

## **DEDUCT WITHHOLDING TAX ON TRAINING: By Jonathan Hore**

A lot of Botswana-based entities engage non-residents to offer them training in various spheres. In my experience, most such organisations are not aware that they should deduct withholding tax from training fees. A withholding tax is a tax that a payer of specified expenses is supposed to deduct before releasing the net amount to the payee. I will discuss this tax in more detail below in as far as it relates to training. In this article, words importing the masculine shall be deemed to include the feminine.

### **WITHHOLDING TAX**

Withholding taxes are taxes deducted at source by payers of taxable expenses such as 'management or consultancy fees.' I must state that the term 'management or consultancy fees' is used in scenarios where Botswana does not have a Double Taxation Avoidance Agreement (DTAA) with the service provider's country of residence. Where Botswana has a DTAA with the service provider's country of residence, 'management or consultancy fees' are referred to as 'technical fees.' These terms are predominantly similar and what we must realise is that the training qualifies under both 'management or consultancy fees' and 'technical fees.' The default withholding tax rate is 15% whilst DTAA's may prescribe lower rates such as 10% or 7.5%. The payer must issue a tax certificate to the payee. On the other hand, the payee may, depending on the tax rules in their country, claim a foreign tax credit on the Botswana tax in full or in part.

### **TRAINING**

The term 'technical fees' as per DTAA's includes services of a consultancy and technical nature. There is a thin line between consultancy and technical services. However, from a practical perspective, training appears to fit more under technical services as it relates to grooming of other person on the technical matters of a certain discipline. It may also be referred to as the impartation of knowledge in a certain discipline which is gathered over time of learning, working and experience. Now that we have established that there is withholding tax on training offered by non-residents, let's focus on the practical matters of complying with the tax.

### **PRACTICAL MATTERS**

Besides the fact that most organisations are not aware that there is withholding tax on training expenses payable to non-residents, most of them struggle to effect the provisions of the law as the non-residents trainers do not want to suffer Botswana withholding taxes. Practically, it is not illegal for a non-resident to instruct you to pay them their fees without deducting Botswana taxes. This is so as it is the local payer's responsibility to deduct the tax and not that of the non-resident supplier of training or other such service.

In cases where the trainer does not wish to suffer withholding taxes, then the payer should gross-up the amount. Grossing up is a process where a payer takes the amount that they would have paid to the non-resident as net of tax and then work backwards to determine the tax due. For example, a trainer who requires payment of P100 000 without deduction of tax receives the full amount as net of tax. If they are resident in South Africa, then the P100 000 is regarded as 90% of a certain amount, i.e. it is 100% less 10%, the latter being the withholding tax rate. If grossed-up, the total fees become P111 111.11, being  $100\%/90\% \times P100\ 000$ . In general, grossing up increases the costs of local entities.

However, if the service provider is so crucial to the Botswana entity and demand to be paid their full fees, then the payer should gross-up the payment.

There is always debate as to whether non-resident persons who do not want to suffer Botswana taxes must have withholding tax certificates issued to them when in fact they would not have suffered any Botswana tax. It is commonly accepted that such persons should not be given any tax certificate as they would not have incurred any taxes in Botswana.

The other issue which is the subject of debate is whether there is any difference in the treatment of the tax in cases where the training is conducted in Botswana and in cases where the training is conducted outside the country. From the perspective of the law, the tax must be deducted in both instances as the overarching issue is that a resident would have paid a non-resident, making the tax deductible on payment of the fees in both instances.

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, send me a text on the cell number below.