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Namibian Tax Alert
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Future Tax Amendments announced
Keeping you in the know

During a press conference held yesterday, the Minister of Finance announced the following tax changes. We do not have any more details on the intended changes, but will keep you informed as matters developed. This newsletter therefore merely serves as an indication of the tax changes that we will see in the near future. Most of these changes will be in Parliament after the July recess and we will see some of them being promulgated as law during the latter part of this calendar year. The changes are aimed at increasing the tax base and tax collection, tightening of administration and attempting to encourage processing and manufacturing activities in Namibia.

INCOME TAX ANNOUNCEMENTS

The Minister announced the intention to tax income from the ***sale of rights or licences*** to explore, mine or retrieve natural resources in Namibia, irrespective of where the transaction will be concluded. The sale of shares in companies that hold such rights will also be taxable. The amendment, in our view, is in the nature of a capital gains tax and is intended to bring into the net, profits made largely outside Namibia in respect of the sale of mining rights, licences and the like.

We should also note here, that the Minister did not announce any ***windfall taxes*** for mining at this stage.

The ***tax rate for mining companies*** other than diamond mining will increase from 37.5% to 44%.

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.

A ***final withholding tax*** of 25% will be introduced on entertainment fees, management fees and consultancy fees paid by Namibian residents to non-resident person who does not have a permanent establishment in Namibia. The withholding tax will apply whether or not the services are performed inside or outside Namibia. At this stage, it looks like a very few, if any, of the double taxation agreements that Namibia has entered into will provide for a reduction of the withholding tax rate, as is normal with withholding taxes. The Minister also did not provide any more information as to what will be regarded as entertainment fees and we will have to see if the Amendment Act will contain a definition in this regard.

The ***rate for non-resident shareholder's tax on dividends*** ("NRST") will also increase from 10% to 20%, where the 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%. Only some of Namibian double taxation agreements will reduce the 20%

NRST rate where the shareholding is less than 25%. The Namibian/Germany and Namibian/ France double tax agreements are examples where the 20% NRST rate will be reduced to 15%.

A number of changes were announced in respect of ***withholding tax on interest***, which include *inter alia* 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.

Changes will also be introduced to ensure that ***Unit Trust Schemes*** make distribution to their members within 60 days after the end of the financial year. No further details were provided as to what the implications will be if such distributions are not made. We can only speculate at this point that the distributions not made will become taxable in the hands of the member or the Unit Trust Scheme.

With regards to ***recoupment of wear & tear allowances*** claimed, the Minster currently has the discretion to accept a lower value than market value when assets are sold, removed from trade or removed from Namibia. This concession will be removed from the Income Tax Act.

Provisions will be introduced to regulate the deductibility of contributions and subsequent taxation or exemption of proceeds from ***educational policies***. Similar provisions will be introduced in respect of ***company owned policies***.

The deduction of ***building allowances*** for manufacturers and otherwise will be changed to the effect that the 20% initial allowance will only apply to the person who erected the building. On the current wording of the Income Tax Act there could be an argument that the person erecting the building and subsequent owners can both claim the 20% initial allowance. The aim of this amendment seems to be to deal with this argument.

VAT

The long awaited ***increase of the VAT registration threshold*** will now become a reality with the Minister's announcement that the registration threshold will increase from N$ 200 000 to N$ 500 000. Moreover, the current provision in the VAT Act that allows for ***voluntary VAT registration*** will be abolished. Thus, once these amendments have been promulgated as law, the only VAT registration that will be allowed is a person whose turnover from taxable supplies exceed N$ 500 000 in any 12 month period. Persons that are currently voluntary registered will be allowed a 6 month period (after the amendment became effective) to de-register. The Minister has also indicated that this will not mean that voluntary VAT registered person will have to repay input VAT claimed in the past or that the Ministry will have to repay output VAT received from such persons. This amendment will also affect companies in start up phases, exploration companies etc. Such companies will not be allowed to voluntary register for VAT and will have to capitalise or expense all input VAT and import VAT costs.

The VAT Amendment Act will also allow for VAT appeal cases to be heard by the ***Tax Tribunal***. Currently only income tax appeals are heard by the Tax Tribunal. The Tax Tribunal was introduced in 2005 to handle "lower value" tax cases and is aimed at expediting tax cases.

The ***refund of VAT to tourist and non-resident persons*** who purchase raw minerals, unprocessed fish, livestock, game, crude oil or gas in Namibia will be abolished. The aim of this provision is clearly to encourage the processing of raw minerals, fish, livestock etc. in Namibia which in turn seems to be aimed at the alleviation of unemployment in Namibia.

Medical and paramedical services will once again be moved to the exempt supply list. These services were changed from exempt to zero-rated supplies in May 2010. The Minister mentioned that the reason for the change is because it seems if these professions have not passed on the effective VAT savings as a result of those services becoming zero-rated to the public. This will effectively mean that all medical and paramedical service providers who do not make other taxable supplies in excess of N$ 500 000 will have to de-register for VAT. The Minister did not provide any other details as to how long they have to de-register (if applicable) and also did not mention if this provision will apply to hospitals, funeral services, dentists, etc.

The ***supply of livestock*** will become subject to 15% VAT. This amendment is aimed at bringing livestock in line with game.

The ***zero-rating of the export*** of raw minerals, unprocessed fish, livestock, game, crude oil and gas will be abolished and such exports will become subject to the standard rate of VAT (15%). This provision is once again aimed at encouraging processing activities in Namibia.

STAMP DUTIES

Where ***immovable property*** is sold with a value less than N$ 400 000, no stamp duties will be payable in future. Where the value of the property exceeds N$ 400 000, stamp duties of N$ 10 for every N$ 1 000 or part thereof will be payable. Juristic persons and trusts will pay a flat rate of N$ 12 for every N$ 1 000 or part thereof with no exemption applicable for the first N$ 400 000.

TRANSFER DUTIES

The amendment first mentioned by the Minister in her 2005/2006 budget speech in respect of the sale of ***membership interest and shares of property owning entities*** will now become a reality. Such transactions will be subject to the normal transfer duty rates i.e. if acquired by a person other than a natural person or a trust 12% of the value of the property and for natural persons a table will be applied (between 1% and 8%). Other related provisions will also be introduced, e.g. to regulate the value on which the duty should be calculated, who should be held liable in the event of failure to pay, etc.

The current exemption from transfer duties where a person purchases, leases or otherwise acquires any real right in land or any right to ***mine for minerals from the State*** will be abolished. This amendment implies that where, for example, a licence to mine is obtained from the State, such right to mine will be subject to transfer duty. The Minister did not mention the rate at which such duties will have to be paid and we assume it will be at the same rate as for other immovable property.

INTRODUCTION OF AN EXPORT LEVY

A new levy, namely an ***export levy***, will be introduced. This levy will be collected by the Directorate Customs & Excise and will apply to the export of all raw minerals, unprocessed fish, livestock, game, crude oil and gas. The rate of the levy will be 5% and calculated on the consideration of the goods. Where the consideration of the goods is lower than market value or nil, the levy will be calculated on the open market value of the goods. Once again, we see these measures aimed at encouraging processing activities in Namibia and with that an aim to increase employment.

OTHER MATTERS

The Ministry will also, in due course, introduce measurements to increase administrative effectiveness, which will include the modernisation of the current IT system, expanding of the Large Taxpayer Office, training, audit capacity building etc.

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