

# *Tax First*

## Namibia Newsletter

### April 2012



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### *Directors' fees—do you comply?*

*With the recent introduction of the Section 35A withholding tax on services, fees paid to non-resident directors are also in the spotlight. Originally directors were only required to register as provisional taxpayers in terms of the Schedule II of the Income Tax Act. Is this still the case?*

#### *Registration as provisional taxpayers for non-resident directors of a Namibian registered company*

Under Schedule II of the Namibian Income Tax Act, any director of a Namibian company is required to register as a provisional taxpayer in Namibia. Therefore, any non-resident directors of Namibian companies should be registered for income tax in Namibia and are taxable on the directors fees in Namibia under the normal provisions of the Act.

#### *Withholding tax on directors fees paid to non-resident directors*

Section 35A, recently introduced by the Ministry of Finance, applies to any Namibian resident (i.e. a company incorporated or managed and controlled in Namibia, and natural persons ordinarily resident in Namibia) paying a director's fee to a non-resident.

The legislation imposes the obligation on Namibian residents to withhold 25% tax on such fees paid to non-resident directors.

The general approach followed in interpreting tax legislation is that specific sections (i.e. 35A in this case), take precedence over general provisions (i.e. Section 1 gross income definition) to determine taxability. With the introduction of Section 35A, Schedule II was not amended and the legislation in 35A does not provide clear guidance on how foreign directors should be taxed.

It is unclear whether non-resident directors of Namibian companies will now be subject to the 25% withholding tax on directors' fees or if Schedule II still require these directors to register as provisional taxpayers.

Section 35A (6) stipulates that the withholding tax on directors' fees is a final tax and that the income earned in respect on which the tax was levied does not form part of the assessable income of a taxpayer. ■

## Tax Administration and Policy Reform

At a recent meeting held during March 2012, the Ministry of Finance communicated various proposed tax policy and administration reforms. The Ministry invited feedback on the proposed reforms from the industry groups.

The various tax and administration reform policies as presented by Inland Revenue include:

### Tax Policy Reform

1. A national policy on Double Taxation Agreements;
2. Investigate trusts as tax avoidance vehicles and reportable arrangements;
3. Introduction of transfer duty on acquiring property through shares;
4. VAT Amendments bill to increase the VAT threshold;
5. Possible abolishment of voluntary VAT registration;
6. Abolishment of VAT registration to be eligible for tender purposes;
7. Abolishment of import VAT accounts.

Short Term

1. Introduction of new thin capitalization rules;
2. Investigate reducing the number of corporate tax rates (currently 4);
3. Review of individual income tax rates and unequal distribution of tax burden.

Medium Term

1. Improve the prioritising of public expenditure;
2. Investigate the introduction of capital gains tax;
3. Investigate a presumption tax for small businesses;
4. Investigate a Dual Income Tax system for e.g. business individuals;
5. Consider abolishment of tax exemptions of interest for e.g. treasury bills and Nampost savings;
6. Investigate introduction of a standard VAT rate to eliminate fuel and power subsidies;
7. Consider restructuring of 'tax-like' non-tax revenue and earmarked funds.

Long Term

### Tax Administration Reform

1. Establishment of a Large Tax Payers Office (LTO);
2. Establishment of a special mining tax unit within LTO;
3. Introduction of a fully fledged self assessment system for Income Tax (ITX) for companies in LTO;
4. Risk based criteria for VAT refunds;
5. Reallocation of assessors to LTO as auditors;
6. Special projects to collect tax arrears.

Short Term

1. Expansion of the LTO;
2. Replacement of the current tax computer system with the Integrated Tax Administration System (ITAS);
3. Re-organise and enlarge Inland Revenue offices and Head Office Quarters;
4. Introduction of risk-based techniques for tax payer audits;
5. Phasing out of external auditors;
6. Introduction of fully-fledged self assessment system for all offices;
7. Introduction of compliance program.

Medium Term

## Mixing friends and business - The Importance of Shareholder Agreements

*The success of a business is often associated with the presence of a properly defined structure regulating the working relationship between shareholders. This is specifically relevant where friends and family become business partners.*

A company's memorandum and articles of association, read together with the provisions of the Companies Act, provide a broad framework for the operation of a company, but these do not deal with the specifics of a company's management or the regulation of the internal affairs of the company. These aspects need to be governed by a shareholders' agreement.

*Important aspects that should be addressed in the terms of a shareholders' agreement include:*

- *Shareholding*: the share capital that the company is authorised to issue, its par value and the terms on which further shares in the company may be issued;
- *Management*: rights of the shareholders to appoint directors; amount of directors to be appointed, the voting rights of directors; appointment and removal of alternate directors;
- *Directors' and shareholders' meetings*: notice periods for meetings, quorums, voting rights and the procedures to be followed in passing resolutions;
- *Decisions of the company that will require a special resolution*: e.g. the sale of the bulk of the company's assets or taking on substantial debt;
- *Shareholders' contributions to fund the company*: including initial contributions, the circumstances in which the company may call for further funding from the shareholders, the interest rates and repayment terms applicable to loan accounts;
- *Sale of shares*: including the circumstances in which a shareholder will be forced to sell his/her shares, the valuation of shares at the date of sale, pre-emptive rights and the procedures to be followed by a shareholder wishing to sell shares;
- *Dispute resolution in case of disagreements*: arbitration and minority shareholder protection;
- *Finance and dividend policies*: including redemption of a shareholder's loan account and payment of dividends;
- *An exit strategy*. What will happen when a third party wants to buy the company as a whole and not all of the shareholders want to sell?

The shareholders' agreement plays a vital role in the business relationship between the shareholders and the success or the continuance of a business could depend on such an agreement. Best practice is that it should be drafted and signed in the early stages of a company's existence. ■



## The Green Era - Inland Revenue's Environmental Tax plan

*Inland Revenue's environmental tax proposals are summarised below. The Ministry is currently awaiting feedback from affected industry groups:*

Plastic bags (different sizes)	Between 4c and 20 c per bag
Non-returnable plastic containers for beverages of all kinds	N\$ 0.80 per container
Pneumatic tyres—new, used and retreaded	N\$10 per tyre
Non returnable glass containers for beverages of all kinds	N\$1.00 per can container
Incandescent (filament) light bulbs of all types	N\$3.00 per bulb
Beverage cans of all kinds	N\$1.00 per Can
Carbon Emission Tax on passenger vehicles (based on engine size)	N\$75.00per g/km CO <sup>2</sup> emissions
Carbon emission tax on vehicles used for transport of goods (based on vehicle mass)	N\$100.00 per g/km CO <sup>2</sup> emissions

## Received a form in the mail? - An update on Withholding Tax on Services compliance.

- The Directorate of Inland Revenue (DIR) issued forms for registration for WTS
- Taxpayers can elect to register as 'Ad-hoc' or 'Regular' WTS payers
- The DIR system will generate forms for 'Regular' payers every month. Forms not submitted will reflect as 'Outstanding' on the system
- The system will not create returns for 'Ad hoc' payers
- During March DIR distributed WTS forms to all companies with an active PAYE account. Only companies who should make WTS payments need to submit these forms.

## Government Gazettes

Government Gazettes for the period February to March 2012 is included in this edition. This is not an exhaustive list of Acts/Notices/Proclamations published.

### Government Notice

**66-2012 Bank of Namibia:** Determination under the Payment System Management Act, 2003. The determination will apply to all persons who intend to issue e-money in Namibia.

Both banks and non-bank actors are permitted to apply for authorisation to issue e-money.

**84-2012 Promulgation of Industrial Property Act, 2012** (Act No. 1 of 2012), of the Parliament

## Tax Calendar—April 2012

Monday	Tuesday	Wednesday	Thursday	Friday
16	17	18	19	20 <ul style="list-style-type: none"> <li>• Import VAT return</li> <li>• PAYE return</li> <li>• Withholding tax on Services</li> </ul> PwC Bite size Session SA Dividends Tax
23 PwC Tax Symposium (HRS, VAT and Customs)*	24 PwC Tax Symposium (Income Tax)*	25 • VAT return (Category A)	26	27
30 <ul style="list-style-type: none"> <li>• Social Security payment</li> <li>• Tax return - companies with 31 September YE;</li> <li>• 2nd provisional returns - companies and individuals with 30 April YE</li> </ul>				

\*Interested in the Tax Symposium - please contact *Lizette Bredenmann* (Invitation attached)

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