

## **OFFSHORE TRAINING FEES ARE TAXABLE**

Training of employees is one of the oldest, yet effective practises implemented by companies to eradicate competence gaps. It is very common for companies to procure training services from non-residents where they fail to locate or obtain the required know-how locally. A very common oversight by most companies occurs when they neglect to withhold tax when paying the non-resident training providers. Allow us to take you through the required regulations in the Income Tax Laws when it comes to payments for training services to non-residents, whether or not the training is delivered online or physically. In this article, words importing the masculine shall be deemed to include the feminine.

### **The training**

Before we get into finer details, allow us to clarify a few principles that are embedded in the Income Tax Act. The term 'training' itself does not have a legal definition in the Act. However, it falls within the wide definition of 'management or consultancy fee'. The Act defines the said term as 'any amount payable for administrative, managerial, technical or consultative services or any similar services, whether such services are of a professional nature or not.' Looking at the general meaning or the practical aspect of training, it is without any doubt that the true essence of training involves teaching, instructing or coaching a particular skill or know-how. Consequently, it is apparent from the definition of 'management or consultancy fee' that training qualifies as either a technical or consultative service. Let us now turn to the triggers of withholding tax on payments for training services.

### **Enter tax**

Now that we have established that any payment for training services is technically a 'management or consultancy fee' for tax purposes, here is what the law stipulates. The Act requires that every person should deduct 15% withholding tax on a payment of management or consultancy fee paid to a non-resident. The withholding tax is a final tax on non-residents training providers. However, where the training provider is resident in a country that signed a Double Taxation Avoidance Agreement (DTAA) with Botswana, the applicable withholding tax rate specified by that DTAA takes precedence over the local rate of 15%. For example, if the training provider is from South Africa, the applicable withholding tax rate becomes 10%.

Another aspect to note is that the withholding tax is only triggered by the actual payment of the training fee.

But what if the training provider doesn't want their fees to suffer withholding tax? Well, the easy way out is to obviously look for another. However, this might not be feasible and practical for most companies. The only way to resolve such a dilemma is to gross-up the training fees. Let us break it down for you in detail.

### **Gross-up and pay!**

In other words, to gross-up means that the Botswana entity consuming the training will bear the withholding tax as its cost. Technically, any amount paid to the training provider will be regarded as being after the deduction of the tax. Grossing-up then attempts to work backwards to arrive at the tax base.

Supposing a Botswana company sourced training services from John LLC, a USA consultant at P 100 000 and paid the amount without tax, the Botswana entity has to determine the grossed-up payment using 15%, which is P 117 647.10 ( $100\%/85\%*P100\ 000$ ). The Botswana entity technically bears the tax as its cost and this must be considered when preparing annual budgets.

### **Cheers**

Well, folks, we hope that was insightful. As we 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.