

BURS triumphs in a Transfer Duty case

The Botswana Unified Revenue Service (BURS) came victorious in a case which was handed down by the Board of Adjudicators against one Wild Cactus (Pty) Ltd. In the said case, it was held that Transfer Duty is still payable on a transaction which would have been zero-rated for Value Added Tax purposes. For the record, the majority of the taxpaying world as well as tax consultants are of the strong view that once a transaction is zero-rated for VAT, then no Transfer Duty would be payable on the same transaction. In addition, this is also the practice that the Registrar of Deeds established before the administration of Transfer Duty was transferred to BURS.

The facts

Wild Cactus (Pty) Ltd had applied for zero rating of a transaction on the purchase of a property. The zero-rating was approved by BURS for VAT purposes, meaning that no actual tax payment was made to the revenue collector. On that basis, the taxpayer then lodged a Transfer Duty pack with BURS, in which they expected that no transfer duty would be charged on the same transaction. The Transfer Duty Act stipulates that no Transfer Duty is payable in instances where VAT on some transactions is "payable". BURS disagreed with the said taxpayer's submission and levied Transfer Duty on the same transaction at the rate of 5%.

The contentions

In essence, BURS' argument was that if a transaction is zero-rated, then no VAT is actually payable, meaning that Transfer Duty must be levied. On the other hand, the said taxpayer contended that section 20 of the Transfer Duty Act annihilates Transfer Duty if Value Added Tax is payable. The taxpayer further went on to argue that Value Added Tax is payable either at zero percent or at 14%. The court had to decide on whether a transaction which is subject to VAT at zero percent resulted in the taxpayer actually making any payment to BURS.

Therefore, during interrogation, the taxpayer was requested to demonstrate if indeed a payment was made, and they argued that payment was made at a rate of zero percent. In handing down the judgment, the court ended up holding that Transfer Duty was still payable given the fact that no actual tax payment was made to BURS, and it disregarded the concept that VAT is payable at zero percent.

Divergence

It would appear from the above that this matter continues to cause sharp divergence of views between the tax collector and taxpayers. The VAT Act regards that VAT would have been charged and collected at a rate of zero percent for specified transactions and there is no need, in such instances, for the flow of cash to the VAT registrant or BURS.

Conclusion

It is not yet clear whether the above-mentioned taxpayer later appealed to BURS against the ruling. On that basis, it will be advisable that if any taxpayer has been granted zero rating of a transaction, they should be ready to pay the Transfer Duty. However, if the taxpayer appealed, which appeal would be to the High Court and subsequently, the Court of Appeal, then the tax fraternity and business in general would be interested in what the higher courts would actually hold regarding this contentious matter.

Tax hint: If you have never had a tax audit/review conducted by a tax consultancy firm, contact us today so we can help you fix your tax affairs whilst you still have time.

Contacts: You may contact us at +267 7181 5836 or +267 393 9435 or jhore@aupracontax.co.bw or www.aupracontax.co.bw. If you need to consult, join our free Tax WhatsApp groups or to know more about our 9 Tax e-books, please send us a text/whatsapp on the number above.