

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

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Mid-Year Budget Speech Review

The Minister of Finance Hon. Calle Schlettwein presented the mid-year budget review policy statement in parliament on the 22nd of October 2019.

Visit the PwC Namibia website to download our 2019/2020 mid year budget speech analysis in PDF or watch our video detailing key findings of the speech.

To have quick access to the content, you can follow this [link](#).



Indirect Tax | To Appeal or Not To Appeal?

VAT is a comprehensive self-assessment tax with Inland Revenue's role set as the inspector rather than assessor. This compels businesses to understand the requirements of the VAT Act and to maintain diligent administration of their accounting records at all times.

The VAT Act provides the necessary rules businesses (i.e. taxpayers) must follow to ensure that VAT calculations submitted are accurate. In addition to this, the Act also provides the Commissioner of Inland Revenue with guidance he/she can use to make certain decisions. Such decisions may include a taxpayer's application for voluntary VAT registration, the cancellation of a taxpayer's VAT registration, the allocation of tax periods, the allowing of input tax claims, value of imports, etc.

Certain decisions the Commissioner makes are "appealable" in terms of the Act. The term "appealable decision" is defined in the VAT Act and refers to any decision under the listed sections of the Act, or any assessment made by the Commissioner under the VAT Act. Where in disagreement with an assessment or decision, the Act affords the taxpayer the opportunity to object or appeal. However, in order to successfully lodge an objection or appeal, strict guidelines must be adhered to.

Objections

Section 27 of the VAT Act states that any taxpayer who disagrees with an appealable decision may lodge an objection to the Commissioner. The objection must: **(1)** be submitted to the Commissioner within 90 days after the date of the assessment or decision notification; **(2)** be in writing; and **(3)** specify the detail of the grounds on which it is made.

The Commissioner is required to consider the objection, after which he/she can then either allow the objection (in whole or in part), or disallow it.

Appeals

Where the taxpayer is still not satisfied with the Commissioner's objection decision, section 28 of the VAT Act allows the taxpayer to appeal to the Special court. The appeal must be: **(a)** made in writing; and **(b)** submitted within 60 days after the taxpayer was notified of the objection decision.

It is important to remember, however, that the person appealing is limited to the grounds set out in the preceding objection. No further grounds or additional information will be considered at this stage.

The special court will then consider the appeal and either:

- support the objection decision (or vary it); or
- refer the objection decision back to the Commissioner for reconsideration.

Keep in mind that when you are of the view that the VAT assessment you received is excessive or a decision taken by the Commissioner is wrong, the burden of proof will rest on you to prove the contrary. Thus, if you are in disagreement with a VAT assessment or decision notification from Inland Revenue and you are in doubt on how to proceed, please feel free to contact us for advice.

bianca.cooper@pwc.com

Income Tax | Disallowance of expenditure by IRD

The prevailing practice by Inland Revenue relating to income tax assessments is to disallow the expenditure incurred during the current year in the event that no taxable income was generated. Once the expenditure for the current year is disallowed, any balance of assessed loss (loss brought forward) is forfeited.

Inland Revenue's rationale, as argued, is based on the premise that a deduction of expenditure shall only be allowed if such expenditure derived income from trade. A person that derives no income from trade will have to discharge the onus that he did in fact trade during the year of assessment, albeit not yielding income. A critical factor is that expenditure incurred in trade should be sufficiently closely linked to its potential to produce income. Over the years, Inland Revenue has disallowed expenditure relating to inter alia: auditing fees, secretarial fees, bank charges, contractual fees. Taxpayers that are going to be affected by this action of Inland Revenue are neither informed nor consulted, only to become aware of the disallowance of expenditure through a notice of assessment issued by Inland Revenue which is often delayed.

Legislation

In perusing the Income Tax Act, Act 24 of 1981 ("the Act") to comprehend the intention of the legislature, two sections appear apparent in this imperative.

Section 17(1)(a) of the Act provides for the deduction of expenditure as follows:

"17. General deductions allowed in determination of taxable income. – (1) For the purpose of determining the taxable income derived by any person from carrying on any trade within Namibia, there shall be allowed as deductions from the income of such person so derived- (a) expenditure and losses actually incurred in Namibia in the production of the income, provided such expenditure and losses are not of a capital nature;"

In addition, **Section 21(1)(a)** of the Act provides for the set off of losses as follows:

"21. Set off of assessed losses. – (1) For the purpose of determining the taxable income derived by any person from carrying on any trade within Namibia, there shall be set off against the income so derived by such person – (a) any balance of assessed loss incurred by the taxpayer in any previous year which has been carried forward from the preceding year of assessment; (b) any assessed loss incurred by the taxpayer during the same year of assessment..."

Accordingly, in terms of this section of the Act there are two requirements which must be met in order for a taxpayer to set off an assessed loss against taxable income, namely: **(1)** the taxpayer must be carrying on a trade; and **(2)** the assessed loss may only be set-off against income derived from that trade.

In terms of the Act "trade" includes every 'profession, trade, business, employment, calling, occupation or venture, including the letting of any property, and the use of or the grant of permission to use any patent or design..'. A person that fails to carry on a trade during a year of assessment will not be allowed to carry forward any assessed loss from the preceding year of assessment. The term "assessed loss" refers to the tax loss that arises in the current year after deducting the admissible deductions in sections 17, 18, and 20 from the income against which they are deductible.

Conclusion

A person is therefore required to carry on a 'trade' in order to be allowed a deduction of expenditure and balance of assessed losses by Inland Revenue. In terms of Section 72 of the Act, the burden of proof that any amount is subject to any deduction, or set-off in terms of the Act, shall be upon the person claiming such deduction, or set-off. A pragmatic approach would be to demonstrate in writing, with the submission of the return of income to Inland Revenue, that expenditure incurred is an 'inevitable concomitant' in the production of income.

stanley.neumann@pwc.com

New Legislation Tracker

This diagram tracks the progress of proposed tax legislation. The following is a status of proposed legislative changes up to 31 October 2019. No effective date has been set for any of the proposed legislation.

Repeal the **EPZ Act** and introduction of **Special Economic Zones** (with sunset clause).

Introduce VAT on income of **listed asset managers**

Abolish conduit principle in taxation of **trusts**

Establishment of **Revenue Authority** - planned implementation for March 2020

Remove zero-rating of VAT on **sugar**

Introduce a 10% **dividend tax** for dividends paid to residents.

Phasing out current tax incentive for **manufacturers** and exporters of manufactured goods.

Disallow deductibility of **royalties for non-mining entities**

Increase tax deductibility of **retirement fund contributions** to the lower of 27,5% of income or N\$150,000 per annum

VAT on proceeds on sale of shares or membership in a company owning **commercial immovable property**

Business School | Upcoming Training

Windhoek:

11 to 15 November |
Fundamentals of Internal Auditing
18 to 22 November |
Lets Talk Tax Week
(Tourism, Construction, Retail, Farming & Millennials)

Walvis Bay:

26 November |
IFRS for SMEs Training

For more information, visit our website:

<https://www.pwc.com/na/en/events.html>

Or contact our office:

Windhoek:

busschool@na.pwc.com
+264 (61) 284 1034



Walvis Bay:

busschool.walvisbay@na.pwc.com
+264 (64) 217 700

Tax Calendar | November 2019



Important Submission dates for November 2019

Wednesday, 20th of November

- VET Levy return;
- Import VAT return;
- PAYE return;
- Withholding Tax returns: Services, Royalties, Interest; NRST

Monday, 25th of November

- VAT Return

Monday, 2nd of December

- 1st provisional for taxpayers with a May 2020 year-end;
- 2nd provisional for taxpayers with a November 2019 year-end;
- Tax return for companies with a April 2019 year-end;
- Social Security return



Our office locations:

Windhoek
PwC Building
344 Independence Ave
Telephone Number: +264 (61) 284 1000

Walvis Bay
1st Floor, PwC Building,
122 Theo Ben Gurirab Str
Telephone Number: +264 (64) 217 700

For assistance or advice please contact one of our tax specialists:



Chantell Husselmann
Tax Leader
chantell.husselmann@pwc.com

Johan Nel
Corporate Tax Partner
johan.nel@pwc.com

Riana Esterhuyse
Tax Associate Director
riana.esterhuyse@pwc.com