

TOPIC: TAX PLANNING



TAX

ICAZ Workshop

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TAX PLANNING

AGENDA

1. Tax Avoidance/Tax Evasion
 - Tax Avoidance legislation
2. Tax Planning - PAYE
3. CGT Planning
4. Estate Duty Planning
5. Stamp Duty
6. Corporate Tax
7. VAT

DISTINCTION BETWEEN TAX AVOIDANCE AND TAX EVASION

1. Tax Evasion

- Illegal activities deliberately undertaken by Taxpayers to avoid payment of tax.
- These activities are illegal and are subject to heavy and severe penalties.

2. Examples: Tax Evasion

- Falsify accounting records
- Fail to disclose any income
- Provide incorrect information

DISTINCTION BETWEEN TAX AVOIDANCE AND TAX EVASION

Tax Avoidance

- Taxpayer arranges their affairs in such a perfectly legal manner that reduces their taxable income or that ensures that there is no tax pay.
- No obligation for a tax payer to pay a greater tax than is required.

DICTA BY LORD TOMLIN IN DUKE OF WESTMINSTER VS IRC

- No man in this country is under the smallest obligation, moral or other, so to arrange his legal relations to his business or to his property as to enable the Inland Revenue to put the largest possible shovel into his stores.
- The Inland Revenue is not slow - and quite rightly- to take every advantage which is open to it under the taxing statutes for the purposes of depleting the taxpayer's pocket. And the taxpayer is, in like manner, entitled to be astute to prevent, as far as he honestly can, the depletion of his means by the Revenue.

TAX AVOIDANCE

➤ Section 98 ;Tax avoidance provision

- Avoidance must have been the sole or one of the main purposes of the scheme
- Scheme must be tainted by abnormality
 - entered into or carried out by means or in a manner which would not be normally employed for such a scheme.
 - it has created rights or obligations which would not normally be created between persons dealing at arms length

TAX AVOIDANCE

➤ Section 98A ;Income Splitting

- TP transfers directly/indirectly income to an associate
- TP transfers property directly/indirectly to an associate

SOLE/MAIN reason - lower tax payable of taxpayer/associate

TAX AVOIDANCE

➤ Section 98A ;Associates, Employers, Employees

- Commissioner to adjust taxable income to reflect to arms length transaction
- Commissioner to adjust income between persons in employee/employer sssss
- Commissioner may recharacterise source of income, nature of PAYE

SOLE/MAIN reason - lower tax payable of taxpayer/associate

EASY WAYS TO AVOID TAX

- Stop earning any income:-nothing to tax
- Fail to declare your income/ falsify your deductions:- you would not pay tax until you are caught and penalised
- Emigrate to some deserted Pacific Island:-no taxes payable but normal comforts of life not available
- Endeavour to become the State President:-emoluments not taxable

TAX PLANNING - BENEFITS

TAX PLANNING OF FRINGE BENEFITS

- High rates of tax have lead employees and employers to appreciate the critical role of fringe benefits in structuring salary packages.
- Under both the Income Tax Act [Chapter 23:12] and the Value Added Tax Act it is the duty of the employer to ensure that the correct tax on the benefit is deducted.

MOTORING BENEFITS

USE OF COMPANY CAR: INCOME TAX

Engine Capacity

- | | |
|----------------------|----------|
| • 1 501cc to 2 000cc | US\$ 300 |
| • 1 500cc or less | US\$ 400 |
| • 2 000cc to 3 000cc | US\$ 600 |
| • Above 3 000cc | US\$ 800 |

VAT TREATMENT

- VAT on the motoring benefit is determined by applying the fraction 15/115.
- Benefit included in employer's VAT return no obligation to recover amount from the employee.

ADVANTANGES

1. Motoring benefits taxed is far less than actual cost of running vehicle
2. Additional car for top executives

MEDICAL BENEFIT

➤ **Income Tax**

- Only “free” benefit available in Zimbabwe
- Extends to payment of medical aid contribution, and shortfalls.
- Cost is fully deductible in employers hands and exempt in employee’s hands.

➤ **Value Added Tax**

- No benefit arises - supply of medical service.

MEDICAL BENEFIT

Exempt:

- (i) Cost incurred by taxpayers and dependent to obtain medical treatment

- (ii) Employer's contribution to medical aid society

MEDICAL BENEFIT

Tax Credit

- (i) Medical aid society contribution for taxpayer, spouse, minor child;
- (ii) Prescription drugs, nursing home fees for TP, spouse, minor child;
- (iii) Invalid appliance for TP, spouse, child

LOANS

➤ Income Tax

- Deemed benefit: < 5% above Libor rate
- No loan benefit on loans for education/ technical training or medical treatment of employees/ spouse/ child.

➤ VAT

- Supply of a loan is a financial service: -
 - Exempt from VAT

CANTEEN FACILITIES

➤ Income Tax

- Employee taxed on cost to employer
- Cost allowed in full to employer.

➤ VAT

- No VAT benefit accrues to employee.
- No input tax claimed unless the employer recovers cost of meals.

SUBSCRIPTIONS

➤ Income Tax

- No taxable benefit in employer's hands if membership is to further employer's business.

➤ VAT

- No VAT benefit is taxed on employee.
- Employer not allowed to claim input tax.

ENTERTAINMENT

➤ Income Tax

- Employee taxed on amount not expended on employer's business.
- No deduction available to employer

➤ VAT

- Employer not allowed to claim input tax credit.
- No taxable benefit to employee.

INTERNATIONAL TRAVEL

➤ Income Tax

- No taxable benefit to employee if trip is purely on business.
- Employees taxed on portion relating to holiday trip.
- Employer can insist on spouse accompanying husband on business trip to benefit.

➤ VAT

- International travel is zero-rated - no taxable benefit accrues to employee.

USE OF TELEPHONES

➤ Income Tax

- Taxable benefit relates to private calls.
- Reasonable adjustment of the private portion should be acceptable to ZIMRA.

➤ VAT

- Employer pays VAT on the value determined in Income Tax

BONUSES

➤ Income Tax

- Exempt portion \$1,000

➤ VAT

- No VAT payable

CLOTHING

➤ Income Tax

- Cash clothing allowances taxable.
- Staff uniforms not taxable “all financial managers to wear suits”.

➤ VAT

- Where a taxable benefit arises in Income Tax above, this amount is liable to VAT.

COMPANY OWED HOLDINGS FACILITIES

➤ Income Tax

- Nominal rental should be charged by company to avoid taxable benefit.
- Capital allowances can be claimed on movables e.g. boats.

➤ VAT

- VAT is payable on any benefit arising in Income Tax.

INSURANCE - ACCIDENT AND GROUP LIFE

➤ Income Tax

- Premiums deductible in full in employer's hands.
- No taxable benefit in employee's hands.

➤ VAT

- No VAT is payable.

PENSION FUND

➤ Income Tax

- Excess pension contributions not allowable to both employer and employee.
- Maximum allowed is US\$ 1 800.
- Increase employees take home pay by increasing company's contributions to pension fund.

➤ VAT

- No VAT is payable.

PROVISION OF DOMESTIC EMPLOYEES

➤ Income Tax

- Not taxable if employee is protecting employer's gardens.
- Housekeepers: - taxable benefits.

➤ VAT

- Amount deemed to be a benefit in Income Tax is liable to VAT

SECURITY GUARDS

➤ Income Tax

- No taxable benefit if protecting company and house etc.
- Notional benefit to employee

➤ VAT

- Amount deemed to be a benefit in Income Tax above is also liable to VAT

GROSS INCOME

- **Section 8 (1) (f): Disposal of motor vehicle**
 - Deemed benefit = Market Price less Amount paid by employee.
 - No benefit accrues on disposal of vehicle to employee aged 55 years and above.

CAPITAL GAINS TAX PLANNING

CARDINAL RULES

1. Plan ahead
2. Note critical dates :
 - (i) property acquired prior to 1st February 2009,
 - ii) On or after 1st February 2009
3. Always keep receipts

POSSIBLE TAX PLANNING OPTIONS

➤ Capital Gains

- The easiest way to reduce capital gains tax is to ensure that one maintains comprehensive records of all amounts expended on the acquisition of, improvement to and the ultimate disposal of the property.
- If the sale is negotiated close to the end of the tax year, it is advantageous to postpone the sale to the 1st week of the following tax year thereby enjoying a full years inflation allowance.

CAPITAL GAINS TAX (continued)

- Consider option of selling as a fixed asset;
- Consider selling shares in property owning company;
- Advantage of latter option is that : the issue of shares is not liable to CGT.
- Note Sommer Judgement.

CGT Planning ideas

- (i) Roll-over provisions re-principal private residences
- (ii) Disposal of PPR by elderly taxpayer;
- (i) Transfer of specified assets between spouses
- (ii) Transfer of principal private residence

CGT Planning ideas

- (a) Roll-over provisions re business property
- (b) Transfer of business property from an individual to a company under his control

Costs involved

- Professional fees (tax consultant, lawyers, etc)
- Duties on transfer of land and improvements - approximately 5% of value
- Setting up new companies

ESTATE DUTY PLANNING

ESTATE DUTY

Estate duty is a tax levied on the estate or property of a deceased person who was ordinarily resident Zimbabwe. If deemed person was not ordinarily resident in Zimbabwe, estate duty is levied only on property situated in Zimbabwe. The rate to tax is 5% of the dutiable amount of the estate.

ESTATE DUTY

Framework

Gross property (assets)	xxxx
Less deduction	(xxxx)
Dutiable amount	xxxxx

Note the first \$50,000 of dutiable amount is duty free. A person declared to be a national hero is not subject in Estate duty.

AVOIDANCE OF DEATH DUTIES

- Divesting oneself of assets
- Use of Trusts

DIVERSTING ONESELF OF ASSETS

- Donations made within 5 years of death of Donor deemed to belong to donor
- Family Home not subject to estate duty
- Family car not subject to estate duty
- Policy for the payment of estate duty not subject to estate duty

- Use of Trusts

WHAT IS A TRUST?

Arrangement whereby assets are transferred by one person (“the donor”) to another person (“the trustee”) who must administer them for the benefit of a “beneficiary”.

TRUSTS

- It is a taxable entity with trustee as representative taxpayer
- Income is taxes in the hands of the:-
 - Trustee
 - Ascertained beneficiary

TYPES OF TRUSTS

- Inter Vivos Trusts - formed during lifetime of Donor.
- Mortis causa Trusts / Testamentary Trusts - effective on death of donor and funded by assets of estate.



TAX IMPLICATIONS

- CGT is biggest complication to estate planning
- Seek professional advise

STAMP DUTY

STAMP DUTIES

➤ Acquisition of property exempt from stamp duty if

- By a company from the wholly owned subsidiary or
- By the wholly owned subsidiary of a company from the company or
- By the whole owned subsidiary of a company from another wholly owned subsidiary

Note: Duty becomes payable if within ten years the wholly owned subsidiary ceases to be wholly owned by the Company.

Make an election in terms of section 25 (2) (n) of the Finance Act (Chapter 23:04) for property to be transferred without payment of stamp duty.

STAMP DUTIES

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CORPORATE TAX

INCOME TAX (restructuring)

- Where ever possible, reconstruct companies under common control so that profits of successful companies can be offset against those with tax losses.
- There is an unfortunate tendency to form new companies every time a new activity is embarked upon:- establishing a division can be just as tax effective and efficient.

TAX PLANNING - INCOME TAX

If transfer of assets is from Tax Loss Pregnant Company - no need to claim relief of group reconstruction.

Take advantage of Provision for transfer of assets between companies under the same control as part of a group reconstruction.

TAX PLANNING - PREPAYMENTS

- Tax expenditure is deductible in the year of assessment in which it is “incurred”.
- May result in an earlier deductions that arise from the accounting treatment.

TAX PLANNING - DEFERRED INCOME

Take advantage of Section 15(2)(c)(c) to claim future expenditure.

TAX PLANNING - INTERNATIONAL

- Treaty shopping
- Transfer pricing

VAT PLANNING

TAX PLANNING - VAT

- VAT compliance is a critical tool in any VAT planning
- Be aware of common VAT shortfalls

Examples: VAT Shortfall

- Reconciliation: Turnover VAT return to management accounts
- Use of proper Tax Invoices
- Invalid Input Tax claims (entertainment)
- Valid Tax Invoice - 12 months
- VAT on benefits

VAT TAX PLANNING

- Disposal of a business as a going concern
- Ensure that transfer - transfer all VAT registered before transfer.
- Use of Cash Basis to account for VAT

QUESTIONS

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THANK YOU

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DISCLAIMER

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