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Postal: P O Box 504899 Gaborone
Physical: Commerce Park, Plot 49, Unit 2
Telephone: 393 9435 / 71 81 58 36
website: www.aupracontax.co.bw

TAX INTEREST MUSTN'T BE CHARGED ON UNEXPECTED PROFITS: By Jonathan Hore

There is a matter which has been the subject of debate for years and that is whether taxpayer's must be charged interest for late-payment of Capital Gains Tax or on profits which rose due to unexpected business events. Well, you wont see the term Capital Gains Tax or CGT in the Income Tax Act as it is referred to as disposal gains. The subject matter of today's article affects a couple of taxpayers, being those who sell assets such as shares or immovable property. It also affects businesses which win high value jobs during the course of a year. I will expand on that matter in detail below. In this article, words importing the masculine shall be deemed to include the feminine.

SAT interest

Companies are required to pay their corporate tax in advance on a quarterly basis, otherwise known as Self-Assessment Tax (SAT). The SAT must be paid in 4 equal instalments with the last one due by the time of submitting the income tax return. A company which will be in its 31 December 2021 financial year is required to pay the taxes by 31 March 2021, 30 June 2021, 30 September 2021 and 31 December 2021. Any payment of an amount less than 20% of the final tax will attract compound monthly interest of 1.5%, which equates to around 20% per annum.

It is critical to state that if a taxpayer in circumstances above sells an immovable property or wins a significant job say in the 3rd quarter, he will be deemed to have underpaid his 1st and 2nd quarter SATs and is penalised for that. Notice here that such person would not have underpaid intentionally but due to circumstances beyond his control.

Despite the fact that he could not control or predict the business transactions, the Income Tax Act empowers BURS to charge interest for late payment of SAT. Regrettably, BURS can only waive P25 000 of such interest if it believes that the amount is irrecoverable.

Interest penalises taxpayers

The levying of interest on instances which the taxpayer cannot control or predict results in him bearing interest which is unproductive and was inevitable. The biggest point in this article is that taxpayers find themselves between the jaws of the law as well as limited powers conferred on BURS.

Regional practices

In the region, tax authorities are allowed to waive the full amount of SAT interest which arises from unforeseen circumstances such as the one described above. Such waivers are premised on the fact that the taxpayer could not control, influence or predict the business transaction, hence he will not be at fault by underpaying the SAT. South Africa, Kenya and Zimbabwe are some of the countries which confer the power to waive full interest to their Commissioner Generals in 'special' circumstances such as the ones described above.

Companies which depend on tenders cannot in any case estimate when they will win the next tender and such reasons must be accepted as just cause for interest waivers.

Further, SAT interest is levied on the disposal of capital assets such as shares or immovable property, items which one does not deal with on a day-to-day basis. As an example, a company which holds shares in a tourism outfit may be forced to offload the shares following an unpredictable business future due to COVID-19. If such disposal is made in the 4th quarter, the business is penalised for quarters 1 to 3.

Possible solution
Whilst interest may be waived by the Ministry of Finance & Economic Development, it would be applaudable to also increase the P25 000 that BURS is allowed to waive to cater for, especially, special circumstances mentioned above. That will go a long way in relieving taxpayers from interest which they could not in any way influence.

Well folks, I hope that was insightful. As Yours Truly says goodbye, remember to pay to Caesar what belongs to him. If you want to join our Tax whatsapp group or know more about our 9 Tax e-books, send me a text on the number below.