

AUCTIONEERS MUST PAY YOU WITHHOLDING TAX! By Jonathan Hore

A number of companies and government departments use auctioneers to help them sell goods through auctions and I have discovered that most of them are not aware that they should instruct their auctioneers to pass withholding tax on commission to them. This issue unfortunately results in the one selling the goods through the auctioneer breaking the tax laws. The laws are broken as the seller (principal) fails to comply with withholding tax on commission provisions. I will endeavour to cover this aspect in today's instalment of the weekly tax articles. In this article, words importing the masculine shall be deemed to include the feminine.

THE AUCTIONEER'S BUSINESS

In most of the auction arrangements, the auctioneer is given the authority to collect the proceeds arising from the auction and then remit the portion that relates to their principal after the auction. As you may know, an auctioneer earns commission, usually a percentage of the value of the goods sold. The experts in this field tell us that the auctioneer passes the commission to the buyer such that the final price is inclusive of the commission. And for your information, I may as well let you know that every auctioneer has to compulsorily register for VAT within 21 days of commencing business. Yes, an auctioneer does not have to wait for the attainment of the P1m annual turnover in order to register for VAT. So, we now know that the final selling price at an auction is inclusive of VAT and commission. However, for the purposes of this article, I will ignore the VAT aspects to keep things as simple as possible.

ENTER TAX ON COMMISSION

With effect from 1 July 2011, the Income Tax Act was amended to introduce a withholding tax on commission, regardless of what sort of commission it is. Every business which pays anyone commission in excess of P36 000 per annum or P3 000 per month is required to deduct and pay withholding tax of 10% from the commission to BURS. The one who pays the tax from BURS is then required to avail a tax certificate to the receiver of commission showing that tax was indeed deducted. So, what is the problem with auctioneers and their clients? Well, keep reading and I will show you the root of the problem.

HOW TAX LAWS ARE BROKEN

Well, withholding taxes are deducted from amounts that a person pays to their payee, including an auctioneer. In most cases, the principal collects the money from his clients and then determines commission that he pays to the agent. So, let's say that Thato (Pty) Ltd sells seeds through Tiro, their agent. Assuming Tiro sells seeds worth P1m for Thato (Pty) Ltd and deposits all proceeds collected into Thato (Pty) Ltd's bank account, then the principal will later pay the agent his commission. So at the end of the month, Thato (Pty) Ltd will determine the commission, say at 15% and Tiro then gets his commission of P 150 000. In such cases, Thato (Pty) Ltd can easily deduct the 10% withholding tax on the P 150 000 commission, being P 15 000 and take it to BURS. I must emphasize that in this case, the principal, Thato (Pty) Ltd has the cash and that makes the deduction of tax easy in such scenarios.

The complexity with auction sales is that the auctioneer, being the agent, is the one who gets to collect the proceeds of the sale and he passes them over to the principal after paying himself his commission. If Tiro was an auctioneer, he would be the one who would have the money and instead of being paid by Thato (Pty) Ltd, he gets to pay the principal. Really? Yes! In such cases, the auctioneer gets to deduct the P 150 000 from the P1m that

he collects, paying over P 850 000 to the principal. That's a completely different arrangement from the one we discussed under the seeds sales above. Auctioneers pay themselves by remitting to their principals the net amounts after taking their commission instead of being paid commission. That is the root of the problem as the principal or seller of goods does not have an opportunity to deduct tax.

LET'S DO THE MATHS

So, we noted from the example above that the auctioneer passes P 850 000 being P1m less P150 000 commission and that is not correct as the withholding tax is ignored. What should happen is that the principal, Thato (Pty) Ltd should instruct Tiro to also pay over 10% tax on the commission, over and above the P 850 000. That would make the total due to Thato (Pty) Ltd P 850 000 plus P 15 000, making it P 865 000. Thato (Pty) Ltd then takes the P 15 000 to BURS as withholding tax on commission and retains the P850 000.

DOES THIS ONLY APPLY TO AUCTIONEERS?

The answer to that is a big NO. This arrangement is also common in the insurance industry where some agents are allowed to collect the insurance premiums and pass them over to the insurers. The same arrangement is also not new in the debt instalment collectors' business who interface the micro-lenders with government employee's payroll. And the list goes on. These business models appear smart from an operational perspective but withholding tax on commission shouldn't be ignored.

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