



# ROOK CONSULTANTS LIMITED

“Providers of tax, accounting & business advisory services”

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## Rook Consultants' May 2014 Newsletter

### Corporation tax issue – Alternative Minimum Tax for loss making companies

#### 1. Introduction

Welcome to our May 2014 newsletter. This month's newsletter focuses on the issue of alternative minimum tax for loss making companies.

In the 2008 Finance Act, the Income Tax Act was amended to introduce a tax of 0.3% of turnover, on companies making perpetual tax losses. The amendment was to come into effect from January 2009. When the tax was introduced, the then Minister for Finance indicated that the Alternative Minimum Tax (“AMT”) at the rate of 0.3 percent of turnover was to be imposed on corporate entities making a loss for three consecutive years. According to the Minister such corporate entities made commercial profits but due to tax adjustments they recorded losses on account of generous investment incentives that were provided in the legislation including accelerated capital deductions and investment allowances.

It would therefore seem that the initial target for imposing the AMT was for loss making companies that were making tax losses as a result of tax incentives.

#### 2. Current rules in respect of the AMT

There have been a number of changes to the AMT rules culminating in the current position based on the changes made in the Finance Act 2013.

Two substantial changes were made to the AMT rules in the Finance Act 2013. Firstly, reference to the words “attributable to tax incentives” was removed. Secondly, the number of years before the AMT kicks in was increased to 5 years up from 3 years. This means that with effect from July 2013, the AMT is applicable for corporations which have a perpetual unrelieved loss for a year of income and the previous four consecutive years of income.

Whilst the initial rationale for introducing AMT was to tax loss making companies whose loss was as a result of tax incentives, the focus now seems to have been widened to include all tax loss making companies whether benefitting from tax incentives or not.

We therefore hope to offer guidance, in this tax newsletter, on how taxpayers should assess their exposure to AMT rules and how they can go along in complying with the law.

#### 3. Application of the AMT rules

The AMT rules apply to taxpayers falling within the following conditions:

- a) The taxpayer is a corporation

- b) There is a perpetual unrelieved loss status as determined under section 19 of the Income Tax Act (“ITA”); and
- c) The perpetual unrelieved loss must be for the current and four previous years.

Each of the above conditions is discussed below:

**a) Corporation**

Corporation is defined in the ITA to mean “*a company or body corporate established, incorporated or registered under any law in force in the United republic or elsewhere, an unincorporated association or other body of persons, a government, a political subdivision organization of a government, a parastatal organization and a unit trust but excludes a partnership.*”

This implies that companies (whether limited by shares or guarantee), branches of foreign companies, associations, societies etc, will fall under the above definition of corporation.

It is important to note that the ITA specifically exempts from AMT companies conducting agricultural business, or engaged in the provision of health and education.

**b) Perpetual unrelieved loss**

Perpetual unrelieved loss is not defined in the ITA. However, section 19 of the ITA, AMT rules refer to, defines unrelieved loss as “*the amount of a loss that has not been deducted in calculating a person’s income...*”

Loss, in turn is defined as “*... the excess of amounts deducted in calculating the person’s income from the business or investment over amounts included in calculating such income*”.

The above definition of loss clearly refers to a situation where a person’s tax deductions exceed taxable income. It is important to note that the use of the wording unrelieved loss focuses the test on an entity in tax losses, rather than accounting losses.

In addition, section 19 of the ITA provides that unrelieved losses from a previous year are available for deduction against income in the current year. This means that an entity that is in a taxable position for the current year but has losses brought forward, is still defined to be in a loss position given the brought forward tax losses are available for deduction against income, as opposed to a tax credit which offsets a tax liability.

The term “perpetual” is not defined in the ITA but we consider that the term should be interpreted narrowly in light of the limitation of 5 consecutive years before AMT becomes applicable.

**c) AMT to be computed from fifth year of perpetual loss**

The ITA imposes a tax charge of 0.3% on the turnover where a corporation has a perpetual unrelieved loss for the year of income and the four previous years. In 2009, the TRA provided its opinion on this issue through a press release. The press release stated:

*“Therefore, basing on the effective date of this provision, the 1st accounts (by perpetual loss making corporations) that will be considered under this taxation are final accounts for the period ending 31<sup>st</sup> July, 2008. However, the status for such accounts and accounts for the previous two years should all indicate losses. Take note that the first return that will be affected by this new provision is the one that is due for submission on 31st January 2009.”*

The initial amendments to the ITA in respect of AMT came into effect on 1 July 2008. Consequently, the AMT was applicable to years ending after that date. However, according to TRA, they would use factors that relate to periods before 1 July 2008 to determine the application of AMT. We consider that by using conditions preceding the introduction of the AMT, TRA would be applying the law retrospectively. We therefore consider that the applicable years should be commencing 1 January 2009. This means that AMT will start applying for years ending from 31 December 2013.

The AMT is not payable in instalments because it is not covered by the provisions of the ITA dealing with instalment taxes. The AMT should be paid as a final tax at the time of filing the income tax return.

#### 4. About Rook Consultants Limited:

Rook Consultants Limited (Rook) offers a broad range of **tax, accounting** and **business support services** including but not limited to the following:

- Accounting and book keeping services
- Tax services
- Payroll services
- Staff recruitment & out-sourcing
- Customized/in-house and general training programmes
- Company secretarial services
- Other business support services

Rook aims at providing high quality and professional services akin to those offered by the Big4 accounting firms while offering a more client-focused, dedicated, flexible and personalized services.

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