

NO 3% CONSTRUCTION TAX ON ME, PLEASE! By Jonathan Hore

You may know that there is a 3% tax whenever one pays any person, whether resident or not, amounts in respect of construction contracts in excess of P 5 000. The tax so deducted should be remitted to BURS and the payee gets an ITW 9 certificate as proof of withholding tax. But there are certain instances where one should not deduct the 3% tax and this is the topic of today's article. In this article, words importing the masculine shall be deemed to include the feminine.

Enter construction

Before I get into the details of the circumstances under which the 3% construction contracts tax is not deductible, let me first try to explain what construction contracts are. I typed 'trying' because the Income Tax Act does not define that phrase. A construction contract is any contract where there is actual construction of a building, structure or roads. Examples include the construction of a house, office complex, school, shopping mall, sewerage works, paving and warehouses.

No tax on professionals

The first instance where the 3% tax shall not be deducted is when one is awarded a job exclusively for architectural designs. Look, the 3% tax is to be deducted when someone is being paid for a construction contract. But if you award a person a contract for the exclusive design of a building, are they constructing anything? Certainly not!

The other instance where you shall not deduct the 3% tax is when you are paying exclusively for engineering designs. Well, some of you may know that when buildings are constructed, engineering designs may be needed, especially for the major ones such as shopping complexes. Just like in the case of one who exclusively does architectural designs, you can't deduct tax just for engineering designs.

In the same token, you shall never attempt to deduct the tax in instances where you are paying exclusively for professional services such as quality assurance. There are professionals who are exclusively contracted to monitor the quality of building works and that is all they do. They do not lay their hands on a brick or shovel; not at all. These guys are smart. They are paid for 'watching' others work and all they do is to ensure that the works are to standard. Man, I wish I had a job like that; getting paid for watching others work. Gosh!

But what if the design contract is part of a construction contract, i.e. the person does both the design and the construction? In such cases, you have to deduct the tax as the design is an integral part of the construction contract.

PPADB registrants

You shall also not attempt to deduct the tax from persons who are registered with the PPADB under classes A, B or OC in cases where the construction contracts are not more than P2m. If you are floating a tender or an expression of interest, make sure that you include that statement. It is upon the contractor to provide you with proof that they are so registered.

Individuals

There is nowhere in the world where tax authorities put the liability to deduct taxes on private individuals who are not in business. That will be tantamount to the tax authority shooting itself in the foot as individuals not in business have high tax default rates. If they deduct the tax from you, chances that such tax reaches BURS will be close to nil. This

explains why the Income Tax Act specifically states that other withholding taxes such as withholding tax on rent, for example, should not be deducted by individuals who are not in business. The legislature had already seen the potential loss in revenue that could arise if individuals were allowed to deduct tax. After all, imagine everyone who builds a private house having to queue at BURS every month to pay taxes.

Well folks, I hope that was insightful. I am sure you now know when to say, 'Don't deduct the 3% tax from me, please!'. As Yours Truly says goodbye, remember to pay to Caesar what belongs to him. If you want to join our Tax Whatsapp group or to know about our 9 Tax ebooks, send me a text on the cell number below.