NamRA
Namibia Revenue Agency

RULINGS OF THE TAX TRIBUNAL: ANONYMISED

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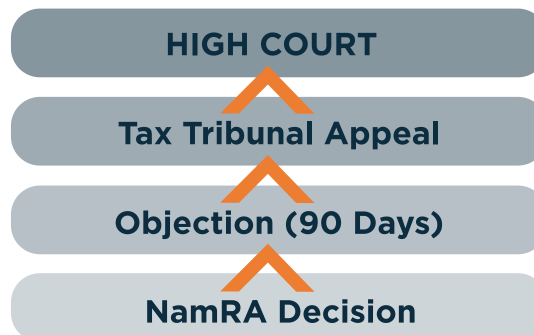
1. DEDICATED TAXPAYER/TRADE GRIEVANCE FRAMEWORK

When taxpayers or traders disagree with an assessment or re-assessment made, a decision, determination or order so made under the tax and customs laws, they have the right to contest it.



The tax laws administered by NamRA are the *Value Added Tax (VAT) Act 2000 (Act No. 10 of 2000), Income Tax Act 1981 (Act No. 24 of 1981), Export Levy Act 2016 (Act No. 2 of 2016) and Customs & Excise Act 1998 (Act No. 20 of 1998*). These statutes provide the legal framework for dispute resolution across the tax types administered by NamRA.

1.1. VAT Act and Income Tax Act

When disputing tax matters, the burden of proof lies on the taxpayer claiming that any amount is exempt from or deductible under tax laws, as contemplated by section 29 of the VAT Act and section 72 of the Income Tax Act, respectively.

A taxpayer may object under Section 27 of the VAT Act and Section 71 of the Income Tax Act. A taxpayer has 90 days from the date of assessment to file an objection against a tax assessment or decision and must specify the grounds of objection in writing. In accordance with sections 27(5) of the VAT Act and 71(4) of the Income Tax Act, the objection may rejected or accepted in whole or in part. If the objection is upheld, the taxpayer's assessment will be corrected, effectively ending the dispute. If the objection is denied, the law allows the taxpayer to file an appeal with a Tax Tribunal within 60 days of being made aware of the decision in relation to the objection, under section 28(2) of the VAT Act and section 73A of the Income Tax Act, respectively.

Any appeal shall in the first instance be heard by a Tax Tribunal. A Tax Tribunal is an informal dispute-resolution mechanism established under section 73A (2) of the Income Tax Act to hear VAT and income tax disputes, headed by a Chairperson and not a Judge. The Chairperson determines the hearing procedures, subject to each party to the dispute being given an opportunity to present their case before the tribunal. The Chairperson shall record the tax tribunal's decision in writing.

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Sections 73A(13)(a) and (b) of the Income Tax Act provide for an appeal to the Special Court within 30 days if the taxpayer or Commissioner is dissatisfied with the Tax Tribunal's decision. It is important to note that the Special Court is no longer in operation because the provision that established it has been declared invalid. Taxpayers who wish to appeal the Tax Tribunal's decision should do so through the High Court of Namibia until the law establishes a new forum to replace the Special Court.

1.2. Export Levy Act and Customs & Excise Act

Exporters who are dissatisfied with a customs assessment or re-assessment and the calculations of the export levy payable thereof have the right under section 18 of the Export Levy Act to lodge an objection within 90 days of the date of assessment or re-assessment. The assessment may reduce or change the assessment or re-assessment, as well as reject the objection. If no objections are filed against an assessment or re-assessment, or if an objection is rejected by the Commissioner or withdrawn by the exporter, the assessment or re-assessment becomes final.

Any person who has contravened and admitted to every element of the alleged contravention of any provision of the Customs Act or has failed to comply in accordance with the procedure prescribed and has deposited an amount equal to the fine imposed by the Court upon conviction for the contravention may appeal in terms of section 101(2)(a) of the Customs & Excise Act to the Minister against such determination or order so made and within a period of three months after the date of the confirmation of a determination.

The person may further appeal to the High Court in terms of section 101(2)(b) of the Customs & Excise Act provided that a notice required by section 106 of the same Act is made in writing with full particulars of claim (cause of action and remedy sought) and served to the NamRA Commissioner. Legal Proceedings must be instituted within a period of one year from the date of occurrence (cause of action).

2. Deductibility: Expenditure incurred in respect of the acquisition of a trademark

Appellant and other professional taxpayers practice under a partnership "trade name". The partners decided to establish a private company and purchase existing partnership for certain amount as a going concern from its partners. The partners attached a certain value to their trade name, which had been in existence for a number of years and was very well known in town. The trademark was valued at x amount as a fair and reasonable value. The company then proceeded and purchased the business from the partnership, thereby ascribing in their financial records a value to the trade mark held at amortized cost, secured through a notarial bond over the plant and equipment (trademark was financed through the financial transaction). The amount was recorded in their accounting records as purchase of other intangible assets through a financial transaction, written off over a period of x years.

NamRA (Department of Inland Revenue/Commissioner of Inland Revenue then) disallowed the deduction of x amount and subsequently declined the objection in terms of section 17(1)(i) of the Income Tax Act 1981 (Act No. 24 of 1981) (Income Tax Act 1981), that the Appellant incurred no expenses as far as the acquisition of the trademark was concerned. The issuing of shares to the shareholders to redeem their loans (which has its origin in the acquisition of the trademark) did not amount to expenditure actually incurred. There were no shareholders' loans reflected in the financial statements and there was no evidence of what action gave rise to the expenditure.

The Appellant appealed against NamRA's objection decision.

The Tax Tribunal found that, in terms of section 17(1)(ii) of the Income Tax Act 1981, 'expenditure actually incurred' means that the taxpayer must have incurred an unconditional legal obligation in respect of the amount concerned and it was not required that the obligation be discharged. Once the obligation had been incurred, the expenditure became deductible.

The Tax Tribunal further held that, the transaction amounted to an unconditional legal obligation (secured loan bearing interest and repayable in respect of the amount concerned) and it was not required that the obligation be discharged for the expenditure to be deductible for the year in question. The appeal succeeded and NamRA's objection decision was set aside.

3. Determination of taxable income: Farming Activities

The Appellant operated on different farms and all farms were registered to the Appellant. The Appellant also had a lease agreement in respect of other farms. The Appellant purchased livestock, usually from communal farmers (cash purchases), commercial farmers and livestock agencies. Livestock would then be supplied by the Appellant to a number of feedlots outside Namibia on a weekly basis, ocassionally to local farmers. The Appellant only improved the quality of the lean and small livestock, which were kept on the Appellant's farms depending on the weight and condition of the livestock, ordinarily for a week or two.

The main issue for determination in this appeal was whether or not the Appellant conducted farming activities in terms of the provisions of section 27 of the Income Tax Act 1981.

The Tax Tribunal found that the facts did not show any genuine intention to engage in any form of farming or "husbandry" by the Appellant on his farms. They rather pointed to the marketing of animals with "improvement" over a or two week for unspecified "lean cattle". There was little work up of "raw material", if at all.

The Tax Tribunal also held that the business which accrued to the Appellant (in respect of the income derived from the sale of cattle) was not one of farming, but rather that of a speculator. The appeal was dismissed and NamRA's decision was confirmed. The taxpayer appealed against the ruling of the Tax Tribunal to the Special Court. The matter is sub judice.

4. Deductibility: Loss (expenses) & Definition of trade

Following the lodgment of the appeal to the Tax Tribunal, the Appellant subsequently withdrew the appeal without stating any reasons therefore. NamRA requested for a ruling notwithstanding the withdrawal of the appeal.

A taxpayer was engaged in the business of a "general dealer, retailer and wholesaler, import and export, fishing, mining, consulting, general investments including property, property development and all related activities". In a certain year of assessment (which it indicated a loss of amount), the taxpayer received dividend income and had no other income for that year. In the following two years, the taxpayer derived interest from its investments activities. NamRA disallowed the deduction of the loss/expenses for a year in question on the basis that taxpayer did not trade in a year in question.

The taxpayer initially noted an appeal on the grounds that:

a. The definition of trade in the Income Tax Act 1981 included investment activities generating interest income entitling the taxpayer to deducts its loss for the year in question;
b. Whereas the taxpayer did not have any other income, this did not imply that its boards of directors no longer had the intention to trade and make a profit; and
c. Its investment activities for the following two years constituted trade entitling it to set off its year in question loss against the following two years income..

NamRA disallowed the taxpayer's objection on the basis that section 17 of the Income Tax Act 1981 did not allow the deduction of expenses where the taxpayer did not trade during the year in question and section 21(1) of the Income Tax Act 1981 did not allow setting off of losses of a previous year, if there was no trade in the current year of assessment.

The issues that had to be determined were the following:

a. Whether or not the taxpayer 's dividend payment in a year in question amounted to income generated through trade as defined in the Income Tax Act 1981, that would entitle the taxpayer to deduct the year in question expenses;
b. Whether an intention to trade and make a profit, absent actual trading entitled a taxpayer to deduct expenditures; and
c. Whether taxpayer's investment activities in the two following years constituted trade entitling the taxpayer to set off loss for the year in question.

The Tax Tribunal found that:

a. The income earned by the taxpayer was from dividends and it did not appear that the taxpayer was in the business of buying and selling shares. The dividend payment was therefore earned passively rather than actively. The expenses in the year in question were not incurred in the "production of the income" in the sense of section 17(1)(a), since the taxpayer was not engaged in the carrying out of any trade in the year in question;
b. The fact that taxpayer intended to trade but did not, could not and did not assist the taxpayer;
c. The taxpayer did not attempt to explain what investment activities it was engaged in during the two following years, what the extent of such activities was and why such should be considered trading within the meaning of the Income Tax Act 1981.

As indicated, the taxpayer withdrew the appeal before adjudication but the Tax Tribunal rendered a ruling regardless.

5. Deductibility: Loss as a result of theft by business partner

This was an appeal against the disallowance by NamRA of an amount as a deductible loss incurred by the Appellant in terms of section 17(1) of the Income Tax Act 1981 for a particular year.

The common cause facts are that, the Appellant entered into an oral partnership agreement with the other person (the partner) to carry on a cash loan business. In terms of the partnership agreement, the Appellant would contribute the necessary capital to start the cash loan business. The partner, a registered money lender would contribute the license and skills by managing the cash loan business on behalf of the partnership. The cash loan would charge interest at a certain rate; any interest earned would be utilized as floating capital and would be made available to future customers. The clients would provide their bank card and/or identify documents as security for the loans.

The Appellant contributed the initial start-up capital for the cash loan business and made regular capital contributions. The Appellant inter alia requested the books of the partnership from a partner, in order to determine the income earned by the partnership to that date. The partner could not provide the books and failed to account for the income. As a result the Appellant opened a case of theft against the partner.

The Appellant included the amount lost as a bad debt from his income. NamRA disallowed the deduction on the ground that the loss amount was as a result of theft committed by a partner of a business venture and was thus not loss incurred in the production of income.

The issue to be determined was whether the Appellant was entitled to deduct a loss sum which was embezzled by his business partner in the cash loan business. The Tax Tribunal held that the Appellant's loss is fortuitous in that it was unexpected as result of the embezzlement of Appellant's partner. The theft was by the partner, who also happened to be the Managing Director and not an ordinary employee of the partnership. Nor was the loss incurred in granting or processing of loans, which was the partnership's main business.

The appeal failed. The deduction was correctly disallowed on the ground that the loss was of a capital nature.

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6. Determination of Tax Rate: Pension payout

On the Appellant's resignation from the employer, a tax directive was requested through a certain pension fund, for NamRA to determine the tax to be deducted from a pension pay out due to the Appellant. The directive was to deduct 21% from the pension pay out. According to NamRA, the rate was arrived at by adding 10% to the Appellant's known taxable income for the previous year, as an estimate for the next year and calculating the rate of tax payable on the withdrawal of the lump sum as the ratio between the tax and the taxable income.

According to the approved tax tables, the total taxable income attracted tax at 23%. The difference between the tax due as per the Appellant's returns and NamRA's assessment, arose from the treatment of the pension pay out. The Appellant believed that the amount deducted from his pension pay out was final and was hence not liable to pay any further tax on it, regardless the total amount of his taxable income.

The Appellant pointed out that it was not aware of the practice of calculating withholding tax on pension fund withdrawals. NamRA could not point to a documented policy (providing for adding 10% to a known taxable income), but asserted that this was a standard practice and that it was impossible to be more precise. The Appellant's claim that it had not known that the directive would only be final for his employer and that there would be a possibility of underpayments and resulting interest. In that event, the Appellant requested the principal amount to be reduced by 50% and that all interest be waived. NamRA countered that there was no statutory authority to waive the capital amount or the interest in the present case, adding that such could only be done under the State Finance Act 1991 (Act No. 31 of 1991).

The Tax Tribunal considered paragraphs 9(3) and 11(2) of Schedule 2 in relation to the employer's obligations to withhold and found that the directive was only binding on the employer. If the employer withheld and paid over the amount determined under the directive, NamRA could not hold the employer liable for any errors of calculation or increases in the amount actually due by the employee, when it's taxable income for the relevant tax year would ultimately be established. The unfortunate impact on the Appellant, was that it might have genuinely believed that the directive was final as far as its liability for tax on the pension pay out was concerned. However, the belief (genuine as it might have been) was not enough to dispel the statutory obligation that arose under the definition of gross income in the Income Tax Act 1981, and the duty to submit an annual return of income under section 56 of the same Act.

The Tax Tribunal held that, it lacked the power to grant the relief sought by the Appellant and in the result, the appeal failed. The Appellant appealed to the Special Court.

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7. VAT Inputs claims: Filming Expenses

The Appellant/taxpayer was a local film production company, contracted to produce a film (footage) commissioned by an international company, which wholly funded or financed the production of the film. The funding or financing of the firm was channeled via a cross border company. The arrangement was that input Value Added Tax (VAT) would be claimed by the taxpayer and if successful, would be paid over to the international company, which funded/ financed the film. The parties, drew up a cost budget, rather than a VAT inclusive budget. After completion of filming the goods purchased such as the set supplies, props and equipment were sold and the taxpayer charged output VAT thereon.

NamRA disallowed all inputs because it was not a VAT-able activity, as the taxpayer only received funding from abroad which was transferred to the director of the movie (who was also the owner of the company), who in turn came to Namibia to make the movie, buy the material needed for it and returned. The taxpayer argued that VAT refunds would encourage foreign investment in the country.

The Tax Tribunal considered the relationship between the taxpayer and the foreign financier. The question then was, who in such a set up and arrangement in respect of the project was liable to pay the input VAT and who paid the input VAT. The project was entirely funded by the foreign the film owner, including the provision of VAT. The foreign company essentially commissioned the film, which the local production company (the taxpayer) produced and at the completion of the film, the taxpayer handed over the final product to the owner (and financier). In exchange for the provisions of its services to the foreign film owner (and financier) the local production company (the taxpayer) was paid a percentage of the net budget for the film. The taxpayer, being the local production company, simply administered and oversaw the budget, by managing the expenditure. The taxpayer also ensured that the returns were filed on time. Any VAT refund the taxpayer managed to obtain would be paid back to the owner /financier of the film. It became apparent that the entity liable for the input VAT payments and the entity that paid the input VAT was in fact the owner/financier of the film and not the taxpayer.

The Tax Tribunal poinred out that for the taxpayer to legitimately claim input VAT in terms of the Act, the liability referred to in Section 19(8) must be that of the taxpayer as the registered person. Where the input VAT claimed had already been paid it must have been so paid in discharge of the registered person's liability to pay input VAT. Importantly, the investment being made was into the film with the expectation that the through the sale and distribution of the film globally, the investment (that is the money put into the film) would be recouped and profit generated therefrom. It would seem that the claim for VAT refund was simply a method to keep the investment as low as possible, in the hope of recouping the investment faster and generating even higher profits. To encourage 'foreign investment' in the country, the legislature saw fit to provide for is the zero-rated supply of services to non-resident person in terms of Schedule III. It was observed that VAT refunds in these circumstances would constitute a divestment from the country.

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The Tax Tribunal held that, the agreement entered into between the owner/financier of the film and the local production company (the taxpayer) in terms of which it was arranged to make it appear as if the taxpayer was liable for the VAT payments did not and could not change the true state of affairs, as the owner/financier was liable for all expenditure on the project, including VAT as part of the local taxes payable in accordance with the domestic tax laws. It was also the foreign owner/financier who paid the VAT payable in respect of the project. To hold otherwise, would be to fall for the ruse used by the owner/financier of the film and the taxpayer, in circumstances where Section 19(8) of the Act seeks to prevent precisely this type of ruse being used. The Tax Tribunal held that, the taxpayer, not having paid nor having been liable to pay the input VAT on this project, was by virtue of Section 19(8) of the Act not competent to claim input VAT.

8. VAT Inputs claims: Exploration Activities

The taxpayers conducted exploration activities in terms of petroleum exploration licenses granted to them, before ceasing their exploration activities. In the course of their exploration activities for the period in question, the taxpayers did not generate or declare output VAT, yet submitted VAT returns claiming refunds.

NamRA disallowed the inputs VAT claim on the basis that the taxpayers were not engaged in taxable activities at the relevant times that they did not make any taxable supplies during the period in question nor that did they intend to make such taxable supplies.

The issues to be resolved were centered on the interpretation of the applicable provisions of the law. The issues or questions to be determined in the appeal were:

a. Whether the taxpayers were engaged in any taxable activities;
b. Whether they made taxable supplies during the period in question;
c. Whether disallowing their input VAT claims amouned to impermissible differential treatment; and
d. Whether the taxpayers are exempted from the Namibian fiscal laws on account of their activities having been conducted in the EEZ.

The Tax Tribunal observed the following:

a. It accepted that on the facts, the taxpayers were indeed engaged in a taxable activities as defined in the Act. They obtained exploration licences and engaged in exploration activities with the intent of eventually supplying goods and services to third parties for consideration. However, when properly considered in the context of the relevant provisions in the Act, the issue was not whether or not the taxpayers engaged in a taxable activity but rather whether

they made taxable supplies during the period in question. Taxable supply is defined as a "any supply of goods or services in the course or furtherance of a taxable activity, other than an exempt supply". Clearly, despite the overlap there was a distinction between the concept of "taxable activity" and "taxable supply". The importance of such distinction became apparent considering that section 6 of the Act imposed value added tax for the benefit of the State Revenue Fund on "every taxable supply by a registered person" rather than on every taxable activity. Similarly section 18(1) provided that the tax payable by a registered person was to be calculated "in respect of taxable supplies by the registered person" rather than in respect of taxable activities.

b. It is common cause between the parties that the taxpayers did not make taxable supplies during the period in question. It is also common cause that the taxpayers ceased their operation because they determined the results of their exploration activities not to be commercially viable. The question to be answered was whether despite the fact that the taxpayers did not make any taxable supplies, were they entitled to claim input VAT and consequently a refund from NamRA? The taxpayers relied on the old section 15(4) of the Act. This section simply allowed persons to register for VAT but it did not allow them to claim input VAT. Registration was only one requirement for a successful input VAT claim. On its own it did not entitle a registered person to claim input VAT. In terms of sections 38(1)(a), section 38(2) read with section 18; in order to successfully claim input tax, the person so claiming input tax has to meet the following requirements: a) the person had be registered in terms of section 15, the person must have generated output tax by making taxable supplies and the person must have paid (or be liable to pay) input tax.

c. The essence of the taxpayers' complaint was that they were being treated unfairly when compared to operators in other industries. NamRA in its objection decision simply stated that VAT refunds to all industries were paid in accordance with the provisions of the Act. Unfortunately the taxpayers did not provide details sufficient to determine precisely under what circumstances the other industry operators supposedly claim input VAT when they had made no taxable supplies. Therefore, if indeed NamRA had allowed input VAT claims in the absence of taxable supplies made by the registered person (during the tax period in question), i.e. contrary to section 18, NamRA would be in violation of the Act.

d. The taxpayer argued that because they conducted their exploration activities in the EEZ, their activities were not subject to the fiscal laws of Namibia and that therefore they were exempted from having to pay input VAT and were entitled to a refund on that basis. First, the taxpayers were correct that States' rights in their respective EEZ were regulated by international law, which in terms of article 144 of the Namibian Constitution form part of the law of the country. Secondly, the taxpayers were also correct that in terms of applicable international law, specifically UNCLOS (the United Nations Convention on the Law of the

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Sea), States are prohibited from imposing their fiscal laws in their respective EEZ, despite the fact that they exercise sovereign rights within the said EEZ. However, the taxpayers overlooked the fact that the prohibition applied to persons and entities that were not otherwise subject to the fiscal laws of the country seeking to impose its fiscal laws. The two Namibian companies, were registered in terms of and subject to Namibian laws, including Namibian fiscal laws, regardless of the fact that their taxable activities were conducted in Namibia's EEZ . In the circumstances, the prohibition on States concerning the enforcement of their fiscal laws in their EEZ did not find application in the present matter.

The Tax Tribunal held that, the taxpayers were not entitled to claim input VAT on the facts and circumstances and were consequently not entitled to a refund of the input VAT. The appeal was dismissed. The taxpayers appealed to the Special Court. The matter is sub judice.

9. VAT Inputs claims: Time of supply in relation to registration for VAT

This appeal lies against the decision by NamRA that Appellant was not entitled to an input credit amount, which was claimed for a VAT period, in respect of goods (frozen product) purchased by the Appellant for a consideration amount. The Appellant also appealed against a penalty levied by NamRA of 200% of the amount of the input credit claimed by it, based on the fact that the Appellant's VAT return constituted a "false or misleading statement" and an intention to unjustifiably benefit from a tax deductive (a tax benefit prohibited by inter alia section 80 of the VAT Act).

According to the Appellant, its intended purpose (before registration for VAT) was to retail frozen products. The Appellant only established its own retail outlets for frozen products in a certain month. The Appellant's supplier and the Appellant's customers (purchaser) were connected persons under the Act "by virtue of the same ultimate ownership and control".

NamRA's concern with the input credit was that:

a. An investigation revealed that the input tax claimed was for the frozen product bought by the Appellant from Appellant's supplier before the Appellant registered for VAT purposes and thereafter the Appellant sold the frozen product to Appellant's customer which in turn sold them outside Namibia, also before the Appellant registered for VAT purposes;

b. At the time that the frozen product was exported out of Namibia, the Appellant was not yet registered for VAT purposes. Further, on the date of registration, the stock of frozen product was not on hand as a result of which the input tax claim cannot be allowed as a deduction permitted in terms of section 18(3)(b)(ii) of the Act. It was also discovered that

the connected companies did not issue the tax invoices at the time that the sale took place, which meant that the frozen products sold by the Appellant's supplier did not take place as per the invoice from the Appellant's supplier to the Appellant because the frozen products were already outside Namibia. Thus the Appellant was also claiming input VAT for goods that were never "on hand".

The Appellant argued based on the interpretation of sections 7(2) and (3) of the VAT Act, the time of supply of the goods to the Appellant, in respect of which the VAT inputs credits were claimed, were the dates of issue of the invoices by the supplier and thus, the Appellant became entitled to claim input credits on goods supplied or deemed to be supplied by virtue of the effective date of its VAT registration.

However, section 7(3) would only apply in instances where the Appellant was already registered for VAT, which was clearly not the case in this matter. Furthermore, the only instance in which the Appellant could obtain a deduction for taxable supply of goods before becoming registered was, if the supply occurred not more than four months before the date of first registration and if the goods were on hand at the time of registration, in terms of section 18(3) of the Act.

The Appellant however could not claim the credit input in terms of the relevant sections because the goods were not "on hand" at the date of registration for VAT. Furthermore there were no payments, but the supply of frozen products on the part of the Appellant's supplier to the Appellant was on credit. Credit sales were dealt with by section 7(4) of the Act and such provisions also did not assist the Appellant, simply because the products were delivered before the Appellant registered for VAT.

The Tax Tribunal held that the interpretation advanced by the Appellant of sections 7(2) and (3) was not sound and would give rise to a result not intended by the legislature, namely that a person not registered for VAT could claim input credit on goods supplied before VAT registration, which outside the scope of section 18.

The Tax Tribunal concluded that the input credit claimed by Appellant was undertaken contrary to the provisions of the Act and therefore upheld the decision by NamRA that the Appellant was not entitled to input credit and that the penalty was properly levied in the circumstances.

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10. Withholding Tax: Payment to non-resident

The Appellant concluded a written contract with a non-resident company and purchased a promotion package to boost its market. NamRA raised an assessment for withholding tax on services included in the promotion package, on the grounds that, the Appellant by entering the agreement had a responsibility towards the tax obligation involved in such transaction as per the section 35A of the Income Tax Act 1981.

The issue was whether the services to be provided under the written contract between the Appellant and non-resident company were "technical services".

The Tax Tribunal indicated that just because the services were services as opposed to a physical objects or similar goods and 'marketing related', did not necessarily bring the services "within the ambit of technical services". Based on the commentary on the United Nations Model Convention, the question is not simply whether the purchaser purchased a product or services. The question was also not whether specialized skills or knowledge were necessary to perform the service. The emphasis should not be on services alone. Instead, the emphasis must have been on the application of that specialized skill or knowledge on behalf of the purchaser.

The Tax Tribunal held that, the Appellant was not liable to the non-resident for any fee contemplated by section 35A(1) of the Income Tax Act 1981. Therefore, the appeal succeeded and the assessment for the withholding tax on services raised by NamRA on the promotion package purchased by the Appellant from a non-resident company, was set aside.

NamRA appealed against the ruling of the Tax Tribunal to the Special Court. The matter is sub judice.