

WHT applies on equipment hire rent due to non-residents

In Botswana, withholding tax (WHT) serves as an important mechanism through which the Botswana Unified Revenue Service (BURS) collects tax at source, particularly from payments made to non-residents. One such payment subject to withholding tax is equipment hire rent to non-residents. Many businesses engage non-resident suppliers for specialized machinery, vehicles, or construction equipment, but often overlook their tax obligations under the Income Tax Act (ITA). Note however, that the type of WHT at play is not the common WHT on rent which is deductible at the rate of 5%. Read on as we unpack the type of WHT which applies to equipment hire rent due to non-residents. In this article, words importing the masculine should be deemed to include the feminine.

Is the WHT rate 5%?

Yes, WHT applies on equipment hire payments made to non-residents. However, many people mistakenly assume that the 5% rate applicable to rental payments also applies here, which is not the case. The ITA only applies the 5% withholding tax to rent paid for immovable property, meaning land and buildings. It does not include movable property such as machinery or equipment.

This means that equipment hire is treated differently and does not qualify for the 5% rate that applies to rental income from property. This brings up an important question, i.e., if equipment hire is not covered under the rental withholding rules, why is withholding tax still charged on payments to non-residents for hiring equipment? The explanation lies in the provisions of the ITA as well as the Double Taxation Avoidance Agreement (DTAA) between Botswana and the non-resident's home country, which determine how such income should be taxed.

Enter commercial royalties

Per the ITA, there is a withholding tax applicable to equipment hire payments made to non-residents. Such payments are classified as commercial royalties under the Income Tax Act. The Act defines a commercial royalty as, "any amount payable for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films, and films or tapes for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience, or the right to commercially develop and exploit software;."

The phrase "right to use industrial, commercial or scientific equipment" refers to the rental or leasing of equipment, particularly in cases where ownership remains with the non-resident. Under the Income Tax Act, such payments are treated as commercial royalties,

since they represent consideration for the right to use specialised industrial, commercial, or scientific equipment. In accordance with section 58(1)(c), read together with the Seventh Schedule, commercial royalties are subject to withholding tax at a rate of 15%, or at a reduced rate where a DTAA applies.

Conclusion

It often happens that a trader hires equipment for use in his business. Payment for the use of equipment would constitute royalties if the payment is made to a non-resident. Such payment results in withholding tax being deducted on the royalties. Common instances where royalties are paid include the hire of specialised industrial equipment such as road-construction vehicles.

Tax hint: If you have never had a tax audit/review conducted by a tax consultancy firm to check whether you are tax compliant or should it be apparent that you are not certain that your tax affairs are in good order, then don't wait for the taxman to pounce on you as that can be very costly. Contact us today so we can help you fix your tax affairs whilst you still have time.

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