28 February 2011

Newsletter 2 of 2011

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Tax First

Tax planning on leasehold improvements

Improvements to a rental property that a taxpayer uses for purposes of trade is an expense of a capital nature.

The general deduction formula in Section 17 (1) (a) of the Income Tax Act of Namibia ('the Act') states that a taxpayer may only deduct expenses that are "not of a capital nature".

Therefore improvements made to leasehold properties are not deductible under S17(1)(a).

With proper planning a number of capital allowances are however available on the improvements effected.

Legal obligation under the lease agreement to improve the property

Where there is a legal obligation under the lease agreement to effect leasehold improvements, the improvements made by the lessee may be claimed under Section 17(1)(h). This section allows a deduction over the remaining lease period or 25 years (whichever is the shorter) from the year in which the improvements are completed.

The value of leasehold improvements stipulated in the lease agreement may be deducted over this period. Where no value is stipulated, the fair and reasonable value as determined by the Minister of Finance should be claimed.

Where required improvements and costs are clearly set out in the lease agreement, the amount will be deductible under s17 (1) (h). Planning and drafting the agreement as such can therefore remove uncertainty around the tax deduction.

Voluntary leasehold improvements

Where the lease agreement contains no legal obligation to effect leasehold improvements, the lessee should consider claiming the expense under Section 17(1)(f) as a building allowance. The requirements of this section however must be met.

S17(1)(f) allows a deduction in respect of buildings used by the taxpayer for the purposes his/her trade. An allowance of 20% of the construction cost of a building may be claimed in the year during which the building is taken into use. For the next 20 years, 4% (8% for registered manufacturers) of this cost may be claimed per tax year.

'Improvements' are not defined in the Act. As a general guideline, a building allowance may only be claimed on improvements to buildings where an extension or addition to the building was erected.

The Oxford dictionary defines a building as "a structure such as a house ... that has a roof and walls". The Income Tax Act does not contain a definition for buildings. Therefore where a structure with walls and a roof has been erected, it is generally accepted that a building allowance may be claimed on the construction costs incurred.

Fixtures and fittings that are removable, separate assets may fall outside the scope of Section 17(1)(f). These may qualify for a wear and tear allowance in terms of S17(1)(e) over 3 years.

Improvements versus repairs and maintenance

Relevant costs incurred may be claimed as a repairs and maintenance allowance under S17(1)(d). Section 17(1)(d) allows a deduction for capital expenditure incurred during the tax year on repairs and maintenance of property occupied for a taxpayer's trade.

There is no definition of a "repair" in the Act. The case of CIR v African Products Manufacturing Co Ltd 1944 TPD established some guidelines:

- A repair is a restoration by renewal or replacement of a subsidiary part of the whole;
- The materials used need not be exactly the same as the original material.

In order for an asset to be repaired, the asset should be damaged or deteriorated. The intention of the taxpayer (lessee) should be to restore the asset to its original condition.

Conclusion

Careful planning can be crucial in determining the tax deductibility of leasehold improvements and avoiding surprises on assessment of a taxpayer's return. Lessees should therefore pay special attention to contract wording, allocation of costs and the detail requirements of the s 17 allowances.

Also inside this issue:

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Government Gazettes during February 2011

Please note that Government Gazettes for the period 28 January to 18 February was included in this edition.

28 January 2011
No significant information was published.

1 February 2011

Proclamations
3/2011— Announcement of appointments of Regional Governors: Act 32 of the Namibian Constitution
4/2011- Declaration of office bearers: Members of Parliament and other Office-bearers Pension Fund Act, 1999

Government Notices
5/2011 Animal Identification Amendment Regulations: Animal Diseases and Parasites Act, 1956

11 February 2011

General Notices of intention to make regulations
14/2011— Broadcasting and telecommunication service license categories
15/2011— Licensing procedures for telecommunications and broadcasting service licenses and spectrum licenses.
16/2011— Submission of interconnection agreements and tariffs
17/2011—Transitional procedures for telecommunications and broadcasting service licenses and spectrum licenses.
18/2011—Regulations regarding consumer complaints

18 February 2011

Government Notices
8/2011— Amendment of Candidate Legal Practitioners Regulations: Legal Practitioners Act 1995
13/2011— Electricity Regulations: Administrative: Electricity Act, 2007

Practice Note 1/2011— Game Farming

The Namibian Receiver of Revenue, on the 24th of February 2011, issued a practice note ("PN") in respect of the taxation of game farming activities.

The PN is applicable to farmers carrying on farming operations with only game or game in addition to other farming operations.

The effective date of the practice note is:

- In the event of any taxpayer other than a company, 1 March 2010; and
- Company, at the beginning of the financial year of the financial year of assessment on or after 1 January 2010.

It is important to note the retrospective effective date of the practise note, which means that individual taxpayers will have to apply the practise note for the tax year ended 28 February 2011.

The PN clarifies the requirements to qualify as a game farmer and further deals with game farming income, allowable expenditure, stock, improvements, housing for safari-tourists/hunters and relief.

Income
The fortuitous sale of game, game carcasses, game skins and related products; and any income from game hunting by game farmer constitutes game farming income and is taxable. Income derived from persons to whom the right is granted to hunt game on the farm is also regarded as game farming income.

Income solely derived from the following activities will not be regarded as farming income:

- Accommodation and catering on the farm;
- Admission charged to persons for spending holidays on the farm; and
- Where the farmer, his or her employees or freelance tour guides act as guides for holidaymakers/hunters.

Expenditure
A deduction for the acquisition of game will only be allowed if it was actually incurred to acquire the game.

Stock
Opening and Closing stock should be excluded when calculating taxable income from game farming.

Every game farmer shall include in his return of income rendered for a tax year a reconciliation of game, which should indicate, the number of game sold/purchased, the number of game hunted, an estimate number of the net game accruals, the number of game donated and the opening and closing balances of game.

Improvements
Capital improvements (paragraph 10 of Schedule 1) incurred during a year of assessment by a game farmer will be allowed as a deduction to determine the taxable income if used in connection with game farming operations.

Housing for safari-goers and hunters
Expenditure incurred in respect of residential facilities such as bedrooms, dining rooms and sitting rooms that are made available to safari-goers and hunters by any farmer who is **not a game farmer**, is not farming expenditure. These capital expenses are therefore not deductible. Further expenditure incurred during the year of assessment by a game farmer in respect of beds, furniture, refrigerators, stoves will be allowed as a deduction in terms of section 17(1)(e) of the Act against camping fees, accommodation fees and visitors fees.

Paragraph 11 of Schedule I of the Act.
Game, is regarded as livestock if a person is carrying on game farming. It is accepted that where a taxpayer carries on farming operations with game and game was sold due to drought, disease or damage to grazing a taxpayer will be entitled to the relief as per paragraph 11 of Schedule 1.

Should you require any additional information regarding the taxation of game farming, please feel free to contact your local PwC office.

Customs Clearing Agents: A duty to care

Nobody is allowed to bring in goods subject to VAT and/or Customs duties into Namibia unless a declaration is submitted electronically on the Customs system and a hard copy signed by a clearing agent is submitted, together with other required documents to Customs at the point of entry into Namibia.

This means that a person who is not an approved clearing agent cannot register a Customs declaration (called the "SAD 500") on the Customs system (called "Asycuda"). An importer must therefore make use of and pay for the services of a recognized clearing agent in Namibia.

The importer who imports on a regular basis normally would have an import VAT account number which is registered on the Customs system. Currently, any clearing agent can choose any import VAT account number to have the goods cleared for home consumption through Customs Namibia, i.e. the usage of a VAT import account number is not restricted through a password or PIN.

Import transactions are recorded on the Asycuda system. Reports on import VAT due per import VAT account numbers are used by Inland Revenue to determine import VAT liability. Therefore a good and responsible clearing agent will realize that his or her actions have serious financial implications for the importer. The import VAT account number used should correspond with the importer/consignee on the invoice. A clearing agent who negligently links the import VAT account number of another importer (than the one the consignment is invoiced to) should be held accountable.

Customs shifted the responsibility for the correctness of information on the Customs declaration to the declarant (the clearing agent). Customs in most cases therefore, will not question entries which otherwise appear legitimate. Any mistake made by a clearing agent should be corrected by lodging a voucher of correction and may be subject to penalties by Customs.

The message to the importer is clear: Choose your clearing agent with care and ensure you obtain original stamped import documentation from the clearing agent/transporter as you will need this for VAT refund audits at Inland Revenue. It remains best practice to obtain monthly Customs reports on imports cleared on your VAT import account number. These should be matched to your monthly internally generated import transactions listing and any discrepancies should be resolved timeously.

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PwC Tax Compliance Centre services

Preparation of financial statements
Working from the trial balance generated by the accounting package used to prepare your accounting records, we will utilize specialized software to prepare annual financial statements compliant with IFRS for SME's.

You may choose to adopt full IFRS, but where we believe that IFRS for SME is the ideal match of relevant reliance information for your entity, without incurring the cost of the extensive accounting and disclosure requirements of full IFRS, we will recommend IFRS for SME as your accounting framework.

Preparation of accounting records
Directors have a duty to ensure accounting records are maintained.
We can prepare accounting records from your bank statements and process journals to account for debtors, creditors not paid at year end, depreciation and other non cash transactions, IFRS (or IFRS for SME) year end adjustments and tax provisions.

The above activity will enable us to provide to you:

- Reports for the submission of VAT returns
- Regular bank reconciliations
- Regular management accounts, consisting of an income statement (compared to a budget if you wish to provide a budget) and a balance sheet
- Reliable information for the preparation of provisional tax returns

Tax compliance services – Registration
We can assist with registrations for all types of taxes.

Tax compliance services – Returns
If registered for VAT, VAT returns need to be submitted whether a taxpayer is trading or not.

For Income tax we will attend to your provisional tax returns, and attend to safekeeping of the related records, and complete and/or review final tax returns.

Company secretarial services
We can provide you with company secretarial assistance and act as your registered office. This service will include the storage of your secretarial records and assistance with the submission of the annual returns to the Registrar of Companies. Any additional ad hoc secretarial duties which you may require will be charged at standard rates based on the standard fees laid down by the Institute of Chartered Accountants of Namibia. A summary of these fees is available on request.

Typical services clients regularly request our assistance on include:

- Appointment /resignation of director, secretary, officer or auditors
- Change of registered office, year ends and company's name.
- Changes to memorandum and articles .

Give us feedback

Please give us feedback on our newsletter at ***amanda.gous@na.pwc.com***.

Tax Calendar—March 2011

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1 *	2 *	3 *	4	5
6	7	8 *	9 *	10 *	11	12
13	14	15	16	17	18	19
20	21 PAYE payment (Due 20 March 2011) Import VAT returns (Due 20 March 2011)	22	23	24	25 VAT returns (Category B)	26
27	28	29	30	31 Social Security payment		

* The date of the 2011/2012 budget speech has not been confirmed by the Minister of Finance. We will provide correspondence in this respect as soon as confirmation is received. We expect that the budget speech will be delivered during the first 2 weeks of March 2011.

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SARS targeting Convertible Loan Structures

Following the judgment in the case of *SARS vs NWK*, the South African Revenue Services indicated that they will begin auditing taxpayers which have entered into convertible loan structures.

They are planning to target convertible loan structures after the supreme court of appeal found that NWK used a convertible loan structure to 'deliberately' evade tax.

It is a well established principle that taxpayers are at liberty to organise their affairs in such a way as to pay the least tax permissible but the court found that there is 'something wrong' with dressing up or disguising a transaction to make it appear to be something that it is not.

The court investigated whether there was a real commercial purpose in the transaction other than claiming deductions from income tax on a capital amount greater than R50m.

The court did not find such a purpose and it decided that the transactions were 'simulated' and levied penalties.

Convertible loan structures are not unusual within the market and clients must therefore make ensure that they are not exposed to a possible risk that the Receiver of Revenue may disallow expenses claimed in respect of the loan. Where confronted with a similar case, Namibian Authorities may follow SARS' reasoning due to similarities in Namibian and SA tax law. Namibian Anti-avoidance legislation follows the same principles as the SA Act.

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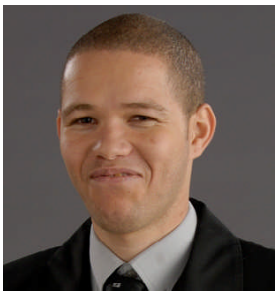

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