

## **COVID-19:- A BASIS FOR TAX PENALTY WAIVERS: By Jonathan Hore**

The advent of COVID-19 brought so much unexpected disruptions to business as well as normal life. It is almost impossible to numerate the number of negative effects that this pandemic has caused but most businesses have lost revenue, some have folded and many are still trying to figure out whether or not they will survive this menace. It is not in question whether non-compliance with taxes will increase as the pandemic has caused so much havoc to normal operational systems. This may lead to tax penalties as well as tax interest with a direct nexus to the advent of the pandemic. I will analyse why business disruptions caused by COVID-19 is likely to constitute just cause for tax penalty and interest waivers. In this article, words importing the masculine shall be deemed to include the feminine.

### **WHY TAX PENALTIES?**

Most tax laws empower tax authorities to levy tax penalties and interest for various reasons as an incentive to enhance voluntary compliance. If taxpayers were to be given the liberty to choose whether or not to pay taxes, then the taxman would collect virtually nothing. Therefore, tax penalties and interest act as the carrot and stick mechanism where the taxman lashes those who underpay or pay taxes late.

As a general rule, the tax laws levy various penalties for late submission of tax returns and underdeclaration of tax whilst tax interest is charged for late payment of taxes. Tax penalties vary with the tax involved but they may be as high as 100% of principal tax whilst in the extreme circumstances, 200% may be levied. On the other hand, interest is generally levied at 1.5% per month, compounded monthly. On an annual basis, it amounts to 19.56%, which is quite a significant burden to bear.

### **ENTER COVID-19**

With COVID-19, taxpayers who are genuinely incapacitated to comply with taxes may use their particular circumstances as just cause for waiver of tax penalties and interest. Below are some of the reasons which taxpayers may advance for such waivers:

- **Depressed sales:** Low sales arising from lockdowns, border closures, event cancellations, among others, may have negative impact on the cashflows of taxpayers, impeding timeous payments. This may be advanced as just cause for waivers of tax penalties.
- **Restricted movements:** It is common knowledge that most businesses could not operate during the 2 lockdowns that we went through. For most businesses, staff could not access offices, records and at times BURS. Late payment or submission of returns may have therefore arisen due to these challenges.
- **Uncertainty:** Corporates are required to pay income tax in advance, based on estimated profits and failure to do so leads to interest charges. COVID-19 ravaged the world and local economy such that trading projections made before April 2020 are most likely to be revised. However, even if they are revised, it will be very difficult to project how much profits one will make in such dicey economic environments, which may lead to underpayment of corporate tax. Interest waivers may also be requested based on the inability to project projects, due to the pandemic.
- **Other reasons:** The pandemic also affected movement of people from one country to others whilst zonal movements were also restricted movements in-country. Other reasons not mentioned above may also be advanced as the basis of seeking waivers, as the reasons vary per each taxpayer.

**Document events**

Taxpayers must be aware that citing COVID-19 without necessarily documenting how it affected them may lead to rejection of their applications for waivers. It is therefore critical that all circumstances which caused non-compliance be documented in order to build a formidable case which may be acceptable to the authorities. Where possible, taxpayers must communicate with BURS the circumstance they face as they happen and get any letter to be stamped or store emails sent to the taxman, as supporting documentation of events. This will prove handy when one requests for the mentioned waivers.

**Conclusion**

I must conclude by stating that the granting of penalty and interest waivers remains the prerogative of the tax authorities and it is not guaranteed that any submission premised on COVID-19 will be considered. However, it is common knowledge that the pandemic will impact tax compliance, hence it is a good basis for waivers.

Well folks, I hope that was insightful. As Yours Truly says goodbye, remember to pay to Caesar what belongs to him. If you want to join our Tax Whatsapp group, send me a text on the cell number below.