

Surviving a BURS audit

An audit by the Botswana Unified Revenue Service (BURS) can be an extremely time consuming, disruptive, stressful and expensive experience – one to be avoided where possible.

BURS is increasingly building capacity and expertise in the area of Income Tax, Withholding Tax (WHT) and Value Added Tax (VAT) audits and investigations. This is in line with the move over the past few years to a “self assessment” system of taxation in Botswana, where returns submitted by Taxpayers will be acknowledged and logged onto their systems, but no formal assessment issued.

Those businesses who have been registered for VAT since 2002 (the year VAT commenced in Botswana) are likely to have experienced a VAT audit by BURS (previously the Department of VAT). The main triggers for a VAT audit were:

- 1 Where a VAT return resulted in a refund claim;
- 2 Where a business applied for de-registration for VAT;
- 3 Any unusual trends or transactions which appeared in the VAT return.

The VAT audits were however carried out in isolation, and did not seek to look into other areas such as Income Tax or Withholding Tax.

Following the establishment of BURS in 2005, the audit function was streamlined and centralised with a view to carrying out holistic tax audits. This allows the various BURS team members to compare findings and discuss issues resulting in a more effective audit (from BURS viewpoint!).

The selection of a taxpayer for an audit is based on a number of different criteria including historical compliance record, size (larger companies are more likely to be audited based on the 80:20 principal), industry practices and volatile earnings / profit trends. It is the intention of BURS that every registered taxpayer should be audited at least once in every four years to ensure 100% coverage.

The key to surviving a BURS audit is to ensure that you have all the necessary documentation filed in such a manner to allow for easy access.

Some of the most common findings in tax audits include:

VAT

- Incomplete tax invoices – apart from the usual details required on an invoice, the most common problem is where the customer’s VAT number is missing;
- Prohibited claims for Input VAT such as hotel bills, car rentals and repairs, non-business related expenditure;
- Claims for VAT payable on imports at the border prior to settling the amount due on the deferred VAT account;
- Claiming for invoices which are “out of time” – i.e. are dated earlier than the immediately preceding four months;
- Free or subsidised goods or services for employees – the output VAT on the benefit should be declared (or alternatively the input VAT on the cost of that benefit should not be claimed).

Withholding Tax (including PAYE)

- The required WHT has not been deducted from payments to non-residents of management and technical fees, interest, royalties, commercial royalties (including hire charges) and entertainment fees;

- Employee benefits are not taxed through the monthly payroll process e.g. provision of housing, company car, furniture, utilities, free or subsidised goods and services and employee share schemes;
- Withholding Tax of 10% has not been deducted from payments of interest to resident individuals or companies (except recognised financial institutions);
- Directors fees have not had PAYE deducted (including Directors fees accrued but not yet paid)
- Incorrect rates of withholding tax applied
- Late remittance of tax

Income Tax

Audits of a company's income tax records are different to VAT and WHT in that they are less about checking compliance and documentation, and more about looking at the financial statements and underlying records to see whether there are areas of concern. The most common issues arising include:

- Related party transactions – any transactions with shareholders, directors or related companies / businesses are reviewed almost automatically. Higher risk transactions will include loans to and from related parties, and payments of management / consulting / technical fees to related parties. You should be able to show that these transactions are on a commercial basis, on commercial terms;
- Claims for any provisions as expenditure for tax purposes including provisions for bad debts, leave pay, severance benefit and future expenses. Provisions that are not a result of a legal obligation will often be queried;
- Continuous reporting of losses will raise queries as to whether there are good reasons for this, and why the business continues to operate;
- Volatile gross margins when compared to the industry and previous years may result in a request for additional information;

The penalties for non-compliance or submission of incorrect information in returns can be very high. Such penalties include:

- 1 Non payment of WHT – this will result in penalty interest of 2% per month on the unpaid amount;
- 2 Overclaims / Incorrect claims of Input VAT or under declaration of Output VAT – this will result in the amounts being claimed by BURS as payable together with a penalty of up to 100% of the original tax payable;
- 3 Errors / omissions in Income tax returns will result in penalty interest at the rate of 1.5% per month, together with a penalty charge of up to 100% of the tax involved.

BURS have stated publicly that where a business can show that it has made every effort to comply with the various tax laws and regulations, a more lenient stand will be taken where areas of non-compliance are identified. To prove to BURS that such efforts have been made, it is advisable to engage your professional tax advisors or consultants to undertake a review of your business with a view to identifying problematic areas.

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