Grant Thornton

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E-TAXLINE APRIL 2014

e-taxline

Introduction

The data from the Grant Thornton International Business Report (IBR) recently revealed that an overwhelming majority of respondents – 79% – see SA's tax system as "one which encourages tax compliance", despite not believing that the current tax system brings enough economic participants into the tax base or that our tax policies are geared to stimulate economic growth.

This means that the majority of taxpayers are certainly being put through their paces with the slew of recent tax amendments, changes and proposals that affect almost everyone in one way or another.

One such change recently introduced, relate to the new Employment Tax Incentive (ETI). With the deadline for Employer Reconciliations drawing nearer, those taking advantage of this incentive need to be aware of the additional requirements when submitting the reconciliation.

Another change applies specifically to VAT paid on residential property levies paid to Home Owners Associations. Cliff Watson, Associate Director Grant Thornton Johannesburg explains what the course of action such Home Owners Associations could consider.

In our Transfer Pricing feature, Tax Services Partner at Grant Thornton Johannesburg, AJ Jansen van Nieuwenhuizen looks at the comparability challenge in South African transfer pricing and explains why multinationals should seize the opportunity to proactively determine their transfer pricing position and ensure that they have transfer pricing policies in place.

And finally, in case you missed our e-taxline alert, time is running out to make use of STC credits which will be deemed to be nil on or after 1 April 2015.

Balancing the power

While we aim to remain law-abiding taxpayers, it is also encouraging to note that South Africa's first tax ombud, retired judge Bernard Ngoepe, has officially opened office in April. The tax ombud will provide a remedy for taxpayers who have exhausted SARS' internal complaints resolution mechanisms on problems relating to administrative matters, poor service or if taxpayers' rights are infringed. The introduction of this office is expected to bring a healthy balance between the power of SARS and the power of taxpayers.

Employer Annual Reconciliation and the Employment Tax Incentive

After the flurry of four-day work weeks, time is fast running out to submit Employer Annual Reconciliations (EMP501) to SARS and if applicable, Tax Certificate Cancellation Declarations (EMP601) for the period 1 March 2013 to 28 February 2014.

Those benefiting from the Employment Tax Incentive (ETI) that came into effect on 1 January 2014, must be aware of these changes before submitting their returns:

ETI information must be included in the reconciliation submission

Any amounts claimed for ETI on the EMP201 returns submitted during the year must be included in the spaces provided when completing your annual reconciliation submission.

Take note of the following requirements:

- **Completing the Employer** Reconciliation Declaration (EMP501) Make sure the amounts entered are correct for each month and complete the following:
  - the gross PAYE amount before the ETI deduction.
  - the total actual payments after the ETI deduction.
  - all the information required in the ETI details section. This section is mandatory if you are claiming the incentive.
- **The ETI supporting data must only** be submitted if SARS requests it Until further notice, the ETI supporting data should not be included in the IRP5/IT3(a) file created by payrolls. The ETI supporting data requirements have been listed in Appendix C of the Business Requirement Specification: PAYE Employer Reconciliation (including the Employment Tax Incentive requirements).
- **New source codes [IRP5/IT3(a)]** ETI (4118) – The sum of the ETI amounts calculated (theoretical amounts) for the employee during the year of assessment. The value of this code cannot be a negative. The code 4118 will not be displayed on the employee issued IRP5, it will only be used during submission.

The deadline for submission by employers is 30 May 2014. The Tax Season for Individuals starts on 1 July 2014.

VAT and your residential levies

By Cliff Watson, Associate Tax Director, Grant Thornton Johannesburg

The VAT Act was recently amended and changed the VAT implications of residential property levies paid to Home Owners Associations (HOAs).

The history

People living in residential complexes managed by sectional title body corporates were generally not required to pay VAT on the levies paid, as the services rendered by these body corporates to their members were generally exempted from VAT.
The main reason provided for exempting such services, was that the body corporate paid the collective municipal rates to the municipalities on behalf of the individual members of the sectional title complex and then recovered these amounts individually from the members which would have created a situation where VAT was charged on something that was, at that stage, exempted from VAT (now zero rated).

However, the situation changed in 2006, when sectional title body corporates were no longer obliged to pay over the collective municipal rates of the sectional title owners and the owners paid their individual rates directly to the municipalities. This change did not affect the body corporates' VAT exemption status as it was argued that the service supplied by the sectional title body corporate to the members is not a business enterprise per se, but more a cost sharing arrangement.

As HOAs essentially provided the same services as the sectional title body corporates, an anomaly was created as the services by HOAs were never exempted from VAT. This was due to HOAs never being required to pay the collective municipal rates to municipalities. This anomaly continued until 2013 when the Minister of Finance announced in the budget speech that it would be corrected.

The new VAT treatment

From 1 April 2014 the services by HOAs to any of its members are also be exempt from VAT.

The VAT Act now allows, subject to certain limitations, that any association of persons formed solely for purposes of managing the collective interests of residential property use or ownership of all its members, may exempt the levies charged in respect of expenditure related to the common immovable property of such members, from VAT.

The negative effect of this amendment is that if such an association only supplies these exempt services to its members, the association will be required to deregister as a VAT vendor. This will create a deemed VAT liability payable to SARS on all the assets that are left in the association. SARS does however allow this liability to be paid over a six month period, without any penalties or interest being levied.

The association may however request that the exemption should not apply to it and then choose to remain registered for VAT and charge VAT on the levies recovered from its members.

How will this affect you?

In essence, there should be a decrease in the levies charged by HOAs, which should be passed onto its members. However, with the association no longer being able to claim the VAT on expenses, in addition to the added deemed VAT liability mentioned that may have to be recovered from members, either through a once-off special levy or over time, the benefit of a reduction in the levies may only be felt in the future.

The comparability challenge in South African transfer pricing

By AJ Jansen van Nieuwenhuizen, Tax Partner, Grant Thornton Johannesburg

A key aspect of transfer pricing is the determination of an arm's length or market related price. A common approach is to establish a range of profit margins through benchmarking against comparable companies' financial data and the profit margins that they earn. One of the challenges for taxpayers in South Africa (and other developing countries), is that besides for listed companies, there is very little publicly available company financial data.

The OECD recently produced a paper on "Transfer Pricing Comparability Data and Developing Countries," in response to concerns about the lack of availability and the poor quality of comparable financial data that many developing countries have access to.

The document offers four alternative approaches to addressing these concerns, namely:

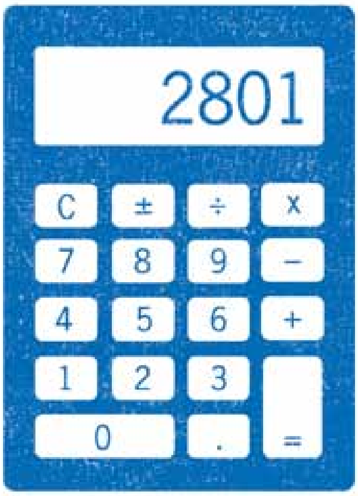
- Expanding access to sources for comparable data;
- More effective use of comparable data sources for and guidance on making adjustments;
- Approaches to reducing reliance on directly comparable data, including the use of safe harbours;
- Advance pricing agreements and mutual agreement proceedings.

The document suggests 15 possible actions within these four approaches, but does note that given the long list of possible actions, there should be some prioritisation of those actions based on country needs and the availability of resources.

Broadly speaking, we feel that the document is a good first attempt to address the comparability issues that are likely to arise over the next few years. As most developing countries do not have mutual agreement proceedings, multinational groups operating in developing countries who have pricing disputes have an increased risk of double taxation due to their relatively limited double tax treaty network – guidance from the OECD to multinational groups and tax authorities alike should be welcomed.

What does this mean for you?

The document should not be considered a relaxation in the transfer pricing approach or level of focus from revenue authorities in developing countries. On the contrary, a more certain environment will create a stronger platform from which revenue authorities can conduct their audit activities. Multinationals should therefore take advantage of the opportunity to proactively determine their transfer pricing position and ensure that they have transfer pricing policies in place, that are both commercial and provide appropriate defence in the case of a query from a revenue authority. We would be pleased to discuss this with you in more detail.



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