



Namibian TAX Alert

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INCOME TAX, VAT AND TRANSFER DUTY AMENDMENT BILLS

The Minister of Finance (“the Minister”) has read the 2010 draft Income Tax, Value-Added Tax, and Transfer Duty Amendment Bills for the first time in Parliament last week. The Amendment Bills, inter alia, deal with the following:

Contacts

Gerda Brand
gbrand@deloitte.co.za

Nikia Bauernschmitt
nbauernschmitt@deloitte.co.za

INCOME TAX

Company tax rate

The corporate tax rate, for companies other than mining companies, will change from 35% to 34% with effect for tax years commencing on or after 1 January 2009. The current 35% rate has been in place, without change, since January 1999.

Companies with December 2009, January 2010 and February 2010 year-ends need to note the effective date, as those companies could be in the process of finalising annual audits and may have used the 35% rate in their normal and deferred tax calculations and financial statements.

Rehabilitation expenses

Taxpayers conducting mining operations are currently allowed to deduct any rehabilitation expenditure actually incurred or any rehabilitation provision approved by Inland Revenue. This tax deduction will no longer be allowed, with effective for financial years commencing on or after 1 January 2010.

Mining companies are also required to include any rehabilitation provision that was previously deducted for tax but not utilised in taxable income in the year mining operations ceased. This provision will still apply in respect of provisions made prior to financial years commencing on or after 1 January 2010.

Individual Tax Rates

The changes to individual income tax rates that were announced on 15 September 2009 by way of government notices 180 and 181 are now confirmed/recognised. See our Tax Newsletter 7/2009 for details.

Retrenchment benefits

The Income Tax Act currently allows for an exemption of N\$ 100 000 on gratuity payments made to an employee at retirement, who is 55 years of age or older, or whose employment was terminated due to ill-health or who was retrenched due to his/her position becoming redundant. The exemption will now increase from N\$ 100 000 to N\$ 300 000.

This amendment will be retrospectively applicable from 1 March 2009. Inland Revenue will have to be consulted where gratuity payments were made during the 2010 tax year of assessment to employees under the circumstances mentioned above and where a N\$ 100 000 exemption was applied.

Interest received from a partnership

Interest received by a person, other than a company, from a partnership where the interest was subject to withholding tax will be exempt from income tax in the hands of the partners of the partnership. This provision will be effective from 1 March 2009.

Pension fund, preservation fund and retirement annuity pay-out

Currently if a pension pay-out is less than N\$ 20 000 the whole amount will be paid as a tax-free lump sum. If in excess of N\$ 20 000 one third of the pay-out will be paid out as a tax free lump sum, while the remaining portion will be paid out as an annuity. The proposed amendment will increase this threshold to N\$ 50 000, i.e. if the pension pay-out is less than N\$ 50 000 the whole amount will be paid as a tax-free lump sum and if in excess of N\$ 50 000 one third of the pay-out will be paid out as a tax free lump sum while the remaining portion will be paid out as an annuity.

Similar changes were made to the definitions of pay-outs in terms of preservation and retirement annuity funds.

These amendments will come into operation on the first day of the month in which the amendment is published in the Government Gazette.

Withholding tax on interest

Various amendments to Section 34A – 34D of the Income Tax Act, are proposed to provide clarity regarding the tax implications of withholding tax on interest. The amendments include amongst others the following:

- Withholding tax on interest will not apply to interest on negotiable instruments;
- Namibian banking institutions and unit trust schemes must issue certificates to all persons where the tax withheld was in excess of N\$ 100 for the particular tax year in question;
- Taxpayers, who are exempt from income tax in terms of section 16 of the Income Tax Act will also be exempt from withholding tax on interest; and
- Provisions around the treatment of accounts opened by stock brokers on behalf of undisclosed principles will be introduced.

All withholding tax on interest amendments will be retrospectively applicable from 1 March 2009.

VALUE-ADDED TAX

Zero-rated supplies

The following goods and services will be zero-rated:

Basic food items

The Minister proposed to zero-rate the sale of dry white or wet or dry brown granular sugar and fresh milk. This amendment will expand the list of zero-rated food items.

The VAT Bill does not contain a definition of “fresh milk” but discussions with Inland Revenue indicate that raw milk, long life milk, UHT milk, etc. will not fall under this category and will therefore not be zero-rated.

Medical services

The Minister proposed to zero-rate the provision of the following medical and paramedical services provided by –

- Any person referred to in section 17(1) of the Medical and Dental Act of 2004 and a person who holds a written authority under that Act;
- A nurse or midwife registered under the Nursing Act of 2004; or
- A practitioner or paramedic registered under the Allied Health Professions Act of 2004.

Currently, medical services are exempt from VAT and only medical practitioners who have dispensaries are possibly registered for VAT. It follows that medical practitioners are currently not entitled to an input VAT deduction or are not entitled to a full input tax deduction in respect of goods and services acquired, except if those relate directly to the dispensary. As a result the unrecovered input VAT forms part of the cost of the practice.

The proposed amendment will result in *inter alia* all doctors with a turnover in excess of N\$ 200 000 being required to register for VAT. VAT registration will enable doctors and other medical professionals to claim input tax in respect of VAT paid on business related expenses. Also, doctors who are currently registered for VAT and who make use of an apportionment ratio to determine their input VAT deduction will no longer need to make use of an apportionment ratio. On the other hand, VAT registration could result in additional administration, but the benefits of the additional input tax claims should exceed the administrative burden.

Hospital services

A proposed amendment which was not specifically mentioned by the Minister in her 2009 Budget Speech is the zero-rating of services and provision of rooms in the ordinary course of operating a registered hospital, maternity home, nursing home, convalescent home, hospice or clinic. This amendment will have similar implications for hospitals, hospices, clinics, etc. as discussed above under medical services.

Funeral undertaking services

Also unexpected was the proposal to zero-rate the provision of funeral undertaking services.

Agents

A registered person importing goods as agent on behalf of a non-resident non-registered principal may recover the import VAT paid on behalf of the principal as input tax. This is a necessary provision, but in the absence of further provisions, residents who would not normally be entitled to relief could effectively avoid paying VAT on imported goods by routing the supply through a VAT-registered agent.

In the light of this it is proposed that where a VAT registered agent imports goods on behalf of a foreign principal, the agent will be deemed to make a supply of those goods to the Namibian recipient/ customer. The supply will be deemed to take place at the time that the import VAT is paid by the agent and the value will be deemed to be the total amount of the value placed on the importation of the goods and the import VAT paid.

Claiming of input VAT on debts written off

A bad debt input tax deduction may currently only be made by the registered person who accounted for the original supply. Where a debt security is ceded and then written off as irrecoverable by the recipient, no relief is available. It is now proposed that where a registered person has declared output VAT in respect of a supply and has transferred the account receivable to another VAT registered person (recipient) on a non-recourse basis, and a portion of the account receivable is written off by such recipient, the recipient is entitled to an input VAT deduction in respect of the portion of the debts which became irrecoverable. An example would be where a registered person has sold an item on hire purchase and ceded the debt on a non-recourse basis to a bank and that debt or part of the debt becomes bad. The bank will, in future, be entitled to an input tax deduction in respect of the debt or part of the debt so written off.

For the recipient to claim an input tax deduction, where the account receivable is transferred on –

- a non-recourse basis, the registered person may not make any deduction in respect of transfer of the account receivable; or
- a recourse basis, the registered person may make a deduction when such account receivable is transferred back to the registered person and a portion thereof has become irrecoverable.

Transitional measures for zero-rated services

Where services (e.g. medical or paramedical services) are performed during a period beginning and ending before the date on which these services will become zero-rated, those services will be deemed to be exempt from VAT.

However, where services (e.g. medical or paramedical services) are performed during a period beginning before and ending after the date on which the services will become zero-rated, the portion of the services performed before the effective date of the amendment will be exempt from VAT and the portion of the services performed after the effective date will be subject to VAT at the zero-rate. A reasonable apportionment should be used, where necessary.

This transactional rule will have an effect on the input tax that may be claimed in respect of goods and services used and or consumed in the making of the relevant supplies. E.g. a medical practitioner will not be entitled to claim input tax in respect of the goods and services used and consumed to provide the portion of the medical services that will be supplied prior to the effective date of this amendment. However, the same medical practitioner will be entitled to an input tax deduction in respect of the goods and services used and consumed to provide the portion of the medical services provided after the effective date of this amendment.

Timing

All the VAT amendments mentioned above will come into operation on the first day of the month following the month in which the 2010 VAT Amendment Act is published in the Government Gazette. Please note that the Act has not been gazetted as yet and we will keep you informed of the date of publication.

TRANSFER DUTIES

Natural persons

Significant transfer duty changes were proposed for natural persons acquiring immovable property. A comparison between the current and proposed rates is set out below:

| Current | | | Proposed | | |
|---------|----------|-----------------|-----------|-----------|-----------------|
| Value | | Rate | Value | | Rate |
| 0 | 100 000 | 0% | 0 | 400 000 | 0% |
| 100 001 | 200 000 | Nil + 1% | 400 001 | 800 000 | Nil + 1% |
| 200 001 | 400 000 | N\$ 1 000 + 5% | 800 001 | 1 500 000 | N\$ 4 000 + 5% |
| 400 001 | and over | N\$ 11 000 + 8% | 1 500 000 | | N\$ 39 000 + 8% |

To illustrate the effect:

| Value of the property N\$ | Current duty N\$ | Proposed duty N\$ |
|---------------------------|------------------|-------------------|
| 400 000 | 11 000 | Nil |
| 960 000 | 55 800 | 12 000 |
| 1 200 000 | 75 000 | 24 000 |
| 1 600 000 | 107 000 | 47 000 |

These rates will be applicable in respect of any fixed property acquired on or after the first day of the month following the month in which the 2010 Transfer Duty Amendment Act is published in the Government Gazette. Fixed property is deemed to be acquired on the date on which the transaction was entered into. Please note that the Act has not been gazetted as yet and we will keep you informed of the publication date.

Commercial agricultural land acquired under Affirmative Action Loan Scheme

The applicable rates for a natural person who acquires commercial agricultural land under the Affirmative Action Loan scheme are to be as follows:

| Proposed | | |
|-----------|-----------|----------------|
| Value | | Rate |
| 0 | 500 000 | 0% |
| 500 001 | 1 000 000 | Nil + 1% |
| 1 000 001 | and over | N\$ 5 000 + 3% |

These rates will be applicable in respect of any fixed property acquired on or after the first day of the month following the month in which the 2010 Transfer Duty Amendment Act is published in the Government Gazette. Fixed property is deemed to be acquired on the date on which the transaction was entered into. Please note that the Act has not been gazetted as yet and we will keep you informed of the publication date.

Persons other than natural persons

The rate will be increased from 8% to 12% on the value of the property.

These rates will be applicable in respect of any fixed property acquired on or after the first day of the month following the month in which the 2010 Transfer Duty Amendment Act is published in the Government Gazette. Fixed property is deemed to be acquired on the date on which the transaction was entered into. Please note that the Act has not been gazetted as yet and we will keep you informed of the publication date

Property owning companies and close corporations

The Transfer Duty Bill does not introduce any transfer duties on the transfer of shares and membership interest in property owning companies and close corporations.



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