aupracon TAX SPECIALISTS
Consulting . Training . Compliance

Postal: P O Box 504899, Gaborone
Physical: Plot 76295 Gaborone North/
205 Independence Avenue
Telephone: 393 9435 / 71 81 58 36
Email: jhore@aupracontax.co.bw

TAX DEFAULTS CAN LINGER BEYOND 8YEARS

Some debts tend to be rescinded or nullified after the lapse of a certain number of years or period. Such debts are technically known as time-barred debts. This term refers to certain amounts which will no longer be legally collectable when a certain period has passed. Ideally, the collection of the debt is dependent on a legally prescribed period i.e., the prescription period. In this respect, the Income Tax Act generally provides a prescription period of 8 years in which every taxpayer is required to retain fiscal records. Accordingly, some taxpayers are inclined to believe that the same prescription period applies to tax debts. However, such assertions are contrary to what is prescribed by the Income Tax Act. As a matter of fact, tax debts can haunt you beyond the 8-year prescription period. Allow us to enlighten you in detail below. In this article, words importing the masculine shall be deemed to include the feminine.

The tax debt

In most cases, taxpayers accumulate debts over a period of time as a result of various factors which may include negligence or wilful neglect. Tax debts usually accrue as a result of failing or forgetting to pay tax, submission of erroneous returns either intentionally or unintentionally. Accordingly, the tax authorities are empowered to levy penalties and interest on outstanding tax liabilities as well as where fraud or intentional manipulation of fiscal records is unearthed. Consequently, such penalties and interest technically form part of the tax debt and the taxman is compelled to recover the same as if it's the principal obligation.

Enter prescription period

As alluded to above, a prescription period is basically a maximum period set by a statute within which a legal action can be enforced. In other words, it is a period in which a statute prohibits any person from taking legal action against a breach of a contract or law. Accordingly, BURS is permitted to make an assessment for any person any time prior to the expiry of four years after the end of the tax year. Simply put, BURS may go back 4 years to determine a tax liability of any person. Additionally, the law permits BURS to extend the initial 4years to 8 years and determine tax where a person has 'misrepresented certain material facts or neglected or failed to disclose such facts; has failed to furnish a tax return; or has furnished an incorrect tax return.' Consequently, this adds up to 8 years in which BURS may go back at collect tax debts. You might be wondering how then BURS is empowered to go beyond 8years to determine and collect long forgotten debts?

8 years and beyond!

As an addition to the 8-year prescription period, the tax laws further provide that BURS may make an assessment for any person at 'any time' where 'fraud or wilful default' has been committed. In other words, BURS may go beyond the 8-year time limit where they suspect fraud or wilful default. Therefore, BURS is inclined to render any omission, error, mistake etc as an intentional breach of the tax law and thereby invoke the same provision. However, the timeless provision is only applicable to any person save for a deceased person. The Income Tax Act provides that an assessment of tax of a deceased person can only be made 'within three years of the end of the tax year in which such person died.' This actually means BURS is precluded from determining any tax liabilities of a deceased person post 3years from the year that individual died.

Conclusion

It is of paramount importance to note that BURS can go beyond 8-years retrospectively, to assess and collect tax for any person. Accordingly, it is key to ensure that one's everyday dealings are properly accorded for tax purposes to avoid tax liabilities in the future.

Well folks, we hope that was insightful. As us the two Yours Truly say goodbye, remember to pay to Caesar what belongs to him. If you want to join our free Tax WhatsApp group or to consult or to know about our 9 Tax e-books, please send us a text on the cell number below.