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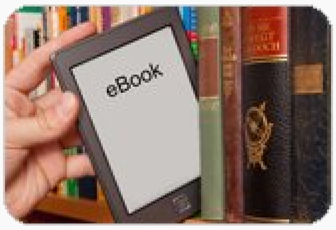
MAY 2014

YOUR E-BOOKS AND MUSIC: MORE EXPENSIVE ON 1 JUNE!



New amendments to Value Added Tax legislation will from 1 June draw foreign suppliers of e-commerce services into the VAT ambit. This means that we will have to pay VAT on items such as e-books and iTunes.

Is it a new tax?

No, in terms of the VAT Act, these transactions have always been taxable. Because these suppliers are not based in South Africa, the onus to pay VAT is on you the consumer – you are supposed to pay SARS the 14% owed on these services. If this is a surprise to you, it is also a surprise to the vast majority of South Africans.

So, to make this tax workable and level the playing fields for local suppliers, the onus to pay VAT has shifted to the foreign suppliers of these services.

What services are taxable?

- Educational services if the service is not regulated by the relevant export country
- Online betting and online games
- Web based auction services
- Music
- E-books and online publications
- Audio visual content including items such as screen savers and photographs
- Online subscriptions.

How will the VAT be collected?

Certain foreign suppliers must register with SARS (if their turnover exceeds R50,000) and be ready by 1 June to begin charging VAT and submitting VAT returns to SARS. In order to lessen the burden on foreign suppliers, they will be allowed to register online and will not be required to open a bank account in South Africa. They will need to issue modified tax invoices and will use the ruling exchange rate on the day the supply is made.

For those of us who make use of e-commerce services this will mean an effective price increase from 1 June.

It should be borne in mind that SARS is merely doing what has become globally accepted practice.

DIRECTORS, MANAGERS: NOT PAYING OVER RETIREMENT CONTRIBUTIONS IS A CRIMINAL OFFENCE

The Companies Act of 2008 and the Consumer Protection Act have pioneered in South Africa models of accountability, transparency and good governance. Government has sought to bring these principles into other sectors of the local economy.

In addition the International Monetary Fund (IMF) and World Bank highlighted matters that need to be addressed within the South African Retirement Industry to bring it in line with global financial regulatory requirements.

To address these issues, the Treasury recently gazetted new legislation, effective from 28 February this year, introducing amendments to the Pensions Fund Act.

Who is liable, and for what?

All business owners and senior managers who are involved in providing retirement funding for their employees should take particular note as the new legislation provides for criminal and civil sanctions if retirement funding is not paid to the appropriate fund.

Every person who is **"regularly involved in the management of the company's overall financial affairs"** is both personally and criminally liable if retirement fund contributions are not paid over.

It is incumbent on the employer to inform the retirement fund who such persons are. Should the employer fail to do so, the directors (if a company) or members (if a close corporation) or "all the persons comprising the governing body of the employer" if not a company or close corporation will be held liable.

The criminal liabilities consist of a fine up to R10 million or 10 years in prison or both. Don't forget there is also personal liability involved for the amounts not paid over.

What to do

If you are not involved in the financial affairs of the business, make sure the retirement fund is notified of the relevant names of financial management. If you are part of the financial management, your risk is increasing. Ensure all controls are in place for the payment of the retirement funds. If your business runs into financial difficulties and cannot meet its obligations, seek advice immediately if retirement funding could be involved.

INVESTOR OPPORTUNITY: VENTURE CAPITAL GETTING A MUCH NEEDED BOOST

Venture capital companies (VCCs) play an important role in assisting small and medium sized (SMEs) businesses to grow. This they do by financing these businesses, usually in exchange for equity in the business. Once the business has shown substantial growth, the VCC sells the equity for a profit.

SMEs are one of the main contributors to job creation and growing the skills base in the economy.

The government has been trying to foster the growth of the VCC market by giving tax incentives to this sector. However, there is much red tape involved in registering with SARS and the incentives given by SARS have not proved attractive to the VCC market. Currently there are only five SARS-approved VCC companies.

VCCs get their primary funding from investors who purchase equity in VCCs expecting to get attractive returns. **As potential investors, readers should keep a close watch on this market as returns could substantially increase when new**

proposed reforms, set out below, take place.

The current position

Investors in VCCs are allowed to write off the cost of their investment upfront. When the investor sells the equity, he or she (it could also be a trust or a company) is subject to tax on the gain made. The purchaser of VCC equity cannot claim a deduction on this. In addition the VCC is subject to capital gains tax when it sells the equity.

In addition, VCCs can only invest in either -

- A junior mining house with a net asset value (NAV) of R50 million or less, or
- An approved business sector with a NAV of R20 million or less – excluded are financial services, banking, gambling, liquor and arms/ammunition (plus the organisation must carry on business in South Africa).

Thus, investors and VCCs feel they are not adequately rewarded for the risk they take (being taxed on their gains), there is no secondary market emerging as onward selling of shares in VCCs attracts no tax benefits, and the NAVs of R20 million for businesses and R50 million for junior mining houses are too low.

Government's response

Finance Minister Gordhan undertook in his budget speech to propose the following legislative amendments -

- Investors in VCCs will incur no tax liability on disposal of their shares if they hold the equity for a number of years (expected to be three to five years),
- VCCs will not have to pay tax on profits when they dispose of their interests in businesses - this will boost their return by 18.67%,
- Qualifying NAVs will be increased to R300 million for junior mining houses and R50 million for qualifying businesses,
- When investors sell equity in VCCs, the new investors will be allowed to deduct tax benefits.

These proposals have been widely welcomed by players in the VCC market who anticipate this will encourage rapid growth in the VCC arena.

BUSINESS 101: GOOD GOVERNANCE IS GOOD BUSINESS

Governance has become a fashionable "buzzword" but when you read how King 3 recommends audit and ethics committees, it all becomes a bit much. Cynics point out that the greatest modern business fraud was perpetrated by Enron, yet Enron ticked every governance box.

So is governance all it's cracked up to be?

What is good governance?

Primarily, it is about **leadership**. In any organisation, people take their cue from their leadership. If the leadership is open, fair and clearly committed to the interests of the business, the rest of the organisation will follow this example. It is in this type of leadership that there is a clear focus and strategy in place. Sustainability is more assured in this type of leadership and let's face it, nothing is as important as long term sustainability.

Open, fair leadership encourages **accountability** – an organisation where people accept responsibility for their actions leads to a culture of trust and learning. It reinforces the open communication philosophy of good leadership. As George

Bernard Shaw once said: *“The single biggest problem with communication is the illusion that it's been accomplished."* Open communication breaks down “the illusion” we too often face.

Contrast this with an organisation where there is no accountability – we see unhealthy lobbying, the blame game and finger pointing.

Finally, there’s **transparency** – all management’s actions are open and visible. For example, all stakeholders get accurate and timeous information when they are consulted, so they can contribute meaningfully to the organisation. In essence, the playing fields are levelled.

A winning culture - it’s not so difficult

When the above principles are followed a winning culture follows. All the structures set out in King 3 are for the larger institutions and government departments. Strong, ethical leadership will lead to good performance in small and medium sized businesses.

Enron – smoke and mirrors

Finally, it is worth remembering that Enron was led by people who are now in prison. Their leadership style was calculated to deceive, the information they put out was too complex to understand and accountability was non-existent. All of their governance structures were nothing but smoke and mirrors. Good leadership alone leads to good governance.

YOUR TAX DEADLINES FOR MAY

The Employer Annual Reconciliation (EMP501) is due on 30 May. This is an important report, so leave yourself plenty of time to get it done.

Have a Great May