EMPLOYEE SHARE SCHEME IN TANZANIA

For one to understand how the **Employee Share Scheme in Tanzania** is conducted, they have to understand the definition of it, whereby it is a scheme for sharing company profits with employees with the object of conferring on them a participation in the company in the hope of engendering greater commitment from them. Schemes operate either by distributing shares already paid up by the company either directly to the employees themselves or trustees for them or by conferring on employees' options to acquire shares on favorable terms. When an employee exercises his options, it's at the price fixed at the date of grant, i.e. when the options were given to the employee, regardless of the prevailing market price. This however shall not apply to a listed company whose prices, of course, depend and are influenced according to the fluctuations of share prices at the Dar es Salaam Stock Exchange (DSE).

Advantages of Employee Share Scheme in Tanzania

Employee Share Scheme in Tanzania has several beneficial advantages such as

- Remunerate employees in a tax-efficient way
- Compensate for lower salaries and relieve pressure on cash flow
- Increase loyalties and reduce staff return
- Recount and retain key employees.

Setting up of an **Employee Share Scheme in Tanzania is** normally, the employer together with selected trustees create a trust under the Trustees Incorporation Act, Cap 318 R.E 2002. The trust then acquires the company's shares. The employees become the beneficiaries of the trust and the shares are held by the Trust of which the beneficial rights to the employees shall be either; the options and shares (after some time) or mere share options and after some time the shares revert to the company. In either case, the dividends from the shares are distributed to the employees by the trust according to set options exercisable by each particular employee. The employer may decide the manner the shares are treated. For example, the shares can be redeemable, that is, they can be returned to the company after a certain period of time, and after exhaustion of rights to exercise share options. The company can set up how the employees can be eligible to join the trust and how the funds will be distributed.

Whereas when it comes to **Employee Share Scheme in Tanzania** the necessary documents in setting up an employee share scheme employers should always satisfy themselves as regards the internal mandate to formulate such schemes. In the premise the following documents are needed:-

- Employer's internal resolutions for the establishment of the share scheme.
- Trust Deed and Rules.
- Share options certificates for employees.

Henceforth obligations of Trust under the Tanzania law Trust is a person like any other person and being an entity conducting activities it is thus regulated by law. A Trust holding share for the benefit of employees have obligations that make the Trust liable to various accounting and notifications to regulatory bodies. Duties of the Trust include;-

- Filing Tax Returns
- Paying Tax

Liability of Trust and their works when it comes to Tax in the Income Tax Act Cap 322 illustrates that Trusts are provided for under Section 52. The Act specifically states that Trusts are taxable separately from their beneficiaries. This means that the income of the Trust is taxable. Section 52(1) of the Act states that; "….A trust or unit trust shall be liable to tax separately from its beneficiaries and separate calculations of total income shall be made for separate trusts regardless of whether they have the same trustees." But in our opinion, for there is no income that the Trust is receiving in its own person, a Trust formed for purposes of carrying on employees share scheme shall not pay an income. The Trust becomes more or less a conduit pipe for benefits to be enjoyed by employees. However, this shall not waive? The Trust's duty to file returns despite there being no liability to declare.

Tax on dividends is not a duty of the Trust to declare or pay since dividend tax is a final withholding tax and the one issuing the dividends is the one liable to withhold such tax. Hence the Company is liable to pay that tax by withholding 5% of the dividends before it releases the dividends to the Trust. If you look at section 52(2) with section 52(3) (c), read together with section 7(3) (a) of the Income Tax Act, illustrates that the distribution made by Trust are not subjected to Tax. However, the real challenger here is the connection of such distribution with the employment of the employee to the company and as regards the distribution there is none.

However, when it comes to **Employee Share Scheme in Tanzania** the Tanzania Revenue Authority (TRA) has been strictly keen to treat distributions from the Trusts as income from employment in the hands of the employee and hence subject the same to pay as you earn system. The taxing authority has tried to broaden the tax base since TRA has seen this scheme as a tax avoidance method by the entities, and treating the distribution as employment income of employees under share option schemes as an income from employment.