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PAYE implications of selling assets to employees in Botswana

There is a common saying that ignorance of the law is no defence, and we always remember this when we chat with employers, accountants or tax practitioners about the PAYE implications of selling assets to employees. The interesting aspect is that very few people are aware that selling assets to employees triggers PAYE. We hope that this article will enlighten you on this aspect and help employers minimise tax exposures arising from such sales. In this article, words importing the masculine shall be deemed to include the feminine.

The sales & PAYE

Let's lay the background first. Most employers dispose of assets to employees, when they no longer need them. These disposals are usually done through closed auctions, i.e. where only employees of that particular employer can participate in the auction. Other assets such as laptops are automatically allocated to employees after using them for say 2 or 3 years.

The Income Tax Act provides that an employee is taxable on monetary remuneration as well as on *'advantages'* that he enjoys from employment. An advantage is not defined in the Income Tax Act but it simply refers to some form of benefit that arises from an employment arrangement. You may have heard people talking about 'benefits in kind' or 'free benefits'. That's exactly what we are writing about. Therefore, if an employer sells a car to an employee, the employer should determine its 'market value' and then deduct any payment made by the employee, if any. The market value represents the potential benefit accruing to the employee but any payment made to the employer should be deducted, to arrive at the actual benefit enjoyed. So, if an employee pays P 5 000 for a car whose market value is P 100 000, then the employee suffers tax on the difference of P 95 000. Technically, the P 95 000 should be added to the employee's other remuneration such as salary and taxed in the month in which he enjoys the benefit.

The above is certainly the ideal way of treating such disposals for PAYE purposes but the truth of the matter is that very few employers bother themselves with establishing the market values. In fact, some employers simply give away assets without requiring any payment. Such transactions automatically expose the employer as he is given the responsibility to collect and pay employees' tax. In the case of a BURS' audit, the employer will have to pay any underpaid tax from his pocket, over and above compound monthly interest levied at 1.5% per month. Whilst the employer may later seek recourse by deducting the same the principal tax from the employees, that potentially results in unwanted employer-employee friction and labour disputes.

There are employers who believe that the use of closed auctions is good enough to cover them should they be audited by BURS. Truth be told, a closed auction does not necessarily give you the market value of goods. In fact, it is likely that the prices will be much lower than if an open auction was conducted. Further, as closed auctions are restricted to employees, there are chances that employees may manipulate the prices through negotiations, distorting the prices in the process. In simple, a closed auction is far from giving any employer correct market values to use for tax purposes. Employers should therefore opt for open auctions or obtaining the market value of the assets before concluding the asset sales.

Market value

One of the biggest questions employers ask is how they should determine the market value of the assets being sold. Well, that's not difficult, if one tries. If an employer is selling old vehicles, he could hire a second-hand car dealer or an auctioneer to value the cars. A property valuer can be hired if fixed property is being sold. Likewise, a second-hand laptop dealer can be hired when laptops are being sold. That obviously comes with its pains and costs but it certainly is better than being subjected to a taxman's audit. None of us are friends with the taxman when he comes auditing. He comes to reap, period.

So, that is just an overview of the PAYE implications triggered by asset sales. As an employer, you don't have anything to lose; just collect the PAYE from the employee and remit it to BURS.

Conclusion

Well, folks, we hope that was insightful. As us the only true Yours Truly say goodbye, remember to pay Caesar what belongs to him. If you want to consult, join our free Tax WhatsApp group or to know about our 9 Tax e-books, send a text to +267 7181 5836 or email us at jhore@aupracontax.co.bw. You can read more tax articles on our website, www.aupracontax.co.bw under the 'Tax articles' tab.