

# MEMORANDUM OF ADVICE

**EX PARTE: ASSOCIATION OF CONSULTING ENGINEERS OF NAMIBIA**

**N RE: INTERNSHIPS // INCOME TAX AMENDMENT ACT 4 OF 2024**

**REF: J25050**

**DATE: 20 JANUARY 2026**

## **Introduction:**

1. We were engaged by Mr. Langford on behalf of the Association of Consulting Engineers of Namibia, to opine on the Income Tax Amendment Act, 4 of 2024 (“the Amendment”) and its insertion of s 17E to the Income Tax Act, 24 of 1981.
2. Section 17 of the Income Tax Act, 24 of 1981 (“the Income Tax Act”) provides for general deductions in the determination of taxable income. The inserted s. 17E allows for the deduction of an internship allowance (from the income derived from an employer) where an intern and employer are parties to a registered internship agreement.
3. Client requests to be advised on:
  - 3.1. Whether both students and graduates qualify as interns;
  - 3.2. Whether interns are considered non-full-time contracted employees;
  - 3.3. Whether ECN registration as “in-training” qualifies for the benefit;
  - 3.4. How this interacts with labour law limitations on contract duration.
4. We proceed to advise.

## **Whether both students and graduates qualify as interns?**

5. Neither the Labour Act 11 of 2007 (“the Act”), the Income Tax Act nor the Amendment defines the word “intern”. Interpretation requires *inter alia* consideration to the

language employed.<sup>1</sup> It is common (but not defining) to make use of dictionary terms as a guide to interpretation.<sup>2</sup>

6. Merriam-Webster defines “intern” as an advanced student or graduate, usually in a professional field gaining supervised practical experience.<sup>3</sup> This definition accords with the definition ascribed to “intern” by the Namibia Investment Promotion & Development Board: “*An intern in this case refers to any individual who seeks to obtain work experience for certification, professional registration purposes or just to gain practical work experience. These individuals vary from school leavers to university graduates and professionals.*”<sup>4</sup>
7. We are of the opinion that students and graduates will qualify as ‘interns’ and be able to partake in registered internship programmes.

### **Whether interns are considered non-full-time contracted employees**

8. The Act merely defines the words “employer” and “employee”,<sup>5</sup> it does not regulate the employment of an “intern” nor does it prescribe the duration or form of an employment relationship insofar as both the tender and acceptance of service is concerned. Employers and employees are free to contract for the provision of part-time, full-time, ad-hoc or permanent services (and remuneration).
9. Internship allowances are not permitted for periods that exceed 36 months of internship.<sup>6</sup> The object of the internship programme is to provide for part-time, ad-hoc and/or fixed term employment, which shall justify the “non-full-time” nature of the employment.<sup>7</sup> Whilst section 128C of the Act creates a statutory presumption aimed to prevent the misuse of fixed term employments, this section will not find application

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<sup>1</sup> Total Namibia (Pty) Ltd v OBM Engineering and Petroleum Distributors CC 2015 (3) NR 733 (SC).

<sup>2</sup> Van Zyl v The State (CA 25-2014) [2016] NAHCMD 246 (05 September 2016) at [160] – [162].

<sup>3</sup> Merriam-Webster Dictionary. See: <https://www.merriam-webster.com/dictionary/intern>

<sup>4</sup> See: <https://www.nipdb.com/youthinternshipallowancefaqs>

<sup>5</sup> See: s. 1 of the Act.

<sup>6</sup> See: s. 17E (5) of the Amendment

<sup>7</sup> See: s. 128C of the Act.

to persons employed as interns, the fixed term nature of the employment shall be justified.

10. Parties to an internship agreement are free to contract for a fixed-term, ad-hoc or part-time duration or period as they deem fit. The relationship shall be regarded as one of employment (albeit fixed-term) and the provisions of the Act will apply.

#### **If ECN registration as “in-training” qualifies for the benefit**

11. The Namibia Investment Promotion and Development Board (“NIPDB”), informs that the National Internship Programme and Youth Tax Incentive was developed to facilitate work experience for a broad range of eligible individuals for purposes of enhancing employability. The aim of the programme is to assist not only those persons engaged in on-going studies or school leavers but also candidates seeking professional registration and recent graduates lacking prior experience.<sup>8</sup> NIPDB takes a broad definition of ‘intern’ or ‘internship’ and their definition accords with the definition of ‘intern’ as advised herein above.
12. Sections 11 to 13 of the Engineering Act, 18 of 1986 regulates in-training registration. In short, in-training registration is a requirement for registration as a professional engineer, incorporated engineer or engineering technician. These requirements are similar (in nature and effect) as those contained in the Legal Practitioners Act, 15 of 1995 and the Medical and Dental Act, 10 of 2004 (and the Regulations to these Acts), namely; the completion of a postgraduate practical training period for purposes of admission or registration in the chosen profession.
13. The Regulations relating to Registration of Medical Interns, Register for Medical Interns and Restoration of Names to Register,<sup>9</sup> makes use of the word ‘intern’ and defines ‘medical internship’ as the training period therein prescribed. Again, this supports a broad definition of the words ‘intern’ and ‘internship’.

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<sup>8</sup> See also: Expression of Interest: National Internship Programme & Youth Tax Incentive published by NIPDB at [https://75d837d2-6776-44cc-b569-2935a1fb79ae.filesusr.com/ugd/80c949\\_37d02ae2ef87466abb8475f36b164652.pdf](https://75d837d2-6776-44cc-b569-2935a1fb79ae.filesusr.com/ugd/80c949_37d02ae2ef87466abb8475f36b164652.pdf)

<sup>9</sup> See: GN 317 of 2020, published in Government Gazette No. 7419 on 16 December 2020.

14. The Public Service Internship Programme as adopted by the Public Service and Administration of South Africa in 2006, is aimed at providing (public service) work experience to unemployed graduates and to provide workplace experience or an opportunity to practice the work skills that they have studied and will practice in future. Dr. Mahlatse Innocent Maake-Malatji opines as follows on the terms 'intern' and 'internship' in the South African context:<sup>10</sup>

“The terms ‘intern’ and ‘internship’ have been defined in various ways, often depending on the field in which they are used. An intern is usually understood to be ‘a person who is employed at an entry-level position in an organisation in a structured programme to gain practical experience in [a] particular occupation or profession’. A typical example can be seen in the guidelines published by Stellenbosch University, which describe an internship as ‘a planned, structured and managed programme that provides work experience for an agreed period of time’, which may last up to two consecutive years. An internship has also been described as ‘career specific work experience that one undertakes during/after one’s studies in order to gain the practical experience required to operate and make a positive contribution with respect to the career path one eventually pursues’.”

15. The author does not refer to any case law authorities nor statutory definitions and we have been unable to obtain any legal definition for the term or terms in our jurisprudence. We have also not been able to find any declarations, determinations or guidelines published by NAMRA that will assist with the question.
16. The terms ‘intern’ or ‘internship’ are used to describe persons placed, engaged or employed for the purpose of obtaining work-experience and for purposes of professional registration. We are of the opinion that there should be no bar to a person registered for ‘in-training’ to be party to a registered internship agreement. A different approach will be contrary to the intention of the National Internship Programme & Youth Employment Tax Incentive.
17. The Engineering Council of Namibia (“ECN”) is designated as an authority which may certify internship agreements.<sup>11</sup> In our opinion, if the ECN certifies the internship agreement, then the requirements of the Amendment will be met.

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<sup>10</sup> See: Internships, Employability and the Search for Decent Work Experience, Edward Elgar Publishing, International Labour Organisation, 2021, Chapter 8.2.

<sup>11</sup> See: Government Notice No. 397, published in the Government Gazette No. 8551, 31 December 2024.

18. Mr. Shipanga met and discussed the issue with Ms. Loide Hamutumwa, employed as Manager with the Namibia Revenue Agency's ("NamRA") legal department. She was not able to assist with NamRA's interpretation of 'intern' for purposes of the Amendment. We were advised to address our enquiry in writing and we propose to client, if it is willing, to instruct our offices to attend hereto.

**How this interacts with labour law limitations on contract duration**

19. As advised, there are no labour law limitations to the duration (or forms) that parties may agree to. The statutory presumption for the justification of fixed term agreements will not apply. Client is advised to inform its members to include a clause whereby the parties expressly agree to justify the fixed term duration of the internship employment for its purpose, i.e, internship. The limit on duration for qualification of the tax rebate is the period of 36 months.<sup>12</sup>

20. We advise accordingly.



**M Shipanga**

**Per: Köpplinger Boltman Van Greunen Legal Practitioners**

21. I have perused, considered and settled Mr. Shipanga's opinion. I am in agreement with that which he has opined above.



**J Boltman**

**Per: Köpplinger Boltman Van Greunen Legal Practitioners**

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<sup>12</sup> See: s. 17E (5) of the Amendment