Grant Thornton

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Tax resilience amid global and local disruption (COVID-19)

The spread of COVID-19 is disrupting businesses around the globe, as well as in Botswana. As the crisis continues, businesses need to be agile in managing the tax effects on their business. While tax filings and payments may already be front of mind, other tax areas require consideration.

Multiple sectors have been impacted with some businesses completely side-lined due to widespread labour and supply chain interruptions. The credit markets are only beginning to see the effects of cash strained borrowers struggling to meet their obligations. Consumer demand has all but evaporated as countries continue to encourage limited interaction to control the spread of the virus. Unemployment is sharply increasing in many places with governments stepping in, and in some cases guaranteeing incomes. Businesses are especially challenged with a complex web of legal and administrative changes happening around the globe. Operating in what was already a complex environment, businesses are now trying to do more with less as the public health situation weighs on the economy. As the crisis continues, businesses need to be agile in managing the tax effects on their business. We have highlighted a few of the areas below that businesses may look to address as they look to be resilient amid the global disruption.

Tax areas for consideration

a) Tax incentives, law changes and stimulus
b) Tax losses
c) Transfer pricing
d) Corporate tax residency
e) Cash tax minimisation
f) Permanent Establishment (PE)
g) Treasury tax matters

Tax incentives, law changes and stimulus

Government have already enacted legislation to help stimulate the economy while providing for crisis response needs or labour concerns. Businesses should be staying abreast of these changes to make sure of timely compliance and the usage of appropriate and applicable changes. Changes to laws have already significantly impacted the legal landscape for taxpayers.

Key questions to now consider include:

- Are you aware of the labour subsidy? Are you eligible for the same?
- Do you have a clear understanding of what you need to do to take advantage of this subsidy?
- Are you compiling and tracking the necessary documentation to avail yourselves of any incentives, if required?

Tax losses

Many companies may incur tax losses in 2020 as a result of the economic downturn. There may be an opportunity to utilise those losses to obtain refunds of tax paid.

Key questions to now consider include:

- Will tax losses arise during 2020?
- Is there any benefit in either filing returns early or shortening the length of an accounting period to more quickly access available tax refunds?

Transfer pricing

As companies adjust their supply chains and business models to meet the demands of the new 'now', transfer pricing (TP) should be top of mind. At a basic level, TP means pricing related party transactions on a basis that is comparable with how you price third party transactions. Changing business models and supply disruptions may alter your company's pricing policy. For example, home working may adjust the duties that workers perform for their employing entity and therefore the TP model of an international business. Wider business changes in these turbulent times may require the same.

Key questions to now consider include:

- Could workers performing functions in new places affect the taxing rights allocated to group companies in the international supply chain?
- Should closed down or temporarily paused operations be remunerated in the same way as when they were operational?
- Should targeted methods of pricing (eg distributor models) be reviewed in these extraordinary times to avoid mismatches of profits and losses?
- If functions are transferred overseas to consolidate business positions, has the transfer pricing impact been considered?
- Have the transfer pricing aspects of treasury matters been considered?

Corporate tax residency

Emergency measures introduced by Governments and altered travel plans may mean that company directors and strategic thinkers may be unable to travel for a prolonged period. That may mean that company board meetings are unable to go ahead with directors being physically present. Where directors or other decision-makers are not in the jurisdiction of tax residency of an entity, this could draw into question the tax residency of the company.

Key questions to now consider include:

- Will ongoing board meetings shift the management and control of a company?
- Could other strategic decisions made separately from home shift the management and control of a company?
- Have Governments or taxing authorities released helpful precedent to reduce this as a risk area?
- Can amendments be made to board members, procedure or attendees to reduce residence risk?

Cash tax minimisation

With the onset of the economic downturn, businesses must immediately re-evaluate any upcoming cash tax payments. BURS have provided for deferment of two tax payments that may occur between April and September to be paid after March 2021. Further, they have also waived payment of training levy for the next six months. More likely, companies bottom lines may be significantly different on a projected basis due to the crisis. Given the importance of liquidity, companies would be smart to immediately inventory upcoming cash tax payments for evaluation.

Key questions to now consider include:

- Do I have a full inventory of upcoming cash tax payments?
- How have the proposed changes impacted my obligation for payments?

Permanent Establishment (PE)

In addition to company directors, many businesses will now have large numbers of workers that do not attend work in their usual office location. This may not create additional tax risk if workers are performing duties within the same taxing jurisdiction or state. However, to the extent that workers are performing their duties from other taxing jurisdictions or states, there is an inherent risk that a company could create a new taxable presence due to those activities.

Key questions to now consider include:

- How can you manage and control employee home-working, with a careful understanding of the location of workers?
- Where there is a need for a worker to be overseas, have you considered their role and responsibilities to determine the level of risk they may create (for example, whether the activities could be deemed preparatory or auxiliary in nature)?
- Have Governments or taxing authorities released helpful precedent to reduce this as a risk area?
- Have you created protocol to manage worker requests?

PE questions may extend further than home working, for example delays to construction or installation projects could create a fixed place of business or installation PE. Adjusted areas of doing business will need to be considered in the round.

Treasury tax matters

As international business reacts to the impact of the disruption, there is likely to be a greater need for cash in certain jurisdictions. Methods to repatriate excess cash or pay intercompany balances may be considered, as well as addressing external cash needs.

Key questions to now consider include:

- Have you contacted your banks for negotiating on various loan repayment?
- Can tax instalments be reduced or eliminated if local legislation permits a rebasing of instalments based on projected income or loss
- Where is there a need for cash, and what strategies could be applied to make best use of group funds?
- If there are distributable reserves available from an accounting perspective, can cash be repatriated? Consideration of participation exemptions and dividend withholding taxes would be required.
- If the terms of intercompany agreements allow for altered payments, have you considered their nature?
- What are the tax implications of altered lender relationships / security arrangements and new loans?
- How are exposures to interest rate and foreign exchange changes being managed?
- Has an altered treasury need changed key calculations relating to thin capitalisation, or other interest deduction restrictions?

For any queries, or to assess the impact of COVID-19 on your organization, please contact our Tax experts Rajesh Narasimhan on (+267) 76 205 478 / rajesh.narasimhan@bw.gt.com, or Rebecca Sanchez on (+267) 77 032 407 / rebecca.sanchez@bw.gt.com