ACCOUNTANTS & AUDITORS

With Compliments

SECTION 7C – IS YOUR TRUST AFFECTED BY THE NEW TAX LEGISLATION?

The new tax legislation relates to any loan, advance or credit made to a trust, by a natural person or a company that is a connected person to the trust where interest is not charged, or interest is charged at a lower rate than the official rate (currently 7.75% based on the repo rate plus 1%). In terms of Section 7C of the Income Tax Act that came into effect on 01 March 2017, the difference in interest between the official rate and what is charged will be deemed to be a donation made on the last day of the year of assessment of the trust. Donations Tax will be payable at a rate of 20% on the interest differential by the person granting the loan by 31 March of each year.

We are sending further communication to our Trust clients to assist them in managing the tax impact of the new legislation.

Please contact us should you require any assistance.

Regards
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October 2017

RUNNING ON EMPTY: IS OUR DOWNGRADE TO FULL JUNK STATUS COMING?

To date only our Rand denominated debt (about 10% of our total debt) has been classified as junk.

On the 25th of October, the new Minister of Finance will present the Medium Term Budget Framework (MTBF). Ratings agencies will closely watch this and if the Minister does not satisfy these agencies, the country will probably be downgraded to full junk status.

Our local currency debt was downgraded following the removal of Pravin Gordhan and his deputy from Treasury. Gordhan was respected by the rating agencies and he had convinced business leaders to help him lobby these agencies and other offshore financial institutions. This had gone a long way in keeping the country from being downgraded.

The general consensus seems to be that the new Minister of Finance, Malusi Gigaba, has yet to gain the confidence of business and consequently of ratings agencies.

The problem we face

One of then Finance Minister Gordhan's key strengths was that he expressed total opposition to corruption and "state capture". Business leaders have indicated that they are yet to be convinced that Minister Gigaba is as firm on corruption.

In addition, State Owned Companies (SOCs) have sunk further into debt and some like SAA need to be recapitalised (up to R10 billion will be required). Unless strong governance is introduced into these entities, they will continue to be a drag on South Africa's finances (Government guarantees SOCs' debt).

Tax revenue has also dropped and potentially will fall R50 billion short of the target set in the February Budget speech.

How will Minister Gigaba fill a R60 billion hole?

Realistically, there are only two options:

1. Increased tax revenue which can come either from rising economic growth or from increasing taxes. It is well known that economic growth is too low to raise tax revenue – we are just coming out of a recession.

   Increasing taxes is equally difficult. At 45% marginal tax rates, pushing the rate up will almost certainly be counter-productive. Then Finance Minister Gordhan said in February that tax morality and compliance were declining, making it more difficult to raise taxes.

   Treasury has looked to introduce new taxes such as a wealth tax and taxing individuals who work in tax havens. Neither of these is expected to bring in significant revenue.

   Every 1% rise in the VAT rate adds R15 billion to state revenue. Thus, it could raise significant revenue, but this will be seen as a tax on the poor and with elections just over eighteen months away, seems highly unlikely.

2. Cut government expenditure. Salaries already account for half of expenditure but as with increasing VAT, reducing staff is politically sensitive.

The easy cuts in government spend have already been made – travel, conferences etc.

One line Minister Gigaba is pursuing is selling government assets to recapitalise SAA. Another is using the Public Investment Corporation (PIC) which has assets of R1.8 trillion.

Tapping the PIC or selling assets will do the job of covering the R60 billion hole but unless there is serious intent to rein in SOCs, these remedies will have little credibility as we will face the same situation next year.

The day of reckoning

The MTBF looks at government revenue and expenditure over the next three years. This is a comprehensive document of government strategies and assumptions. It sets out in detail where revenue and expenditure will be raised and spent. In effect, the Minister will have to demonstrate to the ratings agencies that South Africa is still committed to a prudent fiscal policy. If the MTBF is not considered credible, we can almost certainly expect swift downgrades to junk status which will leave us all poorer.

YOU NEED INDEPENDENT DIRECTORS, NOT HERD MENTALITY

"Here's to the crazy ones. The misfits. The rebels. The troublemakers. The round pegs in the square holes. The ones who see things differently." (Steve Jobs when he was reinstated as CEO of Apple)

The Companies Act tasks directors to apprise themselves of company activities and make up their own minds as to how decisions should be taken. Strong governance structures should also exist in companies. This spirit of independence and good governance should infuse leadership so that the best interests of the company are safeguarded.

Yet when we look around today, we see State Owned Companies floundering and some multinational heavyweights like KPMG, SAP, McKinsey and Bell Pottinger in serious trouble.

"Surely" you ask "why didn't some of their directors stop these disasters?"

The herd mentality trap

It is human nature to adopt a herd mentality particularly when there is a forceful and strong CEO. That is precisely why the framers of the Companies Act required independent leadership and good governance.

Good governance and leadership consists of demonstrating accountability, honesty, transparency and respect for all staff and stakeholders. You don't need committees and red tape if your business is a small one – your leadership should demonstrate these characteristics.

It also pays to be a good listener as this trait curtails "leadership cults". Encourage your managers and staff to challenge you.

Short term thinking often gets a business into trouble. Listen carefully to your

independent thinkers.

YOU DON'T NEED A FORMAL ENQUIRY TO DISMISS AN EMPLOYEE

> ***"Normally, the employer should conduct an investigation to determine whether there are grounds for dismissal. This does not need to be a formal enquiry. The employer should notify the employee of the allegations using a form and language that the employee can reasonably understand. The employee should be allowed the opportunity to state a case in response to the allegations. The employee should be entitled to a reasonable time to prepare the response and to the assistance of a trade union representative or fellow employee…) (Extract from the "Code of Good Practice: Dismissal")***

Generally we perceive labour law as being very bureaucratic and time consuming but there are instances where this conventional wisdom does not apply.

What does the law say about dismissal?

It says that there must be fairness in terms of both the rationale for dismissal and the procedure followed. Specifically it says that there doesn't have to be a formal enquiry provided the employee is informed of the charge/s and is given an opportunity to state his/her views in response to the allegations.

A recent CCMA determination illustrates this. The employee was arrested by SAPS on criminal charges and detained. The employer had already decided to hold disciplinary proceedings against him on different charges. As there was uncertainty as to when the employee would be released and he held an important position (as a law lecturer), the employer decided to institute disciplinary charges. The employee, through his attorney, was asked on two occasions to provide written reasons as to why he was not guilty of the charges. There was no response from the employee or his attorney and he was dismissed.

The dismissal was upheld as the employer had complied with the "Code of Good Practice: Dismissal" – the employee was given the opportunity to state his position but failed to do so. It couldn't have helped him that he was both legally represented and legally qualified in his own right.

This doesn't always apply

If you have company procedures that require a formal hearing or if there is a trade union involved, then you will need to hold a formal hearing. There will also be other circumstances in which a formal hearing is necessary so **in any doubt take advice on your particular case!** Our labour laws are complex and there are serious consequences for failure to follow them.

Clearly, there are always different circumstances in every case, but this illustrates that if you operate in a fair and impartial manner, you don't always have to go to endless bureaucratic lengths with disciplinary cases.

PAYSLIPS ARE IMPORTANT! A PRACTICAL GUIDE TO GETTING THEM RIGHT

Getting payslips correct for your staff carries legal responsibilities for both you and the staff member. Payslips are of course often used in the public domain, such as for getting bank loans, and so they are a public reflection of your business.

What to look for in a payslip

There are many items to verify and check:

1. The employee's name and job title (if one is specified). The employer's name must be the same as the one the employee contracted with.

2. The salary paid is as per the letter of employment and subsequent annual earnings announcements.

3. Pay careful attention to deductions, particularly tax deductions. If they are incorrect, SARS will look to employees and employers to make good any shortfalls which could attract penalties.

   Good employers will have satisfied themselves that fringe benefits are lawful and will withstand any scrutiny from SARS. Employees should similarly satisfy themselves to avoid paying in extra tax and penalties.

   The UIF deduction is small but can help laid off workers, and should be agreed to Department of Labour tables.

   Bonuses should be tied up to correspondence with the employer.

4. Retirement funding - 27.5% of a salary package is tax deductible. If this is incorrect, it can adversely impact retirement amounts (don't forget the power of compounding over the years). In the event of untimely death, payouts to family members could be affected.

5. Other deductions, such as repayment of loans should be checked against the loan agreement.

6. Garnishee orders. Remember that since September 2016, garnishee orders need to be approved by a Magistrate (no longer a Clerk of the Court) who must be satisfied that the order is fair, equitable and affordable. Ensure the order has been approved and the amount deducted on the payslip is as per the garnishee order.

Getting payslips right will save both you and your employee time and frustration – no one wants to get into after-the-fact arguments with SARS or retirement funders. The employer/employee relationship involves trust on both sides and errors on payslips could jeopardise this.

3 FUTURE 'PEOPLE' TRENDS – BE PREPARED

"Leadership involves finding

a parade and getting in front of it" (John Naisbitt, futurist and author of 'Megatrends')

A recent survey identified three major trends for the next five years -

1. ***Multinationals get stronger***

   If one were to take the top 100 economies in the world and include multinationals (MNs), then 69 of the top 100 would be multinationals. Not only are they stronger than some entire nations but also they exert disproportionate power – think of Facebook. We worry about the power of the state but social media could well be a stronger force.

   The line between work and personal time will get increasingly blurred as MNs consume more of their employees' lives – consider Google where sleepers, restaurants and recreation facilities are provided because employees spend the bulk of their days and nights at Google.

2. ***Specialisation growth spawns closer networks***

   Technology has enabled companies to decentralise activities into areas of specialisation – an iPhone is now produced in different geographical locations depending on cost or skills. Competitive forces will make these networks get closer together and more seamless.

   People will know more about co-workers thousands of kilometres away than they do about their own neighbours and local communities.

3. ***Social networks and the environment will overhaul business***

   Like-minded people can now instantly link up on social media and they are already forming powerful lobby groups. These groups will force corporates to realign their strategies.

   The impact of climate change is happening before our eyes – this will pressure businesses (and people) to conserve vital resources like water and to adopt strategies that will protect the environment. Many of the powerful social media groups are environmental lobby groups.

   This will lead to growth in social capital as corporates are obliged to produce goods and services that enhance the greater good of society.

The future looks increasingly interesting!

TAX DEADLINES FOR OCTOBER

Your EMP501 Interim Employer Reconciliation is due on 31 October.

It pays to begin this early as it is a lengthy exercise and SARS have introduced new income source codes and have updated e@syFile™ Employer which you will need to use when submitting the return.

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