

Tax First

Newsletter January 2012



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Also in this issue:

- 2 VAT Implications on medical services rendered
- 2 Prevention is better than cure
- 3 Withholding Tax consequences
- 3 Withholding tax compliance
- 4 Government Gazettes during November to December 2011
- 4 Tax Calendar February 2012

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Managing your provisionals

Provisional tax legislation changed with the recently published Government Gazette. This is a summary of the changes that may become pitfalls if not managed correctly.

1st Provisional 40%

The **first provisional payment** due 6 months prior to the financial year-end of the taxpayer should be at least 40% of the total actual taxable income for the year. Estimations based on the last assessed income will therefore no longer be sufficient.

2nd Provisional 80%

The **second provisional payment** due at year-end should be at least 80% of the total actual taxable income, taking into consideration the first provisional payment already made.

Underestimation Penalty

Should the provisional payment be less than the prescribed 40% or 80%, underestimation penalties (limited to 100% of the underpaid tax) may be levied.

Prior to the legislative changes the penalties levied on late payment of provisional payments were 10% once off.

Under the new law the penalty levy on late payment will be 10% per month (limited to the amount of tax payable) for each month that the amounts remain outstanding.

Late payment subject to penalties of 10% per month.

The amendments introduce a late submission penalty on provisional tax returns (including NIL returns) submitted after the period prescribed of

N\$100 per day

VAT Implications on medical services rendered

The recent exclusion of medical services as a zero-rated supply may cause major repercussions in the medical industry.

With the introduction of VAT in Namibia during the year 2000, the provision of medical and paramedical services was exempted from VAT. Consequently, a person making only exempt supplies:

- did not have to register for VAT;
- is not entitled to any input tax deductions on expenditure incurred.

It is less favourable to make exempt supplies than it is to make zero-rated supplies. In both instances no output tax is charged. The supplier of zero-rated supplies is however making taxable supplies and may therefore claim input incurred. By contrast, the supplier of exempt supplies must bear the input tax charged as an additional cost of doing business.

As exempt supplies are non-taxable supplies, the invoices issued by such suppliers will not reflect VAT, and the perception of the recipient will be that he is not paying tax on the supply. However, as the supplier cannot reclaim input incurred, this increased expense might well be recovered indirectly by being factored into an increased selling price.

VAT Amendment Act 4 Of 2010

With the Value-Added Tax Amendment Act, Act 4 of 2010 (30 April 2010), the provision of medical and paramedical services became zero-rated supplies. This change in the status of medical and paramedical services from an exempt supply to that of a zero rated supply, held significant benefits in store for the providers of such medical services and these benefits were expected to filter through to the public at large. VAT registered medical service providers are able to claim input tax incurred on expenses and their services charged should be at a zero percent VAT rate. The intention of the Fiscus was not to aid the industry solely,

it was in fact envisaged, that ultimately, with the benefits so granted to the providers of medical services, members of the public will benefit from lower tariffs charged for the provision of such services.

VAT Amendment Act 11 of 2011

After approximately 19 months, on the 30th December 2011, the VAT Amendment Act was promulgated in the Government Gazette where the legislation removed the supply of medical and paramedical services from the zero-rated schedule back to the exempt schedule.

Note further that the supply of rooms and services by a private hospital, clinic, maternity home, nursing home or hospice will also revert back to the exempt schedule of the VAT Act.

This will have huge impact on the medical service providers, by having to deregister for VAT, adjusting their accounting systems and not being able to claim any input tax. It may also affect tariffs charged by these medical service providers. It is important to consider the effect of the above on your business industry. ☐



Prevention is better than cure

What to do to avoid penalties on provisional returns:

- *Prepare an accurate first provisional tax calculation*
- *Prepare an accurate second provisional tax calculation*
- *Retain supporting documents for your calculations*
- *Be wary of audit adjustments and year-end journals that could significantly increase taxable income*
- *Consult early to determine the tax effect of large/complicated transactions*

Withholding Tax Consequences

The introduction of the 25% withholding tax on non-resident consulting, entertainment and directors fees shook businesses with the fear of increased overheads and administrative costs.

Tax rules for multinationals businesses operating in Namibia changed drastically on 30 December 2011 with the enactment of a 25% withholding tax on entertainment, management, consulting and directors fees paid to non-residents.

Section 35A introduced by the Ministry of Finance applies to Namibian residents including companies incorporated or managed and controlled in Namibia as well as natural persons ordinarily resident in Namibia. It imposes the obligation to withhold 25% tax on invoices from their foreign suppliers and pay these amounts to Inland Revenue.

The Act empowers Inland Revenue to collect the outstanding amounts from the Namibians where the withholding tax is not deducted and paid over in accordance with the law.



The Withholding tax should be paid over by the 20th of the month following the month in which fees were paid using a prescribed Inland Revenue form. For example where a fee is paid to a Canadian consultant during January 2012, the first payment of the withholding tax should be made by 20 March 2012 at the latest.

Paying late could become a costly affair with penalties of 10% per month and interest of 20% per annum provided for in the new law. Fortunately penalties and interest are limited to the amount of withholding tax.

The definition of management and consultancy fees in the legislation includes "any amount payable for administrative, managerial, technical or consultative services or any similar services, whether such services are of a professional nature or not".

Entertainment fees are defined as "any amount payable to an entertainer (including a cabaret, motion picture, radio, television or theatre artiste and any musician) or a sports-person, and includes any payment made to any person in relation to such activity".

In terms of some of the Double Taxation Agreements ("DTA's") concluded by the Namibian Government, fees

earned by some foreign suppliers would only be taxable in their countries of residence where they do not operate from a fixed base or permanent establishment in Namibia. These service providers may be able to claim relief from the withholding tax under the DTA agreements to avoid paying tax in Namibia and their home country.

Namibia concluded DTA's with Botswana, France, Germany, India, Malaysia, Mauritius, Romania, Russia, South Africa, Sweden and the United Kingdom.

What to do?

- *Identify all fees paid to foreign suppliers;*
- *Consider whether the payments will fall in the scope of S35A;*
- *Determine who is liable for local taxes in terms of agreements;*
- *Consider if DTA relief is available;*
- *Disclose all relevant fees and claim DTA relief on the form submitted to Inland Revenue.*

Withholding tax compliance - new forms

Following the introduction of the new 25% withholding tax on entertainment, management, consulting and directors fees paid to non-residents, taxpayers will have to adjust internal procedures to introduce controls for submission of the new withholding tax returns on the 20th of every month.

Inland Revenue confirmed that they are in the process of designing and printing the new forms required for the remittance of the Section 35A withholding tax. Indications are that the forms will be available in February 2012.

Practice Note 1/2012, issued on 25 January, extended the date for the first payment of this withholding tax to 20 March 2012. Note that this is not an extension of the effective date of the legislation (indicated as 30 December 2011 in the Practice note), but only provides administrative leeway for the payment and submission of the form.

Government Gazettes

Government Gazettes for the period December 2011 is included in this edition. This is not an exhaustive list of Acts/Notices/Proclamations published.

Government Notice

231-2011 Promulgation of Unit Trusts Control Amendment Act, 2011 (Act No. 10 of 2011), of the Parliament.

234-2011 Amendment of Schedule 1 to Financial Intelligence Act: Financial Intelligence Act, 2007

253-2011 Promulgation of Value-Added Tax Amendment Act, 2011 (Act No. 11 of 2011), of the Parliament

254-2011 Promulgation of Stamp Duties Amendment Act, 2011 (Act No. 12 of 2011), of the Parliament

255-2011 Promulgation of Judges Pensions Act, 2011 (Act No. 13 of 2011), of the Parliament.

256-2011 Promulgation of High Court Amendment Act, 2011 (Act No. 14 of 2011), of the Parliament

257-2011 Promulgation of Income Tax Third Amendment Act, 2011 (Act No. 15 of 2011), of the Parliament

Tax Calendar—February 2012

| Monday | Tuesday | Wednesday | Thursday | Friday |
|--|---------|--|----------|--------|
| 13 | 14 | 15 | 16 | 17 |
| 20 • Import VAT return • PAYE return | 21 | 22 • Business Bitesize training: Tourism sector at the PwC Windhoek Office at 07h30 | 23 | 24 |
| 27 • VAT return (Category A) | 28 | 29 • Social Security payment • Tax return - companies with 31 January YE; • 2nd provisional returns - companies and individuals with 28 Feb YE | 1 | 2 |

**Interested in the Business Bitesize seminars - please contact Lizette Bredenmann* Telephone # : 284 1035
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Bills in progress*

- B1-2010 Industrial Property Bill
- B1-2011 Unit trust control Amendment Bill
- B2-2011 Long-term Insurance Bill
- B3-2011 Pension Fund Amendment Bill
- B 8-2011 Earth Science Professions Bill
- B 14-2011 Stamp Duty Amendment Bill
- B7-2011 Conferment of National Honours Bill

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

Should you need any help please feel free to contact one of our tax specialists.

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