

REPUBLIC OF NAMIBIA

NATIONAL ASSEMBLY

**NAMIBIA REVENUE
AGENCY BILL**

(As read a First Time)

(Introduced by the Minister of Finance)

BILL

To establish the Namibia Revenue Agency and to provide for its powers, functions and management; and to provide for incidental matters.

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BE IT ENACTED as passed by the Parliament, and assented to by the President,
of the Republic of Namibia as follows:

PART 1 INTRODUCTORY PROVISIONS

Definitions

1. In this Act, unless the context indicates otherwise -

“Board” means the Board of the Namibia Revenue Agency established by section 4;

“chairperson” means the chairperson of the Board;

“Commissioner” means the Commissioner appointed in terms of section 16;

“member” means a member of the Board;

“Minister” means the Minister responsible for finance;

“Ministry” means the Ministry administering State finance;

“revenue” means the revenue of the State -

- (a) received or accrued by way of any tax, fee, levy, duty, rate, charge, penalty or fine; or

- (b) imposed and collected under the laws set out in the Schedule;

“revenue law” means any law set out in the Schedule in terms of which revenue is collected;

“Revenue Agency” means the Namibia Revenue Agency established by section 2;

“State Revenue Fund” means the State Revenue Fund referred to in Article 125(1) of the Namibian Constitution; and

“tax” means any duty, fee, levy or other charge leviable under any revenue law.

PART 2 NAMIBIA REVENUE AGENCY

Establishment of Revenue Agency

2. (1) There is established a juristic person to be known as the Namibia Revenue Agency.

(2) The Revenue Agency may -

- (a) sue or be sued;
- (b) enter into contracts, and perform all the acts -
 - (i) for the proper performance of the functions of the Revenue Agency under this Act; and
 - (ii) which may lawfully be performed by a juristic person;
- (c) purchase or otherwise acquire, hold, charge or dispose of property;
- (d) insure itself against loss, damage, risk or liability which it may suffer or incur;
- (e) borrow money with the approval of the Minister;
- (f) subject to the approval of the Minister, accept money or goods donated or bequeathed to the Revenue Agency; or
- (g) appoint staff members of the Revenue Agency to perform the functions of the Revenue Agency.

(3) The Revenue Agency is not empowered to lead negotiations of treaties and international agreements relating to tax and customs.

(4) The Revenue Agency is an agent of the State for the assessment of tax and collection of State revenue under the direct supervision and direction of the Minister.

Powers and functions of Revenue Agency

3. The powers and functions of the Revenue Agency are -

- (a) to assess and collect taxes and duties on behalf of the State in terms of the laws set out in the Schedule;
- (b) to receive and record all State revenue on behalf of the State;

- (c) to enforce the revenue, customs and excise laws, with respect to the collection of revenue as provided by those laws;
- (d) to levy penalties and interest on overdue accounts, collect unpaid taxes and impose liens over properties, as provided by revenue laws;
- (e) to provide customs and excise services that facilitate trade, maximise revenue collection and protect Namibian borders from illegal importation and exportation of goods;
- (f) to improve service delivery to taxpayers and promote compliance with the revenue laws;
- (g) to provide information to and to advise the Minister on all matters relating to the administration and collection of revenue in terms of the laws set out in the Schedule;
- (h) to ensure that all revenue collected on behalf of the State is, as soon as reasonably practicable, deposited into the State Account; and
- (i) to perform any other functions in relation to revenue collection as the Minister may direct in writing.

PART 3 BOARD OF REVENUE AGENCY

Establishment of Board

4. There is established a board to be known as the Board of Namibia Revenue Agency -

- (a) to serve as governing body of the Revenue Agency; and
- (b) to advise the Minister on any policy relating to the collection of revenue.

Powers and functions of Board

- 5.** (1) The powers and functions of the Board are -
- (a) to ensure that the Revenue Agency is properly, efficiently and effectively managed;
 - (b) to supervise and ensure proper control of resources, services, properties, personnel and contracts of the Revenue Agency;
 - (c) to ensure that all policies governing the Revenue Agency contemplated in paragraph (g) are duly complied with;
 - (d) to provide the strategic vision, mission and long term plan of the Revenue Agency;
 - (e) to assess and consider the annual budget of the Revenue Agency for approval by the Minister;

- (f) to ensure the implementation and maintenance of effective, efficient and transparent systems of -
 - (i) financial, audit and risk management; and
 - (ii) internal control;
- (g) to develop administrative and operational policies necessary for the discharge of the functions of the Revenue Agency for approval by the Minister.

(2) Nothing in this Act may be construed as giving a power to the Board to make any policy on the collection of revenue.

Board not to make assessment and determination of tax

6. The Board may not -

- (a) have access to; or
- (b) deliberate on any issue relating to the determination of,

tax return, tax assessment or tax liability of a taxpayer or any tax appeal by a taxpayer.

Fiduciary duties of Board

7. (1) The fiduciary duties of the Board are -

- (a) to exercise the duty of utmost care to ensure reasonable protection of the assets and records of the Revenue Agency; and
- (b) to act with fidelity, honesty, integrity and in the best interest of the Revenue Agency when -
 - (i) assisting, advising or recommending to the Minister; and
 - (ii) performing other powers and functions under this Act.

(2) A member of the Board may not -

- (a) act in a way that is inconsistent with the powers and functions of the Board in terms of this Act; or
- (b) use his or her position or privileges, or confidential information obtained in the course of his or her functions as a member, for personal gain or to improperly benefit another person.

Constitution of Board

8. (1) The Board consists of seven members comprising of -

- (a) the Permanent Secretary of the Ministry *ex officio*;

- (b) the Commissioner *ex officio*; and
- (c) five persons, who are -
 - (i) suitably qualified and have knowledge and experience in -
 - (aa) auditing, human resources, economics, taxation, law or accounting and finance; or
 - (bb) other matters of revenue collection as the Minister may determine; and
 - (ii) fit and proper persons.

(2) The Minister must appoint the chairperson and deputy chairperson of the Board from amongst the members.

Governance and performance agreements

9. The Minister, within 30 days of the Board being constituted, must enter into a written performance agreement with members.

Term of office of member

10. (1) A member of the Board holds office for a term of three years and is eligible for reappointment at the expiry of that term.

(2) The Minister may not appoint a person as member for more than two terms.

Disqualifications for appointment as member

11. A person does not qualify for appointment as a member of the Board, if the person -

- (a) is a member of Parliament, a regional council or local authority council;
- (b) has been convicted, whether in Namibia or elsewhere of theft, corruption, fraud, forgery or perjury or any other offence involving dishonesty during the period of 10 years before the date of appointment;
- (c) is an unrehabilitated insolvent;
- (d) has under any law been declared to be of unsound mind; or
- (e) has been removed from an office of trust during the period of 10 years before the date of appointment.

Vacation of office by member

12. (1) The office of a member of the Board becomes vacant if the member -

- (a) becomes subject to any of the disqualifications referred to in section 11;

- (b) resigns from his or her office, after giving the Minister 30 days written notice of his or her intention to resign;
 - (c) has been absent from three consecutive meetings of the Board without leave of the chairperson of the Board; or
 - (d) is removed from office under subsection (2).
- (2) The Minister may remove a member from the Board, if -
- (a) the member has been found to be physically or mentally incapable of performing his or her functions efficiently, and a medical doctor has issued a certificate to that effect;
 - (b) the member is found guilty of misconduct to the detriment of the objectives of the Board or Revenue Agency;
 - (c) the member is not, for whatever reason, effectively and efficiently performing the functions of the Board as a member; or
 - (d) the member is found guilty of misconduct by a tribunal, Board or other body constituted for the purpose of adjudicating on matters of discipline or conduct,

after the member has been afforded a reasonable opportunity to be heard or make presentations.

Filling of vacancies on Board

13. Where a vacancy on the Board occurs, the Minister must in accordance with section 8 appoint another person as member for the remainder of the term of office of the member who vacates office.

Disclosure of interest

14. (1) A member must -
- (a) disclose to the Board any direct or indirect personal or private business interest that the member or a spouse or partner of the member may have in any matter before the Board; and
 - (b) after the disclosure under paragraph (a), leave the meeting for the other members to consider the disclosure to see if it is of a trivial nature or not and decide whether the member is allowed to sit or not.
- (2) A disclosure under subsection (1)(a) and the decision taken by the remaining members in connection with the disclosure are recorded in the minutes of the meeting.
- (3) A member who knowingly contravenes or fails to comply with subsection (1) commits an offence and is liable to a fine not exceeding N\$5 000 or to imprisonment not exceeding a period of 12 months, or to both such fine and such imprisonment.

Meetings and decisions of Board

15. (1) The Minister must convene the first meeting of the Board and thereafter, subject to subsection (2), the Board must meet at least once in two months.

(2) The chairperson may at any time, and must if so requested by the Minister or by a majority of members in writing, convene a special meeting of the Board.

(3) The majority of all members constitutes a quorum at a meeting of the Board.

(4) The chairperson presides at meetings of the Board or in the absence of the chairperson the deputy chairperson, and in the absence of both the chairperson and deputy chairperson the members present at a meeting must elect from amongst their number a member to preside over that meeting.

(5) A decision of the majority of the members present at a meeting of the Board constitutes a decision of the Board and, in the event of an equality of votes, the member presiding at the meeting has a casting vote in addition to his or her deliberative vote.

(6) A decision of the Board or an act performed under the authority of the Board is not invalid only by reason of -

- (a) a vacancy on the Board; or
- (b) the fact that a person not entitled to sit as a member was in attendance when the decision was taken or when the act authorised, if the decision was taken or act was authorised by a majority of the members who were present and entitled to vote at such meeting.

(7) The Commissioner must -

- (a) designate staff members of the Revenue Agency to perform administrative functions of the Board; and
- (b) assign one of the staff members as secretary of the Board.

(8) Subject to this Act, the Board must determine the procedures to be followed at meetings of the Board.

(9) The Board must cause proper minutes of proceedings to be kept for all its meetings.

(10) The Board may invite a person with expertise in any matter before the Board to attend and to participate in the deliberations of a meeting of the Board, but such person has no right to vote.

Committees of Board

16. (1) The Board may appoint any committee as the Board thinks necessary to exercise such powers and perform such functions as the Board may delegate or assign under subsection (6).

(2) A committee appointed under subsection (1) consists of such members of the Board, and may include such persons not being members of the Board and who are not disqualified in terms of section 11, as the Board may appoint to the committee.

(3) The Board must appoint a member of the Board to be the chairperson of a committee.

(4) The chairperson of the Board may convene a meeting of a committee at any time and place.

(5) The Board may dissolve or reconstitute a committee at any time.

(6) The Board may delegate or assign any power or function conferred or imposed upon the Board by or under this Act to a committee of the Board subject to such conditions as the Board may determine, except the power to approve or recommend anything and to appoint staff members under this Act.

(7) The Board is not divested or relieved of a power or function delegated or assigned under subsection (6).

(8) The Board, at any time and without prejudice of a right, may vary or set aside any decision made by a committee of the Board in the exercise of the power delegated to the committee under subsection (6).

Allowances of members of Board and committees

17. A member of the Board or committee who is not in the full-time employment of the State is paid, out of the funds of the Revenue Agency, such allowances approved by the Minister.

PART 4 ADMINISTRATION OF REVENUE AGENCY

Appointment of Commissioner and other staff members of Revenue Agency

18. (1) The Revenue Agency is headed by the Commissioner who is the Chief Executive Officer of the Revenue Agency.

(2) The Minister may appoint a fit and proper person as Commissioner -

- (a) after consultation with the Board;
- (b) if the qualifications and experience of the person are suitable to the functions of the Revenue Agency;
- (c) on terms and conditions of service determined by the Minister, after consultation with the Board; and
- (d) for a term of five years.

(3) The Commissioner is eligible for reappointment at the expiry of his or her term of office -

- (a) based on his or her excellent performance; and

- (b) at the discretion of the appointing authority.
- (4) The Minister may not appoint a person as Commissioner for more than two terms.
- (5) The Commissioner -
 - (a) is in the full-time employment of the Revenue Agency; and
 - (b) may not actively engage in any other business, occupation or employment, whether for remuneration or not, without the prior written approval of the Minister.

Disqualification from appointment as Commissioner

19. A person does not qualify for appointment or to continue to hold office as Commissioner, if the person -

- (a) is a member of Parliament, a regional council or local authority council;
- (b) has been convicted, whether in Namibia or elsewhere of theft, corruption, fraud, forgery or perjury or any other offence involving dishonesty;
- (c) is an unrehabilitated insolvent;
- (d) has under any law been declared to be of unsound mind;
- (e) has been removed from an office of trust; or
- (f) has at any time by order of a competent authority, been suspended or disqualified from practising a profession on grounds of unprofessional conduct or misconduct.

Functions of Commissioner

- 20.** The functions of the Commissioner are -
- (a) to administer and manage the activities of the Revenue Agency subject to the general supervision and direction of the Board;
 - (b) to formulate and transmit to the Board the strategic plan, internal policies, business plan, management systems, budget proposals and the budget execution report for the previous fiscal year for guidance and approval;
 - (c) to manage the funds, properties and business of the Revenue Agency;
 - (d) to administer, organise and control the staff members of the Revenue Agency in accordance with the approved Revenue Agency Human Resource Policy;
 - (e) to properly, efficiently and effectively perform the functions and execute the mandate of the Revenue Agency; and

- (f) to submit to the Minister monthly or when requested by the Minister regular statistics and all relevant information on revenue performance and revenue collection functions.

Appointment of staff members of Revenue Agency

21. To efficiently and effectively achieve the objects of the Revenue Agency, the Commissioner may -

- (a) after consultation with the Board, appoint the staff members below the level of management; and
- (b) appoint staff members at management level with the approval of the Board.

Performance agreements of management of Revenue Agency

22. (1) The Commissioner and the management staff of the Revenue Agency must, within 30 days of appointment, enter into performance agreements with the Board.

(2) A staff member of the Revenue Agency must, within 30 days of appointment, enter into a performance agreement with the Commissioner.

(3) The performance agreements under subsections (1) and (2) include human resources policy matters.

(4) The failure of the Commissioner or a management staff member or supervisor to carry out the terms of a performance agreement constitute a ground for his or her dismissal from the Revenue Agency, subject to the Human Resources Policy.

Termination of appointment of Commissioner

23. (1) The Minister may, subject to the rules of natural justice, terminate the appointment of the Commissioner, if the Commissioner -

- (a) is found to be physically or mentally incapable of performing his or her functions efficiently, and the medical doctor has issued a certificate to that effect;
- (b) is found guilty of misconduct to the detriment of the objectives of the Board or Revenue Agency;
- (c) is not, for whatever reason, effectively and efficiently performing the functions of the Revenue Agency as Commissioner; or
- (d) is found guilty of any offence involving dishonesty or other serious offence.

(2) The Commissioner may resign from office by giving at least three months written notice of his or her resignation to the Minister.

Remuneration of management and other staff of Revenue Agency

24. The Board, with the concurrence of the Minister, must determine the conditions of service, remuneration and other benefits of the staff of the Revenue Agency, except for the Commissioner.

Acting Commissioner

25. (1) If -

- (a) the office of the Commissioner is vacant; or
- (b) the Commissioner is unable to perform his or her functions,

the Minister must appoint a person with appropriate knowledge and experience to act as Commissioner during that vacancy or inability.

(2) A person who is appointed under subsection (1) to act as Commissioner -

- (a) may not act for a period of more than six months, but the Minister may for compelling reasons extend the appointment for a further period not exceeding six months; and
- (b) is entitled to the remuneration attached to the office of the Commissioner for the period that the person is acting as Commissioner.

(3) Subsection (2) does not apply if the Commissioner is temporarily absent from office due to official duties, in which case the Commissioner must appoint a management staff member to act as Commissioner.

Reference to Commissioner of Customs and Excise and Commissioner of Inland Revenue

26. A reference in any law or legal document to the Commissioner of Customs and Excise or the Commissioner of Inland Revenue is, from the commencement of this Act, construed as a reference to the Commissioner.

Declaration of assets and interests by staff of Revenue Agency

27. (1) If the Revenue Agency appoints a person -

- (a) as Commissioner, the person must submit a declaration of assets and interests to the Board; or
- (b) as staff member or in any other capacity, the person must submit a declaration of assets and interests to the Commissioner,

in the form prescribed in the code of ethics of the Revenue Agency, in relation to himself or herself, his or her spouse, minor children, grandchildren and subject to subsection (2), children of age.

(2) The declaration must, in relation to children of age, specify any property sold, transferred or donated to each one of them in any form or manner whatsoever including income or benefits from any account, business, partnership or trust.

(3) Each year the person appointed under subsection (1) must make a fresh declaration of assets and interests in the form specified in that subsection.

(4) Despite subsection (3), where the Commissioner has reason to believe that a person appointed under subsection (1) has in good faith omitted to declare certain assets or interests, the Commissioner may require the person to make a declaration of assets and interests as soon as possible after the omission is found.

(5) If the Commissioner, staff member or any other person employed by the Revenue Agency -

- (a) knowingly submits a false declaration; or
- (b) conceals the existence of assets or interests which the person is required to declare,

under this section, he or she commits an offence and is liable to a fine not exceeding N\$50 000 or imprisonment to a period not exceeding five years, or to both such fine and such imprisonment.

PART 6 FINANCIAL PROVISIONS

Funds of Revenue Agency

28. The funds of the Revenue Agency consist of -

- (a) money appropriated by Parliament;
- (b) grants and donations subject to the approval of the Minister;
- (c) investment income and proceeds from the disposal of any Revenue Agency property; and
- (d) loans extended to the Revenue Agency with the prior approval of the Minister.

Financial year and budget

29. (1) The financial year of the Revenue Agency ends on 31 March each year.

(2) The Revenue Agency may not incur an expense, except in accordance with a budget drawn up in terms of subsection (3)(a) pursuant to a three year strategic plan approved by the Board with the concurrence of the Minister.

(3) The Commissioner must, in each financial year -

- (a) draw up a budget for the next financial year; and
- (b) submit the budget drawn up in terms of paragraph (a) to the Board for consideration and subsequent transmission to the Minister for approval.

Accounts and audits

30. (1) The Revenue Agency must open bank accounts at banking institutions approved by the Minister on the advice of the Board.

(2) The Commissioner must keep and maintain proper accounts, statements of accounts and other records in respect of every financial year relating to the activities of the Revenue Agency.

(3) The accounts, statements and records referred to in subsection (2) are annually audited by either -

- (a) the Auditor-General ; or
- (b) a person registered as an auditor in terms of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951), appointed by the Board with the consent of the Auditor-General.

Annual report

31. (1) The Commissioner must, within six months of the end of a financial year, submit to the Board a comprehensive annual report on the operations of the Revenue Agency for such financial year for transmission to the Minister, together with the Auditor-General's report and the audited financial statements.

(2) The Minister, after receipt of the annual report, must table the report in the National Assembly within -

- (a) 30 days of receipt, if the National Assembly is in session; or
- (b) 14 days after the commencement of its next session if the National Assembly is not in session during receipt.

Payment into State Account

32. All revenue collected by the Revenue Agency must, as soon as possible, be paid into the State Account in accordance with the instructions issued under section 24 (1)(c) of the State Finance Act, 1991 (Act No. 31 of 1991).

Exemption from payment of income tax

33. The Revenue Agency may not pay tax, duty or levy imposed under any law on the income of the Revenue Agency.

Winding up of Revenue Agency

34. The Revenue Agency may not be wound up or liquidated except by or under the authority of an Act of Parliament.

PART 7 GENERAL PROVISIONS

Confidentiality

35. (1) A member of the Board, the Commissioner, a staff member of, or any other person employed by, the Revenue Agency, may not disclose to any other person confidential information, which the member, the Commissioner, staff member or other person, has obtained in the exercise or performance of his or her powers or functions under or in terms of this Act, except if the disclosure of such information -

- (a) is required for the purpose of the exercise or performance of his or her powers or functions under or in terms of this Act or any other law; or
- (b) is required by order of a court of law.

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

Limitation of liabilities

36. The Minister, a member of the Board, the Commissioner, a staff member of, or any other person employed by, the Revenue Agency is not personally liable for any loss or damages caused as a result of any act or omission committed in good faith, unless the loss or damages was caused due to the gross negligent or unlawful conduct of the Minister, member, Commissioner, staff member or person.

Regulations

37. The Minister may make regulations, not inconsistent with the powers of the Minister under this Act, relating to -

- (a) any matter in respect of which the Minister considers it necessary or expedient to make regulations to achieve the objects of this Act; and
- (b) generally any matter required or permitted to be prescribed under this Act.

Tax laws administered by Revenue Agency

38. (1) The tax laws set out in the Schedule are from the commencement of this Act administered by the Revenue Agency.

(2) The Minister may by notice in the *Gazette* amend the Schedule to delete a law or to include any other law enacted for the purpose of the mobilisation and collection of revenue for the State.

Savings and transitional provisions

39. (1) Subject to this section, the Minister on such conditions as the Minister may determine must, by notice in the *Gazette*, transfer to the Revenue Agency such agreements, assets, liabilities, rights and obligations of the State which relate to the functions of the Revenue Agency, with effect from a date specified in the notice.

- (2) Despite any law to the contrary, the Revenue Agency is -
 - (a) vested with the ownership of the assets and rights; and
 - (b) charged with the liabilities and obligations,

transferred to the Revenue Agency under subsection (1), with effect from the date of such transfer.

- (3) A certificate issued by the Minister in which it is stated that -
 - (a) any State land or a servitude or other real right or lease; or
 - (b) any other State asset or right,

described in the certificate has been transferred to the Revenue Agency in terms of subsection (1), is sufficient proof that the asset, right, liability or obligation so described is vested in the Revenue Agency.

- (4) Upon submission of the certificate referred to in subsection (3) to -
 - (a) the Registrar of Deeds; or
 - (b) to any other person in charge of any other office where a register or record of ownership of or entitlement to an asset or right described in such certificate is being kept,

the Registrar or such person must make such entries in or on any relevant register, title deed or other document in his or her office as may be necessary to effect the transfer in the name of the Revenue Agency.

(5) The Revenue Agency is substituted for the State as a contracting party in respect of any agreement transferred to the Revenue Agency in terms of subsection (1).

(6) The value of assets or liabilities transferred to the Revenue Agency in terms of subsection (1) is determined by the Minister.

(7) Despite any law to the contrary, no duty, fee, tax or levy payable in terms of any law for the acquisition or transfer of assets or rights is payable in respect of the transfer of assets or rights by the State to the Revenue Agency in terms of subsection (1).

- (8) A person who at the commencement of this Act has been appointed -
 - (a) as Commissioner of Inland Revenue or Commissioner of Customs and Excise is deemed to have been appointed under the corresponding provisions of this Act; and
 - (b) a staff member in the Department of Inland Revenue or Directorate of Customs and Excise may, within a period determined by the Revenue Agency and communicated to the staff members in writing, apply for employment to the Revenue Agency and may be so employed if successful.

(10) A staff member in the Department of Inland Revenue or Directorate of Customs and Excise who has been appointed under subsection (8) is deemed to have resigned from the Ministry from the date of assumption of duty with the Revenue Agency.

(11) A staff member in the Department of Inland Revenue or Directorate of Customs and Excise who is not appointed to the Revenue Agency under subsection (8) is to be redeployed anywhere in the Public Service.

Short title and commencement

40. This Act is called the Namibia Revenue Agency Act, 2017 and commences on a date determined by the Minister by notice in the *Gazette*.

SCHEDULE

TAX LAWS ADMINISTERED BY REVENUE AGENCY
(Section 38)

1. Customs and Excise Act, 1998 (Act No. 20 of 1998);
 2. Export Levy Act, 2016 (Act No. 2 of 2016);
 3. Income Tax Act, 1981 (Act No. 24 of 1981);
 4. Petroleum Taxation Act, 1991 (Act No. 3 of 1991);
 5. Stamp Duties Act, 1993 (Act No. 15 of 1993);
 6. Transfer Duties Act, 1993 (Act No. 14 of 1993); and
 7. Value Added Tax Act, 2000 (Act No. 10 of 2000).
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