

THE UNKNOWN ASPECTS OF THE 5% TAX: By Jonathan Hore

Most of us may be aware that payers of rent are generally required to deduct a 5% tax from rent and pay the landlord the amount net after tax. The tax is deducted on rent paid for the use of land or buildings where such amounts are at least P3 000/month. Whilst this appears to be a well-known matter, experience shows that tax can at times be dicey. I dedicate today's instalment to analyse the not so known aspects of the 5% tax. In this article, words importing the masculine shall be deemed to include the feminine.

READY, SET, GO!

Ok, I feel like mesmerising you and I am certainly going to do that. If you are ready to go, these are the little-known aspects of the 5% tax:

- **NGOs must deduct:** NGOs and every other payer of rent must deduct the tax, whether or not they exist for profit. This includes churches, associations, public trusts and societies.
- **Individuals can't deduct tax:** Individuals who are not in business can't deduct the tax. In other words, someone who simply uses the premises for residential purposes and not for business can't deduct the tax. The reasons are obvious, individuals are dodgy (except you) and if they deduct the tax, that will be the end of the story. BURS will never receive such tax. However, only individuals in business such as lawyers and doctors who recognize the rent as expenses can deduct the tax.
- **Obtain an exemption letter:** Landlords with valid tax clearance certificates and clean tax return-filing histories can get an exemption letter issued to them by BURS. This helps them escape the tax as their tenants will not be obliged to deduct the tax, saving them cashflow-wise.
- **No tax on exempt persons:** The tax is not deducted from rent payable to persons exempt from income tax such as pension funds, most parastatals (MVA Fund, BITRI, Statistics Botswana, etc) and political parties.
- **Grossing-up is in order:** Where circumstances forbid the tenant from deducting the tax from the landlord, such as where tax has not been deducted in previous years, the tenant may gross-up the rent and pay the tax on behalf of the landlord. Other instances where grossing-up may be done include when the landlord simply does not want to suffer the tax, which calls for the tenant to bear the tax. In such cases, the landlord must not be given a tax certificate (ITW 9) as he would not have suffered the tax.
- **Properties outside BW:** The tax is not deductible from the rental of premises situated outside Botswana. However, it is deductible whether or not the owner of the buildings or land situated in Botswana is resident or non-resident here.
- **It's an advance tax:** The tax deducted by the tenant can be claimed as a credit against the final income tax of the landlord. This means that it is an advance tax and landlords should not view it as a loss. The landlord must file his income tax return at the end of the year, whilst the 5% is deducted on a monthly basis.
- **No tax on VAT:** The tax is deductible on the VAT exclusive amount.
- **No tax on recoveries:** The tax is not deducted on recoveries charged by landlords such as electricity, refuse collection etc as those do not relate to the use of the land or buildings, which is the main reason why the tax is deducted.
- **Deduct on parking fees:** The tax is deducted on parking fees including airstrip landing fees for those in the aviation industry. Basically, tax is deducted as long as the payment relates to the use of land and or buildings.

- **Took effect 13.05.11:** This tax took effect as from 13 May 2011, and therefore, one needs to ensure that they were compliant since then. If one did not comply, BURS can go back as far as 8 years from the time they discover non-compliance.

Conclusion

Simple as the tax may appear, it has its own technicalities as demonstrated above. Lastly, tenants need to know that if they do not comply with the tax, they become personally liable, over and above courting late-payment compound interest of around 20% per annum.

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.