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PKF Accountants & business advisers

Our Ref: PKFTAX/Comp/1962/2015

30 December 2015

The Chairman
Greenpark Water Services Limited
Naivasha

Dear Sir,

GREEN PARK WATER SERVICES LIMITED (GPWSL)
TAX ADVICE ON CURRENT OPERATIONS

Brief profile
We are pleased to advise you on the tax implications on the operations of GPWSL. We understand that GPWSL is a public limited company which is not listed on Nairobi Securities Exchange. It is a management company for the properties owned by the members through the ownership of their respective property shares although the properties themselves are in the name of the company. GPWSL supplies and charges for water to the members. They also recover maintenance and upkeep costs from the members by way of annual cost recovery charges (ACR). The company's only object is to manage the members properties owned through the company and has no profit motive.

Terms of reference
We understand that you would like us to advise you on the tax implications of the company's operation with respect to:

1. VAT applicability on the sale of water to members
2. VAT applicability on ACR charges
3. Corporation tax liability on the company's surplus/profit
4. Treatment of fencing levy from members to build a fence round the estate

Tax implications

VAT
Water to members and ACR
GPWSL gets income from sale of water to the members and for ACR receipts from members. In this respect The VAT Act 2013 stipulates that all supplies are vatable unless expressly exempted under the Act. The Act defines supply as:

Supply of goods:
(a) sale, exchange, or other transfer of the right to dispose of the goods as owner; or
(b) Provision of electricity or thermal gas or water;

Supply of services:
Anything done that is not a supply of goods, including
(a) the performance of services for another person,
(b) the grant, assignment or surrender of any right,
(c) the making available of any facility or advantage,
(d) the tolerance of any situation or refraining from doing of an act.

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It follows from above that all goods and services supplied by a person to another are vatable at 16% unless they are expressly exempted or zero rated under schedule 1 and 2 of the Act. Supply is also not vatable if it does not initially exceed Kshs.5,000,000 per annum. The supply of water by non governmental entities and the supply of ACR are not exempt or zero rated under the schedules and are therefore subject to 16% VAT. We understand that water supply does not exceed Kshs.5,000,000 per annum but when put together with ACR then the threshold is surpassed. GPWSL should have registered for VAT in the month after the threshold was surpassed.

Opinion
GPWSL is therefore liable to pay VAT at 16%, plus penalty of 5% and interest at 2% per month from the time it became registrable to date. It should therefore register for VAT and pay the basic tax. The law allows for application for mitigation of penalties and interest giving reasons why one could not have registered in time. KRA will consider the waiver at their own discretion and waive all of it, a percentage thereon, or decline any waiver. We advice GPWSL to apply for the waiver after the basic tax is paid.

CORPORATION TAX
The Income Tax Act, CAP 470 charges to tax on income that is accrued in or was derived from Kenya after deducting expenses that are incurred wholly and exclusively in the production of that income. The sale of water and the ACR are therefore taxable although in the case of ACR tax will nil off after deducting the costs recovered from members.

If GPWSL has not been paying taxes, then there is tax exposure for each year at the rate of 30% of net income together with late payment penalties of 20% and interest of 2% per month from the time the tax was due to the time it is paid. Taxes become due and payable on quarterly instalments based on the lesser of current year estimated tax or the prior year tax increased by 10%. The balance of the tax that may become payable is due at the end of the fourth month after the year end.

However, Section 21 of the Act stipulates that a body of persons which carries on a members' club shall be deemed not to be taxable if not less than 75% of the gross receipts are from its members. Investment income, i.e, interest, dividends, royalties, rents, other payments for use or occupation of property and capital gains are excluded from the exemption and are taxable even for a members' club.

Opinion
The nature of operation of GPWSL is akin to a members' club and therefore if 75% or more of the gross receipts are from members, then it will not be taxable. Please note that this is not an automatic exemption but the income must be subjected to test every year. It is our advice therefore that GPWSL should take the advantage of club status to get the automatic exemptions as long as it conforms to the above. However it must continue submitting annual tax returns and accounts.

FENCING LEVY COLLECTED FROM MEMBERS
We understand that the levy will be a contribution from members to meet the cost of building a perimeter wall for the estate. In that case since the levy is used to create an asset and not paid for services it is not taxable in the hands of GPWSL.

Opinion

The purpose of the levy is for financing the cost of fence and is therefore not a supply of goods or services. it is therefore not vatable. It is similarly not subject to subject to corporation tax as it is not income earned by GPWSL. However the word levy brings in connotation of service being offered and we suggest it should be worded as contribution for fence erection.

Our advice is based on our understanding that the operations are as stated above otherwise our opinion could change if facts were different. We trust then that our advise has met your requirement but do not hesitate to come back to us if you need more clarification

Yours faithfully
FOR: PKF Taxation Services Limited

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John Thindi
Director

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