MONTHLY TAX FLASH

SEPTEMBER 2021 ISSUE

HLB TOGETHER WE MAKE IT HAPPEN

TRANSFER PRICING

Documentary requirements for Transfer Pricing (TP)

Transfer Pricing (TP) simply means the pricing of business transactions between associated entities. In international tax the term is used to represent the artificial manipulation of internal prices within a group or between associated entities.

In 2018, the Government gazetted the country's official TP regulations through Statutory Instrument (SI) 24 of 2018. This SI specified the documentary requirements from a transfer pricing perspective. With the SI, Zambia formally introduced transfer pricing regulations and documentation requirements into the Zambian tax law.

Arm's Length Principle (ALP)

Zambia adopted the Arm's Length Principle (ALP) by including the provisions in Section 97A (3) of the Income Tax Act (Act) as well as the publication of the Transfer Pricing Regulations. Zambia's TP rules provide for the application of the ALP to controlled transactions. This means that the results of a controlled transaction should be consistent with the results that would have been realised in a comparable transaction between independent persons dealing under comparable conditions.

Zambia Revenue Authority (ZRA) is empowered to impose transfer pricing adjustments on either income or expense arising from non-arm's length transactions between associated persons that lead to a potential Zambian tax advantage. However, Zambian legislation is unique in that it also encompasses the domestic related-party transactions in as far as they lead to tax differences; and are used for tax avoidance.

Importantly, the applicability of the ALP is independent of the applicability of transfer pricing documentation. Therefore, transfer pricing arrangements of all the taxpayers, irrespective of documentation threshold that are inconsistent with the ALP, will have to be corrected. Additionally, the ALP applies to all types of tax, including profits tax, property tax, and salaries tax. Zambia has a source based income tax system, which is different from the comprehensive income tax regimes of several overseas' tax jurisdictions whereby all the sources of income are aggregated for assessment purposes (resident based).

Transfer Pricing Documentation Requirements

Among the biggest changes in transfer pricing documentation and reporting over the past few years are the maintenance of both master and local files as specified in the Organisation for Economic Co-operation and Development (OECD) Base Erosion and Profit Sharing (BEPS) action items.

Prior to the introduction of BEPS in 2017, the OECD standards were unclear, specifying only that documentation should "reasonably" demonstrate that the arm's length standard was used to establish transfer pricing. Under this subjective standard, some companies provided minimal information to tax authorities, complicating efforts to ensure compliance. In addition, many jurisdictions required primarily documentation related to the local company and thus lacked the context of the parent enterprise's transfer pricing practices.

The OECD's goals in adopting new BEPS guidelines were to increase transparency and standardise the documentation which taxpayers are required to provide to ensure tax authorities have the necessary information to assess transfer pricing policies.

To address these goals, the BEPS guidelines established a three-tiered approach for documenting intercompany transactions, requiring companies to prepare a master file, a local file, and a country-by-country report. This tiered documentation is intended to provide tax authorities in all jurisdictions with the context required to verify compliance.

This standardised approach also seeks to achieve three objectives. The first is for companies to self-assess compliance with the arm's length principle. The second is to provide tax authorities with a means of identifying potentially risky transfer pricing, while the third is to provide them with a specified level of information about the taxpayer in the event of an audit.

Zambia adopted the OECD recommended three-tiered documentation structure, comprising master-file, local-file and country-by-country reporting (CbCR). Previously, Zambia focused only on the local-file and master-file for reporting purposes. The government announced its intention to amend the TP regulations to provide for the implementation of Action Point 13. This amendment came into operation on 1 January 2020 by way of the Income Tax (Transfer Pricing) (Amendment) Regulations, 2020 ("the Zambian CbCR Regulations"). Therefore, Zambia has now fulfilled its CbCR obligation under the Inclusive Framework on BEPS by implementing the CbCR minimum standard in domestic law.

Master File Requirements

The master file provides a global overview of the enterprise's transfer pricing. It includes high level information about the company's global operations and transfer pricing policy. This should provide an overview of the Multinational entities' (MNEs) global business operations.

The master file should include the following:

- Organisational structure
- Geographic locations of operations
- Main value/profit drivers
- Descriptions of business activities of business units (products and services)
- Intangible assets

- Intercompany financing
- Enterprise financials and tax positions

The master file represents an opportunity to explain transfer pricing policy to ZRA. What's most important in preparing the master file, aside from including the required documentation, is avoiding risk. Discrepancies or contradictions between information in the master and local files increase audit risk, so it's critical to make sure the descriptions that are provided in the files are consistent.

Local File Requirements

The local file preparation refers specifically to the material transactions of the local (Zambian) taxpayer. The local file should provide more detailed information relating to specific inter-company transactions. This file helps meet the objective of assuring that the taxpayer has complied with the arm's length principle. The required information includes:

- Management structure of the local entity
- Intracompany transactions executed during the tax year
- Related intercompany agreements
- Transfer pricing methodology and application
- Local entity financials

As already noted, ensuring that the information in the local file is consistent with information in the master file is crucial. Disparities can create audit risks.

Country-By-Country Reporting

Under the Zambian CbCR Regulations, CbCR only applies to MNEs, with business entities in two or more states, with an annual consolidated revenue of exceeding €750 million during the immediately preceding accounting year. The filing requirements under the Zambian CbCR Regulations are applicable to Zambia tax resident entities of MNEs for tax years ending on 31 December 2021 and each subsequent tax year. CbCR provides for the automatic exchange of the CbC reports among tax administrations in jurisdictions in which the MNEs operates.

Compliance

The determination of whether the conditions of a controlled transaction are consistent with the arm's length principle are specified in Section 97A (2) of the Act and the quantum of any adjustment made is pursuant to Section 97A (3) of the Act. Every person who engages in such transaction shall keep the documentation to demonstrate that their measure of assessable income accords with the arm's length principle. This documentation must be in place at the time that the income tax return is filed, and must be submitted to the Commissioner-General within 30 days of a written request being issued by the Commissioner-General.

Dispute resolution mechanism

As jurisdictions, including Zambia, begin to focus on the enforcement of transfer pricing laws and regulations, it could be reasonably anticipated that the result would be more disputes and double tax issues that would need resolution. To ensure elective resolution of these disputes, the regime provides for a statutory dispute resolution mechanism whereby:

- Any taxpayer can present a case to the tax authority and/or arbitration under a relevant tax treaty; and
- ZRA must give effect to any agreement reached with the other tax authority concerned in the course of the Mutual Agreement Procedure (MAP) or arbitration.

It is, therefore, important for Zambian entities to be well-coordinated with its foreign related counterparts, to monitor the issues and progress of each other's transfer pricing audits and to ensure that the concerned tax authority is duly notified. This would help in soliciting their involvement at appropriate moments for speedy and amicable resolution of disputes.

Adjustments

The deadline for applying for corresponding adjustments is not stated in legislation. However the Commissioner General, shall after a request is made by the person resident in Zambia, examine the consistency of that adjustment with the arm's length principle, consulting as necessary with the competent authority of the other country (where the associated entity is a non-resident). If the adjustment proposed or made by the other country is consistent with the arm's length principle both in principle and as regards the amount, the Commissioner General shall make a corresponding adjustment to the amount of the tax charged in Zambia to that person on those profits, in order to eliminate the double taxation that would result from the inclusion of the same profits in the taxable income of both that person and the associated person.

Exclusion from requirement to prepare transfer pricing documentation

Persons that are tax resident in Zambia and not MNEs whose turnover is below K50 million are excluded from the requirement to prepare transfer pricing documentation. This means that an associated business established solely in Zambia with a turnover of below K50 million is not required to prepare and maintain transfer pricing documentation. This is because they are not and do not belong to a multinational enterprise group. However, all the transfer pricing rules other than documentation rules apply to these locally established businesses.

For more information on this article please contact our:

Senior Manager – Tax

Nyasha Nigel Machiri

nyasha@hlb.co.zm

AN OVERVIEW OF DIRECT TAXES IN ZAMBIA

The Zambian Income Tax Act (ITA) is based on the general principle that tax is levied only on income derived from a source within Zambia, or deemed to be within Zambia, meaning that both residents and non-residents of Zambia are taxable on income derived from a source within or deemed to be within Zambia.

Income earned by non-residents is deemed to have been earned in Zambia under the provisions of Section 18 of the ITA. This means that if a foreign entity is paid income from an entity duly registered in Zambia, it will be deemed to have earned that income in Zambia.

Zambia Revenue Authority (ZRA) is the tax collecting authority on behalf of the Zambian Government. Zambia has the following direct taxes:

Personal Income Tax;

Corporate Income Tax;

Property Transfer Tax;

Withholding Tax; and

Presumptive Tax.

Corporate Income Tax

This tax is charged on the income of the business for the year. The standard rate applicable on taxable income of corporate entities is 35%. However special rates are applicable to different sectors as tabulated below:

Agriculture, Agro Processing	10%
Manufacture of chemical, organic fertilizers	15%
Non -traditional Exports	15%
Mining operation	30%
Trusts, deceased or Bankrupt estates	35%
Electronic communication networks or service licences whose income exceeds K250 million.	40%

Personal Income Tax

Under the ITA, Zambia has a source -based system for taxation of income. Income deemed to be from Zambian source is generally subject to Zambian Income tax. Individuals are liable to pay tax on their total earnings (wages, salaries, overtime, leave pay, commission fees, bonuses, gratuities). The rates applicable for 2021 charge year are tabulated below:

Taxable Income (ZMW)	Rate%
Up to 48000	0
48001-57601	25
57602-82802	30
Above 82802	37.5

Turnover Tax

This is a tax charged on business income for all businesses with an annual turnover of K 800,000

Or less. The tax payable will be calculated based on 4% of the total revenue.

Property Transfer Tax

Property includes land, shares issued by a resident or non-resident company, mining rights, and intellectual property such as patents, brands and trademarks. The rate applicable on the transfer of land or shares is 5% on Companies not listed on the Lusaka Securities Exchange (LUSE) and 10% for a mining right. All LUSE listed shares are therefore exempt from PTT

Presumptive Tax

This tax deals with income or activities that are hard to tax. Under this tax, only individuals and partnerships are taxed. Limited companies are excluded.

Withholding Tax

Withholding tax (WHT) is not a tax but a means of collecting that tax. The payer is obliged to withhold the tax and remit to ZRA on or before the due date. The payments on which withholding tax is applicable are as follows:

Category of payment	Rate on payment to Zambian resident	Rate on payment to non-resident
Rental income	10%	10%
Management/Consultancy fee	15%	20%
Royalties	15%	20%
Dividends	15%	20%
Public entertainment fees	0%	20%
Interest	15%	20%
Betting and winnings	20%	20%

NB:

No WHT is payable on interest earned by individuals from savings or deposit accounts held with financial institutions such as banks and building societies.

It should be noted that where a double taxation agreement (DTA) exists between Zambia and another Country, reduced WHT rates are applicable to non-resident payments as per the signed DTAs.

For more information on this article please contact our:

Tax Associate

Natasha Kara

kara@hlb.co.zm


www.hlb.global
TAX
AUDITING
ACCOUNTING
BUSINESS ADVISORY
WE ARE HERE TO HELP
HLB Zambia is an independent member of HLB International, a global network of advisory and accounting firms. One of the largest accounting consortia in the world.
HLB ZAMBIA
E: shuko@hlb.co.zm or lillian@hlb.co.zm
T: +260 955 336 060 or +260 978 989 558
TOGETHER WE MAKE IT HAPPEN

TAX PLANNING

Even on calm seas, a ship's captain rarely relaxes! Instead the captain focuses on potential dangers in nearby waters and scans the horizon for the next change in weather, all the while keeping the ship on course towards its destination. With the dynamic and ever-changing tax laws and regulations in Zambia, taxpayers need to take the same approach to tax planning and compliance. Tax constitutes a high-sounding liability to everyone who is required by law to pay tax and its minimisation is a desirable goal for every entity or individual.

Taxes are the main source of local government revenues. Only without government would there be no taxes, therefore without taxes there would be no government. Benjamin Franklin (1789) once said, "In life there are only two certainties, death and taxes". This is equally true in view of the fact that even after one's death (in the case of natural person) or liquidation (in the case of a legally incorporated company) tax still has to be paid-and it is often said "tax follows you to your grave" In humble terms, we do not have a choice, therefore one must seek professional tax advice in order to manage one's tax affairs.

Tax planning is the art of arranging one's tax affairs in ways that defer or avoid taxes by taking advantage of beneficial provisions in the tax legislation-at the simplest it involves effective utilisation of allowable tax deductions and tax credits. Tax planning at a higher level encompasses many different aspects and it does not mean not paying your taxes, it just means being smart with your earnings. The objective is never to evade tax but to pay as little tax as is legally and ethically possible.

A lot of people fail to understand the importance of tax planning until they make a huge mistake and it costs them a fortune in otherwise avoidable taxes. The idea is to plan ahead so that you do not learn this lesson the hard way. Tax payers (Companies, employees, Individuals in business, Investors etc.) need to pay more attention to tax planning strategies and it requires them to identify tax saving opportunities and at the same time ensure that they strictly comply with relevant provisions of the tax laws. All taxpayers are allowed to arrange their affairs in a manner that remains legal but which minimises their taxation liabilities.

A general visualisation of the tax administration scenario depicts a tug-of-war that exists between the tax payers and the tax authority. On one hand, the tax payers are trying their best to pay the least tax and on the other, the tax administrators have a duty to enforce compliance in a manner that helps them achieve their targets. This creates mistrust between the revenue authority and the taxpayers. In our view this unpopular relationship can be managed for the benefit of both parties by the tax authority through having more interface meetings with the taxpayers. Both the tax authority and the taxpayers should know their rights as enshrined in both the Constitution of Zambia and the tax legislation on matters to do with tax compliance.

It should be mentioned that one cannot talk about tax planning without talking about tax compliance as these are two sides of the same coin. Tax compliance holds a significant position in the tax planning equation, and it refers to the willingness of individuals to act in accordance within the letter and spirit of the tax law and administration without the application of enforcement activity. Tax compliance is one of the simplest strategies to tax planning and every taxpayer ought to comply. Of the common taxes administered by Zambia Revenue Authority (ZRA), employment tax (PAYE), Value Added Tax (VAT) and income tax give the most administration challenges when it comes to compliance.

Tax compliance is a problem that needs attention so much that the partnership between ZRA and taxpayers yield optimal results with a symbiotic relationship and to ensure that the benefits of tax planning are maximised for the benefit of both ZRA and the taxpayers.

The growth of a nation's economy is synonymous with the growth and prosperity of its citizens. In this context, a saving of earnings by legal means fosters the growth of both, because savings by dubious means lead to generation of black money, the evils of which are obvious. Conversely, tax planning measures are aimed at generating white money having a free flow and generating without reservations for the overall progress of the nation. Thus, any legitimate steps taken by a taxpayer directed towards maximising tax benefits, keeping in view the intention of law, will not only of help to taxpayer but also to society. Tax planning assumes a great significance.

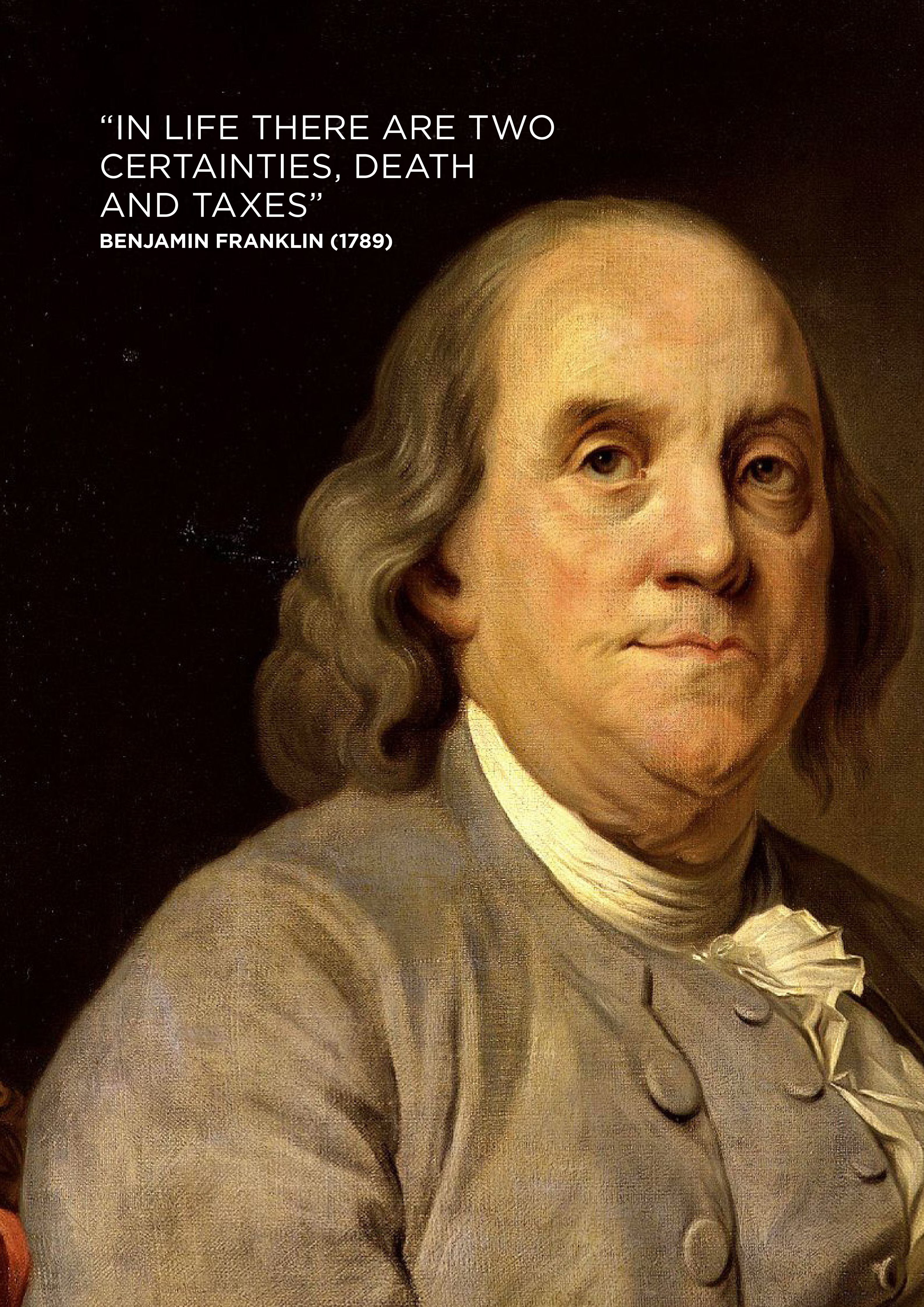
In conclusion, non-compliance results in, sometimes, litigations. It is in this context that a sound tax planning pays returns. When a proper tax planning is adopted within the provisions of law, incidences of litigation are minimised. The fairness of taxation is experienced when all provisions of the law are utilised, that when all deductions and credits available under the tax legislation are exploited within the confines of the tax laws.

For more information on this article please contact our:

Senior Manager - Tax

Nyasha Nigel Machiri

nyasha@hlb.co.zm


“IN LIFE THERE ARE TWO CERTAINTIES, DEATH AND TAXES”
BENJAMIN FRANKLIN (1789)

TAX TEAM

Shuko Ndhlovu, FCCA, FZICA, LLB (UNZA) CMIIA (UK), ACIArB (UK), ACFE (SA)
Managing Partner

Sonkwe Kasonkomona, FCCA, FZICA
Junior Partner

Raymond Hamakuni, MBA – Finance, CIMA, LZICA
Junior Partner

Isaac Daka Siasulwe, ACCA, AZICA
Junior Partner – Tax + Accounting

Nyasha Nigel Machiri, ACCA, CTA
Senior Manager – Tax Services

Cesthwayo Mapala, MAcc, Bcom
Manager – Tax Services

Mwenda Mwenda, ACCA
Assistant Manager – Tax Services

Mtwane Madimbini
Senior Supervisor - Tax Services

Bobby Mambwe
Supervisor – Tax Services

Fair Namakobo
Senior Associate – Tax Services

Trecious Makokwa
Associate – Tax services

Natasha Kara, ACCA
Associate - Tax Services

OUR OFFICES

LUSAKA OFFICE
2nd Floor Saturnia House,
Plot 6392 Dunduza Chisidza Crescent,
Longacres,
Lusaka, Zambia

KITWE OFFICE
Lyness House Unit 1&2
Corner Independence Avenue & Freedom Way 793
Kitwe, Zambia

MKUSHI OFFICE
Plot 73
Hillview Park
Independence Day
Mkushi, Zambia

MALAWI OFFICE
3rd Floor Livingstone Towers,
P.O BOX 1175, Blantyre - Malawi.

BOTSWANA OFFICE
Gaborone - Botswana

660 OFFICES
140 COUNTRIES
20,000 STAFF
SINCE 1969

www.hlb.global

TOGETHER WE MAKE IT HAPPEN

HLB THE GLOBAL ADVISORY AND ACCOUNTING NETWORK

E: shuko@hlb.co.zm or lillian@hlb.co.zm
T: **+260 955 336 060** or **+260 978 980 558**