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Reduced WHT rates no longer automatically applicable

The Income Tax Act (ITA) levies Withholding Tax (WHT) on specified payments made to non residents of Botswana. The WHT is deducted in most instances at the rate of 15% from payments made to non-residents in respect of, among others, management & consultancy fees, interests and commercial royalties. However, if the recipient is resident, or has an address in a country with which Botswana has a DTAA (Double Taxation Avoidance Agreement), the WHT is automatically lowered and in some instances by 50%.

As an example, a payment made by a Botswana resident to a company in South Africa, which would ordinarily suffer WHT at 15% may have its rate reduced to 10%. For other countries such as UAE and China, the WHT rate may be as low as 5%. This practice is set to be fundamentally adjusted in such a way that the automatic decline of WHT will be done away with, if the Income Tax Bill no.36 of 2025 which was published on the 15th of December 2025 sails through Parliament. In this article, words importing the masculine shall be deemed to include the feminine.

The new law

Under the proposed law, a resident of Botswana will not automatically use a reduced rate simply on the basis that it is provided for in the DTAA. Instead, the said resident will have to perform a number of tests or examinations of the recipient of fees on which the reduced WHT rate applies. The said Bill recommends that in the first instance, in order for the reduced WHT to apply, the Botswana resident should first establish whether the payer conducts a trading business in the country of residency of the fees. As an example, if a payment is to be made to a company in South Africa, the Botswana resident must establish that indeed the company is actively trading in South Africa. If the company is not actively trading, then the payer should also perform other tests before applying the reduced WHT rates. Additionally, the resident payer of the fees should also establish that indeed the payee is operating through employees who are based in South Africa as well as on premises based in that country. This is so as it is meant to avoid situations where a reduced WHT rate is applied when there is no economic substance of the company being domiciled in the country where there is a reduced WHT rate.

Further, the payer should consider the country of residency of the ultimate beneficial owners of the shares in the company benefiting from the WHT rate. If more than 50% of the ultimate beneficial ownership of the shares in a company is based in South Africa, then the reduced WHT rate may be applied.

Why this change

This change is meant to avoid a concept called treaty shopping being an arrangement where companies are interposed in countries simply for the sole purpose of benefiting from a reduced WHT rate, when in essence there will be no economic substance to the said companies. In other words, a service provider based in the USA (where WHT rate is at 15%) may interpose a company in South Africa simply with the sole purpose of benefiting from the reduced WHT rate of 10%.

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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