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Income Tax Amendment Bill

Keeping you in the know

The Minister of Finance tabled an Income Tax Amendment Bill in Parliament earlier this week which aims to address the national objectives proposed in the 2015/2016 Budget earlier this year.

The amendments will become effective on the date of publication in the Government Gazette (except for where indicated otherwise). We will confirm the effective date once the gazette has been published.

Sale of mineral rights and licences

In 2011, the Income Tax Act was amended to subject proceeds on the sale of mineral rights and licences (including share transactions) to corporate tax. The Amendment Bill now amends the value on which tax is payable by allowing for acquisition costs relating to the mineral right/ licence to be deducted from the proceeds. The acquisition costs may not exceed the proceeds and may not create a loss.

The provision was further amended to include all indirect transactions. Any sale or other disposal of a share held by a company that indirectly holds a mineral licence or right will also therefore become subject to tax. The Amendment Bill is silent on how this provision will be applied in the case of a non-resident indirect shareholder.

Sale of petroleum rights and licences

The 2011 amendment discussed above excluded petroleum licences and rights. The 2015 Amendment Bill is now addressing the petroleum industry as well and states that any proceeds from the sale or other disposal of petroleum licences or rights will become subject to corporate tax. The sale of shares or member's interest in a company that holds petroleum licences or rights or that indirectly hold such rights will also be subject to tax.

Acquisition costs and costs of improving the value of the licence or right may be deducted from the proceeds as long as those costs do not create a loss.

As with the mineral rights provision, it is not clear how indirect transactions where the shareholder is a non-resident person will be impacted by this proposal.

Restraint of trade payment

In future all payments made to a person or a company as compensation for a restraint of trade will become taxable. The person making the restraint of trade payment will be allowed a deduction of the amount paid. The deduction must be spread over the number of years or part thereof that the restraint applies or over three years, whichever is the lesser amount.

Definition of Namibia

The Income Tax Act will in future read the same as the Value-Added Tax Act in respect of jurisdiction in that its application has been extended to include the territorial sea and exclusive economic zone.

Royalties

Payments made to non-resident persons for the use of trademarks etc. (royalties) are subject to withholding tax and the withholding tax rate has always been linked to the corporate tax rate. The Amendment Bill now proposes that a flat 10% applies to such payments.

The due date for payment of the withholding tax will also change - the withholding tax on royalties will be due by the 20th of the subsequent month during which the royalties is incurred or payment is made.

The Amendment Bill further imposes penalties and interest on the late payment of withholding tax on royalties. The penalties and interest will be imposed on the person who must withhold and remit the tax to Inland Revenue.

Withholding Tax on Interest

A final withholding tax on interest of 10% will in future apply to all interest payments made to a non-resident person with the exception of interest payments made by the State or any Namibian bank to a foreign bank.

Interest includes any interest or related charges, discount or premium payable on financial arrangement, any amount that represents compensation for any lending arrangement and deferred interest.

The person paying the interest must withhold and remit the tax by the 20th of the subsequent month. Interest will be deemed to be paid on the earlier of the actual payment date or when it becomes due and payable.

The withholding tax payment must be accompanied by a return. We suspect that affected taxpayers will have to register for withholding tax on interest, although the Amendment Bill is silent on the matter. We will provide further guidance when we have more information from Inland Revenue.

Failure to withhold and remit the tax will result in penalties and interest being imposed.

Withholding tax on services

Withholding tax on certain services (e.g. management, consulting, technical, and administration services) provided by non-residents and director's fees earned by non-resident directors was introduced in 2011 at a rate of 25%. That rate will now reduce to 10%.

The Amendment Bill also proposes some clarification on the definition of 'resident person'. The current wording of the withholding tax provision is unclear whether or not a branch of a foreign company (an external company) is regarded as a resident person. This uncertainty has now been cleared and any company doing business in Namibia, including a branch, will in future be regarded as a resident person for withholding tax on services.

Withholding tax on dividends

In terms of the current withholding tax on dividend provision, no penalties and interest are imposed on the late or non-payment of such tax. In future Inland Revenue may impose penalties and interest on the late or non-payment of withholding tax on dividends.

The due date for remittance of withholding tax on dividends will also change to the 20th of the month after the tax was withheld from the dividend. This provision seems to be in contradiction with the original due date provision (which was not deleted). The due date will therefore have to be clarified by Inland Revenue.

Director's remuneration

In terms of the current wording of the Income Tax Act, PAYE does not apply to any payments received by a director of a private company and any director's fees received by a director of a public company that is ordinarily resident in Namibia. This provision will now be amended with the effect that PAYE will have to be withheld from payments made to a director of a private company and from director's fees paid to a director of a public company that is ordinarily resident in Namibia.

Corporate tax rate

The corporate tax rate for companies other than mining and manufacturing will reduce from 33% to 32% for years commencing on or after **1 January 2015**.

Application of payments

The Income Tax Amendment Bill now provides for a process as to how payments made towards outstanding tax balance should be allocated. In future payments will first be applied to outstanding taxes, then to penalties and then to interest.

Recovery of taxes

Inland Revenue may in future issue a certificate to Ministry of Home Affairs to prevent a taxpayer from leaving the country until payment of outstanding taxes or a satisfactory arrangement for payment of outstanding taxes is made.

A number of provisions relating to the collection of taxes, persons who are liable for such taxes and the powers of Inland Revenue to collect tax debts have been included in the Amendment Bill. Generally, these provisions increase Inland Revenue's powers and strengthen the collection functions.

Electronic communication

The Income Tax Amendment Bill further contains a legal basis for the Ministry of Finance to make rules for electronic submissions and procedures relating to electronic submissions.

Contact us

For more information on the topic covered in this newsletter please do not hesitate to contact our Deloitte Namibia Tax team:

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