in respect of the demutualisation of a mutual insurer, for the benefit of the State Revenue Fund, at the rate of 2,5 per cent of the value of a portion of the free reserves of that mutual insurer calculated in terms of subsection (2).

(2) The portion of the free reserves which is subject to the levy, is the portion which bears to the total free reserves of the mutual insurer, the same ratio as the number of free shares issued to Namibian members bears to the total number of free shares issued in terms of the demutualisation scheme.

(3) The number of shares issued to Namibian members contemplated in subsection (2) includes the shares that would, but for the levy, have been issued to Namibian members, but which shares are used to pay or recover the levy or which have been held by the affected company for the purpose of paying a levy that will later be payable.

Determination of free reserves

4. (1) Subject to subsection (2), the value of the free reserves is the value of such reserves at a specific date -

- (a) reflected as such in the financial statements submitted with the application for the sanctioning of the demutualisation scheme; and
- (b) recorded as such in the demutualisation scheme, and approved as such by the court or other authority in the country where the applicant is registered, on the sanctioning of the demutualisation scheme.

(2) The value of the free reserves as at the specific date will for the purposes of section 3 be increased at a rate of 12 per cent per annum calculated from the day following the specific date referred to in subsection (1) to and including the date on which the free shares are issued to the members.

Date of liability for levy

5. Liability for the payment of the levy arises on the first of the month following the date of commencement of this Act.

Namibian members liable for levy

6. (1) The Namibian members are liable for the levy, but the levy must be paid on their behalf by the affected company.

(2) The levy payable by the affected company may be paid or recovered by the affected company by using, in any suitable way, an appropriate number of free shares that would, but for the levy, have been issued to Namibian members.

(3) Shares referred to in subsection (2) also include shares that were dealt with as contemplated in that subsection in anticipation of the imposition of the levy contemplated in this Act.

(4) The shares contemplated in subsection (2) may, subject to subsection (5), include shares issued to the affected company by its holding company, or issued by the holding company to another entity, for the purpose of paying or recovering the levy.

(5) The shares contemplated in subsection (4) may be held by the affected company notwithstanding section 39 of the Companies Act, provided that the affected company holds those shares only for the purpose of the payment or recovery of the levy, and that the affected company does not have the right to vote in respect of those shares.

(6) The shares contemplated in subsections (2) and (4) may be realised by the affected company or such other entity contemplated in subsection (4) in an appropriate way, and any surplus or shortfall in the amount so realised, as compared with the amount of the levy payable, is for the account of the affected company or the other entity.

Payment of levy

7. (1) The levy must be paid by the affected company for the benefit of the State Revenue Fund within one month from the date on which the affected company becomes liable for the payment of the levy as provided by section 5, and the payment must be accompanied by a return in such form as the Minister may require in writing: Provided that the other entity referred to in section 6(4) may pay the levy or part thereof on behalf of the affected company.

(2) The public officer of the affected company, appointed in terms of section 93 of the Income Tax Act, is responsible for carrying out the duties of the affected company prescribed by this Act.

Assessment by Minister

8. Where the Minister is satisfied that an amount of the levy has not been paid, or has not been paid in full, within the period contemplated in section 7, the Minister may make a reasonable estimate of the unpaid amount and issue to the affected company a notice of assessment of the unpaid amount.

Interest on late payment

9. Where an affected company or other entity referred to in section 6(4) fails to pay the levy in full before or on the last date for payment prescribed by section 7, interest must be paid by the affected company on the outstanding balance of the levy as well as any penalty imposed under section 10 at the rate and calculated in the manner prescribed by the Income Tax Act for outstanding tax, calculated from the due date for the payment of the levy to and including the date on which payment is received for the benefit of the State Revenue Fund.

Penalties

10. If the affected company fails to pay the levy in full before or on the last date for payment prescribed by section 7, a penalty of 10 per cent of any unpaid amount must be paid by the affected company.

Discretion of Minister

11. A decision by the Minister in the exercise of a discretion under this Act is subject to objection and appeal.

Application of Income Tax Act

12. (1) The provisions of the Income Tax Act relating to-
- (a) the administration of the Income Tax Act, contained in Chapter I of the Income Tax Act;
 - (b) the furnishing of information, documents or things by a person;
 - (c) the obtaining of information, documents or things at certain premises;
 - (d) the conducting of inquiries;
 - (e) the procedures for searches and seizures;
 - (f) penalty on default;
 - (g) assessments;
 - (h) objections and appeals;
 - (i) the recovery of tax, penalties and interest;
 - (j) refunds;
 - (k) transactions, operations or schemes for the purposes of avoiding or postponing liability for or reducing the amount of tax;
 - (l) public officers of companies,

apply, with the necessary changes required by the context, in relation to the administration, enforcement and application of this Act.

- (2) In the application contemplated in subsection (1) “tax” is construed as “levy”.

Overpayments of levy

13. The repayment of an amount of the levy overpaid for the benefit of the State Revenue Fund as a result of an amount -

- (a) not being leviable under this Act; or
- (b) levied and paid in excess of what is leviable under this Act,

is a direct charge against the State Revenue Fund.

Short title

- 14.** This Act is called the Demutualisation Levy Act, 2001.
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