

TAX COMPLIANCE ISSUES

ICAZ Tax Update Seminar
presentation by ZIMRA

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Definition of terms:

- ‘Compliance is either a state of being in accordance with established guidelines, specifications, or legislation or the process of becoming so.’ <http://searchdatamanagement.techtarget.com/definition/compliance>
- Tax noncompliance is a range of activities that are unfavourable to a state’s tax system. This may include tax avoidance or tax evasion. [http://en.wikipedia.org/wiki/tax noncompliance](http://en.wikipedia.org/wiki/tax_noncompliance)

Compliance

- Statutes by their nature create rights and obligations. In this context compliance refers to observance of statutory provisions whilst lack thereof refers to noncompliance
- The ZIMRA Client Charter clearly summarises the rights and obligations of clients. If you follow the spirit and letter of the charter one would generally be on the right trajectory towards compliance.
- It is important for taxpayers to understand these rights & obligations.

Compliance

- None compliance normally occurs in two broad generic categories
 - Commission (what you do)
 - Omission (what you fail to do)
- Both attract penalties per statutes of Zimbabwe & most other countries
- The principle of attraction between iron filings and a magnet

Compliance

- Officers only have power to remit all or part of the penalty so attracted as they see fit.
- The penalty loading model is an attempt to standardise the magnitude of the residual penalty after officers will have exercised their discretion and power to remit penalties.
- It will not be a substitute for the law

Compliance

- The remedy to avoiding losing money through penalties is to comply
- Interest charges are an adjustment for the time value of money. (Please do not beg for waiver of interest)
- Where cash flow challenges are experienced – COMMUNICATE.

General Anti-Avoidance Provisions (GAAP) & Transfer Pricing

- Section 98 of the Income Tax Act (Chapter 23:06) provides for adjustments to be made to taxable income where transactions fail to meet the arm's length test.
- The new tax bill has retained this provision under section 93.
- The new bill introduced section 94 to deal with transfer pricing specifically. (Split of income making reference to functions, assets and risks assumed if different tax jurisdictions.)

Definition of tax avoidance & tax evasion

- ‘Tax avoidance is the legal usage of the tax regime to one’s own advantage, to reduce the amount of tax that is payable by means that are within the law.’ <http://en.wikipedia.org/wiki/tax>
- ‘Tax evasion, on the other hand, is the general term for efforts by individuals, corporations, trusts and other entities to evade taxes by illegal means.’ <http://en.wikipedia.org/wiki/tax>

GAAP & Transfer Pricing cont.

- Most tax regimes have amplified these provisions through issuing country specific guidelines.

Arm's length principle

- 'The arm's length principle (APL) is the condition or the fact that the parties to a transaction are independent and on an equal footing. Such a transaction is known as an arm's length transaction.'

[http://en.wikipedia.org/wiki/arm's length principle](http://en.wikipedia.org/wiki/arm's_length_principle)

Arm's length principle cont.

- 'The arm's length principle of transfer pricing states that the amount charged by one related party to another for a given product must be the same as if the parties were not related. Arm's length price for a transaction is therefore what the price of the transaction would be on the open market.'

[http://www.ustransferpricing.com/arm's length principle. html](http://www.ustransferpricing.com/arm's-length-principle.html)

Transfer pricing

- Transfer pricing is the process by which entities set prices at which they transfer goods or services between each other. Taxpayers should aim to convince the Commissioner that the prices being charged to transfer goods or services are at arm's length, especially when dealing with related parties.

Transfer pricing cont.

- 'Transfer pricing is a profit allocation method used to attribute a corporation's net profit (or loss) before tax to countries.
- (The goal by most MNEs is to allocate more profits to low tax jurisdictions and tax havens)
- Section 94 of the new tax bill primarily seeks to set principles for such allocation of profits in line with the set principles

OECD Transfer Pricing Guidelines

- *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* provides guidance on the application of the "arm's length principle" for valuation for tax purposes of cross-border transactions between associated enterprises. In a global economy where multinational enterprises (MNEs) play a prominent role, governments need to ensure that the taxable profits of MNEs are not artificially shifted out of their jurisdiction and that the tax base reported by MNEs in their country reflects the economic activity undertaken therein

Transfer pricing compliance

- Record keeping
- Transfer pricing policy document
- Comparables
- Rulings (Self assessment regimes)
- With holding taxes - compliance

Withholding tax

- A withholding tax, also called a retention tax, is a government requirement for the payer of an item of income to withhold or deduct tax from the payment, and pay that tax to the government.

<http://en.wikipedia.org/wiki/withholding>

ZIMRA STRATEGIES TO ENFORCE COMPLIANCE

- Technological advances – SAP Upgrade & web based ASYCUDA WORLD.
- Increased compliance checks, audits, investigations & project based audit/investigations
- Whistle blower program
- Client education and awareness programs
- DTAs – exchange of information. (ATAF / SADC)
- Use of scanner & sniffer dogs

SCANNER AT WORK



“ We are here to serve ”

Compliance Common Pit Fall Observed

- Engaging in old prototype tax planning which does not respect the arm's length principle
- Failing to comply with various with holding tax requirements as legislated
 - Section 80(A) – tax clearance certificates
 - Sourcing fake tax clearance certificates
- Deliberate under payment of QPDs
- Crediting vat input tax on none vat invoices

Common Pit Falls cont.

- Not subjecting all employment benefits to PAYE or under declaring them
- Treating Group Companies as one single tax entity. Business arrangements should not be in contradiction with prevailing tax laws – it will cost you money
- Bribery
- Smuggling

Common Pit Falls cont.

- Poor record keeping
 - Prescription periods
- Not acquitting deferred VAT after the respective 90 days
- Abuse of ATIP (application for temporary importation privileges)
- Plus many more too numerous to mention

Compliance issues conclusion

- **Hosea 4 vs. 6** – ‘My people are destroyed for lack of knowledge:
- **Matthew 22 vs. 21** - ‘....Render therefore unto Caesar the things which are Caesar’s.....’
- **Matthew 17 vs. 27** -take up the fish that first cometh up; ...though shalt find a piece of money: take and give unto them for me and thee.



“ We are here to serve ”