Namibian Tax Alert
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Tax Amendment Bills Tabled

Keeping you in the know

The Minister of Finance tabled the Income Tax, Value-Added and Stamp Duty Bills in the National Assembly on 17 November 2011. Please note that these Bills have not been finally approved and gazetted as law yet. We will keep you informed of their status.

INCOME TAX

The sale, donation, expropriation, cession, grant, transfer or other alienation of a ***licence or a right to mine minerals*** in Namibia, irrespective of where the transaction will be concluded, the place where payment for the transaction will be made or the place where the funds from which payment is made are held will become taxable in Namibia. Similarly, the sale of shares in a company that holds a licence or has a right to mine minerals in Namibia will become taxable. When the Minister made her initial announcements (in July and August 2011) it appeared if this provision may also apply to the sale of rights in other natural resources. The Amendment Bill has now clarified this aspect, as this provision will only be applicable to mining for minerals. Fishing rights, for example, will not fall within the ambit of this provision. The provision will likely be applicable for individuals from 1 March 2012 and for companies from tax years commencing on or after 1 January 2012.

A ***final withholding tax of 25%*** will be introduced where:

- A Namibian resident pays any amount to a non-resident sportsperson, a non-resident musician, a non-resident entertainer involved in cabaret, motion picture, radio, television or theatre. The withholding tax will also be applicable to any payment made to any other non-resident person in relation to the activities mentioned above;
- Where a Namibian resident pays any fee to a non-resident person for any administrative, managerial, technical or consultative services or any similar services, whether such services are of a professional nature or not; and
- Where a Namibian resident pays any director's fee to a non-resident person.

A "non-resident person" will be defined as a person (other than a company) not ordinarily resident in Namibia or carrying on business in Namibia or a company not managed and controlled in Namibia. A person will also be deemed to be a non-resident if the payment is made to an address outside Namibia, unless proven otherwise.

The withholding tax provision will apply whether or not the services are performed inside or outside Namibia.

The tax withhold must be remitted to Inland Revenue, together with a prescribed from, within 20 days after the end of the month during which the amount was deducted or withheld. Failure to withhold and late payment will attract additional taxes, penalties and interest.

This provision will likely be applicable for individuals from 1 March 2012 and for companies from tax years commencing on or after 1 January 2012.

The ***withholding tax rate on dividends*** payable to non-resident shareholder ("NRST") will increase from 10% to 20%, where the non-resident shareholder holds less than 25% of the share capital of the Namibian company paying the dividend. Where the shareholder holds more than 25% of the Namibian company's share capital the NRST rate will remain at 10%. The NRST rate may be reduced by a double taxation agreement, if one was concluded with the country in which the shareholder is resident. For example the Namibian/South African double tax agreement reduces the NRST rate to 5% where the South African shareholder holds at least 25% of the Namibian company's capital and to 15% in all other cases.

This provision will likely be applicable for companies from tax years commencing on or after 1 January 2012.

Some changes will be made to the ***recoupment provision*** by which the option to approach the Minister to use an amount lesser than the market value will be removed. The Minister was normally approached for the use a lower than market value where assets were, for example, sold intra-group. This change will likely be applicable for individuals from 1 March 2012 and for companies from tax years commencing on or after 1 January 2012.

The application of the ***deduction of building allowances*** will be clarified to ensure that the taxpayers only start claim the 4% (for 20 year by non-manufacturing operations) and 8% (for 10 year by manufacturing operations) allowances in the year after the 20% initial allowance was claimed. In the past some taxpayers have claimed the 20% initial allowance and the first 4%/8% allowance in the same year.

In addition, the Income Tax Bill makes it clear that a person who claimed a leasehold improvement allowance will not be entitled to claim a building allowance as well.

These changes to the building allowance provisions will likely be applicable for individuals from 1 March 2012 and for companies from tax years commencing on or after 1 January 2012.

The ***export allowance*** (80% of taxable income) that may currently be claimed in respect of the export of certain manufactured goods (excluding fish and meat) will in future only apply to goods manufactured in Namibia. The Bill does not have any definition or further explanation of what "manufactured in Namibia" will mean in the context of the amendment provision. This provision will likely be applicable for individuals from 1 March 2012 and for companies from tax years commencing on or after 1 January 2012.

Practice Note No.2 of 2003 which deals with taxation of ***company (employer) owned policies*** will now been incorporated in the Income Tax Act. It seems if the aim of these changes will be prevent the indefinite postponement of a company (employer) owned policy and the resultant postponement of the tax liability on the proceeds of such policies upon maturity. The proposed changes to the Income Tax Act will be that the amount of any loan made against a company owned policy will become taxable in the tax year the loan is made and where a company owned policy was terminated and substituted the terminated policy and substituted policy will be regarded as one and the same. This provision will likely be applicable for individuals from 1 March 2012 and for companies from tax years commencing on or after 1 January 2012.

The Amendment Bill makes provision for the ***ring-fencing of assessed losses by a natural person*** in certain circumstances, unless the person's trade will constitute a business in respect of which there is a reasonable prospect of deriving taxable income (the Bill includes some criteria as to when a business will be regarded as such). The circumstances are:

- Where the tax loss for the particular tax year in question equals or exceeds N$ 200 000; and
- If the person had an assessed loss for 3 of the last 5 years of assessment; and
- The person practices any sport; or
- The person deals in collectibles; or
- The person rents out residential accommodation, unless at least 80% of the residential accommodation is used by persons who are not relatives (as defined) of the person for at least half of the year of assessment; or
- The person rents out vehicles, aircrafts or boats (as defined) unless at least 80% of the vehicles, aircrafts or boats is used by persons who are not relatives (as defined) of the person for at least half of the year of assessment; or
- The person shows animals; or
- The person is farming or is involved in animal breeding, unless the person carries on farming, animal breeding or activities of a similar nature on a full-time basis (it is not clear what "full time basis" will mean); or

- The person practices any form of creative arts; or
- The person practices any form of gambling or betting.

The provisions relating to ring-fencing will likely be applicable from 1 March 2012.

Changes will be made to the ***withholding tax on interest*** provisions, including the introduction of a definition of "gross interest", measurements to ensure that interest on negotiable instruments issued by Unit Trust Schemes is subject to withholding tax, etc. These changes will be deemed to have come into operation on or after 1 March 2009.

In respect of ***provisional tax payments***, all such payments will, in future, have to be based on an estimate of taxable income for the tax year in question.

The current under-estimation penalty provision will also be changed and penalties (in the form of an additional tax) may be imposed:

- Where the first provisional tax estimate is less than 80% of 50% of the final taxable income for the tax year in question – a penalty of not more than 100% of 50% of the final taxable income; and
- Where the second provisional tax estimate is less than 80% of the final taxable income for the tax year in question - a penalty of not more than 100% of the final taxable income for the tax year.

The additional tax penalty may be waived where the provisional taxpayer was affected by circumstances that he/she were not aware of at the time of making the estimation.

In addition, a penalty on the late submission of the provisional tax estimation of N$ 100 for each day that the estimation remains outstanding may be imposed. Furthermore a penalty on the late payment of the provisional tax of 10% of the amount due for each month or part of a month that the amount is outstanding may be imposed.

The provisional tax amendments will likely be applicable for individuals from 1 March 2012 and for companies from tax years commencing on or after 1 January 2012.

A ***definition of "educational policy"*** will be added and is intended to clarify the allowable deduction of premiums paid towards such a policy. This provision will likely be applicable for individuals from 1 March 2012 and for companies (if applicable) from tax years commencing on or after 1 January 2012.

The only income tax amendment that was ***initially announced*** that are not included in the Income Tax Amendment Bill is the increase of the non-diamond mining and non-petroleum mining tax rate - the tax rate for those companies will therefore remain at 37.5%. The Ministry will continue to investigate the introduction of a formula based surcharge to capture additional mining revenue during better economic periods.

VALUE-ADDED TAX

Medical services, dental services, paramedical services and hospital services will once again become exempt from VAT. Since the inception of VAT until 30 April 2010 these services were exempt from VAT, where after they became zero-rated. This amendment will effectively mean that most medical and paramedical service providers will have to de-register for VAT, unless they make other taxable supplies in excess of N$ 200 000. Funeral services will remain zero-rated.

The VAT Amendment Bill introduces an option for VAT appeals to be heard by a ***Tax Tribunal***. The Tax Tribunal was introduced in 2005 to handle "lower value" tax cases and is aimed at expediting tax cases.

Both these provisions will come into operation on the first day of the month following the month in which the 2011 VAT Amendment Act is published in the Government Gazette.

VAT amendments that were ***initially announced*** that are not included in the VAT Amendment Bill are:

- The supply of livestock. The supply of livestock will therefore remain at 0%;
- The increase of the VAT registration threshold. The threshold will not increase and will remain at N$ 200 000;
- The abolishing of voluntary VAT registration. The provisions around voluntary VAT registration will remain in the VAT Act and registered persons, who were previously registered as such, may remain registered.
- The introduction of a standard VAT rate on the export of raw minerals, unprocessed fish, livestock, game, crude oil and gas. The export of these items will therefore not become subject to 15% VAT.
- The abolishing of the VAT refund provision to tourist and non-resident persons who purchase raw minerals, unprocessed fish, livestock, game, crude oil or gas in Namibia.

STAMP DUTIES

The Stamp Duty Amendment Bill contains the following changes in respect of the purchase of immovable property:

- Where immovable property is purchased by a natural person with a value less than N$ 400 000, no stamp duties will be payable;
- Where immovable property is purchased by a natural person where the value of the property exceeds N$ 400 000, the stamp duties will be N$ 10 for every N$1 000 or part of therefore; and
- Where immovable property is purchased by a juristic person and a trust will pay a flat rate of N$ 12 for every N$ 1 000 or part therefore.

This provision will be effective on the first day of the month following the month in which the 2011 Stamp Duty Amendment Act is published in the Government Gazette.

BILLS STILL TO BE TABLED:

The Minister of Finance also intends to table the following bills soon:

- Transfer Duty Bill – to introduce transfer duty on the sale of shares/ membership interest held in property owning companies/ close corporations;
- Export Levy Bill – to introduce an export levy in respect of raw minerals, unprocessed fish, game, crude oil and gas at a rate between 0% and 2% of the value of the goods. The classification of the goods and the applicable rate will be governed by Regulations and will only be determined at a later stage; and
- An Environmental Bill - to introduce taxes on *inter alia* carbon emissions of vehicles and plastic bags

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