

## Namibian TAX Alert

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### VALUE-ADDED TAX AMENDMENT BILL 2007

The Minister of Finance has read the 2007 draft VAT Amendment Bill for the first time in Parliament last week. The Amendment Bill, *inter alia*, deals with the following:

- Amending the rules relating to the prescription period that applies to input tax claims;
- Deemed or notional input claims in respect of used goods;
- Adding a definition for the term “debt security”;
- Agent and auctioneer provisions;
- Objections; and
- Textual amendment to the definition of “passenger vehicle”

We briefly comment on the proposed amendments, which will come into operation, except where otherwise indicated, on the first day of the month following the publication of the Amendment Act in the Government Gazette.

### PRESCRIPTION PERIOD FOR CLAIMING INPUT TAX

This proposed amendment would allow a registered person to claim input tax deductions in respect of the acquisition or importation of goods, acquisition of services and post-sale adjustments that have not been claimed in previous periods to be claimed in any VAT period within a period of three years.

It would appear that the three year prescription period would only apply to “input tax” deductions (i.e. goods or services acquired from a registered person, imports and post-sale adjustments). It is not clear whether any prescription period will apply to the other deductions in section 18 (e.g. acquisition of goods pre-registration, insurance claims paid by an insurer, deductions in respect of used goods, etc). We would suggest this be clarified with Inland Revenue.

This amendment will be deemed to have come into operation on 27 November 2000.

## DEEMED DEDUCTION IN RESPECT OF USED GOODS

The Bill proposes a change to deal with the provisions in the VAT Act that allows a registered person to claim a deduction where used goods have been acquired from a person who was not entitled to claim an input deduction at the time of acquisition of those goods (generally known as a notional deduction).

It is proposed that a deduction no longer be allowed in respect of immovable property which constitutes used goods. In addition, the used goods must be acquired from “*any person in Namibia*” which means that acquisitions from outside Namibia will no longer qualify for a deduction under this section.

The definition of “used goods” will also be amended to exclude animals. This means that where a non-registered person sells animals to a registered person, the latter will not be allowed to claim a notional deduction in respect of the purchase.

These amendments will be deemed to have come into operation on 27 November 2000.

## TRANSACTIONS RELATING TO DEBT SECURITIES

The proposed amendment in the Bill is aimed at dealing with some of the uncertainties that existed in respect of transactions relating to debt securities. It is proposed in the draft Bill that the “*issue, allotment, drawing, acceptance, endorsement, or transfer of ownership*” of a debt security (a defined term) will be regarded as an exempt supply for VAT purposes.

A “debt security” is defined as:

- (a) *an interest in or right to be paid; or*
- (b) *an obligation or liability to pay money,*

*that is, or is to owing by any person, but does not include a cheque.*

The definition is wide and would include trade debts, loans, promissory notes, payment obligations, etc.

## AGENTS

This proposed amendment introduces provisions for situations where an agent acts on behalf of principal. These proposed amendments are welcomed as the Namibian VAT Act will now for the first time regulate the treatment of transactions by an agent who acts on behalf of its principal.

In terms of the proposed amendment, whenever an agent undertakes activities on behalf of its principal and contracts as an agent, it remains the responsibility of the principal to account for the output tax, claim allowable input tax and submit VAT returns. The agent may however issue and receive tax invoices, tax debit notes and tax credit notes if the supply was made or received on behalf of its principal. The agent must maintain sufficient records to enable the name, address and VAT registration number of the principal to be ascertained. The agent must also notify the principal within 21 days after the end of the calendar month during which the supply was made or received of the details of the supplies made or received on behalf of the principal.

Imports into Namibia by an agent acting on behalf of a principal, will be regarded as an import by the principal. The agent may however hold the relevant import documentation. Where an agent imports goods on behalf of a non-resident and who is also not registered for VAT in Namibia, the agent may, in certain instances, provided certain requirements are met, claim the import VAT paid.

A further proposed amendment provides that any supply made by a registered person to an agent who acts on behalf of a non-resident principal who is also non-registered for VAT in Namibia, will be deemed to be made to the agent provided the supply is subject to VAT at 15% and:

- the supply is a supply of services in respect of the handling, pilotage, salvage or towage of any foreign-going ship/ aircraft while present in Namibia; or
- the supply is a supply of services in connection with the operation or management of any foreign-going ship/ aircraft; or
- the supply is directly in connection with:
  - exports or the arranging of exports; or
  - imports or the arranging of imports.

This would mean that the agent would be entitled to an input tax deduction in respect of the above supplies, provided the normal requirements for claiming an input tax have been met.

## AUCTIONEERS

The VAT Amendment Act also provides for situations where an auctioneer acts on behalf of a principal. In terms of the proposed amendment an auctioneer will be defined as “*registered person carrying on a taxable activity which comprises or includes the supply by him or her by auction, of goods as an auctioneer or agent for or on behalf of another person*”

The general provisions that would apply to an agent will also apply to an auctioneer (see above). This would *inter alia* mean that if the auctioneer acts on behalf of non-registered principal, the supply made by the auctioneer will not attract VAT. Special provision is however proposed to allow the principal and auctioneer to agree that the supply be treated as a taxable supply. In that case the auctioneer will account for the output tax and will be entitled to recover the amount from the principal.

## OBJECTIONS

The current section 27(4) provides that Inland Revenue may only consider an objection after the person who is objecting has paid all outstanding VAT, penalties and interest or provided security for the amount due. It is proposed that this provision be deleted from the VAT Act which means that in future Inland Revenue would be able to consider an objection before the taxpayer has paid the tax in dispute.

## DEFINITION OF PASSENGER VEHICLE

An amendment of a textual nature is proposed to the definition of “passenger vehicle”.

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This newsletter is designed to keep readers abreast of developments and is not intended to be a comprehensive statement of the law. It should not be relied upon as a substitute for specific advice in considering the tax effects of particular transactions. No liability is accepted for errors or opinions contained herein.

### For further information, please contact:

<b>Gerda Brand</b>	(*264) (61) 285 5062	<a href="mailto:gbrand@deloitte.co.za">gbrand@deloitte.co.za</a>
<b>Aron Haifene</b>	(*264) (61) 285 5037	<a href="mailto:ahaifene@deloitte.co.za">ahaifene@deloitte.co.za</a>
<b>Annerie Keulder</b>	(*264) (61) 285 5064	<a href="mailto:akeulder@deloitte.co.za">akeulder@deloitte.co.za</a>
<b>Mark Freer</b>	(*27) (31) 560 7079	<a href="mailto:mfreer@deloitte.co.za">mfreer@deloitte.co.za</a>