

## **Hotel loses tax allowances tussle to taxman in Botswana**

Local hotel, Peermont Global (Botswana) Pty Ltd (herein referred to as Peermont, hotel, or taxpayer) lost a tussle with BURS over its argument that BURS' recommended capital allowances forms (ITA 201 & ITA 202) allow the hotel to claim capital allowances on assets which would have been fully absorbed or depreciated. The hotel referred to the said tax deductions as enhanced or accelerated capital allowances. The judgment was handed down by the High Court of Botswana, following an appeal against a decision by the Board of Adjudicators, a tax court established to streamline tax disputes.

### **Principle**

As a matter of principle, capital allowances are the equivalence of depreciation for accounting purposes and they are granted on assets that are used in a business or trade but they cannot exceed the cost of acquiring the said assets. To that end, a capital allowance basically reduces income tax payable by a taxpayer. In this article, reference to absorbed costs or the like means the part of the cost which would have been allowed as a capital allowance for tax purposes.

### **Facts**

Peermont claimed enhanced capital allowances from the years 2006 to 2013 years under the perception that that BURS' prescribed capital allowance forms ITA 201 and ITA 202 allow for capital allowances on fully absorbed assets. BURS conducted an audit in 2013, and it concluded that the taxpayer had made excessive claims which were undue and incorrect. Revised assessments were issued which demanded P6.4m from the hotel as additional tax. Due to the above, the hotel lodged an objection against the reassessments, which was opposed by BURS, leading to the matter spilling into the Board of Adjudicators, where the hotel triumphed. BURS then appealed to the High Court against the decision of the last stated court.

### **Contentions**

BURS' contention was that the Income Tax Act does not permit a taxpayer to compute capital allowances using absorbed assets, even if such assets are still in use. Peermont however contended that the Third Schedule of the Act and the forms ITA 201 & ITA 202 allow for a pooling of all assets in use regardless of whether they have been fully absorbed. BURS averred that it was never fathomed that capital allowances would be claimed on absorbed assets as that would result in it collecting lesser taxes than what is required by law. It further stated that section 39(2) and 41(1) of the Act, do not provide for pooling of assets.

### **Judgment**

The main issue which the court had to deal with was to establish 'whether sections 39 and 41 of the ITA provide for enhanced allowances to be claimed by use of fully absorbed assets, as the calculation base, in terms of the ITA.' The judge stated that the Act needed to be read as a complete enactment so that one section sheds light onto another, adding that the intention

of the legislature was paramount in the case at hand. In the result, the court held that if capital allowances were accorded on fully absorbed assets, that would prejudice the State of taxes which it is supposed to collect, going against the grain of the Act as a whole. Therefore, the hotel lost on that basis and the assessments by BURS were upheld. The court further instructed the Ministry of Finance to relook into the forms in question and remove any unclear features that may be misconstrued.

**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.

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