

TAX DDs CRITICAL IN BUSINESS ACQUISITIONS

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A Tax Due Diligence (TDD) review is highly recommended and it also appears as a must have, before one acquires any business or shares in a company. If a TDD exercise is not conducted, then business acquisitions may prove to be very costly to the acquirer, tax-wise. Acquiring shares in a business technically means that the acquirer also purchases liabilities of that entity, which include tax owed to BURS. In addition, acquiring a business which is not tax compliant may eventually result in the buyer losing any future profits as they will need to extinguish taxes which were not unearthed before the purchase. We will expand on this matter in further detail in this article.

What is a TDD?

A TDD is a comprehensive tax compliance review exercise which is conducted by a tax consultant on the affairs of any company or business which will be the subject of a sale. As businesses operate, various incomes are subject to different taxes. One of the key taxes which applies to almost all businesses is Corporate Income Tax and that tax is levied on the profits which are made by the impacted business. Further, entities which sell goods and services subject to Value Added Tax also have to comply with that tax. In addition, every employer is required to deduct Pay As Earn (PAYE) from all taxable monetary and non-monetary benefits enjoyed by employees. Companies are also supposed to ensure that other-withholding taxes are deducted and paid to BURS on specified transactions. Lastly, Capital Transfer Tax applies on transactions such as the waiver of interest-bearing loans and free transfer of assets among companies. It is usually advisable for these TDD reviews to cover as many financial years as possible and also to encompass the determination of all current tax liabilities due by the prospective business under sale.

The importance

Therefore, a TDD basically checks whether all the taxes were accounted for as prescribed by the Tax Acts and it grants assurance to the prospective buyer that the business in question does not owe any taxes. If a business owes taxes, the TDD report will then be used to negotiate the price of the business down, where necessary. As stated above, skipping the review process is likely to result in the acquirer purchasing a business which is over-valued or one which will result in onerous tax liabilities after the purchase. Further, acquiring any business without a TDD review may result in the wiping away of future profits as the new owner battles to extinguish taxes owed to the taxman. The new owner may also suffer bad media reports should it become public that they are not tax compliant, especially if audited by BURS immediately after the purchase. Another aspect to consider is the inclusion of a general clause in sale agreements stating that despite the fact that a TDD exercise was conducted, any tax liabilities arising from transactions embarked on by the entity before the sale which may, due to some constraint, not have been picked by the review should be to

the account of the seller. In brief, a TDD may result in a sale not going through and, in most instances, it will inform how the sale agreement will be crafted. By implication, the buyer must not suffer unnecessary taxes due to taxes which arose before the purchase.

Conclusion

We believe that we have unequivocally demonstrated above that a TDD review is a must if one is to avoid throwing money down the drain in business acquisitions. In the event that you intend to embark on a business or share acquisition, it is highly recommended that you get a TDD review done to avoid purchasing a business with undisclosed tax liabilities.

Tax hint: If you have never had a tax audit/review conducted by a tax consultancy firm, contact us today so we can help you fix your tax affairs whilst you still have time.

Contacts: You may contact us at +267 7181 5836 or +267 393 9435 or jhore@aupracontax.co.bw or www.aupracontax.co.bw. If you require to join our free Tax WhatsApp groups or to know more about our 9 Tax e-books, please send us a text/whatsapp on the number above.