Legal Alert December 2008 Employees Share Acquisition Schemes In Nigeria

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Case Law Update on Dishonoured Cheques Law.

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In the case of ABEKE v. THE STATE (supra), the accused was charged under Section 1 (1)(b) of the Dishonoured Cheques (Offences) Act No. 44 of 1977 with obtaining a credit of N3,300.00 (Three Thousand Three Hundred Naira) by means of a cheque which when presented on due date was dishonoured on the ground that the accused/appellant had no sufficient funds in her account to cover the face value of the cheque. The Supreme Court held that a cheque issued by a drawer and accepted by the drawee serves the dual purpose of (1) documenting the particular transaction and (2) as a medium of payment. The Supreme Court further held that the accused committed a criminal offence under Section 1 (2)(b) of the Dishonoured Cheques (Offences) Act when she issued a cheque in settlement of an obligation, which cheque, when presented less than 3 (three) months afterwards, was returned unpaid. The conviction and sentence of the accused/appellant person by the lower Court was accordingly affirmed and the appeal dismissed for lack of merit.

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Growing competition in business is continually necessitating the development of new methods to motivate and retain the best employees of any corporation. A recurring long-term method of achieving this retention is for a corporation to make its employees part owners in the equity of the corporation.

It is also instructive that most jurisdictions have recognised the benefits of employees share acquisition schemes by providing tax advantages for government approved long term employees share schemes.

While these schemes encourage employee retention and higher motivation to the benefit of the corporation, the schemes also have some disadvantages, like:-

(a) They provide the employees with less immediate dispensable income.

(b) They restrict the free movement of labour as most employees would not want to leave an employment with such a scheme too soon in order not to loose the shares or tax benefits associated with the employee share scheme.

(c) The investment could become a burden or a loss to the employees if the corporation does not make consistent profits over the long term.

Employees Share Schemes Under Nigerian Company Law

Generally, the Companies and Allied Matters Act prohibits a company from providing direct or indirect financial assistance for the acquisition of the company's own shares. Some of the exceptions to this general rule are:

(i) Where it is ordinarily a part of the business of the company to lend money for all kinds of businesses.

(ii) Where the fully paid shares of the company or its holding company are being purchased by trustees of the employees of the company for the benefit of such employees including any directors holding a salaried employment or office in the company.

(iii) Where bona fide employees of the company are given loans to purchase or subscribe for fully paid up shares in the company.

A company that however infringes the general rule that is not covered by the above stated exceptions would be contravening the provisions of the Companies & Allied Matters Act and such a contract by the company would be void. Also, every officer of the company in default of these provisions above stated shall be liable to a fine not exceeding N500.00 (Five Hundred Naira).

Tax Implications of Employees Shares Schemes

There are no special tax provisions regulating employees share schemes in Nigeria other than the provisions of the Personal Income Tax Act (PITA).

PITA subjects all salaries, payments, gains or benefits?in?kind, by employers to employees, to tax. Employers and employees would therefore do well to seek professional advice from their tax consultants and especially from the Federal Board of Inland Revenue Service (FBIRS) and the Joint Tax Board (JTB), on whether there would be any exception(s) to tax for their employees share acquisition scheme particularly as such schemes encourage savings and investments in the long term.

The benefits from employees share schemes could equally be liable to Capital Gains Tax under the Capital Gains Tax Act. A Capital Gain is the credit excess between the cost of acquiring an asset and the cost of transferring or disposing of such asset to another party.

Conclusion.

Employees share schemes are a welcomed incentive to motivate and retain staff. The tax implications of these schemes should be clearly indicated in relevant legislation to encourage more schemes, increase staff retention and specialisation.

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