



Tax First Namibia Newsletter

October 2014



A monthly newsletter published by PwC Namibia providing informed commentary on current developments in the local tax arena.

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Capital Allowances for Patents, Trademarks and Copyrights

It is becoming increasingly important for successful Namibian businesses to protect their intellectual assets which could have a significant value. In doing so, taxpayers have to incur expenses of a capital nature that are not deductible under the general deduction formula.

Thankfully, Section 17(1) (i) of the Income Tax Act provides for capital allowances relating patents, designs, trademarks or copyrights costs.

The first part of this section allows the taxpayer to claim allowances on expenditure incurred for:

- developing an invention, design or trademark;
- obtaining or restoring of any patent;
- registration of any design;
- purchasing a patent, design, trade mark or copyright or other properties of similar nature (with the Minister's approval); or
- purchasing the right to use such assets.

It is important to note that the relevant patent, design, trademark or copyright should generally be *registered* under the respective legislative Acts (for example The Trade-mark Act, The Copyright Act) to qualify for a claim. Registering intellectual property with the relevant regulator, may therefore be an important first step.

The allowance is only available to the extent that a patent, design, trade mark, copyright, other properties or knowledge, *is used by a taxpayer in the production of income*.

For expenditure that satisfied the above conditions, an allowance claimable is equal to:

- where amount is less than N\$200 – allowance shall may not exceed the cost.
- where the expenditure exceeds N\$200 – allowance is the lesser of:
- 1/25 of the cost; or
- Cost divided by the expected useful life (as deemed reasonable by the Minister) of a patent, trademark or design.

For example where a trademark is registered for 10 years, the allowance equals the total cost for the trademark divided by 10.

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VAT implication of services provided by foreigners

Have you recently made use of foreign services providers? Were these services used or consumed in Namibia? Have you ever considered whether such services have any Namibian VAT implications for you as the recipient?

The VAT Act deems services provided by a “**non-resident person**” to a “**resident person**” to be imported services where the services are used or consumed in Namibia for purposes “**other than making taxable supplies**” (for example, exempt supplies or non-supplies).

Imported services include services between a foreign branch and its local head office or between a foreign head office and its local branch.

This means that VAT of 15% will be payable on services regarded as “**imported services**” by the recipient of the services within 30 days of:

- The earlier of invoice or payment date; or
- For connected persons—the time when the services were performed.

The value on which the VAT should be calculated and paid will be the consideration charged for the services. Where the foreign services provider and the local recipient are connected persons, the open market value of the services should be used.

VAT on imported services is filed on a return different to the one for Import VAT on goods. The VAT paid can however not be claimed, irrespective of whether or not you are registered for VAT in Namibia.

Intention of the Law

VAT on imported services was introduced to essentially protect the local services provider. The VAT charged on imported services effectively bring the price of foreign services in line with the price of local services thereby ensuring businesses compete on a level playing field.

So, who is affected?

If you receive services from a foreign service provider, you should firstly determine whether you are considered to be a “**resident person**” in terms of the VAT Act.

A “**resident person**” includes:

- (a) The State, a regional authority or any local authority in Namibia; or
- (b) Any natural person ordinarily resident in Namibia; or
- (c) Any company, partnership, board or trust which is formed / established under any laws of Namibia or which is managed and controlled in Namibia; or
- (d) Any other person carrying on a taxable or other activity and has a fixed place in Namibia relating to such activity.

Secondly, you need to determine whether the foreign services provider is a “**non-resident person**” in terms of the VAT Act.

A “**non-resident person**” includes:

- Any person who is not a resident person as explained above; or
- Any person referred to in (d) above to the extent that the activities carried on are carried on outside Namibia.

If the answers to the above 2 questions are Yes, then you need to determine the purpose for which the services are used or consumed in Namibia.

If it is that:

Option
1

You are VAT registered and you use or consume the foreign services solely for supplying goods and/or services in Namibia at a VAT rate of either 15% or 0%, then the services are not regarded to be imported services, and no VAT is payable.

Option
2

You are VAT registered and you use or consume the foreign services solely for making non-supplies (e.g. receiving grants / subsidies / dividends / finance capital etc.) or exempt supplies, then the services are regarded to be imported services and VAT of 15% is payable by you to Inland Revenue.

Option
3

You are VAT registered and you use or consume the foreign services to make taxable (15% or 0%) supplies, non-supplies and exempt supplies, VAT of 15% is payable on the services to the extent that it relates to non-supplies and exempt supplies. In other words, the services should be apportioned and VAT at 15% is to be calculated and paid on the portion relating to making of non-supplies and exempt supplies.

Option
4

You are not VAT registered or required to be VAT registered, the foreign services are regarded to be imported services and VAT at 15% is payable by you to Inland Revenue.

If your answer to options (2), (3) or (4) above is Yes, you need to determine whether VAT exemption is applicable on the imported services.

If the same or similar services were to be provided to you by a local services provider and the local services provider would have zero-rated (0%) the services to you or the services would have been exempt from normal VAT, then the imported services would be exempt from VAT on importation.

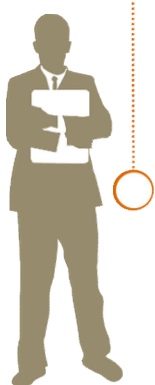
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Tax Calendar - October 2014

Mon	Tue	Wed	Thu	Fri
6	7	8	9	10 *Bitesize Session: General Considerations in Tax Structure Contact liretha.jordaan@na.pwc.com
20 • PAYE Returns; • Import VAT return; • Withholding Tax on Services return; • VET Levy	21	22	23	24
27 • VAT return (Category A)	28	29	30	31 • Social Security payment • Tax return - companies with 31 March 2014 Year-End; • 2nd provisional returns - companies with October year-ends

OECD's tackles Tax treaty abuse



The OECD (Organisation for Economic Co-operation and Development) is a global body that works, amongst others, to assist countries in managing their tax laws.

The OECD published draft changes to the guidelines for addressing the abuse of tax treaties. The new draft recommended:

- extensive changes to the OECD Model Treaty (which most Namibian treaties are currently based on);
- suggested domestic law provisions targeted at treaty abuse or abuse of domestic law where the abuse involves application of treaty benefits.
- a proposed change to the preamble of tax treaties to clarify that tax treaties are not designed to create double non-taxation; and
- potential tax policy issues that countries might consider in deciding whether to enter into a tax treaty.

Inland Revenue started the process of reviewing Namibian double taxation agreements by compiling a DTA framework. This framework is currently under review.

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PwC Business School

Training Courses

October - November 2014



October

- 10** Bitesize Session: General Considerations in a TAX Structure
- 7 & 8** Speak-Up Presentation Skills
- 16** Bitesize Session: Data Analytics
- 21 - 22** Professional Customer Care

November

- 11 & 12** Basic Accounting: Finance for Non-Finance Managers
- 18** Organising Workflow and Time Mastery
- 19 - 20** People Skills for Managers

For more details:

Liretha Jordaan at 061-284 1041 or
liretha.jordaan@na.pwc.com

Investment: Register three (3) delegates and one delegate may attend for 50% of the fee per participant.

Fee includes comprehensive hand out, facilitator's fee and certificate. All public courses allow it to be customised for client specific training. Cut-off date for registrations is 5 working days prior to workshop date.