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Tax First

Overview of the 2011 Namibian budget speech

Namibia's Minister of Finance Mrs Saara Kuugongelwa-Amadhila presented her 9th budget to the National Assembly on 09 March 2011. The Minister presented an expansionary budget with the aim of consolidating economic recovery, create jobs and improve the welfare conditions of Namibians while safeguarding macro-economic sustainability.

Revenue outturn 2010/12

Total revenue for 2010/2011 is estimated to N\$22.5 billion. The lower outturn (N\$24 billion realized during 2009/2010) is largely due to effect of the global economic downturn on the SACU Revenue Pool.

The SACU Revenue Pool recorded an estimated N\$9.8 billion deficit in 2009/2010 of which Namibia's share is estimated at N\$2.4 billion. This estimated deficit will be deducted from Namibia's share of the SACU revenues for 2011/12.

SACU receipts represented an estimate 29.3 percent in the 2010/11 fiscal year. Overall tax revenue is estimated at N\$20.4 billion in 2010/11 compared to N\$22.2 billion collected in 2009/10.

Domestic revenues have remained strong despite the decrease in SACU receipts. Individual income tax, value-added tax and mining company taxes displayed better performance.

TIPEEG

Starting this financial year, the Namibian Government will implement a Targeted Intervention Programme for Employ-

ment and Economic Growth (TIPEEG). This program is aimed specifically at addressing economic growth and the high unemployment rate through support to strategic growth sectors. The TIPEEG will focus on four key sectors, namely, agriculture, transport, tourism and housing and sanitation.

Tax Reforms

The Minister announced no tax changes in her speech, apart from excise duties. She indicated that tax law amendments will be tabled during the course of the year.

In the budget speech Mrs Kuugongelwa-Amadhila said that Government is currently undertaking tax policy reviews including tax administration "with the view to optimise revenue collection with emphasis on finding alternative sources of revenue". She also said the process to introduce an environmental tax, based on the "polluter pays principle", is advanced.

The excise duty increased as previously announced by the SA Minister of Finance. The increased duties took effect midnight, 23 February 2011.

Integrated tax system

The Ministry of Finance is engaged in a process to improve the administration of taxes. As part of the process technical assistance was sought. The IT system support tax administration is being upgraded in order to develop a fully integrated tax administration system. Once completed the system is expected to simplify the tax administration and improve services to the taxpayer and also improve compliance and collections.

PwC Budget speech gala event

During the 2011/2012 budget speech gala event held on the 9th of March 2011, a panel discussed the 2011/2012 National budget.

During this discussion the following aspects were mentioned by Mr Calle Schlettwein, the Deputy Minister of Finance as areas the Ministry may consider to improve administration and collections on existing taxes :

- Possible ring fencing arrangement
- The scrapping of some tax incentives considered to be inefficient.
- Upward adjustment of the VAT threshold
- Improvements in the tax administrative arrangements
- To increase collections from individuals/legal persons that are illegally outside the tax net.

The broadening of the Namibian tax base was also discussed. The proposed amendments to this would include:

- Implementation of new taxes, such as environmental taxes; and
- Amendments to the current natural resource taxation schemes;.

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What is a 'repair' for income tax purposes?

Section 17(1)(d) of the Income Tax Act 24 of 1981 provides that a taxpayer is entitled to a deduction in respect of expenditure incurred on "repairs" of property occupied for purposes of trade or which produces income.

But what exactly is a "repair"? The Act contains no definition, and it has fallen to the courts to interpret this elastic word.

The crucial distinction that has been drawn by the courts in this regard is between, on the one hand, "repairs" (expenditure on which is deductible in terms of section 17(1)(d) of the Act) and an "improvement, reconstruction or renewal" (expenditure on which is regarded as being of a capital nature, and therefore not deductible).

Such capital expenditure may however qualify for a wear and tear or depreciation allowance in terms of section 17(1)(e) of the Income Tax Act, which allows qualifying capital expenditure to be deducted in instalments over the estimated productive life of the item in question.

This, of course, is second prize – it is far more valuable for taxpayer to be entitled to deduct the whole of the expenditure, as a "repair", in the year in which it was incurred.

To determine whether something is a repair or improvement the following guidelines can be used:

- A repair is a restoration by renewal or replacement of a subsidiary part of the whole;

- The materials used need not be the same as the original materials;
- Renewal or repair is a reconstruction of the entirety or substantially the entirety, whereas improvement is the creation of a better asset; and
- An improved asset usually has an improved income earning capacity.

As can be seen from the guidance above, this is not an easy decision to make and will be a case of fact to be determined per case.

Government Gazettes

Government Gazettes for the period 23 February to 25 March was included in this edition. This is not an exhaustive list of Acts/Notices/Proclamations published.

23 February 2011—Government Notices

14/2011—Scope of practice of social workers, social workers and students
15/2011—Continuing professional development applicable to registered or enrolled persons and failure to comply: Nursing Council of Namibia
16/2011—Regulations regarding prices of reselling of petrol

24 February 2011—Government Notices

17/2011—Notice of variation of the provisions of the Labour Act (Hospitality and Tourism industry)

15 March 2011—Government Notices

25—30/2011—Declaration of areas of conservancy

General Notices

56/2011—Namibian Communications Commission: Amendment to tariffs of mobile operators
58/2011—Municipality of Windhoek: Amendment of health regulations

25 March 2011—Government Notices

No significant information was published.

Transfer Pricing in Namibia

The Directorate Inland Revenue (DIR) has outlined their requirements for supporting documentation for group transfer pricing policies in their Income Tax Practice Note 2/2006 (PN 2/2006) issued on the 5th of September 2006.

In terms of PN 2/2006, a taxpayer is required to be in possession of transfer pricing documentation. If the Minister of Finance ("Minister"), as a result of an examination substitutes an alternative arm's-length amount for the one adopted by the taxpayer, the lack of adequate documentation will make it difficult for the taxpayer to rebut that substitution, either directly to the Minister or in the Courts.

A taxpayer therefore needs to demonstrate that it has developed a sound transfer pricing policy in terms of which prices are determined in accordance with the arm's-length principle by documenting the policies and procedures for determining those prices.

However, PN2/2006 acknowledges that preparing documentation is time-consuming and expensive. It will therefore not be expected of taxpayers to go to such lengths that the compliance costs related to the preparation of documentation are disproportionate to the nature, scope and complexity of the international agreements entered into by the taxpayers with connected persons.

Losing your assessed loss

In terms of Section 21(1)(a) of the Income Tax Act a company that does not carry on a trade during a year of assessment forfeits the right to carry forward its assessed tax loss from the immediately preceding year of assessment.

In order to set-off an assessed loss two requirements must be met, namely that the taxpayer must be carrying on a trade and that the loss should be set off against income derived from the carrying on of a trade. The application of the trade and income requirements was affirmed in the Robin Consolidated Industries case.

Carrying on any trade requirement

The term "trade" is defined in section 1 of the Act and its meaning has been considered in a number of court cases which have held the following arguments:

- In ITC 1476 it was stated that the carrying on of a trade involves an active step, something more than merely watching over existing investments. It is not essential that the company must have carried on a trade for the whole of the year, and any period of trading during the year will suffice.
- In SA Bazaars (Pty) Ltd v CIR it was concluded that the mere fact that a company is kept alive for a period of time, it cannot be said to have been carrying on a trade, even if it had the intention to at a later date start carrying on trade. Trade is an activity that a person undertakes in order to earn income. It must be distinguished from a passive activity, i.e. investment of surplus funds.
- In SARS v Contour Engineering (Pty) Ltd it was confirmed that amounts disguised as trade income will not be accepted as having been earned from the carrying on of a trade. In the abovementioned case the company purported to have derived an amount of commission from a single transaction. The court suspecting the amount to be fictitious, refused to accept that it had been derived from carrying on a trade.

- The fact that a company keeps itself alive during the year of assessment, but without trading, is not enough to entitle it to carry forward an assessed loss into the next year.

- In SARS v Megs Investments (Pty) Ltd and Another, it was conceded and accepted by the court that there must be a connection between the trade they carried on and the income they received.

Bills in progress*

- B 6-2008 National Youth Service Bill
- B1-2010 Industrial Property Bill
- B7-2010 Namibian Planning and Construction Council Bill
- B15-2010 Employment Service Bill
- B26-2010 Statistics Bill
- B1-2011 Unit trust control Amendment Bill
- B2-2011 Long term insurance Amendment Bill
- B3-2011 Pension Fund Amendment Bill
- B4-2011 Inspection of Financial Institutions
- B5-2011 Income Tax Amendment Bill

* Source: Parliament of Namibia www.parliament.gov.na/bills

In these circumstances, taxpayers would be required to submit abridged documentation, identifying the relevant transactions and providing details of the methodologies applied. The taxpayer should use judgement to determine the level of documentation required.

The documentation requirements set out by the PN2/2006 broadly follows Chapter V of the OECD Guidelines. Accordingly, a taxpayer's process of considering whether transfer pricing is appropriate for tax purposes should be determined in accordance with the same prudent business management principles that would govern the process of evaluating a business decision of a similar level of complexity and importance. The Minister would expect taxpayers to have created, referred to and retained documentation in accordance with this principle.

PN 2/2006 does not prescribe what kind of documentation should be available, as appropriate documentation depends on each taxpayer's specific facts and circumstances, but recommends some form of functional analysis and information gathering on relevant comparables.

Taxpayers should be able to justify why certain transfer prices are considered to be consistent with the arm's-length principle.

PN2/2006 is based on and acknowledges the OECD Guidelines.

- The DIR will apply an objective test to determine if a trade has in fact been carried on during the year in question and the onus ultimately rests on the taxpayer to establish that it indeed carried on trade and received an income from the trade.

The income from trade requirement

Section 21(1) requires that an assessed loss be "set off against the income so derived".

In ITC 664 the Commissioner refused to allow the assessed loss to be carried forward during the years in question. On appeal, the court held that there must be some income, i.e. an amount received, against which the set-off can operate. Further, the income must be derived from trade.

The South African Supreme Court of Appeal had cause to consider the "income from trade" requirement in *SARS v Megs Investments (Pty) Ltd* where the respondent companies carried on the business of a central buying organisation on behalf of their members comprising of wholesale and retail supermarket and grocery outlets. Their income was the difference between the discounts they received and the discounts they passed on to their members. The company's tax year ended on 31 December. On 1 January 1996 the appellants sold their entire business as a going concern.

During the year ended 31 December 1996 the companies sought to set off their assessed losses brought forward from 1995 against their interest income. The set off was disallowed by the Commissioner on the grounds that the company had not traded nor earned any income from trade during 1996.

The court rejected the argument that the interest income was derived from carrying on the trade of an investment company. On the basis that the respondents had conceded that for set off to occur there must be some income from trade, the appeal was upheld and the set off of the assessed losses disallowed. It was further emphasised that the judgement should not be seen as confirming the principle that a company was not entitled to set off its assessed loss where it had traded but failed to earn any trade income.

To succeed in carrying forward a tax loss the company must show a connection between the trade they carried on and the income they received.

PwC Indirect Tax Services

The Indirect Tax team operates on a national basis and has unmatched experience in providing tax solutions to clients in key industries such as financial services, retail, telecommunication, education, mining and local authorities.

How we can support you

- ◆ Minimise indirect tax take
- ◆ Maximise cash flow advantage
- ◆ Maximise commercial marketing opportunities through efficient VAT planning
- ◆ Increase shareholder value
- ◆ Maintain management control over indirect tax spend

Consulting

- Technical opinions on Value-Added Tax in Namibia
- Assistance with Audit of Tax Risks
- Value-Added Tax refund audits
- Rulings and opinions
- Calculation of apportionment ratio

Customs and Excise

- Cross-Border Valuation of Goods;
- Provision of monthly Asycuda import reports.

Compliance

- Application for the extension for the payment of Value-Added Tax due
- Application for waiving of penalties
- Value-Added Tax Balance investigation
- Value-Added Tax registration and deregistration

Value Added Tax reviews

- Health checks
- High level review
- 3 year input recovery review
- Audit of Value-Added Tax

Training

- Public practical workshops
- Industry specific workshops
- In-house practical Value-Added Tax training
- Connected Pursuit - The VAT Game

Give us feedback

Please give us feedback on our newsletter at
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Tax Calendar—April 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 PAYE payment Import VAT returns	21	22	23
24	25 VAT returns (Category A)	26	27	28	29 Social Security payment (Due 30 April 2011) Farmers : Yearly return to Ministry of Labour * (Due 30 April 2011)	30

* The returns can be obtained from www.agrinamibia.com.na

How does Namibia compare to other countries?

Corporate tax rates

CORPORATE TAX	South Africa	Namibia	Botswana
Corporate tax rate			
- Basic tax rate	28.00%	34.00%	15.00%
- Additional tax rate	0.00%	0.00%	10.00%
Branch taxation	33.00%	34.00%	25.00%
Manufacturing companies			
- Basic tax rate	28.00%	18.00%	5.00%
- Additional tax rate	0.00%	0.00%	10.00%

Individual Tax Rates

Taxable income	South Africa	South Africa	Namibia	Botswana
	(Over 65)	(Under 65)		(Residents)
N\$ / R	R	R	N\$	N\$*
40,000	-	-	-	471
80,000	-	3,645	10,800	3,884
200,000	20,733	28,745	49,200	30,507
500,000	121,503	129,515	151,200	105,507
526,000	131,383	139,395	160,040	112,007
600,343	160,040	168,052	185,316	130,592
750,000	219,903	227,915	236,200	168,007
1,500,000	519,903	527,915	513,700	355,507

* Converted at a rate of BWP 1= NAD 1.019254

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