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GOING CONCERN SALES TRIGGER CGT

The business phenomenon of corporate acquisitions is one aspect that generally triggers complex transactions which in turn brings about various tax quandaries. In the public domain, business acquisitions are usually known to exist among large entities. However, the reality is that such transactions occur across various entities regardless of their size. Usually, companies are acquired as a going concern for various strategic reasons which include seeking economies of scale, diversification, increased synergy, or new niche endeavours. The transaction of disposing a business as a going concern is commonly known for its VAT neutrality if it occurs between VAT registered persons. However, it is vital to note that such a transaction triggers Capital Gains Tax. Allow me to illustrate what the tax laws say on going concern disposals. In this article, words importing the masculine shall be deemed to include the feminine.

Enter going concern

One can sell the shares of a company and that is completely divorced from going concern sales. A going concern sale is simply the sale of the whole business and its assets or part of it without the sale of the shares. For example, a retail giant with branches across the country can decide to sell the Gaborone branch as a going concern, i.e., only that part of the business is sold and the shares remain intact. It is commonly known that for a business to be regarded as a going concern, it must be abele to generate income soon after sale. Using our retail chain as above, once the Gaborone branch is sold, the new owner must be able to run that shop as any other business.

The Law

CGT is levied on the disposal of, among others, 'any property.' That phrase is wide and effectively brings to CGT the disposal of almost anything on which capital allowances cannot be claimed. Therefore, a business is 'any property' which is potentially subject to CGT.

Enter CGT

As alluded to above, a disposal of a going concern involves the transfer of any business capable of separate operation. Additionally, we now know that a business may be disposed as a whole or in part. Therefore, the transfer or disposal of a business or part of a business as a going concern effectively triggers CGT. To put this into perspective, the CGT is determined by looking at the difference between the selling price and what it took to build the business. The quandary that befalls most business-owners is how to determine the cost of building a business or part of a business. It is very easy to determine how much it cost to build a shopping complex from the accounts of any company but it is never easy to tell how much it took to put up a business. However, the professionals in business valuations may easily assist with such cost. Assuming that a business was built at a cost of P3m and it is now valued at P7m at the time of sale, then the capital gain will be P4m, which is then discounted by a statutory 25% to arrive at the taxable capital gain. From our example, the taxable capital gain would then be P3m. If the seller is a business, the CGT is levied at 22% or 30% for resident and non-resident companies, respectively. Individuals are taxed by applying 25% on the excess of the gain over P156 00 adding P13650 to that amount. Lastly, such disposals may

be exempted from CGT if the disposals are triggered by a reconstruc or merger of two or more resident companies. BURS' pre-approval of such transaction is required.

Conclusion

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 to know about our 9 Tax e-books, send me a text on the cell number below.