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TAXMAN CHARGES 200% PENALTY: SERIOUSLY? By Jonathan Hore

Andrew has always had his auditors audit his accounts and they have given him clean audit reports for the past 3 years. Andrew is a serious businessperson who wants things done right, hence he never misses his financial audits. And I must say kudos to this gentleman as he has a positive attitude towards paying taxes. But one thing that Andrew does not know is that his auditors never bring a tax expert with them and so they do surface checks of his tax matters. Unfortunately, Andrew thinks that simply because they are certified auditors, they know it all when it comes to tax.

Coincidentally, the taxman called a couple of weeks ago and appointed to audit Andrew's tax affairs. They actually started the tax audit last week and so far, they have discovered that Andrew did not pay VAT on short-term insurance refunds he received as well as on mobilisation fees. The principal tax bill is a whooping P1m. To Andrews' astonishment, the taxman is proposing to charge penalties of 200% of the P1m, meaning that Andrew's company will part with P3m in total. Damn! How can this happen when he has always had clean financial audits? Let's explore and find out why Andrew is now having to part with millions he never expected. In this article, words importing the masculine shall be deemed to include the feminine.

WHY WOULD THE TAXMAN CHARGE PENALTIES?

The taxman is empowered by the Tax Acts to charge penalties for a number of reasons. I will focus on instances where he charges 200% penalties. This sounds incredibly high and believe you me, it is. So, what is the taxman's motivation in charging these penalties?

Well, the taxman charges penalties simply because the Tax Acts require him to do so. Further, all tax authorities rely on what is called voluntary compliance, meaning that taxpayers should pay the right amount of tax without compulsion from the taxman. When the 200% penalty is charged, it will be like the taxman will be saying, 'I am too busy to monitor the affairs of every taxpayer, so pay the correct amount of tax. If I have to check your affairs and discover that you underpaid or did not pay tax, then I will punish you by charging 200% penalties. The 200% compensates my efforts for having to force you to comply.'

The Tax Acts set out instances where the taxman charges these high 200% penalties, being:

- Where the taxpayer showed negligence and carelessness. A good example is when VAT is not charged on mobilization fees received for services not yet rendered simply because accountants treat that income as not yet earned. However, the taxman treats such amount as subject to VAT on the basis that VAT is accounted for on the earlier of receipt of payment or issuance of an invoice. The fact that the services may be rendered in a subsequent tax year does not vary the VAT treatment.
- Where a taxpayer underpaid or did not pay tax due to a fraudulent scheme and wilful default. This is a planned and known default in paying taxes, such as understating sales.

In the above cases, it is up to the taxpayer to prove that their actions did not amount to negligence, carelessness, fraud or wilful default. So, if you were still shocked that the taxpayer charges 200% penalties, you better believe it because it is real.

CAN I GET THE PENALTIES WAIVED?
The answer is yes, but I must hasten to state that you need a good rebuttal or submission to counter the tax penalties. The taxman wants to maximise the collections he makes from you whilst you want to pay the least possible amount as permitted by the law. Therefore, a 200% penalty is the maximum that the taxman can charge but it is not the final amount. You may actually, depending on your circumstances and provided you obtain professional tax advice, get up to 200% of the penalties waived. Note however, that waiving penalties is the prerogative of BURS.

WHERE TO NOW ANDREW?
Well, Andrew finds himself in between a rock and a hard place. He now has to pay P3m and yet his auditors gave him a clean audit record for the past 3 years. I have met a number of Andrews, I mean disappointed ones. And I must say that your general medical practitioner cannot perform at the same level as your specialist medical practitioner. The same principle applies to tax. An auditor or accountant who is not a tax expert cannot perform at the same level as a tax specialist in as far as tax matters are concerned.

Therefore, most clients find themselves in serious problems when they call a tax consultant to do a tax-health check or when they are audited by BURS as they discover that there were some matters that were not unearthed during a financial audits, due to their complexity. So, I advise taxpayers not to accept audited accounts without a tax specialist’s report as they may simply be signing their jobs or savings away. Andrew should, in the next financial audit insist that a tax specialist be engaged to check his affairs before the audit report is presented, to avoid further 200% penalty charges. Tax penalties chock you and may threaten your business continuity.

Well folks, I hope that was insightful. As Yours Truly says goodbye, remember to pay to Caesar what belongs to him.