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Newsletter

Tax Administration Act Gazette Notice August 2020 Update

Ernst & Young wishes to bring to your attention to Tax Administration Act ("Principal Act") amendments effective 1st August 2020.

A. Amendments to the Principal Act:

(i) Penalty for making false or misleading statement (Section 46)

Section 46 of the Act is amended to provide for more consistent and fairer application of audit penalties. The existing audit penalties are being replaced with a standard penalty at 15% of the tax shortfall.

The penalty rate is to be calculated in the same way as an interest rate as follows:

- (a) in the case of income tax– penalty = $A \times r \times t$ where–
A is the tax shortfall
r is the rate of penalty at 15%
t is the number of years after the year of assessment for the tax return; and
- (b) in any other case– penalty = $A \times r \times t/12$ where–
A is the tax shortfall
r is the rate of penalty at 15%
t is the number of months after the period of assessment for the tax return."

(ii) False or misleading statement penalty (Section 46A)

Section 46A of the Act is amended to provide for more consistent and fairer application of audit penalties. The existing audit penalties are being replaced with a standard penalty at 15% of the tax benefit arising from overstatement. The penalty rate is to be calculated in the same way as that shown in Section 46 amendments to this Act.

- (a) in the case of income tax– penalty = $A \times r \times t$ where–
A is the tax benefit arising from overstatement
r is the rate of penalty at 15%
t is the number of years after the year of assessment for the tax return;
- (b) and in any other case– penalty = $A \times r \times t/12$ where–
A is the tax benefit arising from overstatement
r is the rate of penalty at 15%
t is the number of months after the period of assessment for the tax return."

(iii) Penalty in case of VAT Evasion (Section 46B)

Section 46B of the Act is amended to remove the 300% audit penalty for VAT evasion.

(iv) General provisions to penalty

Section 48(7) of the Act is amended to allow to allow the Chief Executive Officer to also remit, in whole or in part, any penalty payable by a person under section 46 of the Act. This means audit penalties can also be remitted.

(v) Offences by tax agents

Section 116A of the Act is amended to provide for consistency with other penalty provisions in the Act. The revised amendments are as follows;

“. A tax agent who, in his or her capacity as tax agent for a taxpayer, knowingly or recklessly–

- (a) prepares or causes to be prepared any document required to be produced for the purposes of complying with any tax law which is false or misleading in any material particular;
- (b) makes any entry in any document required to be produced for the purposes of complying with any tax law which is false or misleading in any material particular;
- (c) makes in any document produced to a tax officer for the purposes of complying with a tax law any statement which is false or misleading in any material particular or produces or delivers to a tax officer any such document containing any such statement;
- (d) omits from a statement made to a tax officer any matter or thing without which the statement is false or misleading in a material particular; or
- (e) commits an offence and is liable to a fine not exceeding \$50,000 or imprisonment for a term not exceeding 10 years or both.”.

Let us know should you wish to seek clarifications on the issues highlighted.

Our advice is based on the current taxation legislation and our understanding of FRCS's current interpretation of the law. We note however that, it is our experience that the FRCS can be inconsistent in their interpretation of the tax law and we cannot guarantee that the advice will not be challenged. Nor is it possible to guarantee the outcome of such a challenge if it occurs. Should you have any contact from the FRCS in respect of this advice, we recommend that you contact us for advice on how to proceed.

It is also important that you ask us to review any advice already given if a transaction is delayed, or is to be repeated, or if an apparently similar transaction is to be undertaken. Our original advice may no longer be applicable or appropriate in such circumstances.



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