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July 2012

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Many of us have experienced the frustration of applying for a tax clearance certificate only for SARS to inform us, for example, that there is a missing VAT return from 2001 or that the PAYE reconciliation (the EMP501) for 2006 does not balance.

The onus is on us, the taxpayer, to produce the relevant VAT return or EMP501 and prove it was submitted timeously and correctly. In the protracted negotiations that follow, we often find it is easier to double pay, say, the VAT on the missing return than to undergo the time and frustration of proving our case to SARS. Only once we have gone through this pain, are we given a tax clearance certificate by SARS.

What is a tax clearance certificate and why is it so important?

It is a certificate issued by SARS stating that all of our returns are up to date and that we have paid all of the taxes payable to SARS. It is valid for a certain period – usually six months. There is no law governing tax clearance certificates – they are governed by internal SARS policies.

Tax clearance certificates are called for in many circumstances, and are specifically needed for most offshore investments and tenders (particularly for government and local municipality tenders - without a tax clearance certificate businesses cannot be considered for the tender). Thus, for many individuals and entities, tax clearance certificates are crucial.

The High Court lays down the law

The North Gauteng High Court recently handed down a judgment which involved the revoking of a tax clearance certificate by SARS. In this case there were allegations of fraud against a Close Corporation (CC) and a member of the CC. Based on the fraud allegations, SARS withdrew the tax clearance certificate which the CC needed for a tender.

The CC argued that it had not been given the opportunity to rebut these allegations and accordingly the revoking of its tax clearance certificate was unlawful. Judge Wright of the North Gauteng High Court agreed with the CC, which "was entitled to reasonable notice of SARS' intention to call the certificate into question and an opportunity to put its case to SARS." This accords with the fundamental tenet of administrative justice that before a party is prejudiced or penalised, it has the right to state its case. SARS had unilaterally revoked the tax clearance certificate and this action was unlawful.

This should be seen as a significant victory for taxpayers who can expect that SARS will follow proper administration procedure in their future dealings with you.

LABOUR REFORM: PROPOSED CHANGES YOU NEED TO KNOW

There has been much press coverage regarding proposed changes to the Labour Relations Act ("LRA") And the Basic Conditions of Employment Act ("BCEA").

These Acts have been approved by cabinet and now need to go through Parliament and the National Council of Provinces to pass into law. COSATU have been vocal in pushing for these reforms, particularly for bringing an end to labour broking.

The earnings threshold increase (from 1 July)

Firstly, let's look at what has actually come into law. The threshold of the BCEA has been increased from R172,000 to R183,008 per annum. This means that any of your employees who earn less than R183,008 now fall under the BCEA. What does this mean? Employees earning below R183,008 per annum are protected in terms of:

- Maximum working hours per week,
- Allowed time for meals and minimum rest intervals,
- Limits on how much overtime they are permitted to work and increased rates of pay for overtime work plus work on Sundays, and
- Shift allowances and access to transport for night work.

It is worth checking on how many of your employees now fall under the BCEA. It is also worth re-reading any contracts you have entered into with employees to ensure they don't have the above protections by virtue of the wording in their contract e.g. they may have begun working for you at R170,000 per annum and now earn, say, R185,000 per annum. This would put them outside the automatic protections of the BCEA but if their contract stipulated they fall within the BCEA, then contractually they will continue to do so.

New liabilities, new restrictions

Now let's go back to the proposed legislation. What will happen to labour broking?

The main thrust of government's intended amendments is to weaken labour brokers as opposed to COSATU's demand of banning them outright. The legislation aims to protect "vulnerable workers" and achieves this by deeming that workers earning less than R183,008 per annum (the BCEA minimum) will be considered **full time employees** if their contract runs for more than six months at a single place of work.

In terms of section 198 of the LRA, these "vulnerable workers" may institute proceedings against the labour broker or the employer or both parties for any contravention of, amongst others, a collective agreement concluded in a Bargaining Council that regulates terms and conditions of employment or a binding arbitration award that regulates terms and conditions of employment. *In effect, the employer is jointly liable with the labour broker*. There are similar provisions for "vulnerable workers" on fixed term contracts.

Throughout both sets of proposals, there is a tightening up of regulations to prevent employers circumventing the Acts by delaying or appealing against rulings of labour statutory bodies.

In terms of unions, before embarking on strikes, a ballot of members is to be held and a majority of members must vote in favour of the strike. This is mainly to reduce the disorderliness of strikes which has been increasing over the past few years.

The Minister may make sectoral determinations whereby trade unions are allowed to operate in certain sectors. The Minister may also set minimum wages and minimum wage increases in these sectors. The purpose of this is to ensure worker rights in sectors where it is difficult for unions to operate, such as farms. Trade unions may also be allowed organisational rights in certain circumstances – these circumstances would, for example, be where there is a concentration of temporary workers employed by labour brokers.

In summary, the Bills tighten restrictions around employment and time will tell if the economy will benefit from this legislation.

It is worth speaking to an expert to assess the impact on your business.

WHAT PASSWORD DO YOU USE? BEWARE, THE HACKERS ARE WATCHING

Do you use a simple password so it is easy to remember? Do you also use it for all your applications where a password is needed?

The problem with doing this is that passwords get stolen – for example, 6.4 million passwords were stolen recently from Linked-In. When hackers get this sort of windfall, they run these passwords against the most used passwords. When they get a match, they can get into all your programs that have the same password.

So, what are the 10 most used passwords? And what to do about it

1. password
2. 123456
3. 12345678
4. qwerty
5. abc123
6. monkey
7. 1234567
8. letmein
9. trustno1
10. dragon

If you use any of these, change them now!

The other risk is that hackers will use the patterns of the passwords they find to crack the next most obvious generation of passwords.

Use passwords of at least eight characters with mixed numbers and words, some capitals and some signs like # or &. This will give you a strong password which is hard to hack into. Get more tips from Microsoft athttp://www.microsoft.com/security/online-privacy/passwords-create.aspx.

You can also generate a strong password at a site like Symantec's PC Tools – go tohttp://tinyurl.com/2o5yhj.

It is still risky to use this password for all your applications (remember passwords can be stolen), so have different passwords for different sites. If you have several passwords which you know you will not remember, then use a password manager application that will remember your different passwords and can log you on to your various sites.

It is not worth the risk – it's like being mugged and having all your credit cards stolen when your password is hacked.

FINANCE 101: HOW WELL DO YOU MANAGE YOUR DEBTORS?

Have you ever stopped to think how important credit sales are to your business? Consider the process involved in generating one credit sale:

- An order is generated
- The sales person calls on the customer
- It is vetted by credit control
- A stock query is generated and if there is insufficient stock an order is sent to the manufacturing department
- The order is "picked" in the warehouse
- An invoice is made out
- The goods are shipped to the customer
- The credit department follows up to collect the money
- If the customer is not satisfied a credit note may need to be generated

It cuts right across your business and is one of the most important of your processes. Clearly it pays us to ensure these activities work efficiently.

New trends, new risks

During the past few years there have been some interesting trends:

1. Many companies have increased their indebtedness which has resulted in bad debts rising strongly – a look at JSE companies over the past few years bears this out.

2. Technology has increased our turnover base and given us access to

customers around the globe. This has tended to do away with middlemen (such as agents) as we can communicate directly with global customers - this may improve our profitability, but cutting out middlemen exposes us to more risk of bad debts.

3. Finally, global connectedness has raised the possibility of contagion – for example, the collapse of Lehman Brothers in 2008 led to a worldwide liquidity squeeze which affected all businesses around the world.

So, how do you manage your debtors' book? The starting point is to assess your appetite for risk – from this the system for credit control is designed and credit limits per customer are set. Most companies use credit risk agencies and these agencies tell you how much they are prepared to give in insurance cover per customer. Once these limits are in place it makes sense to have a system which vets each order received and tells you if the customer has exceeded the pre-set credit limit. Based on your appetite for risk and your knowledge of your customers, you could allow the order to go through or reduce your risk by, say, asking for a post-dated cheque.

You should never underestimate your understanding of your business and knowledge of the customers you trade with. Credit agencies provide a good guide but you have the experience and understanding of your business.

As our lives get more complicated, it is worth taking a step back to consider how risky is your industry and look at your customers on a more strategic basis - for example one of your large customers may be slightly more risky, in which case, why not offer this customer early settlement discount?

Managing credit is integral to your business. It pays to think through how to manage it to get the best possible results.

Have a great July!

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