



Tax First Newsletter October 2011

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Tax treatment of Post Employment Payments

Tax deductibility of employee costs associated with post-retirement benefits.

In most businesses, employees form an important part of the continued existence of the business. Whilst employed, the costs associated with employees are generally deductible under Section 17(1)(a).

The tax deductibility of payments to employees/directors once they leave the business (examples are golden handshake and post-retirement medical aid benefits), are however often not considered. In order to rank as a deduction from income, expenditure and losses must be actually incurred in the production of income.

To determine whether expenditure is incurred in the production of income two questions should be asked:

- Which action gives rise to the expenditure?; and
- Is this action closely connected (or a necessary concomitant of) the income earning activities?

Amounts paid to former employees/directors when they leave the business in recognition of prior services ren-

dered, may not qualify as a deduction due to the fact that the expense incurred are not in the production of any current or future income.

The WF Johnstone and Co Ltd case held that payments made in recognition of past services rendered to the taxpayer, did not constitute expenditure incurred in the production of income. The fact that the payment constituted income in the hands of the recipient was considered irrelevant to the question of deductibility in the hands of the past employer.

In the Provider v COT case it was determined that if the expenditure is however incurred to induce the employee to enter or remain in the service of the taxpayer, the expenditure may qualify as a deduction since the purpose is to produce current and future income.

It is therefore advisable for taxpayers to carefully consider the structure of agreements with outgoing employees to avoid an unexpected tax leakage where related payments will not be deductible.¶

NB!

In it's drive to speed up VAT refunds, Inland Revenue indicated that electronic transfers will now also be used for refunds below NS500 000.

It is therefore crucial that taxpayers should include contact and bank account details when completing VAT returns.

Research on proposed changes - PwC African Tax Network report continued...

In our September newsletter we published some results of our study to compare the proposed tax amendments to tax laws in other African countries. This issue reveals more results.

Income Tax round-up

Question	Namibia (proposed)	South Africa	Botswana	Zambia	Kenya	Mozambique	Tanzania
Is there any capital gains tax on the sale/ alienation of mining licenses or on the shares of companies holding these licences?	Introduce taxation on income from the alienation of a right or license to explore, mine or retrieve natural resources in Namibia. The income on the sale of shares in companies that hold such a right will also be taxable.	Yes	Yes	No	No	Yes	Yes
Are there any group restructuring relief with regard to recoupment of assets?	To remove the discretion that the Minister has to accept a lower value than the market value of assets for recoupment purposes.	Yes	No	Yes	No	No	Yes
Are there any ring fencing policies in place? (i.e. where a taxpayer is not allowed to set off losses from specific activities against other taxable income) In place for: - Farming losses - Property Losses	To improve the integrity of the tax system by preventing expenditure and losses normally associated with suspect activities (disguised hobbies, etc) from being deducted as a means to reduce taxable income.						
		Yes	Yes	Yes	Yes	Yes	Yes
		Yes	Yes	Yes	Yes	No	No

Transfer Duties Compared

What transfer duty regulations are applicable in other African countries?

Recent proposals include an amendment to the Transfer Duty Act to introduce transfer duty on the sale of membership interest or shares in a company, trust or close corporation which owns immovable property.

These transactions will be subject to the same transfer duty rates that are currently used when natural persons or juristic persons acquire property.

Tanzania
yes - 1%

We asked PwC African Tax experts about transfer duty levied in their respective countries on the sale of interests in entities which own immovable property.

Only South Africa, Tanzania and Zambia levy transfer duties on the sale of members interest or shares.

South Africa
yes

Neither Botswana, Mozambique nor Kenya apply similar transfer duty legislation.

The Namibian Ministry of Finance further proposed the regulation of the property value on which transfer duty should be calculated when such shares or membership interests are alienated.

Botswana
no

In South Africa the value used to calculate transfer duty is defined as the amount of consideration paid; or where no consideration is payable, then the *declared value* of the property is subject to transfer duty. The *declared value* is the “*value of the property as declared in the declaration completed by the person ... who has acquired the property*”.

Zambia
yes

In Zambia Property Transfer Tax (PTT) is charged on and collected from the person transferring the property and is based on the realizable value, which is defined as the higher of the open market value or contract price.

Stamp duties juxtaposed

In the press release by the Minister of Finance (21 July 2011), she proposed to amend the stamp duties payable on the transfer of immovable property.

The Stamp Duty Act, 1993 will be amended to introduce an exemption on the payment of stamp duty when *immovable property* is purchased by a *natural person* and where the value is less than N\$400,000. She further proposed to levy stamp duty of N\$10.00 per N\$1,000 where the value of the immovable property exceeds N\$400,000.

Another proposed change includes that *juristic persons* (including trusts) will pay a flat rate of N\$12.00 per N\$1,000 irrespective of the value of the immovable property.

As part of the PwC survey we researched whether stamp duties are payable on immovable property in the following African countries:



South Africa NONE

Botswana NONE

Zambia NONE

Kenya 4% (urban property) and 2% (rural property)

Mozambique 0.2%

Tanzania 1%

Tax Returns - complete the blanks!

Inland Revenue again stressed the importance of accurately completing tax returns for submission.

More electronic funds transfers ("EFT") are envisaged by Inland Revenue for the payment of VAT refunds due to taxpayers, now even for refunds *less than* N\$500,000.

Establishing a sufficient VAT assessment and refund process can however not be accomplished if the taxpayer's banking details are not correctly reflected on the return.

It is therefore important that the taxpayers ensure that their contact details and banking information is included on VAT returns and are up to date per Inland Revenue's records, as this could aid in smoothing the assessment and refund process.

The EFT process will ensure that VAT refunds due to taxpayers would be processed in reduced time, which in turn reduces the refund period.

"Why?" you might ask. When returns are processed and the assessor has queries or concerns, the taxpayer could be contacted directly via telephone/email, instead of snail mail.

Inland Revenue further advised that if significant local capital goods are acquired, copies of the relevant tax invoices could accompany the VAT return. This will assist Inland Revenue, once again, in speeding up the assessment of returns and could reduce the chance of having to schedule a VAT refund audit.



Congratulation to our Tax and Advisory Leader, Patty Karuaihe-Martin, for her appointment as a member of the Special Tax Court.

Government Gazettes

Government Gazettes for the period 26 September 2011 until 21 October 2011 is included in this edition. This is not an exhaustive list of Acts/Notices/Proclamations published.

Government Notice

190-2011 Under section 73 of the Income Tax Act, 1981 (Act No. 24 of 1982), the addition of a special court was constituted for hearing income tax appeals and, in addition to the judge of the High Court, appointed Ms. Nelago Saima Kasuto and Ms. Patty Karuaihe-Martin as members of this court.

General Notice

302-2011 The Board of Directors of Namibia Post Limited altered the domestic and international rates in respect of postal services with effect from 1 October. Please refer to the Government Gazette No.4799 for details on the tariff adjustments.

330-2011 Telecom Namibia Limited filed a tariff amendment in respect of the following: international call tariffs, basic telephone line and ISDN rental charges, site sharing and co-location tariffs. Please refer to the Government Gazette No.4814 for details on the tariff amendments.

Tax Calendar—November 2011

Monday	Tuesday	Wednesday	Thursday	Friday
14	15	16* • Business Bitesize training at Pelican Bay Hotel in Walvis Bay - Mining Sector at 7h30 - Fishing and Marine sector at 10h30	17* • Business Bitesize training: Insurance sector at the PwC Windhoek Office at 07h30	18
21 • Import VAT return • PAYE return	22	23	24	25 • VAT return (Category B)
28	29	30 • Social Security payment • Tax return - companies with 30 April year ends; • 1st provisional returns - companies with 31 May YE	1	2

*Interested in the Business Bitesize seminars - please contact Zanna Moore Telephone # : 284 1235
Email her : zanna.moore@na.pwc.com

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
- B4-2011 Inspection of Financial Institutions
- B6-2011 Appropriation Bill
- B7-2011 Conferment of National Honours Bill
- B 8-2011 Earth Science Professions Bill

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

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