

NO WHT ON RETENTIONS BEFORE PAYMENT IN BOTSWANA

In Botswana, withholding tax (WHT) is triggered by payments made to suppliers for services rendered. Simply put, withholding tax can only apply after actual payment has been made, and if there is no payment then no WHT applies. From this analogy, it can easily be averred that it is apparent that no WHT applies on retention fees. Allow us to further explain what retention fees are and why WHT does not apply to such fees. In this article, words importing the masculine shall be deemed to include the feminine.

Enter retentions

Retention fees refer to amounts withheld from payments due to suppliers to ensure that suppliers fulfil their obligations or as a way of covering for unforeseeable defects. Retentions mostly apply in construction contracts where the client doesn't pay the contractor the full contract price just in case there may be any defects or anomalies on the works done by the contractor on behalf of the client. For instance, a company which contracts another company to do construction work valued at P10m may withhold P1m from the contract value payable as a retention fee and only paid P9m to the supplier. The P1m will then only be paid after some time when the client is satisfied that the works of the contractor did not result in defects such as cracks etc. Since this is a key issue affecting the total fees payable by the client to the contractor, the contracts between the parties involved in such transactions contain clauses speaking to such retentions.

Enter WHT

As stated above, the Income Tax Act only levies WHT as and when actual payment is made. Payment for the supply of goods or services may be made through electronic funds transfers, cash or any other means. Since retention fees are not paid to the supplier until such a time in the future after successful and satisfactory completion of work without defaults, WHT would not apply. This is as per the provisions of the Income Tax Act where WHT can only be deducted after payment has been made. The retention fee would only be subjected to WHT when it is finally paid to the contracting company. This is in line with the fact that WHTs are only triggered by payment and not accrual as in other countries.

Enter VAT

We are aware that the focus of this article is on WHT on retentions but there is no harm in us being lavish with information and as such, we will delve into the VAT aspects of the retentions, which is also a contentious issue in the construction industry. Whilst retention fees escape WHT due to the fact that payment would not have been made, Value Added Tax (VAT) still applies to the fees as they are considered as 'consideration' for a supply. The VAT Act defines 'consideration' as a price charged for a supply of goods or services, including any fee or charge,' and as such, it is therefore evident that retention fees fall

within the ambit of `consideration,' subject to VAT. VAT is therefore levied on retention fees despite the fact that WHT doesn't apply on them until the time the client pays such amounts to the contractor.

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.

