

An analysis of the proposed introduction of resident shareholder dividend tax in Namibia

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TABLE OF CONTENTS

DECLARATION.....	i
ABSTRACT	ii
ACKNOWLEDGEMENTS.....	iii
LIST OF ABBREVIATIONS.....	iv
LIST OF TABLES.....	v
CHAPTER 1: INTRODUCTION	1
1.1 INTRODUCTION	1
1.1.1. Background	1
1.1.2. Motivation of topic actuality	3
1.2. RESEARCH PROBLEM.....	4
1.2.1. Problem Statement	4
1.2.2. Research questions	4
1.2.3. Limitations of the study	5
1.3. RESEARCH OBJECTIVES.....	6
1.3.1. Main objective	6
1.3.2. Secondary objectives	6
1.4. RESEARCH DESIGN.....	7
1.4.1. Research Approach	7
1.4.2. Research Strategy.....	7
1.4.2.1. Literature review	7
1.4.2.2. Research approach and methodology	7
1.4.2.3. Research plan	9
1.4.2.4. Research method.....	9
1.4.3. Reporting	11
1.5. SUMMARY.....	12
CHAPTER 2: ANALYSIS OF THE PROVISIONS IN THE NAMIBIAN INCOME TAX ACT RELEVANT TO NON-RESIDENT SHAREHOLDERS' TAX	14
2.1. Background	14
2.2. What is a dividend?	14
2.3. What is a company?	14
2.4. What is a shareholder?	15
2.5. The tax treatment of dividends - Income tax effect.....	16
2.5.1. Gross income definition	16
2.5.2. Specific inclusion in gross income.....	16
2.5.3. Exemptions.....	16
2.6. The tax treatment of dividends - Dividend tax effect	17

2.6.1. Non-resident shareholders' tax.....	17
2.6.1. Levy of non-resident shareholders' tax.....	17
2.6.2. Income subject to tax.....	18
2.6.3. Person liable for tax.....	18
2.6.4. Recovery of tax	19
2.6.6. Rate of tax.....	19
2.6.7. Determination of tax if company also operates outside territory	19
2.6.8 Date of payment of tax.....	19
2.6.9. Exemptions.....	20
2.7. Conclusion.....	20
CHAPTER 3: AN ANALYSIS OF NEWLY PROPOSED RESIDENT SHAREHOLDERS' TAX LEGISLATION.....	22
3.1. Introduction	22
3.2. Background	22
3.3. Determination of a good tax policy	23
3.4. Proposed amendment to the definition of a dividend.....	24
3.5. Proposed amendment to definition of shareholder	24
3.6. Proposed introduction of 35C withholding tax on dividends received by or accrued to a resident	25
3.7. Practical implications of implementing the proposed amendment and introduction of the new tax.....	27
3.8. Summary of benefits and challenges.....	29
3.9. Comparison between non-resident shareholders' tax and resident shareholders' tax.....	30
3.10. Conclusion.....	32
CHAPTER 4: A COMPARISON OF THE PROPOSED NAMIBIAN DIVIDENDS TAX LEGISLATION TO OTHER DEVELOPING COUNTRIES.....	34
4.1. Introduction	34
4.2. Taxation of dividends in South Africa.....	35
4.2.1. Background of South Africa.....	35
4.2.2. Dividends tax requirements	36
4.2.3. Liability of the dividends tax	36
4.2.4. Anti-avoidance provisions.....	37
4.2.5. Exemption from dividends tax	37
4.2.6. Comparison to Namibia	37
4.2.7. Conclusion	40
4.3. Taxation of dividends in Botswana.....	41
4.3.1. Background of Botswana	41
4.3.2. Dividend tax requirement	41
4.3.3. Liability of the dividend tax	42
4.3.4. Exemption from dividend tax	43
4.3.5. Comparison to Namibia	43

4.3.6. Conclusion	45
4.4. <i>Taxation of dividends in Kenya</i>	45
4.4.1. Background of Kenya	45
4.4.2. Dividend tax requirements	45
4.4.3. Liability of the dividend tax	46
4.4.4. Anti-avoidance provisions.....	47
4.4.5. Exemption from dividend tax	47
4.4.6. Comparison to Namibia	47
4.4.7. Conclusion	50
4.5. <i>Overall summary</i>	51
4.6. <i>Conclusion</i>	52
CHAPTER 5: CONCLUSION AND RECOMMENDATIONS	53
5.1. <i>Introduction</i>	53
5.2. <i>Understanding the current legislation</i>	53
5.3. <i>Critical analysis of draft legislation</i>	54
5.4. <i>Comparative analysis</i>	54
5.6. <i>Area for possible future research</i>	56
5.7. <i>Conclusion</i>	56

DECLARATION

I certify that this research report is my own unaided work. It is submitted in partial fulfilment of the requirements for the degree Master of Commerce in Taxation t the North-West University. All sources, that I have used or referred to, have been indicated and acknowledged as such by means of complete references. It has not been submitted before for any other degree or examination in any other university.

Etiigwana Selma Neloolo Itope

ABSTRACT

In Namibia, dividends received are exempt from income tax in the hands of all taxpayers. Dividends declared to foreign shareholders are however subject to non-resident shareholder's tax (NRST). NRST, which is a withholding tax, is levied on non-resident shareholders.

One of the proposed changes announced by the Minister of Finance in his mid-term budget review for the 2018/2019 tax year include the introduction of a resident shareholder's tax. The proposed introduction of the resident shareholder's tax will mean that all dividends paid by Namibian companies will be subject to dividends tax regardless of whether it accrues to a non-resident shareholder or a resident shareholder. The objective of the proposal is to enhance fairness and equity of the tax system between local and foreign investors who are already subject to a withholding tax on dividends. Similar to NRST, the resident shareholder's tax will be treated as final withholding tax. This means that the company paying the dividend will withhold the necessary tax on behalf of the taxpayer.

There is a great concern from various stakeholders including the civil society, local investors, and the general public of the impact that this newly proposed resident shareholder's tax will have. There is hence an urgent need to increase the understanding of this newly proposed tax and ensure that it is formulated in such a way that it will achieve its intended purpose without rendering Namibia unattractive for potential investors. Given the above concerns, this study will analyse and evaluate the proposed resident shareholders' dividend tax. By gaining an understanding of the proposed tax and comparing it to similar countries' dividend tax regimes, it will contribute to the body of knowledge around the newly proposed resident shareholder's tax and possibly assist with its eventual successful implementation. Also by doing a benchmark to similar dividend taxation legislations of other similar countries, it could be determined if this newly proposed legislation is in line with the common practice and if lessons could be learned from other developing countries in terms of their dividend tax regimes. This study will further enrich literature on the Namibian tax policy.

KEY WORDS:

Resident shareholders' tax, Dividend, Withholding tax, Namibian Income Tax Act, Comparative analysis

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LIST OF ABBREVIATIONS

Botswana Income Tax Act	Botswana Income Tax Act No. 12 of 1995
BURS	Botswana Unified Revenue Service
CIT	Corporate income tax
DTA	Double taxation agreement
ITAS	Integrated Tax Administration System
Kenyan Finance Act	Kenyan Finance Act No.10 of 2018
Kenyan Income Tax	Kenyan Income Tax Act No.470 of 1974
Namibian Companies Act	Namibian Companies Act No. 288 of 2004
NRST	Non-resident shareholder's tax
OECD	Organisation for Economic Cooperation and Development
PwC	PricewaterhouseCoopers
SARS	South African Revenue Service
SEZ	Special Economic Zones
SEZA	Special Economic Zones Act, 2015
South African Income Tax Act	South African Income Tax Act No.58 of 1962
STC	Secondary Tax on Companies
The Act	Namibian Income Tax Act No. 24 of 1981

LIST OF TABLES

Table 1 Comparison of the non-resident shareholders' tax and the newly proposed resident shareholders' tax	31
Table 2: Comparison of dividends tax between South Africa and Namibia	38
Table 3: Comparison of dividends tax between Botswana and Namibia.....	43
Table 4: Dividend tax withholding rates according to Income Tax of Kenya	46
Table 5: Comparison of dividends tax between Kenya and Namibia	48
Table 6: Comparative summary of dividends tax between Namibia, South Africa, Botswana and Kenya	51

CHAPTER 1: INTRODUCTION

1.1 INTRODUCTION

1.1.1. Background

On the 24th of October 2018 the Minister of Finance of Namibia delivered his mid-term budget review for the 2018/2019 tax year. The Minister confirmed that against a complex set of external shocks to the Namibian economy and domestic structural constraints, a responsive macro-fiscal policy framework was now being adopted (Ministry of Finance, 2018b). He further announced some proposed amendments to the Namibian Income Tax Act (24 of 1981) (the Act) which will aim to generate replacement revenue as there had been declines in the South African Customs Union (SACU) revenue (Ministry of Finance, 2018b).

In Namibia, dividends received are exempt from dividends tax only in the hands of Namibian corporates, individuals and trusts. Dividends declared to foreign shareholders are however subject to non-resident shareholder's tax (NRST) (PwC, 2018). NRST, which is a withholding tax, is levied on non-resident shareholders in addition to normal income tax on income from other Namibian sources, in terms of sections 41 to 48 of the Act.

Dividends fall within the definition of gross income, as defined in section 1 of the Act for both resident and non-resident taxpayers. However according to section 16n of the Act, dividends are specifically exempt, therefore they don't form part of income. Dividends received would therefore not have any further additional tax consequences for the taxpayer. The dividend tax withheld by the company paying the dividend will therefore be the final tax on these dividends. The taxpayer will still be required to declare any dividends received in their annual tax return but they will not have any further tax consequences.

A dividend according to section 1 of the Act is defined as any amount distributed by a company to its shareholders excluding interest or any distribution out of the assets pertaining to any unit portfolio to the shareholder of the unit portfolio (Namibia, 1981).

Section 42 of the Act provides that a non-resident shareholder would include a natural person that is not ordinarily resident in Namibia, or that does not carry on business in Namibia or the deceased estate of such a natural person. With regards to companies, a non-resident

company shareholder would include one that is not managed or controlled in Namibia, or a company which holds more than 50% of the issued share capital for the benefit of one or more companies and these companies are not managed or controlled in Namibia (Namibia, 1981).

In terms of section 42 of the Act, the Namibian company declaring the dividend is responsible for paying the NRST to the Receiver of Revenue. The Namibian company is required to withhold the NRST from the dividend due to the non-resident shareholder and pay it over to Inland Revenue before or on the 20th of the month following the month in which the NRST was deducted. Penalties and interest can be levied on late payments.

NRST is levied at a standard rate of 20%, with the exception of non-resident shareholders who hold more than 25% of the shares of the Namibian company declaring the dividend, in which case the rate will decrease to 10% (PwC, 2017).

One of the proposed changes announced by the Minister of Finance in his mid-term budget review for the 2018/2019 tax year include the introduction of a resident shareholder's tax (Ministry of Finance, 2018b). The proposed introduction of the resident shareholder's tax will mean that all dividends paid by Namibian companies will be subject to dividends tax regardless of whether it accrues to a non-resident shareholder or a resident shareholder.

Similar to NRST, the resident shareholder's tax will be treated as final withholding tax. This means that the company paying the dividend will withhold the necessary tax on behalf of the taxpayer. The company will then pay the dividend tax withheld to the Receiver of Revenue. As this is a final withholding tax, the taxpayer is no longer required to pay any additional taxes relating to the dividend received (Ministry of Finance, 2018a).

In his book, *An Inquiry into the Nature and Causes of the Wealth of Nations*, Smit is quoted as saying, "The subjects of every state ought to contribute towards the support of the government, as nearly as possible, in proportion to their respective abilities; that is, in proportion to the revenue which they respectively enjoy under the protection of the state", (Smit & Bullock, 1779). This famous quote reinforces the sentiments echoed by the Minister of Finance that the introduction of the new tax will be to the benefit of the entire country.

Those opposed to this new tax have voiced concerns regarding the impact this may have on the Namibian economy which is currently experiencing a recession (Mhunduru, 2017). Cirrus Securities, one of the leading investment fund managers in the country have commented on

the proposed resident shareholder dividend tax, stating that it would diminish the incentive for investors to expose their funds to business ventures in Namibia, that it would further make Namibia more uncompetitive in the regional environment given that the tax will not be introduced together with a reduction in the corporate tax rate (Cirrus Securities, 2019).

KPMG has expressed concerns citing that no mention has been made in the draft bill of any exemption to be granted for share buy backs, distributions by trusts and dividends passing through multi-level group structures. They highlighted that this could result in an inefficient tax collection model, which would impact negatively on normal corporate activities (KPMG Advisory Services Namibia, 2019).

Given the previous challenges with tax administration, the Ministry of Finance has embarked on the modernization initiative to automate the Inland Revenue tax system in order to improve the efficiency and effectiveness in the tax administration (Inland Revenue Department - ITAS, 2018). The improvement in tax administration, compliance and revenue collection will have to run hand in hand with the introduction of this new tax (Ministry of Finance, 2018b).

1.1.2. Motivation of topic actuality

There is a great concern from various stakeholders including the civil society, local investors, and the general public of the impact that this newly proposed resident shareholder's tax will have (Cirrus Securities, 2019). There is hence an urgent need to increase the understanding of this newly proposed tax and ensure that it is written in a way that it will achieve its intended purpose intention without rendering Namibia unattractive for potential investors.

Given the above concerns, this study will analyse and evaluate the proposed resident shareholder dividend tax. By gaining an understanding of the proposed tax and comparing it to similar countries' dividend tax regimes, it will contribute to the body of knowledge around the newly proposed resident shareholder's tax and possibly assist with its eventual successful implementation.

By doing a benchmark to similar dividend taxation legislations of other similar countries, it could be determined if this newly proposed legislation is in line with the common practice and if lessons could be learned from other developing countries in terms of their dividend tax regimes. This study will further enrich literature on the Namibian tax policy.

The countries selected for comparison are South Africa, Botswana and Kenya. South Africa and Namibia have a long history, having their monetary currencies pegged to each other (Bank of Namibia, 2018) and given that Namibian tax legislation is to a great extent similar to South African tax legislation (Legal Assistance Centre, 2018), it is an ideal country to compare with. Kenya is a developing country with a comparable resident dividend tax policy already in place, making it a good example to learn from (PwC, 2019b). Botswana has a growing economy and is said to be one of the well-run states in terms of its tax affairs having one of the lowest tax collection costs on the continent (Carter & Cebreiro, 2011), which would make it a suitable example to learn from.

1.2. RESEARCH PROBLEM

1.2.1. Problem Statement

With the proposed introduction of the resident shareholders' tax, investment income will effectively be reduced. This could serve as deterrent to local investors (Cirrus Securities, 2019) who feel that they might be able to secure a better return in a foreign market with more lenient dividend tax regimes. To counter the unintended negative consequences of this proposed tax, Namibian law makers could take into consideration the lessons learned by other developing countries that already have similar dividend tax regimes in place.

Given that this is a completely new piece of legislation that is being introduced, it might bring possible implementation and interpretation problems. The possible risk of non-compliance stemming from misinterpretation increases significantly with the introduction of any new legislation, therefore it is important that the taxpayer understand and apply this new tax correctly. It is even more vital that the Minister of Finance and the legislator write this new legislation in the correct manner so the intended benefit is realised.

1.2.2. Research questions

- What are the potential problems with the tax administration, being the application and the practical implementation of this newly proposed resident shareholder's tax legislation?
- Is the Namibian dividend tax regime aligned with that of other developing countries?

- How have other developing countries addressed the challenges brought about by their dividend tax regimes and what lessons that could potentially benefit Namibia as a country in the introduction of its newly proposed resident shareholder tax legislation.

1.2.3. Limitations of the study

The research and interpretations will be based on the proposed Income Tax Draft Amendment Bill published in August 2018. The draft legislation relating to the resident shareholder's tax will be analysed, while the information on the foreign legislation relating to the taxation of dividends will be used to briefly compare and benchmark the proposed legislation in its current draft form. A detailed analysis of the foreign legislation and a detailed comparison between the Namibian and foreign legislation of South Africa, Botswana and Kenya is beyond the scope of the research.

The legislation relating to the taxation of dividend distributions of the above-mentioned countries will be considered in the study and will be based mainly on secondary sources and a limited analysis of the relevant foreign legislation.

1.3. RESEARCH OBJECTIVES

The research objectives are divided into a general objective and specific objectives.

1.3.1. Main objective

The main objective of this research is to analyse the proposed resident shareholder's tax in Namibia and to compare it to similar countries' dividends tax legislation in order to benchmark the proposed legislation to determine if it is in line with that of similar countries.

1.3.2. Secondary objectives

The secondary objectives of this research will aim to address the main objective:

- i. To gain an understanding of the existing legislation applicable to the taxation of dividends and related definitions. This objective will be addressed in chapter 2.
- ii. To analyse the newly proposed resident shareholder's tax legislation, obtaining an understanding of the possible benefits and challenges within the newly proposed resident shareholder's tax legislation and also considering any potential problems with the application and practical implementation of the newly proposed legislation. This objective will be addressed in chapter 3.
- iii. To evaluate how the Namibian dividend tax regime compares to that of other similar countries and to note the challenges overcome by other developing countries relating to their dividend tax regimes. This objective will be addressed in chapter 4.
- iv. To make recommendations to the Namibian legislature based on the finding of the study. This objective will be addressed in chapter 5.

1.4. RESEARCH DESIGN

1.4.1. Research Approach

A qualitative approach with extensive literature review will be followed. The Namibian Income Tax Act, relevant case law, government documents, opinions of appropriate academics and professionals, media reports and reputable websites will be reviewed as part of the research. The study will be both analytical and comparative. The Namibian dividends tax legislation and administrative requirements of the legislation will be analysed. The Namibian dividends tax legislation will also briefly be compared with that of South Africa, Botswana and Kenya.

1.4.2. Research Strategy

1.4.2.1. Literature review

The intention is to make use of data from the following sources for this research:

- Legislation: Namibian Income Tax Act 24 of 1981;
- Income Tax amendment Bill (Namibia) August 2018
- FY2018/19 Mid-Year Budget Review Speech Presented by Calle Schlettwein, MP Minister of Finance
- Dividend tax legislation of South African, Botswana and Kenya
- Tax publications by international and local audit firms
- Textbooks and writings of acknowledged experts in the international tax field;
- Articles relevant to international taxation
- Masters dissertation and PhD thesis in the international tax field;

1.4.2.2. Research approach and methodology

There is a substantial body of literature available on the conducting research, however most research lean toward the two traditional core research philosophical paradigms. These two organising frameworks that researchers use to guide their work are commonly known as positivism and interpretivism (McKerchar, 2008). Both these frameworks have their own individual characteristics which inform the ways and means in which expectations about the nature of the research will be set and how it is eventually conducted. The framework selected by the researcher will largely depend on their views of the world (ontology) and the beliefs that knowledge is created (epistemology). However, it is important to note that the choice of the

most appropriate paradigm will also be influenced by the nature of the research problem at hand (McKerchar, 2008). It is fundamental that there is a clear alignment between the research problem and the research design (McKerchar, 2008).

Researchers that lean toward the positivism paradigm seek objectivity, they are often viewed as detached from the subject of the research and their explanation are based on empirical evidence and tested theories. These researchers follow deductive reasoning, they tend to be realist and can also be described as foundationalist. They also have the view that the world exists independently of the knowledge in it. The explanation in their research tends to be nice, neat and complete.

On the opposite side of the spectrum, researchers that lean toward the interpretivism paradigm cannot really be detached from the subjects of the research. In this paradigm, the researchers provide an understanding of the social reality based on their own subjective interpretation. Their research does not provide hard fast explanations like that of the positivism researcher and can often be described as messy and open-ended (McKerchar, 2008).

Researchers that fall within the positivism paradigm tend to adopt quantitative methodology in their research, which is empirical in nature and relies on deductive reasoning. The researchers that fall into the interpretivism paradigm tend to adopt a qualitative methodology in the research, which requires inductive reasoning as opposed to logic.

Given the vast differences between these two traditional research frameworks or paradigms, this study will fall in the interpretive paradigm. A qualitative research methodology will be applied to achieve the research objectives by gaining a deeper understanding of the proposed amendment which will seek to introduce a new dividend tax on resident shareholders and its proposed plan of implementation.

McKerchar also discussed an alternative view, that legal research could be a research paradigm on its own distinct from positivism and interpretivism (2008:8). According to the Pearce Committee (cited by (McKerchar, 2008), legal research can be categorised into two typologies of research, namely doctrinal or non-doctrinal.

Doctrinal research is described as the traditional or 'black letter law' approach and is characterised by the systematic process of identifying, analysing, organising and synthesising statutes, judicial decisions and commentary. In contrast, non-doctrinal research is

characterised as research "about law" rather than "in law" and employs the methodologies commonly used in other disciplines (McKerchar, 2008).

The Pearce Committee has gone a step further by dividing non-doctrinal research into reform-orientated and theoretical research (cited by (McKerchar, 2008)). Reform-orientated research is designed to accomplish change in the law, whereas theoretical research fosters a more complete understanding of the conceptual bases of legal principles.

Given the above explanation of the types of legal research and the clear distinction between the doctrinal and non-doctrinal legal research, this study will comprise both doctrinal and non-doctrinal elements. The research plan which is targeting a combination of these research approaches is described below.

1.4.2.3. Research plan

In the early part of the research a theoretical research approach will be adopted, to attempt to gain an understanding of the proposed amendment to the legislation. The research will seek to understand the purpose and intention behind the legislation.

In the next part of the research a doctrinal research approach will be adopted, where a critical evaluation of the proposed legislation will be done, comparing it to that of other developing countries.

In the final part of the research a reform orientated approach will be adopted, where recommendations for changes based on critical examination will be provided.

1.4.2.4. Research method

1.4.2.4.1. Research setting

The study will be performed as a desktop study and the qualitative research methodology which it will apply will be document analysis. Data will be collected by way of a literature review of printed and electronic material from Namibian national legislation, Namibian and foreign governmental policy documents, reports from Namibian and foreign commissions or committees of inquiry, Namibian and foreign case law, academic journals, authoritative textbooks and publications by international organisations.

Due to the nature of the study, documentation will be the only necessary data source for this study. Given that the tax under discussion, is a new tax being introduced for the first time, interviews would not be able to yield accurate results. Documents will provide background information and wider global insight, which will provide an understanding of the intention of legislature and allow for a comparative study of other developing countries. The chosen method will also allow for better referencing and documenting of details to be included in the research report (Yin, 2009).

1.4.2.4.2. Data analyses

Document analysis can be described as the systematic procedure of reviewing or evaluating documents and requires that data be examined and interpreted in order to elicit meaning, gain understanding and develop empirical knowledge (Bowen, 2009). This analytical procedure requires selecting, evaluating and synthesising data found in documents, then organising into major themes, categories and case examples through a process called content analysis (Labuschagne, 2003).

In analysing the documentary data, a content analysis exercise will be performed, which entails organising the information categories related to the study's objectives, thereafter, a thematic analysis will be performed whereby patterns within the data will be identified, with emerging themes becoming categories for further analysis.

A large enough source of information will be used, as documents of all types will be sorted to ensure that the research is able to uncover meaning and developing understanding to further discovering insights that contribute to resolving the research problem (Merriam, 1988).

The advantage of document analysis as a qualitative research method includes efficiency as it requires less time as it requires only data selection instead of data collection (Bowen, 2009). It is more cost effective and suitable in this particular case given the readily available data needed. It is considered to be ideal due to the lack of obstructiveness and reactivity, which is the nature of document analysis (Bowen, 2009) as documents are unaffected by the research process, making them stable (Merriam, 1988).

1.4.2.4.3. Strategies employed to ensure quality data

There is the ever-present risk in using document analysis as a qualitative research method of "biased selectivity" (Yin, 2009). In performing this study, the risk of "biased selectivity" will be mitigated by ensuring that documentary data is collected from the widest possible range of credible and authoritative sources. This will also ensure that the findings of the study can be validated by the support of other studies. This method of validation of the research findings in a qualitative study is referred to as "cumulative validation" (Sarantakos, 2013).

1.4.3. Reporting

As mentioned above a qualitative approach, extensive literature review will be followed, the reporting of the findings will be done using a qualitative writing style. The research report is structured to contain the following sections: introduction, aims of the study, review of the literature, findings, discussion, conclusion and abstract (Burnard, 2004).

1.5. SUMMARY

The chapters in this mini dissertation are presented as follows:

Chapter 1 : Introduction

Chapter 1 will serve as an introduction to the research and sets out the context and the goals of the research.

Chapter 2 : An analysis of the provisions in the Namibian Income Tax Act relevant to non-resident shareholders' tax

Chapter 2 will provide background and an understanding of the existing legislation around the taxation of dividends and related definitions. It will also address the secondary research objective as identified in par 3.2(i).

Chapter 3 : An analysis of the newly proposed resident shareholder's tax legislation

Chapter 3 chapter will provide an in-depth analysis of the proposed resident shareholder's tax and how it will be integrated with existing legislation. It will also seek to identify the benefits and challenges that are likely to arise as a result of this new tax. In addition, chapter 3 will also consider the administrative and practical implications of implementing this new tax. It will address the secondary research objective as identified in par 3.2(ii).

Chapter 4 : A comparison of the proposed Namibian dividends tax legislation to other developing countries

Chapter 4 will provide a brief comparison of the dividend tax regimes of three selected developing countries, namely South Africa, Botswana and Kenya. In this chapter, it will be considered whether the newly proposed resident shareholder's tax is in line with that of similar countries by benchmarking it to the above-mentioned countries. This chapter will address the secondary research objective as identified in par 3.2(iii).

Chapter 5 : Conclusion and recommendations

Chapter 5 will provide a summary of the research findings and the conclusions reached, demonstrating how the goals of the research are addressed. It will also serve to provide recommendations to the Namibian legislature based on the findings of the study. This chapter will address the secondary research objective as identified in par 3.2(iv).

CHAPTER 2: ANALYSIS OF THE PROVISIONS IN THE NAMIBIAN INCOME TAX ACT RELEVANT TO NON-RESIDENT SHAREHOLDERS' TAX

2.1. Background

This chapter will provide background and an understanding of the existing legislation of the taxation of dividends and related definitions in order to fully understand the intention of the legislator. This chapter will address the secondary research objective identified in paragraph 1.3.2(i) of chapter 1.

In this chapter the current legislation related to the taxation of dividends in the Act will be considered. Firstly the key definitions will be considered.

2.2. What is a dividend?

In order to be liable to establish the tax treatment of a dividend, a taxpayer will first need to determine if they have received a dividend as defined. The definition of a dividend is provided in section 1 of the Act. A dividend is defined as an amount distributed by a company to its shareholders.

The Act goes further to define the expression “amount distributed” to include any of the profits being distributed including those of capital nature when the company is not under liquidation or being wound up. Distribution of profits of a capital nature will not be considered a dividend when the company is being wound up or liquidated (Namibia, 1981).

A dividend will also arise when the share capital of a company is redeemed at a value higher than the nominal value of the share. The same will also be true in the event of a reconstruction of a company, a dividend will be deemed to be declared to a shareholder when the cash and assets given to the shareholder exceed the nominal value of their shares as part of the reconstruction exercise (Namibia, 1981).

2.3. What is a company?

From the above dividend definition, it is clear that a dividend is always paid to a shareholder in relation to the shares held in a company by the shareholder. The definition of a company is provided in section 1 of the Act.

It is defined as any association, corporation or company incorporated under Namibian law or has its place of effective management in Namibia. In determining the place of effective management, the Act will consider whether the company carries on business or has an office or place of business in Namibia, and whether it derives income from Namibian sources (Namibia, 1981).

Any holding company, regardless of country of incorporation will be regarded as a company as defined provided it holds shares in a Namibian company. Associations formed for specific purposes and for public benefit are also considered to be companies as well as any unit trust scheme managed by any company registered as a management company under the Unit Trust Control Act of 1981 (Namibia, 1981).

2.4. What is a shareholder?

As mentioned above, for a taxpayer to receive a dividend from a company, that person has to be a shareholder of the company paying the dividend. A shareholder is also defined in section 1 of the Act as the registered shareholder in respect of any share of any company as defined in the Act (Namibia, 1981). This means that the shareholder will need to appear in the registration document of the company to be a registered shareholder.

In relation to a unit trust scheme, the shareholder will be the registered holder of any unit certificate issued in respect of any unit portfolio (Namibia, 1981). Currently the legislation does not consider members of a close corporation or beneficiaries of a trust to be shareholders. Therefore, any distribution made by close corporations and trusts will not attract any non-resident shareholders' tax.

Having established what a dividend is and how it accrues to a taxpayer, the tax treatment of the dividends received will be considered from an income tax perspective firstly and later on from a dividend tax perspective.

2.5. The tax treatment of dividends - Income tax effect

2.5.1. Gross income definition

To determine the income tax treatment of a dividend received, it would firstly need to be determined if it falls within the definition of gross income. Gross income is defined in section 1 of the Act as, “the total amount, in cash or otherwise, received by or accrued to or in favour of such person during such year or period of assessment from a source within or deemed to be within Namibia, excluding receipts or accruals of a capital nature” (Namibia, 1981).

This gross income definition will be applied to any person, including non-resident persons, in relation to any year or period of assessment of that person. According to section 1 of the Act, the definition of person in addition to natural and juristic persons includes any trust or estate of a deceased person and also includes a partnership.

It is clear that most dividends received would naturally fall into the definition of gross income as defined above, however if ever there is doubt about the nature of the dividend, the Act provides a special inclusion which is briefly discussed below.

2.5.2. Specific inclusion in gross income

There are certain amounts that although deemed to be of a capital nature, according to section 1 of the Act, would still specifically be included as part of gross income, these include any amounts received or accrued by way of dividends. This special inclusion in gross income by way of paragraph (i) of the definition of gross income includes any dividends distributed by any company out of, or by way of the capitalization of, any profits of such company.

It is clear from the above discussion that dividends received would form part of gross income for the ordinary taxpayer.

2.5.3. Exemptions

Even though dividends received form part of gross income for both residents and non-residents, there is a special exemption provided in the Act in section 16(n) which allows such dividends to be exempted from income. The exemption provided in this section is subject to the provisions of section 42, which provides for non-resident shareholders' tax.

Section 16 of the Act still requires full disclosure of dividends received by or accrued to or in favour of any taxpayer in their tax returns.

2.6. The tax treatment of dividends - Dividend tax effect

2.6.1. Non-resident shareholders' tax

Part III of the Act deals specifically with the taxation of dividends received by non-resident shareholders from Namibian companies.

Namibia currently follows a source-based tax system and to determine the residency of a taxpayer, one will need to refer to case law. In the *Levene v Inland Revenue* it was held that the term ordinary residence would be the place a taxpayer stays or resides with some degree of continuity, aside from accidental or temporary absences (*Levene v Inland Revenue*, 1928).

The non-residents shareholders' tax applicable in Namibia is similar to the non-resident shareholders' tax that was previously applicable in South Africa in 1941 (Kamdar, 2018), before the country changed over from a source based tax system to a residence based tax system in 2001 (South African Reserve Bank, 2015). Non-residents had to pay at rate of up to 5% withholding tax on dividends from a South African source (Kamdar, 2018).

2.6.1. Levy of non-resident shareholders' tax

For both resident and non-resident taxpayers it was established that dividend income from a Namibian company is specifically included in gross income and is also exempt from income. Effectively dividends received will therefore not form part of income and will have no further income tax consequences for the taxpayer. This is however only true for resident shareholders. Non-resident shareholders are subject to a withholding tax in terms of section 42 of Act.

Section 42 of the income tax act provides for a separate tax referred to as the non-resident shareholders' tax (Namibia, 1981). This withholding tax will now be examined below in greater detail.

2.6.2. Income subject to tax

The Act under section 42, provides that the non-resident shareholder tax is payable on any dividends or interim dividends received from a Namibian company by the following persons that were shareholders at the date the dividends were declared:

1. Any non-resident shareholders who are not ordinarily resident or carrying on business or trade in Namibia; or
2. The deceased estate of a person who was not ordinarily resident or carrying on business in Namibia at the date of his or her death; or
3. Any company that is not managed or controlled in Namibia; or
4. A company where more than 50% of the equity share capital or issued share capital is held directly or indirectly for the benefit of one or more companies that is not managed or controlled in Namibia; or
5. Any holder of a provisional share certificate or bearer scrip (Namibia, 1981).

The Act also provides that any cash or assets given to a shareholder not part of a formal declaration of a dividend will also be deemed to be a dividend declared to them on the date they became entitled to such cash or assets (Namibia, 1981).

2.6.3. Person liable for tax

Section 43 of the Act states that the liability of the non-resident shareholders' tax rest with the person to whom or in whose favour the dividends accrue or are deemed to accrue (Namibia, 1981). This means the taxpayer who is the beneficial owner of the dividend has to rely on the company paying the dividend to carry out this responsibility of paying over the correct amount of dividend tax to the relevant authorities. This could place the taxpayer in an unusual situation as they would not have proof that the tax has been paid over to the Receiver of Revenue and may even incur late payment interest and penalties and interest in the worst case scenario, if the company declaring the dividend fails to make the necessary dividend tax payment or fails to pay on time (Thoother, 2014).

2.6.4. Recovery of tax

Although the person liable for the non-resident shareholders' tax is described in the preceding paragraph, according to section 44 of the Act, this tax will be payable or recoverable from either the company which declared the dividend to the non-resident shareholder or the agent receiving the dividend on behalf of any non-resident shareholder (Namibia, 1981).

2.6.6. Rate of tax

According to section 45 of the Act, non-resident shareholders' tax shall be withheld at a rate of 10% of the dividend declared if the beneficial owner is a company which directly or indirectly holds at least 25% of the capital of the company paying the dividends. In all other cases, the tax will be withheld at 20% of the dividend declared (Namibia, 1981).

2.6.7. Determination of tax if company also operates outside territory

The non-resident shareholders' tax can only be levied on dividends declared from income or profits derived from sources within Namibia. (Namibia, 1981)

Should the company declaring a dividend derive the income from sources both in and outside Namibia, according to section 46 of the Act, the tax will be apportioned in the ratio of the separate sources of income, in order that the tax is only withheld on the portion of the dividend that relates to income derived from a Namibian source.

The remaining portion of the dividend declared which relates to income or profit derived from a source outside Namibia will also be deemed to be a dividend received by the non-resident taxpayer from a source outside Namibia, and therefore not taxable in Namibia (Namibia, 1981).

2.6.8 Date of payment of tax

According to section 47 of the Act, the non-resident shareholders' tax needs to be paid within thirty days of the date on which the dividend is payable. The tax needs to be paid over by either the company which declared the dividend to the non-resident shareholder or the agent receiving the dividend on behalf of any non-resident shareholder. They are also required to submit a return showing the amount of the dividend and the name and address of the person to whom it has accrued (Namibia, 1981).

2.6.9. Exemptions

Section 48 of the Act provides for three types of exemptions from non-resident shareholders' tax as discussed below.

Dividends declared by the following entities will be exempt from non-resident shareholders' tax:

1. Any society or company registered under the Co-operative Societies Ordinance, 1946 (Ordinance 15 of 1946), as amended; or
2. Any insurance society or company subject to assessment in terms of section 32 of this Act; or
3. Any public utility company, established by law;

Dividends paid or declared from any company that earns its income from mining for natural oil in Namibia is also exempt from non-resident shareholders' tax (Namibia, 1981).

The final exemption from dividend tax is related to dividends paid in the form of an annuity derived from a source within Namibia (Namibia, 1981).

2.7. Conclusion

The objective of this chapter was to gain an understanding of the existing legislation applicable to the taxation of dividends and the related definitions. The three main definitions regarding the payment of dividends were presented and it was established that a dividend is paid by a company to its shareholders in relation to their shareholding in a company.

The tax treatment of dividends from both an income tax perspective as well as a dividend tax perspective was considered. It was determined that the income tax treatment which is the same for both residents and non-resident taxpayers, is that a dividend would form part of gross income and be exempted from income.

For non-resident taxpayers it was determined that in addition to the income tax, they are subject to an additional non-resident shareholders' withholding tax which is levied on dividends received from Namibian companies at a rate of 10% for a shareholding in the company of 25% or more, or a flat rate of 20% for a shareholding of less than 25% in the company. Double tax agreements may provide for reduced rates.

In conclusion it was established that the Act in its current state only makes provision for dividend tax payable by non-resident shareholders in the form of a withholding tax. Resident shareholders therefore normally wouldn't have, according to current tax legislation, any tax effects when receiving a dividend. This fact is addressed in the newly proposed legislation relating to resident shareholders' tax. The newly proposed resident shareholders' tax legislation will be analysed in the next chapter.

CHAPTER 3: AN ANALYSIS OF NEWLY PROPOSED RESIDENT SHAREHOLDERS' TAX LEGISLATION

3.1. Introduction

This chapter will provide an in-depth analysis of the proposed resident shareholder dividend tax and how it will be integrated with existing legislation. It will also seek to identify the benefits and challenges that are likely to arise as a result of this new tax. This chapter will also consider the administrative and practical implications of implementing this new tax. This chapter will address the secondary research objective as identified in par 3.2(ii), analysing the amendments to the Act related to the introduction of the resident shareholders' tax.

3.2. Background

In August 2018 the Ministry of Finance released a draft amendment bill for commentary by relevant stakeholders (Ministry of Finance, 2018b). One of the proposed changes announced by the Minister of Finance in his mid-term budget review for the 2018/2019 tax year include the introduction of a resident shareholder's tax (Ministry of Finance, 2018b). The proposed introduction of the resident shareholder's tax will mean that all dividends paid by Namibian companies will be subject to dividends tax regardless of whether it accrues to a non-resident shareholder or a resident shareholder.

The introduction of the resident shareholders' tax is meant to enhance the fairness of the tax system as dividend income will be taxed the same as other streams of passive income such as interest income (Ministry of Finance, 2018b). This proposed amendment seeks to strengthen the equity and progressivity of the tax system. It would be in line with the spirit of having an equitable and progressive tax system and would further the plight of bringing all potential taxpayers in the tax net, thus increase the Namibian Tax base (Ministry of Finance, 2018b).

Those opposed to this new tax have voiced concerns regarding the impact this may have on the Namibian economy which is currently experiencing a recession (Mhunduru, 2017). Cirrus Securities, one of the leading investment fund managers in the country, have commented on the proposed resident shareholder dividend tax, stating that it would diminish the incentive for investors to expose their funds to business ventures in Namibia, that it would further make

Namibia more uncompetitive in the regional environment given that they tax will not be introduced together with a reduction in the corporate tax rate (Cirrus Securities, 2019).

KPMG has expressed concerns citing that no mention has been made in the draft bill of any exemption to be granted for loans, share buy backs, distributions by trusts and dividends passing through multi-level group structures. They highlighted that this could result in an inefficient tax collection model, which would impact negatively on normal corporate activities (KPMG Advisory Services Namibia, 2019).

3.3. Determination of a good tax policy

The well known author of “The Wealth of Nations” and Scottish philosopher, Adam Smith devised what is today known as the canons of taxation in 1779. These canons can be used to measure as tax policy to determine if it can be considered a good tax policy. These canons are set out below:

- Canon of equality or equity - There should be equal and fair treatment of all taxpayers
- Canon of certainty – There should be no doubt regarding the tax payable, the rates applicable
- Canon of economy – The cost of collecting the taxes should not be excessive
- Canon of convenience – The tax should be designed to enable taxpayers to easily pay it and the collector should easily be able to administer the policy

According to a study conducted by Venter in 2013, on the introduction of dividend tax in South Africa, it was determined that a good tax system needs to be impartial to all taxpayers (Venter, 2013).

In a research paper by Dr Du Preez on the fundamental principles of taxation, it was determined that there are six fundamental principals in taxation, which are listed below (DuPreez, 2015):

1. Efficient and effective administration and communication;
2. Certain, neutral, understandable legislation;
3. Equity influencing different levels of society;
4. Taxpayers’ duty to contribute to society versus the government’s duty to find a balance; between taking too little and taking too much;
5. Benefits to the public through taxation; and

6. Changes to unwanted social behaviour.

These and other criteria will form part of the considerations that will be used to analyse the newly proposed legislation and determine whether it can be considered to be a good tax policy.

3.4. Proposed amendment to the definition of a dividend

The legislator has proposed the complete substitution of the definition of a dividend as stated in section 1 of the Act with the following:

“An amount declared, transferred or applied by a company for the benefit of any shareholder in relation to that company by virtue of *any share held by that shareholder in that company, whether -*

(a) by way of a distribution or

(b) as consideration for the acquisition of any share in that company;

without taking into account any liability in respect of any loan, or any financial arrangement,

as attributable to that share or interest.” (Ministry of Finance, 2018a).

Compared to the existing legislation, this new definition cast a wider net to include all distributions made in respect of any shareholding in a company. The definition of ‘dividend’ is being amended to include all amounts declared, transferred or applied by a company for the benefit of any shareholder and to ensure that no loan repayment is considered in the determination of the distributed amount.

3.5. Proposed amendment to definition of shareholder

In addition to the existing definition of a shareholder in section 1 of the Act, the definition will be extended to now include the following (Ministry of Finance, 2018a):

(c) “In relation to any close corporation, means a member of such corporation”; or

(d) “In relation to a trust, means a beneficiary of a trust;”

Compared to the existing legislation, the definition of "shareholder" is being amended to include members of close corporations and beneficiaries of trusts. Therefore, any distributions

made by either a trust to its beneficiary or a close corporation to its members will also be treated as a dividend.

3.6. Proposed introduction of 35C withholding tax on dividends received by or accrued to a resident

The legislator has proposed to add the following legislation under the new section 35C of the Act:

(1) “There must be paid for the benefit of the State Revenue Fund a tax *in this Act referred to as resident shareholder’s tax*) equal to 10% of any amount of any dividend transferred or applied or declared or paid by a company for the benefit of any shareholder in relation to that company by virtue of any share held by that shareholder in that company” (Ministry of Finance, 2018a).

The draft legislation makes use of the words “any amount of dividend transferred or applied or declared or paid”, and since these words are not defined in the draft legislation therefore to obtain guidance on the meaning of these words, case law will be referred to. In the case of *Butcher Bros (Pty) Ltd v CIR* it was held that the word ‘amount’ connotes that which has a monetary value, therefore a dividend need not only be received in cash in order to attract this tax (*Butcher Bros (Pty) Ltd vs CIR, 1945*). A dividend in specie will also attract dividend tax.

The draft legislation further states that the dividend needs to be transferred or applied or declared or paid by a company for the benefit of a shareholder in relation to their shareholding in the company paying the dividend. This means that an amount does not necessarily have to be received by the shareholder. The amount could be paid to a third party on the instruction of the shareholder, and it will still be considered to be received by the shareholder because the distribution is made on behalf of the shareholder (Stiglingh, et al., 2016).

Another vital requirement is that the taxpayer holds shares in the company that is paying the dividend, and the dividend is being paid by virtue and in relation to the shareholding in the company (Stiglingh, et al., 2016).

The draft legislation requires that the company paying, declaring, transferring or applying the dividend for the benefit of the shareholder, similar to the non-resident shareholders’ tax, will be the one liable to withhold the resident’s shareholder’s tax (Ministry of Finance, 2018a).

Similar to the resident shareholders' tax, the taxpayer who is the beneficial owner of the dividend has to rely on the company paying the dividend to carry out this responsibility of paying over the correct amount of dividend tax to the relevant authorities, which has its drawbacks as noted in paragraph 2.6.3.

The draft legislation specifies that the withholding tax on resident shareholder's tax is payable on the 20th of the month following the month during which the withholding tax was deducted (Ministry of Finance, 2018a). This requirement is not an unusual one and is similar to the time period provided for other type of withholding taxes levied by the Act (PwC, 2017). For the purposes of the payment of the withholding tax, the dividend will be deemed to be paid on the earlier of the date on which the dividend is actually paid or the date when it accrues (Ministry of Finance, 2018a).

The liability to withhold the dividend tax will be triggered by the actual payment of the dividend to the shareholders or the accrual of the dividend to the shareholder. The dividend will be considered to be accrued the shareholder once they become entitled to the dividend (*Lategan v CIR* , 1926). This view is in line with the ruling in the case law. The shareholder becomes entitled to a dividend when it is declared by the company as such. A dividend declaration will be done by the company through a signed director's resolution according to the Namibian Companies Act no 288 of 2004.

The draft legislation under section 35C(5) provides an exemption from the withholding tax for dividends paid to the following types of entities (Ministry of Finance, 2018a):

- The Government of the Republic of Namibia;
- Municipalities;
- Local authorities; and
- Pension funds.

The draft legislation provides this exemption based on the nature of the shareholder. The company declaring the dividend therefore has to be well aware of who its shareholders are to avoid withholding tax on their dividends.

The draft legislation also provides for an exemption from the withholding tax for any dividend declared, paid, transferred or applied by any company that have been distributed out of dividends received by such company from any other company. This exemption is available on the assumption that the dividends that are received are in respect of shares which the recipient

company is holding on their own behalf and that residents shareholder's tax was already withheld and paid with respect to those dividends (Ministry of Finance, 2018a).

This draft legislation appears to make provision for group structures in which the same dividend could be declared upward through the group structure to the ultimate holding company. The draft legislation allows for every subsequent dividend declared at the next level in the group hierarchy provided that dividend tax was withheld with its initial declaration. This exemption will prevent the double taxation of the same dividend at the various levels of a group of companies' structure (Ministry of Finance, 2018a).

As the name indicates this tax is specifically levied on dividends paid to resident shareholders. The draft legislation determines that the residency of a taxpayer in relation to the payment of this tax shall be decided by reference to the date on which the dividend is paid (Ministry of Finance, 2018a).

The Act in section 1, refers to a resident as either a natural person that is ordinarily resident or a juristic person that is incorporated under the laws of Namibia or is managed or controlled in Namibia. In the *Levene v IRC*, 1928, it was held that ordinarily residence refers to a residence in a place with some continuity apart from occasional absences.

It is the practice in Namibia that even if a natural person is not ordinarily resident, they could still be considered to be resident if they meet the physical presence test. This test requires that the individual must be physically present in Namibia for a period longer than 183 days in the particular year of assessment and 915 days over a five-year period (FHBC Wellington, 2018).

3.7. Practical implications of implementing the proposed amendment and introduction of the new tax

In order to understand the newly proposed resident shareholder's tax legislation completely, the practical implementation of the newly proposed legislation will now be considered, citing any potential problems with the application. Given that this is completely new legislation that is being introduced, it might bring with it possible implementation and interpretation problems as was noted by Deloitte in the review of the tax proposals, which raised concerns about the interpretation of the key terms in the legislation (Deloitte, 2019a). They further commented that they feel that the introduction of such a tax will broaden the tax base, but have also raised

concerns about the potential impact of future investments in shares and the national promotion of a much needed savings culture (Deloitte, 2019b).

KPMG has commented on the proposed introduction of the resident shareholders' tax, saying that its introduction could be problematic if passed in its current state with no exemption provided for share buy backs and distributions by trusts and in group scenarios, as this would impact negatively on normal corporate activities (KPMG Advisory Services Namibia, 2019).

In an early study conducted by John William in 1997, about the taxation of dividend, a concern was highlighted around the double taxation of dividends, whereby companies are required to pay their corporate taxes without a deduction for dividends paid and shareholders are taxed on their dividend receipts (William, 1997). This concern is still very much relevant with the introduction of the resident shareholders' tax in Namibia citing concerns raised by the various stakeholders as discussed above.

The draft legislation provides that if the person liable to withhold the tax, being the company that declared the dividend, fails to withhold an amount of tax in terms of subsection 35C(2) of the draft legislation or withholds an amount of tax but fails to pay that amount over, they shall be personally liable for the payment to the Minister (Ministry of Finance, 2018a). This just emphasizes the point made above that, even though the beneficial owner of the dividend is the shareholder, the company paying the dividend is responsible for withholding the dividend tax and paying it over to the relevant authorities.

The draft legislation further states that the company paying the withholding tax on a dividend must, together with the payment complete and submit the prescribed return to the Minister (Ministry of Finance, 2018a). The return will need to be completed as accurately as possible which means that the company paying the dividend will need to have the necessary information about their shareholders on hand to be able to fulfil this obligation.

The draft legislation states that it will impose a 10% late payment penalty for each month or part thereof for which the withholding remains outstanding. However, the penalty imposed may never exceed the actual amount of withholding tax (Ministry of Finance, 2018a).

In addition to the late payment penalty, interest will be payable on the outstanding balance at the rate of 20% per annum calculated as from the day immediately following when the tax was

due until the day of payment. “The interest levied similar to the penalty levied shall not exceed the amount of the withholding tax” (Ministry of Finance, 2018a).

The draft legislation confirms as with all withholding taxes, that this dividend tax to be withheld from resident shareholders is a final tax and the dividend received by the taxpayer is not to be added to or set off against any other income in their annual tax returns (Ministry of Finance, 2018a).

A possible reaction by taxpayers to the introduction of this tax would be an increased amount of dividend declarations in the period before the implementation of this new tax as predicted by Kamdar in his article in the Tax Professional (Kamdar, 2018). This would be an attempt to avoid paying any resident shareholders’ tax by distributing profits before the tax becomes effective. This is however a normal tax planning initiative that is exercised when legislation changes.

3.8. Summary of benefits and challenges

In summary, it appears the draft legislation will be doing what it had set out to do, which is to pull all possible taxpayers that were previously excluded into the tax net (Ministry of Finance, 2018b).

It appears that this new tax will create additional administrative responsibilities for companies that will be declaring and paying dividends. These companies will have to keep updated accurate information about its shareholders to be able to complete the returns that they need to submit to the Ministry of Finance. In a study performed on the introduction of dividends tax in South Africa, it was found that the administrative burden of a dividend withholding tax, similar to the one proposed for Namibia, will fall upon the company declaring the dividend as they could be held personally liable for any taxes that are not paid on time (Venter, 2013).

In the case of those companies that will be distributing dividends in kind or in specie, they will need to keep track of all the market values of the assets distributed in order to be able to determine the tax payable on these dividends. They will also have to ensure that they have made the necessary arrangements to have cash on hand to pay the dividend tax based on the market value of the assets distributed (Ministry of Finance, 2018a).

The draft legislation does not seem to place an enormous administrative burden on the beneficial owner or the shareholder unlike that of the companies paying the dividend. Theirs is to simply ensure that the company in which they hold shares has the correctly updated information, in order to ensure the returns filed by the company are accurate and complete.

The draft legislation appears to be silent on regulated intermediaries and the responsibility that may fall upon them in terms of this draft legislation. Most listed companies generally distribute their dividends through regulated intermediaries. A regulated intermediary is defined as: “a specified regulated person which administers dividend payments that were declared by a company after having received those payments from the company that declared the dividend. A regulated intermediary includes, for example, central securities depository participants, brokers, nominee companies, and approved transfer secretaries” (South African Revenue Service, 2013).

The legislation needs to be clear on the question of who should bear the ultimate withholding obligation of the dividend tax in the case where there is regulated intermediary involved in the actual pay-out of the dividends. Schafer’s study into the impact of dividend tax on regulated intermediaries reveals that a similar tax introduced in South Africa would have a significant impact on the regulated intermediaries in terms of changing their systems to cater for such a tax, they would have accurate records on all the shareholders receiving dividend to enable them to comply with the law (Schafer, 2010).

The one advantage to the taxpayer or shareholder is that this is a final tax on the taxpayer. It does not need to appear anywhere else in their tax return and no additional administrative responsibility will be placed upon on the taxpayer with regards to the dividend tax that will be paid on their behalf.

3.9. Comparison between non-resident shareholders’ tax and resident shareholders’ tax

The table below provides a brief comparison between the existing legislation relating the non-resident shareholders’ tax and the newly proposed resident shareholders’ tax.

Table 1: Comparison of the non-resident shareholders' tax and the newly proposed resident shareholders' tax

Criteria	Non-resident shareholders' tax	Resident shareholders' tax
Dividend tax requirements	The non-resident shareholders' tax will be triggered by the payment of any dividend by a resident company to a non-resident taxpayer.	The resident shareholders' tax will be triggered by the payment of any dividend by a resident company to a resident taxpayer.
Liability of the dividend tax	The liability for the dividend tax rests with the beneficial owner in all cases, however the company making the distribution is required to withhold the dividend tax and pay it over to the Ministry of Finance.	The liability for the dividend tax rests with the beneficial owner in all cases, however the company making the distribution is required to withhold the dividend tax and pay it over to the Ministry of Finance.
Withholding requirement	The non-resident shareholders' tax will be withheld at a rate of 10% when the shareholder holds more than 25% of the company. The rate increases to 20% when the shareholder holds less than 25% of the company.	The resident shareholders' tax will be withheld at a rate of 10%.
Exemption to dividend tax	Exemptions are provided in respect of dividends distributed by: • Co-operative societies; • Long-term and short-term insurance companies; • Public utility companies established by law; and	Entity related exemptions are provided for dividends paid to: • The Government; • Municipalities; • Local authorities; and • Pension funds

	Companies that derive their taxable income from the extraction of natural oil in Namibia Dividend accruing in the form of an annuity from a Namibian source will also not be subject to NRST.	Absolute exemptions are also available for dividends paid to group companies.
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Source: (Namibia, 1981), (Ministry of Finance, 2018a)

The non-resident shareholders' tax and resident shareholders' tax appear to be very similar to each other. The main difference arises in the rates that need to be withheld and the exemption available under each tax. The non-resident shareholders' tax provide a for a lower rate when the shareholding in the company exceeds 25%, where-as the resident shareholders' tax only has a flat rate regardless of shareholding.

Given the various similarities between the two pieces of legislation, it can be suggested to combine them into one dividend withholding tax that is applicable to both residents and non-residents. This would simplify the law even further making it easier to comply with and promote fairness and equality amongst all taxpayers, which is what any good tax policy strives to do as discussed under paragraph 3.3.

3.10. Conclusion

The objective of this chapter was to gain an understanding of the of the proposed resident shareholders' tax and how it will be integrated with existing legislation which is one of the secondary objectives under paragraph 1.3.2.ii. This chapter considered through an in-depth analysis of the proposed tax, the possible benefits and challenges that are likely to arise as a result of this new tax and also considered the administrative and practical implications of implementing this new tax.

The resident shareholders' tax is written in a clear and understandable way and is in many ways similar to the non-resident shareholders' tax provided in section 42 of the Act. The draft legislation appears to cover all the tax canons of good tax policy as discussed under paragraph 3.3. It is written in an understandable manner and does not seem to have any grey area that

could result in alternative interpretations. It follows a logical sequence and appears to be practical in implementation, therefore it can be concluded that the legislation is written in a manner that will enable it to achieve its primary objective of increasing state revenue for the Government of Namibia. This tax will be withheld and paid over to the Receiver of Revenue by the company paying the dividend. The rate at which the tax will be withheld has been proposed to be set 10%, which is lower than the rate applicable to non-resident shareholders.

The practical implementation of the resident shareholders' tax will follow the practice already established by the non-resident shareholders' tax, with submissions and payments due on the 20th of the month following the payment or accrual of the dividend, whichever is earlier.

The biggest advantage to the resident shareholder taxpayer is that this tax will not result in additional tax administration duties as the withholding and payment of this tax will be done by the company paying the tax. The greatest drawback is that the ultimate responsibility still remains with the resident shareholder and they will have to rely on the company declaring the dividend to ensure that they comply with the Act.

Given the various concerns of stakeholders around the interpretation of the key terms in the legislation and the fact no exemptions were provided for share buy backs and distributions by trusts and in group scenarios, it could be recommended that the Ministry of Finance publish an interpretation guideline about the newly proposed resident shareholders tax to provide taxpayers with additional guidance on the practical implementation of this new tax, especially with regards to the treatment of dividends in group structures. The Ministry can also further clarify the roles and responsibilities of regulated intermediaries involved in the dividend payment process.

The next chapter will consider how this newly proposed resident shareholders' tax compares to the legislation of other specifically selected developing countries and also consider any areas of improvement that can be drawn from the countries to be incorporated into the draft legislation.

CHAPTER 4: A COMPARISON OF THE PROPOSED NAMIBIAN DIVIDENDS TAX LEGISLATION TO OTHER DEVELOPING COUNTRIES

This chapter will provide a brief comparison of the dividend tax regimes of three selected developing countries, namely South Africa, Botswana and Kenya. This chapter will address the secondary research objective as identified in par 3.2(iii) by considering whether the newly proposed resident shareholders' tax is in line with that of similar countries by benchmarking it to the above-mentioned countries.

4.1. Introduction

In recent years, governments' expenditure to provide basic services have been on the increase. Studies have suggested that policy makers are choosing to continue providing these basic services by widening or deepening their tax bases to raise additional state revenue, in spite of the many disadvantages associated with an increased tax burden placed on their tax payers (Legwaila, 2019). It is in this spirit that the Minister of Finance in his budget speech announced the introduction of the new dividend tax for resident shareholders (Ministry of Finance, 2018b). This newly proposed tax amendment is an attempt to cast a wider net, thus bringing all potential taxpayers in the tax net, thus increasing the Namibian tax base (Ministry of Finance, 2018b).

Namibia is not the first developing country to try and attempt to widen its tax base in this manner (Legwaila, 2019). In this chapter it will be attempted to determine if the Namibian dividend tax regime is aligned with that of other developing countries by doing a benchmarking exercise with three carefully selected developing countries. It will also be attempted to determine if this newly proposed legislation is in line with the common practices and if lessons could be learned from other developing countries in terms of their dividend tax regimes. As part of the benchmarking exercise, the challenges experienced by the selected countries due to their dividend tax regimes will also be considered taking note of what could potentially benefit Namibia as a county in the introduction of its newly proposed resident shareholders' tax legislation.

The countries selected for comparison are South Africa, Botswana and Kenya. South Africa and Namibia have a long history, having their monetary currencies pegged to each other (Bank of Namibia, 2018) and given that Namibian tax legislation is to a great extent similar to South African tax legislation (Legal Assistance Centre, 2018), it is an ideal country to compare with. Kenya is a developing country with a comparable resident dividend tax policy already in place,

making it a good example to learn from (PwC, 2019b). Botswana has a growing economy and is said to be one of the well-run states in terms of its tax affairs having one of the lowest tax collection costs on the continent (Carter & Cebreiro, 2011), which would make it an great country to learn from.

Although this chapter will entail a benchmarking exercise of the different tax regimes around the taxation of dividend distributions, a detail comparison between the tax legislation of South Africa, Botswana and Kenya is beyond the scope of this research. Of the foreign legislation of the countries mentioned above, only the portions relating to the taxation of dividend distributions will be considered in the study and information obtained will be based mainly on secondary sources and a limited analysis of the relevant section of the foreign legislation. Only dividends tax effects will be considered for the comparative exercise and not the full income tax effects.

4.2. Taxation of dividends in South Africa

4.2.1. Background of South Africa

In 2007, South Africa announced that it would be moving away from its former dividend policy, Secondary Tax on Companies (STC) to a new Dividend Tax policy (South African Revenue Service, 2017). The main aim of the change which became effective 1 April 2012 was to align South Africa with the international norm where the recipient of the dividend, and not the company making the distribution, is liable for the tax relating to the dividend. This was said to make South Africa more attractive to international investors (South African Revenue Service, 2017). A study conducted by Venter revealed that the objective of implementing the dividend tax was achieved and that foreign investors do find the dividend tax more beneficial when compared to the former STC legislation (Venter, 2013).

Legislation regarding dividends tax in South Africa can be found under sections 64E to 64N of the South African Income Tax Act (58 of 1962). This legislation applies to all taxpayers regardless of whether they are resident or non-resident in South Africa.

4.2.2. Dividends tax requirements

For dividends tax purposes, a dividend is defined as any dividend or foreign dividend as defined in the South African Income Tax Act (South Africa, 1962). This means that dividends tax is triggered by the payment of dividends by any:

- South African resident company; or
- Foreign company listed on the South African securities exchange (JSE), (if the dividends are paid out in specie, this will not attract a dividends tax).

Dividends tax is levied at a rate of 20% (previously 15% for dividends paid or payable before 22 February 2017 (South African Revenue Service, 2017)). This is subject to double tax agreement relief in the case of dividends being paid by the companies resident in countries which have signed double tax agreements with South Africa (Stiglingh, *et al.*, 2016). The dividend tax will be levied on the amount distributed for those distributions made in cash or on the value distributed for those distributions made *in specie* (South African Revenue Service, 2017).

4.2.3. Liability of the dividends tax

If the dividend being distributed is in cash, the liability of the dividends tax rests with the recipient receiving the dividend, however the company making the distribution is still required to withhold the relevant withholding tax. The situation is slightly different for dividends *in specie*, where the liability of the dividends tax rests with the company making the distribution, and not transferred to the recipient of the dividend (South African Revenue Service, 2017).

Dividends tax needs to be withheld from any dividend distribution and paid over to the South African Revenue Services (SARS) by the company making the distribution. In some cases, the withholding tax will be withheld and paid over by a regulated intermediary, should they be involved in the process of paying out the dividend to the relevant shareholder. The ultimate responsibility still however rest with the person liable for the tax (South African Revenue Service, 2019).

4.2.4. Anti-avoidance provisions

Section 64E(4)(a) of the South African Income Tax Act provides that a dividend is deemed to be declared when there is loan or debt between a resident company and its connected person, which arose solely by virtue of a share held in the company by that connected person, meaning that there is no other business or a commercial reason for the debt. The entire debt will be deemed to be a dividend in specie declared by the resident company to its connected persons (South African Revenue Service, 2019).

Another anti-avoidance rule is Section 64E(4)(b) of the South African Income Tax Act, which provides that a dividend is deemed to be declared *in specie* by a resident company which provides a loan and a nil or below market related interest rate to its connected persons. The deemed dividend will be the difference between the market related interest on the loan and actual interest rate charged or paid for each year of assessment for which non-market- related interest is payable in respect of the debt (South African Revenue Service, 2019).

4.2.5. Exemption from dividends tax

Exemptions from dividends tax can be granted depending on the nature or status of the recipient. These exemptions are elective, meaning the recipient needs to give notification to the company making the distribution or the relevant regulated intermediary in the manner prescribed by SARS prior to the payment of the dividend. These exempt entities are listed in section 64F of the South African Income Tax Act and include amongst others local companies, the government, approved public benefit organisations, mining rehabilitation trusts and pension funds and retirement and benefit funds and many others (South African Revenue Service, 2019).

There are also some automatic exemptions available which require no notifications on the part of the recipient. these include dividends paid to group companies as defined and dividends paid to regulated intermediaries as defined (South African Revenue Service, 2017).

4.2.6. Comparison to Namibia

A comparison between South Africa and Namibia regarding the taxation of dividends is summarised as follows:

Table 2: Comparison of dividends tax between South Africa and Namibia

Criteria	South Africa	Namibia
Dividend tax requirements	The dividends tax is triggered by the payment of a dividend by a resident company or a foreign company listed on the JSE (excluding <i>in specie</i> dividend) to both residents and non-resident taxpayers.	The resident shareholders' tax will be triggered by the payment of any dividend by a resident company to a resident taxpayer. Namibia is currently on the source-based system for all taxes therefore it does not tax dividends declared by foreign companies from foreign sources. The following are however excluded, payments in respect of any liability in respect of any loan, or any financial arrangement, as attributable to that share or interest.
Liability of the dividend tax	The liability for the dividend tax rests with the beneficial owner only when the distributions relates to a cash dividend, for <i>in specie</i> distributions the liability rests with the company making the distribution or the regulated intermediary. In all cases, the company making the distribution or the	The liability for the dividend tax rests with the beneficial owner in all cases, however the company making the distribution is required to withhold the dividend tax and pay it over to the Ministry of Finance.

	regulated intermediary is required to withhold the dividend tax and pay it over to SARS.	There is no provision for regulated intermediaries in the draft legislation.
Withholding requirement	Dividend tax is withheld at a rate of 20%.	The resident shareholders' tax will be withheld at a rate of 10%.
Anti-avoidance provisions	Certain deeming provision listed in section 64E(4)(a) and (b).	There are no anti-avoidance provisions provided for in the draft legislation.
Exemption to dividend tax	Elective exemptions are available to specific entities depending on their nature or status. This list of entities is provided for in section 64F of the South African Income Tax Act, some of these include: • A company which is resident in South Africa • The Government, provincial government or municipality (of the Republic of South Africa) • A public benefit organisation (approved by SARS) Absolute exemptions are also available for dividends paid to group companies or regulated intermediaries.	Entity related exemptions are provided for dividends paid to: • The Government; • Municipalities • Local authorities; • Pension funds Absolute exemptions are also available for dividends paid to group companies.

Source: (South Africa, 1962) (Namibia, 1981)

From the above comparison between South African and Namibia, it is clear that legislation of the two countries is very similar. A possible weakness that could be identified in the new legislation of Namibia would be to incorporate the obligation and responsibilities of regulated intermediaries with regard to the roles they will play in the distribution of dividend by companies to the beneficial owners.

It appears South Africa is more lenient when compared to Namibia with regards to the entity specific exemptions, however the fact their exemptions are elective via a notification that needs to be provided to the distributing company, only created more administrative work for parties involved. Therefore, it is suggested that Namibia not adopt the same approach.

Another significant difference noted is in the definition of the dividend for dividends tax purposes. South Africa excludes a dividend *in specie* for foreign companies listed on the JSE, which is not the same for Namibia. Namibia is trying to cast the widest net possible therefore it is not suggested that the same approach is adopted. Namibia is currently on the source-based tax system, and is planning to switch over to a residence based system in the near future (Ministry of Finance, 2018b). Once this has taken place, this recommendation could be revisited.

South Africa appears to have some well-developed anti-avoidance measures in their legislation such as the deeming provision listed in section 64E(4) which deems certain items to be dividends declared *in specie* on which dividends tax needs to be withheld. Namibia could definitely borrow some for these provisions for their draft legislation to try to deter any tax avoidance and possible creative tax planning to avoid paying the correct amount of dividend tax. In fact, the definition of the dividend in the Namibian draft legislation excludes payments in respect of any liability in respect of any loan, or any financial arrangement, as attributable to that share or interest. This could lead to possible abuse of the legislation to hide dividend payments as repayments of such loans and thus avoid the payment of the necessary dividend tax. It is suggested that this last provision to the definition of a dividend for the purposes of determining dividend tax be removed.

4.2.7. Conclusion

It is clear from the above comparative analysis that the South African legalisation relating to the taxation of dividends is far more comprehensive when compared to the Namibian draft

legislation for resident shareholders' tax. Namibia could incorporate some provisions from the South African legislation into its own legislation, however caution will have to be exercised in the selection of relevant provisions as some may create additional unnecessary burdens on the taxpayers.

The South African legislation make no separate distinction between shareholders who are resident and non-resident when it comes to dividends tax. The proposal by the Namibian legislators to include in the Namibian legislation a withholding tax for dividend paid to resident shareholders aligns the Namibian legislation even closer with the practice in South Africa.

4.3. Taxation of dividends in Botswana

4.3.1. Background of Botswana

Under the law of Botswana, when a taxpayer, including companies, makes a payment of a specified nature, they have the responsibility to withhold a percentage of the payment and pay over the amount withheld to the Commissioner General. The amount of tax withheld may be a final tax on the income received by the recipient or it may be an advance payment and the recipient may still be required to pay additional taxes once they have submitted a return for further assessment (Botswana Unified Revenue Service, 2019).

One of the specified payments which required the payer to withhold an amount include dividend payments to residents and non-residents (Botswana Unified Revenue Service, 2019).

4.3.2. Dividend tax requirement

The legislation applicable to the withholding of tax on dividends is found in section 58 and the 7th Schedule of the Botswana Income Tax Act 12 of 1995 (Botswana, 1995).

A dividend is defined in the Income Tax Act of Botswana as an amount distributed, whether in cash or otherwise, by a company to its shareholders (Botswana, 1995).

The law requires that a company that is resident who makes any payment of a dividend to a resident or non-resident shall deduct tax from such payment in accordance with the Seventh Schedule of the Income Tax Act of Botswana (Botswana, 1995).

Withholding tax on dividends is levied at the same rate for both residents and non-residents at the rate of 7.5% and it is a final tax (PwC, 2019b). The fact that it is a final tax means the recipient is not obligated to submit an annual tax return to the tax authority to declare tax deducted from the dividend received (Botswana Unified Revenue Service, 2019).

The rate of dividend withholding tax may be varied by double tax agreements (DTA) (tax treaties) should the non-resident recipient be resident in any one of the countries with which Botswana has signed a DTA (South African Tax Guide, n.d.).

Dividends subsequently distributed by investment firms or companies within the same group are exempt from tax if the dividend they are declaring are paid out of dividends received that were already subject to withholding tax (Ernst and Young, 2018b).

Section 58(4)(b) of the Income Tax Act of Botswana provides an incentive for residents receiving dividends that may be also be liable for additional company tax as provided in Table III of the Eighth Schedule of the Income Tax Act of Botswana, to be able to offset the withholding tax on dividends they have withheld against additional company tax (Botswana, 1995).

The additional company tax is levied at a rate of 10% of the company's chargeable income. The legislation provided that the withholding tax shall be set-off in chronological order, meaning that the tax withheld first will be the first to be set-off, so to ensure no withholding tax shall be set-off more than once (Botswana, 1995). The balance of unused additional company tax may be carried forward to subsequent years but need to be utilized within a five year period (Botswana Unified Revenue Service, 2019).

4.3.3. Liability of the dividend tax

The responsibility of the withholding tax on dividends rests with the resident person making the dividend payment, however the ultimate liability of dividend tax still rests with the recipient of the dividend (Botswana, 1995).

This resident paying the dividend will be required to register with the Botswana Unified Revenue Services (BURS) in order to remit any tax withheld on payments they have made in the form of dividends (Botswana Unified Revenue Service, 2019).

The resident paying the dividend and withholding the necessary taxes is required to provide the recipient of the dividend with a certificate in the prescribed form which reflects the dividend paid and the tax withheld from such dividend. This certificate is required to be furnished to the recipient within 15 days after the end of the month during which the tax was deducted (Botswana, 1995).

4.3.4. Exemption from dividend tax

An exemption is provided for under section 58(4)(b) of the Income Tax Act of Botswana. Under this section, an exemption is provided for payments of dividends to non-residents that are either international financial services centre companies or collective investment undertakings.

4.3.5. Comparison to Namibia

A comparison between Botswana and Namibia regarding the taxation of dividends is summarised as follows:

Table 3: Comparison of dividends tax between Botswana and Namibia

Criteria	Botswana	Namibia
Dividend tax requirements	The dividend tax is triggered by the payment of a dividend by a resident company to either a resident or non-resident.	The resident shareholders' tax will be triggered by the payment of any dividend by a resident company to a resident.
Liability of the dividend tax	The liability for the dividend tax rests with recipient of the dividend, however responsibility for withholding and paying of this tax lies with the company paying the dividend. Failure to make such a payment could result in personal liability of the	The liability for the dividend tax rests with the beneficial owner in all cases, however the company making the distribution is required to withhold the dividend tax pay over the Ministry of Finance.

	company paying the dividend.	
Withholding requirement	Dividend tax is withheld at a rate of 7.5%.	The resident shareholders' tax will be withheld at a rate of 10%.
Anti-avoidance provisions	There are no anti- avoidance provisions provided for in the legislation.	There are no anti- avoidance provisions provided for in the draft legislation.
Exemption to dividend tax	Elective exemptions are available to non-residents that are either international financial services centre companies or collective investment undertakings.	Entity related exemptions are provided for dividends paid to: • The Government; • Municipalities • Local authorities; • Pension funds Absolute exemptions are also available for dividend paid to group companies.

Source: (Botswana, 1995), (Namibia, 1981)

When comparing the legislation of these two countries, one noticeable difference is the lower rate which Botswana is charging of 7.5% compared to the proposed rate of 10% in Namibia. The withholding tax rate used to be 15% until it was recently decreased to 7.5% (PwC, 2019a).

Studies have suggested that a reduction in tax rates improves the economy by boosting national spending (Cloutier, 2019). Namibia could possibly reconsider the dividend tax rate should further studies prove this to be beneficial for the country.

In Botswana, both residents and non-residents are subject to the withholding tax rate of 7.5% which promotes the fairness and equality of their tax system. In Namibia the non-resident shareholder' tax is levied at 10% to 20% depending on the percentage of ownership in a company and resident shareholders' tax will be levied at 10% (PwC, 2017). Namibia could also move to a more equitable position and charge a flat rate regardless of shareholding as this will promote the fairness of the tax system.

The fact that Botswana provides an incentive for some companies to set off the dividend tax against their additional company tax is also commendable and could also be a learning point for Namibia as it encourages compliance to the tax legislation and create a positive atmosphere for tax collection in the country.

4.3.6. Conclusion

When comparing the two countries, their legislation appears to be very similar. Botswana appears to take a more lenient approach to its taxpayers, and even incentivises compliance to its legislation. Namibia could borrow some of these traits from Botswana to encourage compliance amongst its taxpayers.

4.4. Taxation of dividends in Kenya

4.4.1. Background of Kenya

On 21 September 2018, Kenya introduced its latest Finance Act 10 of 2018. This act aimed to provide clear regulation on procedural matters relating to Income Tax Act 470 of 1974 amongst other changes (Ernst and Young, 2018a). Throughout the years, amendments to the Kenya Income Tax Act have been made, mainly through the Finance Acts, as well as subsidiary legislation via legal notices (Ernst and Young, 2019).

4.4.2. Dividend tax requirements

According to the Income Tax Act of Kenya, a dividend is defined as any distribution, be it in cash or kind by a company to its shareholders with respect to their shareholding equity interest in the company (Kenya, 1974).

Dividends paid by Kenyan companies are subject to withholding tax at varying rates between 0% to 10% depending on whether the recipient is a resident or non-resident and also depending on the shareholding in the company paying the dividends (PwC, 2019b).

The table below summarises the rate applicable in each case (PwC, 2019b):

Table 4: Dividend tax withholding rates according to Income Tax of Kenya

Shareholding	Resident WHT rate (%)	Non-resident WHT rate (%)
Shareholding exceeds 12.5% voting power	Exempt from withholding tax completely	10%
Shareholding is less than 12.5% voting power	5%	10%

Source: (Kenya, 2018), (Kenya, 1974)

For the resident shareholders receiving the dividend, the withholding tax will either be a final tax or creditable against corporate income tax (CIT). For non-resident shareholders receiving the dividend, the withholding tax will be a final tax (PwC, 2019b).

Citizens of the East African Community are considered for the purposes of this withholding tax on dividends to be residents of Kenya, therefore dividend paid to them by Kenyan companies only attract withholding tax at a rate of 5% (PwC, 2019b).

The withholding tax rate applicable to non-residents is subject to a DTA that may be signed between the Government of Kenya and the other in which the non-resident shareholders may be resident (Kenya, 2018).

4.4.3. Liability of the dividend tax

According to the Income Tax Withholding Tax Rule in the Income Tax Act of Kenya, the responsibility of deducting and paying over the relevant withholding tax rests with the company declaring and paying the dividend, however the ultimate liability still lies with recipient of the dividend (Kenya, 2018). The company paying the dividend is by law required to keep record of all names of all payees or shareholder receiving dividends, their personal identification numbers, the gross amount paid to each and the amount of tax deducted from each payment (Kenya, 2018).

The Kenyan companies are required to provide the payee shareholders with certificates showing the gross amount paid and the total tax deducted and other information that the Commissioner may require (Kenya, 2018).

Any company that fails to comply with this legislation will be guilty of committing an offense and could be held personally liable for the withholding taxes they were required to withhold and pay over to the commissioner (Kenya, 2018).

4.4.4. Anti-avoidance provisions

Section 7(1)(b) to (e) of the Finance Act of Kenya contains deeming provisions that could be viewed as anti-avoidance provisions. This section provides that all profits in relation to a company that is being wound up voluntarily shall be deemed to be payment of a dividend (Kenya, 2018). The provision also deems a dividend to be paid when a company issues debentures or redeemable preference shares to its shareholders for no consideration or for a consideration below the nominal value of the debentures or redeemable preference shares (Kenya, 2018).

These provisions will however not apply if the sum paid for the debentures or redeemable preference share is 95% or more of their nominal value (Kenya, 2018).

4.4.5. Exemption from dividend tax

The legislation appears to provide for only one exemption to the dividends withholding tax, that is if the company paying the dividend is a Special Economic Zones (SEZ) enterprise as defined paying the dividend to a non-resident (Deloitte, 2019b).

In the spirit of inspiring foreign direct investment and positioning Kenya as a prominent business hub in the region, the President of Kenya assented to the Special Economic Zones Act, 2015 (SEZA) on 11 September 2015. This act came into operation on 15 December 2015 and provides for the establishment of special economic zones (SEZs).

SEZ enterprises are entities licensed under SEZA, and these entities are entitled to various tax benefits such as being exempt from value added tax and income tax which includes dividends withholding tax amongst other things (Ernst and Young, 2015).

4.4.6. Comparison to Namibia

A comparison between Kenya and Namibia regarding the taxation of dividends is summarised as follows:

Table 5: Comparison of dividends tax between Kenya and Namibia

Criteria	Kenya	Namibia
Dividend tax requirements	The dividend tax is triggered by the payment of a dividend by a resident company to either a resident or non-resident.	The resident shareholders' tax will be triggered by the payment of any dividend by a resident company to a resident.
Liability of the dividend tax	The liability for the dividend tax rests with recipient of the dividend, however responsibility for withholding and paying of this tax lies with the company paying the dividend. Failure to make such a payment could result in personal liability of the company paying the dividend.	The liability for the dividend tax rests with the beneficial owner in all cases, however the company making the distribution is required to withhold the dividend tax pay over the Ministry of Finance.
Withholding requirement	Dividend tax is withheld at a rate between 0% and 10%.	The resident shareholders' tax will be withheld at a rate of 10%.
Anti-avoidance provisions	Certain deeming provisions are in place that deem profit of companies being wound up voluntarily as dividend. A dividend is also deemed to be declared when debentures and redeemable preference shares given to shareholders at no value or at a value below their nominal value.	There are no anti-avoidance provisions provided for in the draft legislation.

Exemption to dividend tax	Exemptions are available to SEZ enterprises that pay dividend to non-resident shareholders.	Entity related exemptions are provided for dividends paid to: • The Government; • Municipalities • Local authorities; • Pension funds Absolute exemptions are also available for dividend paid to group companies.
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Source: (Kenya, 2018), (Kenya, 1974), (Namibia, 1981)

When compared to the Namibian draft legislation of the resident shareholders tax, Kenya's legislation appears to provide more incentive to its taxpayers to own a larger stake in companies by providing for a complete exemption from the dividend withholding tax if the resident taxpayer owns more than 12.5% of the voting rights. This incentive promotes a culture of investment in the country.

Namibia could possibly consider introducing similar incentives. In a study conducted in tax incentives and foreign direct investment in Namibia, it was found that tax incentive along with other factors such as the functioning of government and availability of good infrastructure have an important role to play in attracting foreign direct investment to the country (Haiyambo, 2013).

In Kenya the withholding tax rate of 0% to 5% which is levied if a resident receives a dividend is significantly lower than that of Namibia, which is at 10%. The rates applicable to non-residents, similar to Namibia are higher than those rates applicable to residents. Although the lower rate is commendable and Namibia could also benefit from a reduced rate, it is not suggested to levy differing rates between residents and non-residents as this would not result in a fair and equitable tax system.

Kenya does have special treatment for SEZ entities, through which it aims to promote foreign direct investment in Kenya and position the country as a prominent business hub in the region (Ernst and Young, 2015). Namibia could possibly consider providing a similar incentive to try

improving its global competitiveness in attracting foreign direct investment, for example the exemption of dividend tax for such entities.

The Kenyan legislation has built into its dividend withholding tax provisions certain anti-avoidance provisions which deem certain amounts to be dividends and therefore attract the tax. Namibia could also possibly consider introducing similar provisions into its draft legislation.

4.4.7. Conclusion

When comparing the two countries, their legislation appears to be very similar. Kenya appears to have aligned its dividend tax legislation with its development goals for the country and the dividend tax legislation is being used as a tool to help realise these goals. Namibia could borrow some of these strategic synergies from Kenya to help it promote its own national developmental goals.

4.5. Overall summary

A brief summary of the some of the differences between Namibia, South Africa, Botswana and Kenya regarding the taxation of dividends is summarised as follows:

Table 6: Comparative summary of dividends tax between Namibia, South Africa, Botswana and Kenya

Dividend Tax	Namibia	South Africa	Botswana	Kenya
Who is liable for the tax?	Beneficial owner	Beneficial owner for normal cash dividend and company declaring the dividend for in specie dividends.	Beneficial owner	Beneficial owner
Who is responsible for paying the tax?	Company declaring the dividend	Company declaring the dividend or regulated intermediary.	Company declaring the dividend.	Company declaring the dividend.
Tax rate?	10%	20%	7.5%	0% to 5%
Withholding tax/Final tax or additional/advance tax?	Final withholding tax	Final withholding tax	Final withholding tax – could be set-off against additional company tax for qualifying companies.	A final tax or could be utilized as a credit against their Corporate income Tax (CIT).
Reduced rates for foreign resident	None	None	Yes, exemption for dividend to non-residents that are international financial services centre companies or collective investment undertakings.	Yes, exemption available for SEZ enterprises.

Source: (Namibia, 1981), (South Africa, 1962), (Botswana, 1995), (Kenya, 2018) and (Kenya, 1974)

Apart from South Africa, Namibia does have one of the higher rates compared to the countries selected for the comparative study, it could be suggested to conduct a further study into the

benefits that could be harnessed from reducing the withholding tax rate applicable to resident shareholders.

Adding some anti-avoidance provisions to the draft legislation will also possibly assist with the risk of non-compliance and tax avoidance. The draft legislation in its current state also does not make any provision for regulated intermediaries, which do play an important role in the financial services industry and therefore their roles and responsibilities in relation to this new tax would need further clarification.

4.6. Conclusion

The objective of this chapter was to provide a brief comparison of the dividend tax regimes of three selected developing countries, namely South Africa, Botswana and Kenya. This objective as outlined in paragraph 3.2.(iii) would be achieved through performing a benchmarking exercise to determine whether the newly proposed resident shareholder's tax is in line with that of similar countries.

It was determined that based on the comparison performed above, the draft legislation of Namibia compares quite well to that of developing countries selected. Various areas for improvement have been noted, which include amongst others the reduction of the proposed rate, the inclusion of anti-avoidance provisions and the incorporation of regulated intermediaries into the legislation.

The next chapter will summarise the research findings and the conclusions reached, it will be demonstrating how the goals of the research are addressed. It will also serve to provide recommendations to the Namibian legislature based on the findings of the study and possible future areas for further studies.

CHAPTER 5: CONCLUSION AND RECOMMENDATIONS

5.1. Introduction

The main objective of this research was to analyse the proposed resident shareholders' tax in Namibia and to compare it to similar countries' dividends tax legislation in order to benchmark the proposed legislation to determine if it is in line with that of similar countries.

To fully understand the change that would result from the draft legislation it was initially attempted to gain an understanding of the existing legislation applicable to the taxation of dividends and related definitions in the second chapter. Thereafter a critical analysis of the newly proposed resident shareholders' tax legislation was conducted, obtaining an understanding of the possible benefits and challenges within the newly proposed resident shareholders' tax legislation and also considering any potential problems with the application and practical implementation of the newly proposed legislation. This objective was addressed in chapter 3.

It was then attempted to evaluate how the Namibian dividend tax regime compares to that of other similar countries and to take note of any area of improvement that Namibia could learn from other developing countries relating to their dividend tax regimes. This objective was addressed in chapter 4.

In this final chapter a summary of the research findings and the conclusions reached is provided, demonstrating how the goals of the research were addressed. This chapter also provides recommendations to the Namibian legislature based on the findings of the study.

5.2. Understanding the current legislation

A detailed analysis was performed on the existing legislation with particular reference to the taxation of dividends. It was found that currently dividends although part of gross income, are exempt from income for all taxpayers. Companies paying dividends to non-resident shareholders are required to withhold a dividend tax equal to 10% of the distribution when the non-resident shareholder has a 25% shareholding in the company and 20% in all other cases. This will in all cases be subject to any DTA signed between Namibia and the country of residence of the non-resident shareholder. (Chapter 2)

Under the current law, there is no withholding tax applicable to dividends paid to resident shareholders.

5.3. Critical analysis of draft legislation

A critical analysis was performed on the draft legislation that seeks to introduce a withholding tax on dividends paid to resident shareholders. This revealed the proposed rate of 10% which will be levied on all dividends declared by local companies to resident shareholders. Together with the amendment to the definition of a company and dividend, it is clear that the legislator intends to cast the tax net as wide as possible to include even distributions made by trusts and close corporations into this dividend tax net. (Chapter 3)

5.4. Comparative analysis

The comparative analysis of the draft legislation revealed that it was comparable to the legislations of the countries selected for the comparative exercise being, South Africa, Botswana and Kenya. There were many similarities in the dividend tax regimes of all three countries selected. Some recommendations of suggested improvements from each of the countries have been summarised below. The objective of the benchmarking test was achieved in a sense that it can be concluded that the Namibian draft legislation on withholding tax on resident shareholders is in line with that of similar countries. (Chapter 4)

5.5. Recommendations

From the detailed analysis performed on draft legislation performed in chapter 3, some areas of weakness or possible improvements were identified.

Various stakeholders have raised concerns around the interpretation of the key terms in the legislation and the fact that no exemptions were provided for share buy backs and distributions by trusts and in group scenarios, as this would impact negatively on normal corporate activities. It could therefore be recommended that the Ministry of Finance publish an interpretation guideline about the newly proposed resident shareholders tax to provide taxpayers with additional guidance on the practical implementation of this new tax, especially with regards to the treatment of dividends in group structures. The Ministry can also further clarify the roles and responsibilities of regulated intermediaries involved in the dividend payment process.

Also considering the various similarities between the existing non-resident shareholders tax and the newly proposed resident shareholders' tax, it can be suggested to combine the two taxes into one dividend withholding tax that is applicable to both residents and non-residents. This would simplify the law even further making it easier to comply with and promote fairness and equality amongst all taxpayers. This would also assist the tax authorities in alleviating the burden of trying to administer two taxes that could be incorporated into one.

From the findings of the comparative study performed in chapter 4, some areas of weakness or possible improvements were identified:

The South African legislation appears to be far more comprehensive when compared to that of Namibia, which is understandable given the relative size of the South African tax base when compared to Namibia. The South African legislation makes provision for regulated intermediaries which have a defined role in the country's financial sector. The legal roles and obligations of the regulated intermediaries are clearly defined in the legislation. Although Namibia may not have that many role players in the process of paying dividends and making distributions, this is an important area of possible improvement to take from South Africa as the Namibian economy is growing day by day and the need for regulated intermediaries is surely to arise as the finance sector of the country expands.

The South African legislation also contains some anti-avoidance tax provisions which the Namibian lawmakers could also introduce into the draft legislation to try curb any tax avoidance on the side of taxpayers.

Botswana's dividend tax system, which is also very highly sophisticated, appears to take a more lenient stance on its taxpayers. They have a withholding tax rate of 7.5% for both residents and non-residents. This promotes fairness and equality in the tax system which Namibia could also learn from. Namibia could possibly consider reducing the proposed rate to try and have a competitive advantage to investors in the region.

Kenya's dividend tax legislation appears to reward resident shareholders for owning larger stakes in local business by exempting resident shareholders that own more than 12.5% in a company from dividend tax completely. The Kenyan legislation in this regard is being used as a tool to promote local investment, this is an important lesson that Namibia can learn from.

The objective of learning from similar countries' tax legislation has therefore been achieved successfully.

5.6. Area for possible future research

Possible areas for future research could be a study into the benefits that could be harnessed from reducing the withholding tax rate applicable to resident shareholders. This could provide Namibian lawmakers with further insight into the likely outcomes that could result from a reduction in the withholding tax rate, thus assisting them in making correct policy decisions for the country.

5.7. Conclusion

The overall objective of the research has been successfully achieved and it can be concluded that after a critical analysis of the proposed resident shareholders' tax, the Namibian draft legislation is comparable to that of similar countries' dividends tax legislation and recommendations from the benchmarking exercise identified areas of possible improvement for Namibian lawmakers.

By including residents into the tax net by levying a resident shareholders tax, aligns Namibia with other similar developing countries' policies.

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