Q & A from Namibia Income Tax Update 2022 - Employees' tax and fringe benefits - 24 March 2022

1. **<u>Question</u>** - Is it compulsory for an employee to register for income tax if he earns less than N$ 50k per annum? NamRA is currently requesting ALL employees (even those earning less than N$ 50k per annum) to register for income tax.

   <u>Answer</u> – Para 12(1) of Schedule 2 of the IT Act requires that every employee who is subject to income tax in terms of the tax rates applicable to natural persons must register as taxpayer. Thus, as the IT Act currently stands, an employee who earns less than N$ 50 000 per annum is not obliged to register as taxpayer.

   I, nevertheless, believe that employees who are not required to register as taxpayers under para 12(1) of Schedule 2 have no other option than to comply with this requirement by NamRA.

2. **<u>Question</u>** - How are the Director's fee paid to the Directors who are Namibian residents treated?

   <u>Answer</u> – All remuneration paid by a Namibian company to any director who is resident in Namibia is subject to employees' tax. No exceptions.

3. **<u>Question</u>** - Where a resident of RSA owns property in Namibia, does he/she become a normal taxpayer in Namibia or is there NRST involved on the profit?

   <u>Answer</u> – I assume that the question is in respect of a natural person, who is a resident of SA and owns property in his personal name in Namibia. If the property located in Namibia earns rental income, the owner of the property is carrying on a trade in Namibia and must register as taxpayer. An individual who earns rental income from a property owned by that individual will not derive dividends from that trade. Thus, NRST is not applicable in this case.

4. **Question** - As a provisional taxpayer do I include expenses or just income?

   <u>Answer</u> – A provisional taxpayer must base his provisional tax payments on the amount of the taxable income estimated for the year of assessment to which these payments relate. Taxable income is calculated by deducting from income all expenditure allowed in terms of the IT Act.

5. **Question** - Should a member of a CC who pays monthly PAYE still register as a provisional taxpayer if that is the only income?

   Answer – No.

6. **Question** - should an employee who earns commission be registered as a provisional taxpayer?

   Answer – I assume that the employee earns the commission income for services rendered to his employer and that he does not carry on any other trade in Namibia. Commission income is included in the definition of 'remuneration' in Schedule 2 of the IT Act. Based on this, the employee is not obliged to register as provisional taxpayer.

   *Answers compiled by Hartmuth van Alpen

General approach to the following concepts: <u>Total amount either cash or otherwise (Court cases)</u>

Lategan v CIR (2 SATC 16) (1926 CPD 2013)

Winegrower received his income in installments, so the value of the total amount could be determined either in cash or otherwise.

CIR v Butcher Bros (Pty) Ltd (13 SATC 21) (1945 AD 301)

In this case, there was an agreement that improvements were made to the building over a period of 50 years, the amount could not be determined either in cash or otherwise.

Finally, to conclude:

1) Amount refers not only to money but to the value of property earned by the taxpayer, which has a monetary value (not market value), regardless of whether it is physical or incorporeal.

2) Onus was on the Commissioner to determine an amount of the property

General approach to the following concepts: <u>Received by (Court cases)</u>

Geldenhuys v CIR (14 SATC 419) (1947 (3) SA 256 (C))

The Mother sold the sheep on behalf of her children, but in the end the children were taxed on the sales of the sheep. It is important to mention here, that the mother cannot receive anything on behalf of the children. The Mother received the money, but the sheep were assigned to the children.

Pyott Ltd v CIR (13 SATC 121)

Trust was not the beneficial owner, but the children. Trust fees are not taxed in the Trust, because the Trustee is not entitled to the fees, but the beneficiaries are. It was further stated that the 'cans' had not yet been returned, so no liability arose, money was received by factory. So, the factory had to pay taxes.

CIR v Delagoa Bay Cigarette Co Ltd (32 SATC 47)

Whether you receive the money legally or illegally, it remains taxable.

MP Finance Group CC v CSARS (69 SATC 141)

Instead of being the owner of MP Finance Group, he paid out the deposits that had to be on trust to others. So, he used money that was not his. Money on trust had to grow. Because he used the money, SARS saw it as receiving money and then had to pay tax on it.

General approach to the following concepts: <u>Accident to (Court cases)</u>

CIR v Peoples Stores (Walvis Bay) (Pty) Ltd) 52 SATC 9) (1990 (2) SA 353 (A))

The case involved a trader selling goods, cash, or credit. The problem was that the trader granted a revolving credit scheme, the court had to determine whether the installments that were outstanding at the end of the year or should be included in gross income, or if they were accrued in that year.

Court ruled that the amount does not necessarily have to be due or receivable to be included in the gross income, they receive a right to claim a payment in the future, means that the right can be converted into cash.

Important here to see is that once the right arises to receive the money, the income must be included in gross income.

CIR v Witwatersrand Association of Racing Clubs (23 SATC 380)

The case held a horse race, they then made profits. And later it was said that the net profit would be donated to a charity. Income made in the normal course of business, first receiving the income and later saying that they are going to donate the net profits. Already decided that it happened to them.

If they had said earlier that they would only act as an agent, the income would not have accrued to them. If income is received from an asset that was purchased / acquired to generate income, even if you donate the income, even if you keep the asset, the income will be accrued to the person who owns the asset.

Mooi v SIR (35 SATC 1) (1972 (1) (SA 674 (A))

Person who was given the option from his job to take up shares. But there were certain conditions, that she still had to be an employee at the time the mine was built, the mine still had to be built, so he could exercise the option over the year.

The person then took up the shares after 3 years, but the shares were worth more after 3 years. The court ruled that because there were conditions, the income could not accrue to him until the conditions were met, so the larger amount of income accrued to him.

Income subject to conditions is included in gross income when conditions are met.

Closing Remarks:

1) Accident implies that the taxpayer must be entitled to an amount.
2) Established right - right to a future payment.
3) Unconditional right must exist to be included in gross income.