



TOPIC: TAX COMPLIANCE ISSUES IN CURRENT ENVIRONMENT

ICAZ Tax Compliance Issues

Maxwell Ngorima
24 January 2014





TAX COMPLIANCE ISSUES IN CURRENT ENVIRONMENT

Table of contents

1. Introduction
2. Tax compliance - general
3. Tax compliance issues
 - Corporate Tax
 - P.A.Y.E
 - VAT
 - Withholding Taxes
4. Conclusion



INTRODUCTION

- Tax cash liabilities place a significant demand on a company's cash resources and consequently they need to be managed more effectively than ever through :
 - Effective tax compliance management
 - Tax planning
- Non-compliance results in:
 - Penalty of up to 100% of tax payable
 - Interest of 10% p.a.



Tax Compliance - General

- Late submission of tax returns
- Late payment of taxes on due date
- Non-compliance with tax legislation

Penalty: Late submission of returns

Penalty chargeable

- The penalty, which is with effect from 28 June 2013, shall be levied at *not more than thirty United States dollars (US\$30)* for each day the return remains outstanding up to the 181st day from the first day when such return became due.
- The table below shows how the penalty shall be applied:

Days Delayed	Remission	Penalty Chargeable	Penalty Calculation in US\$	Penalty amount in US\$
0 to 10 days	100%	0% (written warning)	\$30 x 10days x 0%	\$0
11 to 20 days	75%	25%	\$30 x 20days x 25%	\$150.00
21 to 30 days	50%	50%	\$30 x 30days x 50%	\$450.00
31 to 60 days	25%	75%	\$30 x 60 days x 75%	\$1,350.00
61 to 181 days	0%	100%	\$30 x 181 days x 100%	\$5,430.00

Penalty: Late submission of Returns

- Where a return remains outstanding after 181 days, prosecution may be instituted in addition to the payment of any penalty levied.

Return	Name of Return
ITF 1	Return of Income : Individual from Employment
ITF 1A	Return of Income : Individual from Trade
ITF 12	Return of Income : Company
ITF 12C	Self-Assessment Return: Individual and Company
ITF 16	Reconciliation of payroll details (Pay As You Earn)
REV 5	Return for the remittance of Withholding Taxes
REV 5A	Return for the remittance of Presumptive Taxes
CGT 1	Return for Capital Gains Tax
VAT 7	Return for the Remittance of Value Added Tax



Penalty: Late submission of Returns

- Justification of \$30 penalty for ITF 16's
- Justification of \$30 penalty for dormant companies
- Justification of \$30 penalty if tax already paid



Late payment of taxes

- Penalty of 100% for late payment
- Request for waiver of penalties from Commissioner
- Penalty loading model



Non Compliance with tax legislation

- Tax evasion - 100%
- Repeat offence - 200%
- In addition - prosecution proceedings and in the case of customs offences forfeiture of goods



Penalty Remission:- Considerations

1. Degree of voluntary disclosure
2. Level of cooperation
3. Degree of capability

Penalties: Uninternational offences

	Total Remission	Penalty to be charged
a) First offenders: with full voluntary disclosure	100%	0% with a written warning
b) First offender: subject to partial and voluntary disclosure	75%	25%
c) Second offender: subject to full disclosure	50%	50%
d) Third offences	25%	75%
e) Subsequent offences		Maximum penalty or Forfeiture. Prosecution will also be considered.



Degree of voluntary disclosure

- Voluntary disclosure results in lower penalty while attempts to hide the offence or to mislead ZIMRA results in a higher penalty and prosecution.
- A disclosure will be considered voluntary when it is truthful, complete, and if it is received before:
 - a) The commencement of investigation or audit on the taxpayer, or notification from ZIMRA that it intends to commence such an audit or investigation;
 - b) ZIMRA receives information from any source (e.g., informant, other governmental agency, or the media) alerting ZIMRA to non-compliance of the client;
 - c) ZIMRA has acquired information directly related to the specific liability of the taxpayer from any civil or criminal enforcement action.

PAYE COMPLIANCE ISSUES



PAYE Compliance

➤ Failure To Pay Tax On Due Date

- PAYE is due for submission on or before the 10th day of the month following that in which it was held;
- Failure to pay within the stipulated period results in a 100% penalty and interest;
- While most taxpayers will ensure that the PAYE is paid on due date, P2 forms are usually not completed and submitted to ZIMRA on the date.



PAYE on the executive directors' fees

- **Failure to pay PAYE on executive directors' fees**
 - Some taxpayers are not charging PAYE on directors fees accrued by executive directors.
 - Definition of remuneration in the 13th schedule includes directors fees payable to executive directors
 - Risk of 100% penalty and interest.



PAYE on Benefits

- **Failure to pay PAYE on allowances**
 - Allowances payable to civil servants are exempt from tax but transport and housing allowances payable to non civil servants are liable to tax.



PAYE Compliance Errors

➤ **Failure to pay PAYE on benefit accruing on vehicles sold to staff**

Where an employer sells a motor vehicle to an employee at below market value, a taxable benefit accrues (A-B)

A= market value of car

B= amount paid by employee

NOTE:- No benefit accrues to taxpayer aged 55 years and above



PAYE Compliance

➤ Failure to pay PAYE on loan benefit

- The provision of loans for school fees, medical expenses for the employee, spouse and children is not subject to a taxable loan benefit
- Loan benefit calculated at a rate of 5% above libor rate is due on any other loans advanced to employee.



PAYE Compliance

➤ **Free benefit:-**

- Medical aid contributions by an employer on behalf of employee;
- Value of medical treatment or of travelling to obtain such treatment provided by employer for an employee or the dependent of such employee



PAYE Compliance - Canteen Meals

- ZIMRA now approaching companies and requesting payment of PAYE on benefits.
- Need to revise tax legislation
- Exempt these if they are provided by employer to employee during business hours at any cafeteria, canteen operated by the employer



PAYE Compliance - Transport services

South African tax legislation:

- Exempt any transport services provided by an employer for the conveyance of employees from home to the place of employment.

Corporate Tax Compliance Issues

➤ FAILURE TO SUBMIT ANNUAL TAX RETURNS

- Section 46 - Payment of a penalty equal to the tax chargeable or maximum fine prescribed in section 81(i) whichever is the greater.
 - [US\$ 400 or three months imprisonment or both such fine or imprisonment]
 - Self assessment return due by the 30th of April
Other returns due 30 days after due notice.
 - Unrealistic date for submission of tax returns

CORPORATE TAX COMPLIANCE

➤ Failure to pay QPDs

QPD payables as follows

- 1st 10% - 25th March
- 2nd 25% - 25th June
- 3rd 30% - 25th September
- 4th 35% - 20th December

➤ Move 4th QPD to date after year end??

➤ Introduce a 5th QPD ?



WITHHOLDING TAXES ON CONTRACTS

- **Failure to deduct 10% tax where tax clearance is not held**
- **ITF263s**
 - Payments made in absence of tax clearance certificates.
 - 10% tax should be paid over to ZIMRA on or before the 10th of the following month.
 - 100% penalty and interest at 10% p.a.
 - payment by cash, barter set-off or other settlement of obligation.
 - 15% withholding tax on payment to non-resident artists or entertainers.



WITHHOLDING TAXES ON CONTRACTS

- Penalties/Interest justification?
- Tax compliance -taxpayer penalised for inefficiency of another taxpayer;



EXTERNAL PAYMENTS

- **Fees and royalties are subject to a 15% withholding tax**
 - The tax is payable to ZIMRA within 10 days from date of payment.
 - Tax risk - 100% penalty plus interest at 10% p.a.



EXTERNAL PAYMENTS

- **Justification of withholding tax on financial arrangements?**
- **Additional cost to business especially where payee insists that they want to be paid the gross amount.**



NON - EXECUTIVE DIRECTORS' FEES

- A 20% withholding tax is payable on fees payable to non - executive directors
- Fee is due to ZIMRA within 10 days from day of payment
- Tax risk of 100% penalty plus interest
- Payer to issue a withholding tax certificate to each director



THIN CAPITALISATION

- Interest disallowed if debt to equity ratios exceeds 3:1
- Justification in current environment ?
- Justification with financial institutions ?



CAPITAL GAINS TAX COMPLIANCE ISSUES

➤ Withholding tax

- 15% for immovable property
- 10% for unlisted shares
- 5% for listed shares
- Due date :3 days after payment
- Tax risk - 100% penalty and interest

VAT COMPLIANCE ISSUES



VAT COMPLIANCE ERRORS

OUTPUT TAX - BENEFITS

➤ **Failure to account for VAT on employer benefits**

Section 17(3)d VAT ACT

When an employer grants a fringe benefit to his employee a supply subject to VAT is deemed to take place except when:

- (i) the supply would in any event be exempt
- (ii) supply would be zero rated
- (iii) the benefit is granted in the event of making exempt supply.

➤ VAT on fringe benefit is payable by the employer.

MOTOR VEHICLE BENEFITS: VAT CALCULATION

<u>Engine Capacity</u>	<u>2014</u>
• 1 500cc or less	US\$ 300 per month
• 1 501cc to 2 000cc	US\$ 400 per month
• 2 000cc to 3 000cc	US\$ 600 per month
• Above 3 000cc	US\$ 800 per month

Example

- Vat on Mazda 3 1800cc = $15/115 \times 400$
= \$52.17 per month

VAT COMPLIANCE ERRORS (cont)

➤ Reconciliation of VAT returns and financial statements

- Turnover declared on VAT returns in some cases is lower than that declared in financial statements.
- Starting point in ZIMRA audit as it indicates potential understatement of VAT.
- Incorrect completion of VAT returns where exempt /zero rated income is not included

VAT Compliance:- Output tax common errors

➤ Failure to account for VAT on advance payments

- VAT is accounted for on the earlier of receipt of any payment or issue of an invoice.

➤ Failure to account for VAT on sale of assets

- The sale of used assets is a supply for VAT purposes.

➤ Failure to account for VAT on post sale adjustments

- Post sale adjustments result from:
 - Settlement discounts
 - Return of goods
 - Cancellation



VAT COMPLIANCE

➤ Failure to pay VAT on “imported services”

- In terms of section (6) (i) (c), VAT is payable on the supply of imported services.
- The tax is payable by the recipient of the services
- Imported service is defined as a supply of services
- Made by a non resident of Zimbabwe to resident of Zimbabwe to the extent that such services are utilized or consumed in Zimbabwe for making exempt supplies



VAT COMPLIANCE

- Section 13(5) (b) - An imported service that would be either exempt or zero-rated if rendered in Zimbabwe is not taxable
 - E.g. No VAT is payable on fees paid to non resident insurance companies since their services are exempt from VAT.



VAT COMPLIANCE:- INPUT TAX

➤ **Input tax common errors**

- Claiming of non claimable input tax;

Input tax is not claimable on the following:

- Entertainment
- Purchase import or hire of a passenger motor vehicle
- Subscriptions to a club, association or society of a sporting, social or recreational nature.



VAT COMPLIANCE ERRORS

- **Claiming of tax using invalid tax invoices**
- Information that has to be included on the tax invoice is stipulated in the VAT Act and includes the following:
 - The words “tax invoice” in a prominent place;
 - The name and address and VAT number of the registered person making the supply and
 - The name, address and VAT number of the recipient of the supply



VAT COMPLIANCE ERRORS

- Claiming input tax on invoices that are more than twelve months old
- Failure to claim VAT paid on imports
- Claiming customs duty as input tax
- Vat paid on imported services is not input tax and therefore not claimable as input tax

Customs Duty



CUSTOMS AND EXCISE ACT (CH 23:02)

- Provides for the levying of customs duties on imported goods
- All exported/ imported goods have to be cleared before they are consumed in Zimbabwe
- Clearance is done at designated places such as at the border posts or inland offices



CUSTOMS CLEARANCE

- Every good imported into the country has to be cleared;
- Clearance is done at designated places;
- Goods are cleared through
 - ✓ Commercial clearance or
 - ✓ Private clearance



COMMERCIAL CLEARANCE

- Done on imports for commercial use
- Clearance is by way of bill of entry
- Usually done by clearing agents



PRIVATE IMPORTS

- These are importations for private use i.e. not for sale.
 - ✓ Food stuff,
 - ✓ Other household goods
 - ✓ Personal clothing
 - ✓ Private goods owned by returning residents



CLEARANCE MODE

- An individual can elect to clear using
 - ✓ flat rates of duty or
 - ✓ the tariff handbook
- The flat rates allow fast clearance of goods at border post
- The duties are generally higher than commercial rates



DECLARATIONS

- Both individuals and corporate bodies must make a declaration of all imported or exported goods
- Any false declaration i.e. falsification of goods, under declaration, production of false documents etc
- Will result in
 - ✓ seizure of the goods and or
 - ✓ Forfeiture and or payment of heavy fines of up to three times the duty paid value.



KEY CUSTOMS COMPLIANCE AREAS

- Description of goods/services
- Tariff classification of goods/services
- Values of goods/services
- Quantities of goods/services
- Origin of goods/services



DESCRIPTION OF GOODS

- Full descriptions of goods are required on bill of entries or declaration certificates
- Correct descriptions lead to correct classification of goods/services
- In all instances trade names are not preferred
- In some instances descriptive literature is called for to assist in tariff classification of goods/services



TARIFF CLASSIFICATION OF GOODS OR SERVICES

- Tariff headings provide for customs, value added tax and or surtax (All Duty) rates for computation of duty purposes
- Tariff headings are also associated with correct preferential rates of duty application.
- Preferential rates are associated with the origin of goods.
- Correct tariff classification provide for correct duty computations and is related to correct descriptions of goods/services.



VALUES OF GOODS OR SERVICES

- Values are important for the computation of the Value for Duty Purposes (VDP)
- Values are based on the invoiced amount of the goods or as provided for in valuation sections of the Customs and Excise (C & E) Act.
- Under declarations of value lead to under payment of duty whilst over declarations of value lead to overpayment of duty.
- Under declarations are offences punishable by the C & E Act while over payments may lead to externalisation and hence are also punishable in terms of the same Act.



QUANTITIES OF GOODS/SERVICES

- Quantities of goods/services refer to the numbers involved on clearance and are basically supported by a tax invoice and packing list were it is provided.
- Under declaration of numbers/volumes and statistical numbers will lead to under declaration of duty payable and over declaration of the same will lead to over payment of duty.
- Under declarations are offences which are punishable in terms of the C & E Act.



ORIGIN AND PREFERENTIAL RATES OF DUTY

- Origin refers to the countries and regional trade groupings where the goods were grown, produced or manufactured.
- Origin leads to preferential rates of duty. e.g. Goods of South Africa Origin under the Zimbabwean-South African Trade Agreement (ZA) and goods originating from SADC
- Preferential rates are generally lower rates of duty which promote trade between member states.
- False declaration of preferential rates of duty leads to under declaration or non payment of duty at all.
- False declaration to enjoy preferential rates of duty is an offence punishable in terms of the C & E Act.



WHAT DOES ZIMRA CHECK ON CUSTOMS AUDITS/INSPECTIONS

- Correctness of all the 4 key customs compliance areas as discussed above as they lead to mainly under declaration of duty and hence under payments to the FISCUS.

REMEDY:

1. Seizures and forfeiture of goods
2. Seizures and heavy penalties.



CONCLUSION

- With the tight liquidity position prevailing in the country, effective tax compliance management is an essential part of business financial planning.
- Tax compliance is a two way process :
 - (i) On the one hand you have the taxpayer who is expected to be a good corporate citizen by the government;
 - (ii) Taxpayers on the other hand expect the Tax Authorities to uphold the values of integrity, transparency and fairness



QUESTIONS

QUESTIONS ?????

THANK YOU

mngorima@bdo.co.zw



DISCLAIMER

Whilst every effort has been made to present the most current, correct and clearly expressed information possible, inadvertent errors can occur and are subject to change. The information is intended to serve as a general guideline and may not apply directly to specific circumstances. Nothing in this presentation should be construed as advice and professional advice should be sought before acting thereupon.

Copyright of this publication rests with BDO Zimbabwe Chartered Accountants All rights reserved. Copying of this information, in whole or in part, is prohibited without prior written permission.

BIOGRAPHY



**Tax Director -
BDO Zimbabwe CA (Z)**

Max Ngorima
Tax Consultant
mngorima@bdo.co.zw

Expertise summary:
Cross border tax planning
Transfer pricing
Tax Investigations
Expatriate Tax Consulting
Strategy Tax Planning

Max is a Director with BDO Tax & Advisory Services, an associate firm of BDO Zimbabwe CA (Z).

Max Ngorima has 31 years experience in taxation. He specialises in transfer pricing and cross-boarder tax planning. He regularly speaks at seminars about a range of tax issues and international tax.

He joined BDO in 1998, after several years as a tax officer with the Tax Department where he left as Assistant Commissioner, and as a tax consultant with a private sector group of companies.

He studied accountancy at the University of Zimbabwe.

He is a member of the Tax and Legal Committee of the Institute of Chartered Accountants and also a member of the Institute of certified Tax Accountants.

www.bdo.co.zw

BDO Tax & Advisory Services (Private) Limited is an associate firm of BDO Zimbabwe. BDO Zimbabwe, a Zimbabwean partnership, is a member of BDO International Limited, a UK Company Limited by guarantee, and forms part of the BDO network of independent member firms. BDO is the brand name for the BDO network and for each of the BDO member firms.

