ICAZ TAX UPDATE SEMINAR

16 APRIL 2013

TAX UPDATES

Agenda

- Apart from the increase in the exempt portion of bonus from $700 to $1000, the Finance (No. 2) Act of 2012 which became effective from 1 January 2013 did not bring major tax changes. This presentation seeks to discuss common areas of exposure that taxpayers need to be reminded of in their day to day tax administration:

Coverage:

- Personal Income Tax
- Corporate Tax
- Capital Gains Tax
- Withholding Tax
- Value Added Tax

PERSONAL INCOME TAX

- Zimbabwe Individual income tax (PAYE) is imposed at progressive rates up to 45%. 1st $250 is tax free and any amount above $10000 is taxed at 45%. 3% AIDS levy is also imposed.
- The tax is imposed on salary, allowances, fringe benefits etc.
- Basis – Individuals pay tax only on Zimbabwe-source earnings or income deemed to be Zimbabwean source.

Personal Income Tax

- Filing and payment of tax
- Tax is deducted by the employer and is payable by him to ZIMRA by the 10th of the following month (13th Schedule to Income Tax Act)
- Penalties of up to 100% p.a. imposed for late, non or under payment and interest at 10% p.a. is also charged for same offense
- Employer is required to do a reconciliation of PAYE deducted and paid to ZIMRA by the last day of the month following the end of the Financial year (ITF 16).

PERSONAL INCOME TAX

Filing and payment of tax

- Individuals are not required to file returns if they are on the final deduction system.
- An individual who has more than 1 source of income, who changes employment during the year of assessment or who terminates employment during the assessment year is required to file an Income tax return upon notice to do so by the Commissioner.

Personal Tax

- Common Areas of Exposure
- Not subjecting tax to fringe benefits
- Not disclosing income from other sources by employees
- Not submitting proof of medical expenses or over claiming same.
- Not subjecting to tax directors` payments claiming that directors are withdrawing from the directors' loan accounts.
- Payments such as ex-gratia or gratuities not included in payroll.
- Not lodging PAYE returns (P2)
- Late remittance of PAYE
- Not lodging ITF 16 and not matching salaries declared on ITF 16 with Financials
- Not filling income tax returns by employees when required to do so
- PAYE shortfalls not being recovered from affected employees hence a tax benefit arises.

CORPORATE TAX

- The rate of tax is 25%, although a lower rate may apply under incentive schemes. 3% AIDS levy is also charged
- Basis: Zimbabwe companies and individuals deriving income from trade and investment are taxed on Zimbabwe source income.
- **Taxable income** : Taxable income includes all income received or accrued from sources within Zimbabwe or deemed to be within Zimbabwe (excluding amounts of a capital nature and revenue accruals that are specified as exempt) and is calculated after deduction of specified expenditure and allowances

CORPORATE TAX

- **Taxation of dividends**: Dividends received by a company incorporated in Zimbabwe from another company incorporated in Zimbabwe are exempt from income tax.
- Foreign-source dividends are subject to tax at 20%, with any withholding tax deducted in the foreign country able to be credited up to the amount of the tax applicable in Zimbabwe.

CORPORATE TAX

- Tax Incentives: Reduced income tax rates apply to certain classes of taxpayers as follows:
- Licensed investors, 0% for the first 5 years and 25% thereafter
- Special mining lease and mining operations, 15%. An additional profit tax may be levied. This leaves the effective rate higher that 25%
- Manufacturing or processing companies that export 50% or more of their output, 20%
- Operators of tourist facilities in an approved tourist development zone, 0% for the first 5 years and 25% thereafter;
- Build, own, operate and transfer projects (BOOT), 0% for the first 5 years and 15% thereafter.

CORPORATE TAX

Tax Filing requirements

- Tax returns must be filed by 30 April after the close of the tax year (CG usually issues public notice).
- The annual return must be supported by financial statements (which may not necessarily be audited). However taxpayers on self assessment are not required to submit financials.
- Income tax is paid quarterly, based on estimated annual taxable income, on 25 March (10%), 25 June (25%), 25 September (30%) and 20 December (35%) during the assessment year for taxpayers on a 31 December financial year end.
- For those with financial year ends other than 31 December, the Commissioner may allocate different payment dates upon application by the taxpayer. Currently ZIMRA calling for returns 4 months after yearend, N.B. this is not supported by legislation.

CORPORATE TAX

Penalties and Interest

- Interest is levied on unpaid tax or late remittances (QPDs) at a rate of 10% p.a.
- Penalties of up to 100% of unpaid taxes. N.B no penalties on QPDs.
- Up to 200% may be levied for repeated offence
- Penalties of up to $30 per day may be levied on late submission of tax returns. This penalty is limited to 181 days (i.e. $30 x 181 days = $14,480)

CORPORATE TAX

Anti-avoidance rules:

- Transfer pricing: While no specific legislation is in place, where the authorities deem that a transaction was not conducted at arm's length, a "fair" price may be substituted.

What is Transfer Pricing?

- The price at which divisions of a company transact with each other.
- TPs are used when individual entities of a larger multi-entity firm are treated and measured as separately run entities.
- When independent parties deal with each other, external market forces ordinarily determine the conditions of their trading
- When associated parties (mainly multi national companies (MNC) deal with each other, external market forces may not directly determine their conditions of trade. Their main objective is to increase group profitability while minimising tax.
- Most TP issues hover around the objective of lowering taxation.
- TP concerns itself mainly where profits are shifted from a high tax jurisdiction to a lower tax jurisdiction.

Arm's Length Principle

- The arm's length principle is stated in paragraph 1 of Article 9 of the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention.
- It essentially entails that the amount charged by one related party to another for a given product should be the same as if the parties are not related.

Corporate

- Thin capitalisation: Expenditure incurred by a local branch or subsidiary of a foreign company or by a local company or its subsidiary in servicing debt contracted in connection with the production of income to the extent such debt causes the person to exceed a debt-to-equity ratio of 3:1 is disallowed.
- Debt not defined – in practice accounting treatment adopted
- Excess deemed to be a dividend and withholding tax may be levied.

Corporate Tax

- Anti-avoidance rules:
- Group Allocated Expenditure: general administration and management expenditure allocated within a group of companies (local or foreign) in excess of 1% of the total allowable deductions is disallowed.
- General administration and management expenditure not defined
- Foreign costs disallowed also treated as a dividend subject to withholding tax.

Corporate Tax

- Capital Allowances
- SIA of 25% in first year and accelerated W& T of 25% in the subsequent 3 years.
- Value of PMV restricted to $10,000 and qualifying limit (cost) of staff housing of $25,000
- Special rate of 50% in first year applies to SMEs.

Corporate Tax

- Common Areas of Exposure:
- Claiming prohibited deductions e.g. Provisions for bad debts, entertainment, fines and penalties. ZIMRA currently disallowing all provisions.
- Underestimation of QPDs and non submission of returns (ITF 12B)
- Failure to vouch for expenditure claimed
- Prepayments claimed prematurely.

Corporate Tax

- Common Areas of Exposure:
- Inflating salaries and wages figures on income statements. Failure to do PAYE reconciliation
- Claiming Capital allowances on assets that are not used by taxpayer.
- Incorrect claiming of capital allowances due to wrong classification of assets, e.g. claiming SIA on commercial buildings and on buildings still under construction,
- Computer software expenses, are they capital or revenue expenses.
- Assessed loss carried forward – check prescription period.
- Not observing passenger motor vehicle limits, SIA limits, Wear and tear rates.
- Interest in case of thin capitalised companies.

Corporate Tax

- Common Areas of Exposure:
- Claiming unproductive interest
- Group companies transactions – transfer pricing
- Fines and penalties and legal fees.
- Bad debts.
- In case of mines, expenses incurred during period of non production.
- Non filing of income tax returns. This includes dormant companies

CAPITAL GAINS TAX

- Capital gains tax is chargeable on gains from a source within Zimbabwe from the sale or deemed sale of specified assets: immovable property (land and buildings) and marketable securities (stocks and shares).
- Capital gains from the sale or disposal of a marketable security and immovable property acquired before 1 February 2009 is the amount realised from the sale or disposal at a rate of 5%.
- A sale of a marketable security and immovable property acquired after that date is taxed at 20% after allowing deductions such as the cost of acquisition, additions and alterations of the specified asset.

CAPITAL GAINS TAX

- An inflation allowance of 2.5% of the cost, alterations and additions of the asset is granted.
- Certain deferrals may be elected where assets are transferred under a scheme of reconstruction or merger between companies under the same control. This arises where shares are exchanged for no cash consideration under such a scheme, or if a business property that has been sold and is replaced shortly thereafter (roll over).
- Capital gains withholding tax of 15% for immovable assets and 1% for ,marketable securities is imposed.

Withholding Tax

- **Dividends** : dividends from securities listed on the Zimbabwe stock exchange are taxed at a rate of 10%; otherwise, the rate is 15%. The tax rate may be reduced under a tax treaty. No tax on dividend declared by a company to another company.
- **Interest**: Bank interest from a Zimbabwean source is taxed at 15%. Tax on interest accruing on fixed term deposits of a tenure of at least 90 days is 5%. No withholding tax is levied on interest accruing to a non resident.
- **Royalties** : Royalties paid to non-residents are subject to a 15% withholding tax. The rate may be reduced under a tax treaty.
- **Remittances**: Remittances paid to non-residents are subject to a 15% withholding tax.

Withholding Tax

- **Tenders**: A 10% withholding tax is deducted from any payment above $250 to a supplier who does not possess a valid tax clearance (ITF 263)
- **Non Executive Directors**: fees paid to non-executive directors subject to 20% withholding tax.
- **Fees**: fees paid to non-residents are subject to 15% withholding tax. The rate may be reduced under a treaty.

Withholding Tax

- Common Areas of Exposure:
- Giving non executive directors similar benefits with employees
- Subjecting directors fees payable to executive directors to withholding tax
- Use of fake ITF 263
- ZIMRA issued an alert for prevalence of fake ITF 263
- Taxpayers penalised if found in possession of fake ITF 263

Value Added Tax

- Taxable Transactions: VAT is payable in respect of a broad range of goods and services supplied by registered operators.
- It is also payable on imported goods and to some extent imported services.
- The standard rate of VAT is 15%
- Some goods and services are subjected to a VAT rate of 0%
- Some goods and services are exempt from VAT
- Special rate of 20% is levied on exports of unbeneficiated chrome

Value Added Tax

- **Filing and VAT payment** : VAT returns and payments are submitted on or before the 25th of the month following the end of the tax period.
- **Penalties and Interest:** Interest is levied on late remittances or non payment of VAT at 10% p.a.
- Penalties of up to 100% of unpaid or late paid VAT may be imposed.
- 100% penalties may also be levied on incorrectly claimed input tax
- Penalties of up to $30 per day may be levied on late submission of tax returns up to a maximum of 181 days.

Value Added Tax

- Common Areas of Exposure
- Claiming of input tax on:
  - Invalid tax invoices.
  - Invalid bills of entries.
  - Prohibited deductions such as purchase of passenger motor vehicle.
  - Entertainment when not in the entertainment business e.g. food for staff who get the food for free, canteen repairs and expenses.

Value Added Tax.

- Exempt or zero rated supplies where VAT was not charged on the invoice.
- Pro-forma invoices.
- Purchases invoices from other countries instead of VAT on the Bill of Entry.
- Invoices from companies that are not registered for VAT.

Value Added Tax

- Over-claiming input tax i.e. claiming more than the actual VAT charged.
- Over -claiming VAT on bills of entry some, i.e. claiming total of VAT and duty.
- Claiming input tax twice using the same invoice in different months (fraud).
- Claiming input tax on invoices issued more than 12 months from the date of claim.

Value Added Tax

- Under declaration of sales (fiscalisation).
- Not accounting for VAT on fringe benefits.
- Not declaring VAT on imported services
- Failing to reconcile sales per VAT returns and Financial statements
- All VAT refunds now subjected to audit by ZIMRA

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