NamRA TAX CAFÉ

ISSUE #3 12 January 2022

Dear Readers,

The Namibia Revenue Agency (NamRA) remains committed to continuous tax education to overcome knowledge gaps. It is against this backdrop that we introduced this platform to share with you information from our inhouse experts, which we trust will ensure that you remain well informed, while advising on how to be compliant. We further hope to equip taxpayers with the necessary understanding about the tax legislation and thereby strengthening tax compliance.

Loide Hamutumwa, Manager Legal Services and Memory Mbai, Manager Audit and Compliance have extensive knowledge in taxation and contributed this article.

Happy reading.

Loide Hamutumwa
Manager: Legal Services

When is a taxpayer deemed to have incurred an input tax deduction for "entertainment" in the ordinary course of business?

Memory Mbai
Manager: Audit and Compliance

When a registered person lacks the proper understanding of the law pertaining to the claiming of input taxes, such inputs may be disallowed, should the said inputs not meet the required criteria as prescribed by the law. This article aims to educate taxpayers on the application of section 19 of the Value Added Tax Act No 10 of 2000 "the VAT Act", as amended with a specific focus on "entertainment" as defined.

"entertainment" as defined in the VAT Act means "the provision of food, beverages, tobacco, accommodation, amusement, recreation or hospitality of any kind by a registered person, whether directly or indirectly, to any person in connection with a taxable activity carried on by the registered person."

Section 19(2) (b)," no amount may be deducted by a registered person for input tax paid in respect of... goods or services acquired for the purposes of entertainment or providing entertainment, unless... the registered person is in the business of a tour operator or of providing entertainment and the taxable supply or import relates to the provision of taxable supplies of entertainment in the ordinary course of such business or

the registered person is in the business of providing taxable supplies of transportation services and the entertainment is provided to passengers as part of such transportation services ...”

For the VAT input expense to qualify as an allowable deduction under section 19, the following should be considered:

Firstly, the registered person should satisfy that the core of its business activities involves the provision of entertainment and the taxable supply must likewise fall within the definition of entertainment. This requirement should be satisfied without any doubt in relation to the main business activity for which the entity was set up and registered.

Secondly, only when the first requirement is met, the taxpayer must have paid or be liable to pay the input VAT whereby the expenses are directly attributable to the taxable activity of supplying “entertainment”.

The definition of “entertainment“ is pivotal. This means that if the registered person is not engaging in the business of supplying entertainment in view of the VAT Act, nor is the VAT input expense incurred for the supply of such entertainment, such person is not entitled to a deduction in terms of section 19(2) (b) inputs of entertainment expenses.

The rationale of the law in section 19 and as further confirmed by the Supreme Court, is to prevent registered taxpayers not engaged in the business of entertainment, from claiming expenses when they do entertain.

It is therefore crucial for a taxpayer to ascertain its business activities in relation to the definition of “entertainment” as extracted above and to further consider whether the VAT input expenses are incurred for the supply of entertainment in the ordinary course of business.

Should any uncertainties exist, taxpayers are encouraged to approach the NamRA Legal Services for an individual ruling based on specific facts and the law.