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JANUARY 2013

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frequently be difficult to get all the directors together in one place for a meeting.

The Act makes provision for this. Directors may hold meetings using electronic communication – in other words they could use Skype or any other such technology to hold a meeting. As long as they can all communicate concurrently without an intermediary, the meeting is as if they were all in one room.

Moreover, if an urgent situation arises and it is not possible to hold a full director's meeting, an electronic communication can be held. Thus, directors could pass a resolution by email or make a decision by similar means.

The requirements

Obviously, there are some hurdles to cross. Notice must be given of such meetings – it is worth ensuring you comply with the requirements of notice for meetings. The Electronic Communications and Transactions Act must be complied with – emails, for example, must be identifiable as coming from the relevant director, they must be stored so they can be proven not to be altered, and they must be retrievable. Such meetings cannot be prohibited by the Memorandum of Incorporation (the MOI). As most companies are now in the process of converting their current constitutional documents to the MOI, it is worth ensuring that this is allowed in the MOI.

Similarly, shareholders may make use of electronic communications at their meetings, subject to fulfilling statutory requirements – more or less the same as directors' meetings. In fact, for public companies, the Act requires that the meeting be "reasonably accessible within South Africa for electronic participation by shareholders".

Technology can be used to ensure correct communications and transparent decision-making in a business. It is worth seeing how you can apply these principles to your business.

VAT INPUTS ON PROFESSIONAL MEMBERSHIP DUES - SARS CLAMPS DOWN



Do you pay for your staff's professional memberships? Can you claim the VAT inputs?

Until now, many professional firms have, when paying their staff's annual membership dues to the relevant professional body, been claiming the input

VAT on this expense. *SARS have given notice that this practice will not be allowed as a VAT deduction from 1 January 2013.*

Employers have in the past been allowed to claim the input VAT deduction, subject to certain conditions, in terms of a ruling issued by SARS to the South African Institute of Chartered Accountants (SAICA) at its request, but SARS has now advised that the ruling will only be valid for membership fees charged in respect of the 2012 calendar year and claimed as input tax in or before the December 2012 tax period.

There is an anomaly in the interpretation of the VAT Act in that sole practitioners can deduct their membership fees to a professional organisation but employers cannot. The reason for this is that an input deduction is only allowed in the VAT Act to an employer if the goods or services were purchased by the vendor (employer)

for the purpose of making taxable supplies. As the employer is paying membership dues on behalf of the employee, the key issue is that, although the services are indeed used in the making of taxable supplies, it is *not the vendor (the employer)* that acquires the membership as required by the Act – it is rather *the employee* who acquires the membership. The fact that the employee learns professional skills and is subject to the disciplinary procedures of this professional body means, as SAICA have argued, that employers effectively outsource these functions to the employees' statutory body. If the professional body did not carry out these functions, the employer would have to, and thus the services are "wholly" for the benefit of the employer and should be deductible as a VAT input.

Although therefore a strong case has been made to SARS to allow the VAT deduction in the hands of the employer, from 1 January next year this will no longer be possible.

The position with income tax

However, if employers structure their employees' membership of professional organisations correctly (so that, for example, being a member of the professional body is a condition of employment) the full amount including VAT is deductible for income tax purposes.

Other staff expense VAT inputs

It is a good time to review VAT deductions for other expenses incurred by staff, such as travel expenses. **It is worth making an appointment with your accountant to ensure you have planned for future SARS VAT queries.**

DIESEL REBATES: ARE THEY WORTH APPLYING FOR?



The diesel rebate or refund has been in existence for more than a decade and is claimed as part of the value added tax (VAT) process. It applies to you if you use it for your own "primary production activities" in one of the following business categories:

- Mining on land
- Forestry
- Farming
- Commercial fishing
- Coastwise shipping
- Offshore mining
- National Sea Rescue Institute
- Rail freight
- Electricity generation

In SARS' words it is "to encourage and enable primary production". Depending on your usage, the rebate at 80% of R1.58 per litre of diesel (this is for farming operations) can be substantial.

What is the catch?

For starters, there are many specific requirements to take into account and SARS applies the regulations strictly. **It is definitely worth discussing this with your accountant.**

The rebate is claimed as part of the VAT system, and as many of you will have experienced, SARS has been actively querying and auditing VAT returns, particularly when it comes to refunds. SARS' approach has become increasingly strident and many taxpayers get their credentials queried or are notified of potential 200% penalties. Thus, when you overlay the exacting methodology of the diesel

rebate with SARS already actively querying VAT returns, it can be seen why many taxpayers are wondering if it is worth it.

Another issue that has arisen is that there have reportedly been instances where SARS have asked vendors to not deduct the refund as it is easier if SARS calculates the refund. After the calculation, SARS then pays the refund to the vendor. This is because the SARS VAT system and the Diesel refund system do not “talk” to each other.

What to do

In the case of SARS asking for vendors to allow SARS to calculate the refund, the position is clear. The refunds are governed by the Customs and Excise Act and SARS merely performs the administrative function of processing the claims. In terms of the “VAT 404 Value-Added Tax Guide for Vendors” dated 12 March 2012, Diesel refunds are to be off-set against any VAT liability or increase the amount of any refund due to you. *Thus, taxpayers should deduct the Diesel refund themselves.*

Readers are no doubt like the vast majority of taxpayers – you are law-abiding and pay your taxes. As the rebate can have a positive effect on your cash flow, this is worth pursuing. As mentioned above, **it makes sense to make use of your accountant or tax specialist, especially because, as seen above, SARS do not always get it right.** Your accountants or tax advisers will have better access to SARS, know their way around the process and be familiar with handling the queries SARS will probably throw at you.

FINANCE 101: WHO PAYS TAX? WHERE DO WE STAND GLOBALLY? IS THERE AN INCREASE ON THE CARDS?



SARS recently released their annual tax statistics for 2012 which make for some interesting reading.

33% of taxes come from individuals. This is made up of 6 million taxpayers of whom 1.5 million are below the threshold of submitting tax returns. This is up from 1.7 million taxpayers in 1994. The average rate of tax paid by individuals is 21%. We often hear that South Africa is the most unequal country when it comes to distribution of income, so it is not surprising that 10% of individuals pay 57% of personal income tax.

The next highest category is indirect taxes – VAT (25.7%) and Fuel Levy (4.9%). As this is a consumption tax it is borne by all citizens. Over the past several years, there has been a boom in retail spend driven by black consumers and this confirms that taxation falls on all the people of the country. The fact that taxis contribute substantially to the fuel levy underlines this.

Corporate South Africa pays 20.6% of taxes. This sector has been under pressure since the 2008 global slump and only one in three corporations actually pay tax.

The remainder of tax collections comes from Customs and Excise (4.6%), Secondary Tax on Companies (STC or dividend tax) 3% and then “other” makes up the balance.

How do we compare globally?

On a **corporate basis** we compare reasonably well - our overall average rate is 33% as opposed to 44% globally and 57% for the rest of Africa. This puts us at 59th position out of 179 countries.

On an **individual basis** we are amongst the higher taxed nations – our top rate is 40% whereas the average global maximum rate is 28.9%. As this includes all countries it is perhaps best to compare South Africa to the BRICS (Brazil, Russia, India, China and South Africa) – Russia’s rate is 13%, Brazil’s 27.5%, India’s 30% and China’s 45%. We are still high on this basis.

On the **indirect front**, our VAT rate of 14% is relatively low versus other countries including the BRICS (Brazil 17%, Russia 18%, India 12.5% and China 17%).

Overall

In the past several years, SARS has considerably improved revenue collections. If we look at the three different sectors (corporate, individuals and indirect), we are probably close to global averages. We also know the government will continue to try and improve the lives of the poorer communities – more than 1 million more people to receive social grants, National Health Insurance etc. It looks as though tax increases could therefore be coming - and a VAT increase looks like the most likely option.

YOUR TAX DEADLINES FOR JANUARY

January 31 – Due date for eFiling provisional taxpayers to submit your 2012 income tax return.

Have a Healthy, Happy and Successful 2013!

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