

# Tax First

## Namibia Newsletter

### May 2014



A monthly newsletter published by PwC Namibia providing informed commentary on current developments in the local tax arena. Through analysis and comments on new law and administrative changes assists business executives to identify developments and trends in tax law and revenue practice that might impact their business.

#### Are you importing?

#### Important Notice on Document Retention

**Paying the amount of Import VAT indicated on its monthly Asycuda++ Import report, does not automatically entitle a business to claim the full amount as input VAT on its VAT return.**

In order to support such reclaim it is important to have adequate import documentation readily available. This is specifically important for imports of high value.

Section 18(2)(a) of the VAT Act states that a deduction for input tax can not be made in respect of an Import unless an originally stamped SAD500 document was issued and is held by the taxpayer making the deduction.

Furthermore, in the event of an audit conducted by either Inland Revenue or Customs' officials, should an importer not have the necessary supporting documents (SAD500 and foreign supplier invoices) available, a penalty of N\$3,000.00 per day can be levied for the number of days the documentation is outstanding.

In addition to the above, where a person fails to maintain proper records a once-off fine of N\$8,000.00 can be levied.

It is thus important to monitor your business' imports and ensure that the original import documentation is in safe keeping and readily available for inspection by the authorities.

**Important Notice:** Please note that as from May, ASYCUDA report will only be accessible via internet. To apply for access, please visit the website: [www.asycudaworld.mof.na:8080/asyw](http://www.asycudaworld.mof.na:8080/asyw)

Alternatively contact them directly at (061) 209 2636 or (061) 209 2626

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**Reminder:**  
VET Levy  
due  
**20 May '14**

**All companies with an annual payroll over N\$1,000,000.00 a year is liable for the new Vocational and Education Training Levy. These companies were required to be registered for the levy by the end of February 2014. The levy is 1% of the total annual payroll and is payable on a monthly basis, of which the first payment is due on or before 20 May 2014;**

#### Also in this issue:

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## Namibia Court Case - Transfer Duty evasion

**Herewith a summary of the Namibia Court Case “Trustees of the Eldo Trust v Noabeb” (I 3565/3013) [2014] NAMCMD 81 on 12 March 2014, where a structure used to purchase property was found to be for the sole purpose of evading Transfer Duty.**

### Overview

The parties agreed in essence that the defendant would purchase a property from the plaintiffs for a consideration of N\$815,000.

The structure of the agreement was that the defendant will become the sole new trustee of the Eldo trust and the sole beneficiary of the trust upon paying the full consideration, i.e. the sellers will resign as the current trustees.

The plaintiffs held that they had complied with the obligations under the agreement, but that the defendant was in breach of the agreement by failing to pay the full consideration. They also confirmed that they cancelled the agreement with the defendant by written notice dated 27 August 2013.

The plaintiffs claimed the outstanding money from the defendant and an order banishing the defendant from the property.

The following principles were established in the courts' ruling on the case:

### a) Sole trustee and beneficiary

An essential concept of trust law, is that the enjoyment and control should be functionally separate. As stipulated in the Parker Case, a sole trustee should not become a sole beneficiary.

The structure contemplated by the agreement thus regates the whole notion of trust and accordingly the failure of the trust in the transaction.

The court held that “the agreement amounts to a clear instance where a trust has been debased and abused to achieve the transfer in ownership of immovable property without the consequence” of such a transaction (including paying transfer duty under the Transfer Duty Act).

### b) Validity of transaction

The question arises as to whether the agreement is in circumvention of the rules of the Transfer Duty Act by seeking to avoid the payment of transfer duty by a simulated / disguised transaction.

The Namibian judge quoted from the NWK<sup>#</sup> South Africa supreme court case: “The test require ... an examination of the commercial sense of the transaction: of its real substance and purpose. If ... the transaction is only to achieve ... the avoidance of tax ... it will be regarded as simulated”. (In the NWK case, the court ruled that excessive interest tax deductions that resulted from the “simulated transaction” should be disallowed in SARS’s assessment.)

The court confirmed that where the taxpayer simulates/disguises a transaction, or a series of transactions with the intention to achieve an object that allows the evasion of tax, the court will look at the real nature of the transaction and measure whether it was intended to evade tax.

### Conclusion

The court held in the current case that the real substance of the transaction was the sale and transfer of immovable property.

It was done in this manner to achieve an object that allows the evasion of tax, resulting from the abuse of the trust.

It was held that the transaction is to be regarded as simulated for the purpose of evading the payment of Transfer Duty .

The agreement was therefore held to be null and void.

<sup>#</sup> Commissioner for the SARS v NWK Ltd

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**!** *This ruling increases the risk for taxpayers who conclude structured agreements that result in significant taxes reductions. Taxpayers should carefully consider the business rationale for such transactions. It also remains important to ensure that transactions are properly analysed to comply with tax laws.*

# Tax Calendar - May 2014

Mon	Tue	Wed	Thu	Fri
12	13 *PwC Business School course : Workforce Planning	14 *PwC Business School course : Workforce Planning Contact <a href="mailto:liretha.jordaan@na.pwc.com">liretha.jordaan@na.pwc.com</a> for bookings	15 *RemChannel Workshop: Reports Training Contact <a href="mailto:liretha.jordaan@na.pwc.com">liretha.jordaan@na.pwc.com</a> for bookings	16
19 • PAYE Returns • Import VAT return • Withholding Tax on Services return • VET Levy	20	21 *PwC Business School course : Emotional Intelligence Contact <a href="mailto:liretha.jordaan@na.pwc.com">liretha.jordaan@na.pwc.com</a> for bookings	22	23
26 • VAT return (Category A)	27	28	29	30 • Social Security payment • Tax return - companies with 31 October 2013 Year-End; • 2nd provisional returns - companies with May Year-End

## Upcoming PwC Tax Events:

**11 - 13 June 2014**

*2014 Annual Tax Symposium, Windhoek*

**06 - 08 August 2014**

*2014 Annual Tax Symposium, Walvis Bay*

To obtain our registration form please contact **Liretha Jordaan** in Windhoek on or before **05/06/2014** at Tel: **061 284 1041** or via email: [liretha.jordaan@na.pwc.com](mailto:liretha.jordaan@na.pwc.com)



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