

How VAT affects mobilization fees in Botswana

In the construction industry, it is a well-known practice that contractors are paid some fees before commencement of the construction work. These fees are commonly known as mobilization fees and they are paid to cover the costs of site preparation and purchase of key materials which allows the construction companies to commence their work. Given the nature of the construction industry, most such construction projects take several months to complete and are capital intensive, which motivates the mobilization fees.

Construction companies often have a tough time trying to figure out the right Value Added Tax (VAT) treatment of such fees. Today, we will get to understand whether these fees should be subjected to VAT or not as per the provisions of the Value Added Tax Act (VATA). In this article, words importing the masculine shall be deemed to include the feminine.

Enter VAT

Generally, VAT is applicable to the total consideration or the amount a VAT-registrant charges for goods or services sold or to be sold. As already mentioned, construction companies charge an advance fee for the work they will carry out on behalf of their client. This fee is usually contained in a contract, meaning that the construction company can legally claim the same from their customer. That being the case, it means that the mobilization fees are therefore an advance payment to be made by the client to the construction company. In terms of the VAT Act, mobilization fees are applied towards the 'consideration' or price of the construction work, which means that they constitute a part payment for the construction services to be rendered by the contractor. Per the VAT Act, VAT is charged on the fees chargeable for the construction services, technically referred to in the said Act as '*consideration*.' That term is defined as, 'the total amount in money or kind, paid or payable for the supply including any fee and charge. It is apparent that mobilization fees fit in the definition of '*consideration*', as they eventually form part of the final fee payable to the contractor. In fact, the fees are usually offset against future billings made by the contractors.

Invoices

Further, most contractors issue tax invoices to their clients in order to receive payment of the mobilization fees. Per the VAT Act, VAT must be accounted for at the earlier of issuance of an invoice or on receipt of any payment. Therefore, the mere issuance of an invoice also triggers VAT on the said fees.

Deposit or fees?

We should be careful not to confuse mobilization fees with deposits. A mobilization fee is technically an advance payment of the agreed fees. Deposits are not, per the VAT Act, consideration for a supply. Mobilization fees on the other hand are an advance payment and form part of the consideration for the supply and must therefore be subjected to VAT. With the information just provided, construction companies should make sure that they charge VAT on the

mobilization fees they invoice for and remit the tax to BURS. If a contractor intends not to have problems with VAT on mobilization fees, then the contract must clearly state that they will receive a deposit and not a mobilization fee. The substance of the transaction should also bear testimony to the fact that the contractor will not be receiving a mobilization fee. Furthermore, a deposit is not invoiced for in most instances and such invoicing convolutes the VAT treatment of the said fees.

Well, folks, we hope that was insightful. As us the two Yours Truly say goodbye, remember to pay Caesar what belongs to him. If you want to consult, join our free Tax WhatsApp group or to know about our 9 Tax e-books, send a text to +267 7181 5836 or email us at jhore@aupracontax.co.bw. You can read more tax articles on our website, www.aupracontax.co.bw under the 'Tax articles' tab.