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ACCOUNTANTS
& AUDITORS

With Compliments

The 2016 Draft Taxation Laws Amendment Bill and the 2016 Draft Tax Administration Laws Amendment Bill were recently published. They aim to give effect to the tax proposals announced in the 2016 Budget Speech and the 2016 Budget Review.

A new proposed section 7C, 'Loan or Credit Advance to a Trust by a Connected Person' has been included in the 2016 Draft Taxation Laws Amendment Bill. This section affects any person who has made an interest free or low interest loan to a trust (lower interest rate than the official rate), and the person is a connected person to the trust. In summary:

1. The fringe benefit interest rate of income will be deemed in the seller's hands where no interest loan or lower interest rate charged (fringe benefit rate currently 8%)
2. The seller will not be able to claim the interest exemption against the deemed interest income
3. The seller will not be able to donate away the no interest or low interest loans
4. There will be a deemed donation after 3 years of the tax paid by the seller if the seller elects not to recover the tax from the Trust
5. The Trust will have no deduction for the deemed interest that is taxed in the seller's hands.

These are proposals and are subject to change. However, we strongly urge you to address these proposals with your partner ahead of the implementation date of 1 March 2017. We will be reviewing your Trust and Estate planning critically before the implementation date to minimise the impact of these proposals on your tax and asset structures.

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Your Tax Deadlines for August

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August 2016

STARTUPS AND SMALL BUSINESSES: CONSIDER CROWDFUNDING

A novel and effective way of raising finance

It is well known that finance is extremely hard to raise for small and medium sized entities (SMEs). Banks are very conservative and prefer to deal with the larger, more established businesses. The venture capital market is small in South Africa and many SMEs fail due to a lack of finance.



Globally, crowdfunding has taken off and has also been successful locally in the past few years.

What is crowdfunding?

It consists of an online platform that puts investors in touch with any kind of organisation that requires funding – it can for example be a startup business, a one-off project or perhaps an N.G.O. looking for funding.

The online platform tracks how the required funding is being met.

It is best illustrated by looking at a crowd funding portal or two – see examples like [Startme](#) and [Jumpstarter](#) - Google for more.

How do I make use of it?

Many of the funding requests fail and one of the most successful United States platforms has some excellent advice for using a crowdfunding platform:

- You need to have expertise on the web and social media.
- Plan and prepare. This is crucial. You need to have a great strategy for reaching investors. A video is a good tool for this. The video should come from you or a member of the team to communicate your passion and commitment.
- Be transparent, honest and specific. The funding required should be detailed and not general. Thus, if you need R100,000 break this down into discrete amounts e.g. R20,000 for advertising, R20,000 for selling expenses etc.
- Get your friends or colleagues to contribute – launching on a crowdfunding site with some funding already secured is a key success factor. US platforms advise that having 30% secured funding makes a considerable difference to the campaign.

- Use influential people – well known bloggers, for example, can spread the message which can get momentum going
- Always be proactive as being in frequent contact with potential investors will enhance your credibility. Make widespread use of social media platforms – they can be powerful e.g. the recent strike in Zimbabwe was inspired by a social media video.
- Have set time limits for raising the funds. This creates a sense of urgency plus people have limited attention spans. Most sites recommend a one to two month fundraising cycle
- Reward your investors. It doesn't have to be large sums but if you are, say, making a documentary, give investors free copies. If it is for an N.G.O. send funders letters of thanks from the beneficiaries.
- Have a good team in place as planning and executing the campaign are very time intensive
- Always remember that some fund raising simply does not work. However many of the failed efforts have brought benefits as it has taught valuable lessons. In one instance, a business relaunched its campaign with fewer, more simple concepts and was then able to raise their required funding.

Tax issues

There are many tax issues here – for example prepayments can fall into taxable income for the recipient. Speak to your accountant. This has the potential to derail a campaign.

Crowdfunding is up and running – it definitely works. Think about using it.

BREXIT: WHAT DOES IT MEAN TO YOU?

Recently, Great Britain voted in a referendum to leave the European Union (EU). This sent shock waves throughout the world. Where does Brexit leave South Africa which has strong ties to both Britain and the EU? The EU is by far our largest trading partner whilst Britain alone accounts for 4% of our exports and we currently run a R4 billion annual surplus with the United Kingdom.



A global phenomenon at play

To a large degree the vote was a rejection of the status quo and the affluent (London voted overwhelmingly to stay in the EU). This reflects a global backlash against globalisation and income disparities – even the United States is not immune as evidenced by the rise of Donald Trump.

Whilst we often think we are unique in the number of protests in South Africa, we are in line with global trends. China, for example, has over 50,000 protests a year.

New territory

No nation has ever before exited the EU (it has 28 members), so what is going to happen is uncharted territory.

One option being mooted is that Britain will not actually leave the EU – the Westminster Parliament, for example, could vote to remain in Europe. However, new Prime Minister May has clearly ruled this out.

Brexit will be a negotiation between the EU and Britain which is clearly subject to how each party approaches and negotiates the breakup.

There are many scenarios out there, ranging from an amicable settlement whereby Britain remains part of the EU customs union to a complete separation. In between these poles are options where Britain has free access to certain sectors in the EU or has access to the EU market but will need to impose EU tariffs on other trade partners.

The fact that South African markets have largely recovered from the June 23rd vote indicates that financial markets, which tend to look 6 to 12 months ahead, are now more comfortable that South Africa will be able to navigate a favourable solution when the outcome of the Brexit negotiations is known.

But - no one likes uncertainty

There is always the risk that Brexit will not be a smooth process which will make it difficult for South Africa to negotiate a favourable outcome with two extremely important but potentially antagonistic trading partners.

South Africa has one of the most liquid foreign exchange markets of developing nations and has already shown how volatile it is to events such as Brexit. This uncertainty is perhaps the biggest downside of Brexit.

COMPANY DIRECTORS: BEWARE OF THE RISKS WITH RESOLUTIONS

“The devil’s in the detail” (wise old idiom)

The “new” Companies Act (the Act) has some requirements which can easily be overlooked. They may seem to be minor and technical, but not complying with them could expose you to major risks. In our increasingly litigious society, it is important to be thorough.



For example - resolutions must be sequentially numbered

In addition to being dated, resolutions are required to be sequentially numbered. Remember the law now (subject to the Memorandum of Incorporation) allows resolutions to be passed by electronic media which can make it more difficult to keep track of resolutions.

Ensure that your company has put in place such a numbering system. If you outsource your company secretarial function, check that your outsource partner has implemented this requirement.

The danger for directors

The Companies Act includes a general provision that: “Any person who contravenes any provision of this Act is liable to any other person for any loss or damage suffered by that person as a result of that contravention”. You are accordingly exposed to substantial liability and should take cognisance of these and similar provisions, no matter how technical they may seem.

Record how directors vote at meetings or when passing resolutions

Another ancillary point is that it makes sense to record how each director voted on any matter, since directors risk liability for losses to the company arising from any breach of their fiduciary duties or required standards of conduct.

One of the defences available to directors when certain unlawful decisions are taken by the board of directors is to be able to show you voted against the matter. Thus, tabulating how each director voted can quickly establish who was against the decision made. Also remember, some years can pass before directors are sued.

Directors are tasked with overseeing and controlling of companies, so **don't overlook what seem to be small matters – they can come back to haunt you.**

A GOOD NEWS STORY: FARMING IS DOING BETTER THAN WE THINK

One of the stories that underpins the current wave of pessimism around our economy is farming. We read stories about:

- Farmers being murdered and driven off their land.
- The government plans to ban all foreign ownership of land.
- New ways are being sought to make it easier (and cheaper) for the expropriation of agrarian land.
- In the late 1980s there were more than 65,000 white-owned farms. Today there are less than half of that.
- The 2011 agricultural strike led to a 50% rise in the minimum wage rate. This led to the belief there would be increased mechanisation in the farming industry which would result in widespread layoffs of unskilled labour.
- The government acknowledges that the bulk of subsistence farmers settled on formerly white-owned farms have not been viable farmers.



These points are true but they don't reflect the full story of what has in fact happened.

The positives

- Farming output has risen by 40% since 1994

- On the whole South Africa is an exporter of agricultural products (imagine where the currency would be if this wasn't the case)
- Employment in the commercial sector has risen by 250,000 since 2011- from 626,000 to 876,000 earlier this year. This is a 40% increase.
- South African farmers have adapted to the shifts and demands of globalisation and have shown considerable resilience. For example, there has been a drop in the demand for beef but farmers have shifted into other areas such as horticulture
- Farming income doubled between 2007 and 2012
- Just under 1.7 million people make a living from subsistence farming. Add to this the 876,000 working in the commercial sector and you have a significant number of people earning a living on the land.
- Agriculture has a significant multiplier impact on the economy. For every R1 generated economic output will grow by R1.81.

Farmers not only face adverse weather conditions but they get little support from the authorities (in contrast to Western Europe and the United States). Yet they have more than coped with this by growing productivity substantially. This productivity leap has enabled the government to begin the process of transformation (nearly 10% of commercial land has been acquired or just under 8 million hectares) without it seems any harmful economic consequences.

Farmers still confront many challenges – the proposed Expropriation Bill is one example. Yet we can be confident they will weather the storm and continue to be a vital cog in the economy.

THE AXE BEGINS TO FALL FOR THOSE NAMED IN THE PANAMA PAPERS

We live in the age of leaks. The latest is the “Panama Papers” which details how wealthy people and companies have used off-shore accounts to protect and hide their assets from their country's authorities.

1,700 South African names appear in the leaked Panama Papers. In a parliamentary briefing, a SARS official said that 79 Panama companies had been matched to SARS data and it had linked this to 81 South African residents.



Whilst opprobrium has instantly attached to those named, we should recognise that the truth is that the vast majority of transactions associated with the Panama Papers are, in the words of Barack Obama, almost certainly legal schemes.

Where does this leave individuals or companies who have been named?

A new Special Voluntary Disclosure Program (SVDP) commences on 1 October this year. It is likely that South Africans who had set up unlawful structures in Panama were planning to enter the SVDP when it opened in October.

However, where SARS or the Reserve Bank has already notified taxpayers of a pending (or the commencement of) an audit or investigation, such taxpayers cannot use the SVDP.

It is apparent that SARS and the Reserve Bank plan to proceed against taxpayers before October, thus preventing these taxpayers from using the SVDP.

The onus is now on defaulting taxpayers to **take advice now** on approaching SARS and the Reserve Bank as quickly as possible – get to them before they get to you. There is still an existing VDP running and making full disclosure will prevent the risk of being exposed to criminal charges. There will also be a reduction of penalties faced by taxpayers.

Bear in mind also the international treaties entered into by more than 100 nations (commencing in September 2017) which will introduce an automatic sharing of information between the Revenue authorities of these countries.

The leaking of the Panama Papers only underscores that it is becoming increasingly difficult to hide assets by using offshore structures.

YOUR TAX DEADLINES FOR AUGUST

For provisional taxpayers, the first provisional payment for the 2017 tax year is due on 31 August.

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