

IS THERE WITHHOLDING TAX ON DISBURSEMENTS? By Jonathan Hore

Well, it is a matter of fact that most organisations in Botswana make use of non-resident consultants for various projects or tasks. Most of the payments that are made to the non-resident consultants are subject to withholding taxes in Botswana. One of the frequently asked questions is whether there is withholding tax on the disbursements that are charged by the non-resident consultants, which are over and above the consultancy fees. Before I analyse that aspect, I should take things step-by step by laying the instances under which withholding taxes are deducted when one is dealing with non-resident consultants. In this article, words importing the masculine shall be deemed to include the feminine.

WHEN DO WE DEDUCT SUCH TAXES?

A withholding tax is a tax that is to be deducted at source by the payer from a payment to be made to a payee. I should hasten to state that the simple fact that a payment is being made to a non-resident does not in itself trigger withholding tax but there are specified instances where the tax is deductible. Since I am talking about consultants, most of them fall under what is referred to as management and consultancy fees. Under Double Taxation Avoidance Agreements, these are referred to as technical fees. I narrate below instances where withholding taxes are deductible, when dealing with non-resident consultants:

- **Consultancy services:** Payments made to the following non-resident, among others, attract withholding tax as they qualify as consultancy services: auditors, surveyors, mining experts, actuarial scientists, tax consultants, lawyers and forensic experts.
- **Management services:** Any payments made to head offices outside Botswana by subsidiaries in respect of shared services are subject to withholding taxes. These include services where the head offices provide IT, human resources, financial support etc and on-charge these to subsidiaries.
- **Administrative services** such as human resources placement and selection done by a non-resident on behalf of a resident.

HOW DO I DEDUCT THE TAX?

When dealing with non-resident persons, it means that the Botswana entity paying such tax should deduct the withholding tax at the prescribed rate and take the same to BURS. The non-resident payee receives the net amount of the amount due to him, including a tax certificate called an ITW 9, which serves as proof of withholding. If a South African-based consultant charges P1m, the Botswana entity should deduct P 100 000 and pay it to BURS. The consultant will only receive P 900 000. That tax, once deducted, is not refundable to the consultants within Botswana. However, depending on the laws of South Africa, the consultant may be eligible for a tax credit on that withholding tax.

WHAT ABOUT DISBURSEMENTS THEN?

Now that we know that non-resident consultants suffer withholding taxes from payments made by Botswana resident entities, the big question is whether disbursements such as hotel accommodation, food, air travel, communication costs that are added to the consultancy invoices are subject to withholding taxes. To be honest, there are two views regarding this issue. Some are of the view that withholding taxes are only subjected to the actual consultancy fees and not to the related disbursement costs. The argument by those who support this view is that the disbursements are not part of management and consultancy fees but separate expenses which are merely recovered from the Botswana entity.

The second school of thought is that the disbursements are an inseparable, necessary and integral part of the provision of the consultancy services and therefore they constitute consultancy services. You may be asking yourself which school of thought I subscribe to. Well, I subscribe to the second one which regards the disbursements as inseparable from the consultancy services. To illustrate this, consider a trainer whom one hires to train their employees. The trainer will certainly need to print slides, call to confirm certain issues and if he charges for those services, you can't split them and say they are separable from the training. You in fact treat the full cost as training expenses, which simply shows that the trainer could not offer you the training services without incurring such costs.

Now, if a non-resident consultant charges you separately for accommodation and air fares, those are not distinct services or charges but simply a cost incurred in the provision of the consultancy services. In fact, the consultant may as well simply lump up all such costs and have a one line description such as, 'Forensic services provided in Botswana including incidental costs thereto.' This means that you have to deduct withholding taxes on the total amount. The only instance where you may need to separate these is when you purchase equipment and then at the same time acquire technical services such as training. In that case, you only deduct withholding taxes from the training as the other cost relates to capital equipment, which is not subject to withholding taxes as these only apply to services.

Well folks, I hope that was insightful. As Yours Truly says goodbye, remember to pay to Caesar what belongs to him. If you want to join our Tax Whatsapp group or have details of our 7 tax books, send me a text on the cell number below.