

## **NO 3% CONSTRUCTION TAX ON SOME SERVICES IN BOTSWANA**

Most people by now are aware of taxes like Withholding Tax (WHT) on interest, rental, commission, etc. Withholding Tax is tax deducted at source before payment is made to the payee. The ITA recognizes another type of Withholding Tax which is not so common because of the nature of the work, known as Withholding Tax on payments relating to construction contracts. According to the ITA, any person making any payment to a resident or non-resident under a contract relating to construction operations shall deduct tax at 3% from all payments made under such a contract. There is however instances and payments to certain contracts this 3% should not apply. We will expand on these in this article. In this article, words importing the masculine shall be deemed to include the feminine.

### **First exclusion**

Whilst the 3% tax should be deducted from payments made to contracted construction entities, there are instances where contracts payments escape the said 3% tax. This is because the Income Tax Act (ITA) explicitly exempts some construction services from the 3% tax if they meet certain criteria. If you are a devoted reader, you will recall that in one of our recent articles, we touched on the basics of such a tax where we discussed that this particular type of tax does not apply to retention fees, a very common aspect of construction contracts.

The exclusions from this also extends payment for construction services rendered by companies registered with Public Procurement and Asset Disposal Board (PPADB now PPRA) under classes A, B and OC in respect of contracts with values not exceeding P2million. The exclusion can only apply on payments made for contracts exclusively for architectural designs, engineering, survey works and related professional services. This means that any payment to a company exclusively contracted to do the aforementioned services escapes the 3% WHT. However, if a contractor is granted a contract which includes the above-mentioned services where no tax must be deducted as well as the actual construction contract, then the exemption falls away as the construction works then become the main contract. In such instances, the 3% tax applies.

### **Second exclusion**

Another special exclusion is also granted to payments made to main contractors on behalf of their sub-contractors by the principal. In the construction industry, it is a common practice for contracted companies to engage the services of subcontractors to execute part of the contract work. For the exclusion to apply, the main contractor should apply to BURS to issue a directive stating that their principal should not withhold 3% tax on the portion of the payment that the main contractor will pay to the sub-contractor. Let's make use of an illustration on this aspect. If company AA contracts company BB for a project worth P10m, and in turn company BB subcontracts company CC for P2m, company BB may apply to BURS for a directive to be issued

to company AA instructing that it should not withhold 3% tax on the P2m that relates to work done by company BB. Company AA will withhold 3% tax on P8m only, whereas Company BB will withhold 3% tax on payment of P2m to company CC.

## **Conclusion**

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](mailto:jhore@aupracontax.co.bw). You can read more tax articles on our website, [www.aupracontax.co.bw](http://www.aupracontax.co.bw) under the 'Tax articles' tab.