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"The difference between tax avoidance and tax evasion is the thickness of a prison wall" (Denis Healey)

Tax avoidance differs from tax evasion in that evasion is against the law whilst avoidance is acceptable to SARS – as one of their Practice Notes states:

"A taxpayer who has carried out a legitimate tax avoidance scheme, i.e. who has arranged his affairs so as to minimise his tax liability, in a manner which does not involve fraud, dishonesty, misrepresentation or other actions designed to mislead the Commissioner, will have met his duties and obligations under the Act...."

What has the practice been?

Prior to some recent court cases, it was accepted that SARS would allow transactions involving tax avoidance if the transactions remained true to the agreement or contract that created them. In addition: -

1. If the primary objective of the transaction was tax avoidance, and
2. If there was some "abnormality" to the transaction, such as it is not being at arm's length or having no commercial substance,

.....then if both of these criteria applied, SARS could attack the transaction. These criteria were instituted by the 2006 amendments to the Income Tax Act.

Thus, I may enter into a transaction which gives me a tax break. If the transaction is in line with my intention, then this is acceptable to SARS, provided my main motive is not the avoidance of tax and, as per requirement 2 above, there is nothing abnormal about it.

SARS has wide powers to attack transactions it deems are not meeting these criteria, such as setting aside the transaction, denying deductions to the parties to the transaction etc.

What are the Courts saying?

Recent judgments have called this interpretation into question. One judge held that if the purpose of a transaction was to avoid tax, then the transaction is "simulated" (i.e. artificial), and the transaction moves from the realm of avoidance to evasion. It is thus liable to be attacked by SARS. If this judgment changes the rules by removing or diluting the requirement for "abnormality" in the transaction, it will considerably strengthen SARS' position. Tax specialists have debated whether this judgement changes what the practice has been. More definitive case law is required which specifically addresses the 2006 amendments.

Be careful!

It is important to be extremely cautious if you are about to embark on a transaction which involves tax savings. Until the issue is resolved as to which interpretation applies, uncertainty will prevail. SARS are already using these judgments to attack transactions.

THE CONSUMER PROTECTION ACT - WHY HAS IT GONE QUIET?



The CPA was launched with much fanfare in March 2011. It heralded powerful new rights for consumers as the CPA is a globally recognised piece of legislation.

What is happening on the ground?

There is strong evidence that the larger retailers are aware of the CPA and act within its parameters.

But more and more we hear stories of smaller retail outlets still having signs saying “No refunds” or “No replacements or repairs”. Yet the CPA stipulates that the consumer has a six month warranty and the consumer (not the supplier) has the choice, if he/she returns defective goods, of -

- Getting a refund, or
- Replacing the product, or
- Having it repaired.

In fact, the CPA has more than forty provisions relating to how potential abuses are to be investigated, moving from conciliation to dispute resolution to summoning abusers, to issuing search warrants and finally to sanction - which could mean a R1 million fine or 10 years’ imprisonment.

Yet, complaints to the NCC (National Consumer Commission), the watchdog for the CPA, have all too often not been responded to.

Power to the people

In South Africa there are 5 million Facebook users and 2.4 million followers on Twitter. Companies tend to respond to complaints in the social media to prevent complaints going viral. That gives consumers a lot of power, and – as the public becomes more aware of its rights - businesses who flout the CPA do so at their peril!

SOCIAL MEDIA: EMPLOYEES AND THE DAMAGE RISK TO YOUR BUSINESS!



We are all familiar with how the Arab spring was fanned by social media and how fast things can go “viral”. If one of your employees makes derogatory comments about you or your business on, say, Facebook, there is a strong possibility (obviously depending on the merits of the case – get proper advice before taking any action!) that labour courts and the CCMA (Commission for Conciliation, Mediation and Arbitration) will uphold your decision to dismiss the employee. Globally, courts are coming to similar conclusions.

Employees: the dismissal danger

Employees often vent their frustrations on social media without realising the possible consequences – the danger is that you can irreparably damage relationships with your employer, leading to your dismissal. You could also find yourself facing a damages claim for defamation.

Employees are entitled to privacy but if you post a comment which you have not sought to keep amongst your network of friends, then the information is in the public domain and your employer could use it against you. Posting comments on your Facebook wall, for example, can be used against you. Further, if you have a Facebook friend who happens to know your employer, then the friend might inform your employer of the content of the posting.

Employers: what you should do

You should put in place a policy which makes clear what is and what is not acceptable. This policy should also allow you to monitor what your employees say about you in the social media (it will also assist you in complying with the Regulation of Interception of Communications and Provision of Communication-related Information Act (RICA)).

In terms of the common law the employee has to act in good faith, show loyalty to the employer and not bring the employer into disrepute. The employee cannot argue there was no policy to stop them making, for example, derogatory comments about you or your business.

If the employee has a grievance, they must take it up with the employer. Thus, it is

sensible to have a grievance procedure or encourage staff to speak to you or their superiors if they have a gripe.

You don't want the hassle and bad publicity of being bad-mouthed in the social media – make sure your staff are aware of the consequences and that you have policies in place to swiftly deal with any contraventions. Finally, appoint one of your managers to monitor what staff are saying about you in the social media.

BUSINESS 101: THE NATIONAL DEVELOPMENT PLAN (NDP) IS NOW OFFICIAL GOVERNMENT POLICY – WHAT DOES IT MEAN FOR US ALL?



The recent ANC conference at Mangaung clarified the socio-economic framework for the next generation. President Zuma proposed that the NDP become official ANC policy, this was ratified by the delegates at the conference, and the Cabinet has endorsed it.

What is the NDP and why is it important to us all?

Announced as a blueprint for eliminating poverty and reducing inequality in South Africa by 2030, it is a document that analyses how to get a united South Africa to a position where there is sustainable economic growth along with improved social harmony in the country.

It has two objectives -

1. To reduce poverty. Currently just under 40% of the population live on R460 per month or less – the aim is to reduce this to 0%.
2. To achieve a Gini coefficient of 60% from the current 69% (the Gini coefficient measures the level of inequality in a nation – see the Wikipedia map http://en.wikipedia.org/wiki/File:GINI_retouched_legend.gif for a graphical representation of how we rank in the World).

Where are we today?

The NDP has a frank assessment of where the country is today - service delivery has failed in many areas, corruption is pervasive, much needs to be done to improve relationships between our various communities, the quality of education available to most black learners needs considerable improvement and unemployment is too high.

What needs to be done?

There is no detailed plan as the NDP rather aims to create a multi-disciplinary framework which will set in motion a cycle of improvement. Thus for example, creating the conditions for sustained economic growth will reduce unemployment, which will increase income levels, which in turn will bring down poverty.

The NDP is as much qualitative as it is quantitative – it aims for leadership from all walks of life, not just politicians. Groups from all walks of life need to get involved to create a participatory, transparent and accountable framework. It recognises that youth unemployment is the biggest risk facing us and proposes a youth subsidy along with reducing rigidity in the labour market and improving productivity.

What are the milestones?

It also sets out “enabling milestones” to ensure the plan remains on track. In the next eighteen years some of these are –

- Employment needs to increase from 13 million today to 24 million in 2030,
- All children are to have at least 2 years’ pre-schooling and by Grade 3 must be able to read and write,
- Reasonably priced high speed internet broadband must be achieved,

- Transport is to be competitively priced and accessible to all citizens, whilst incomes for the poor need to increase from 6% to 10% of national income,
- There needs to be a fair, effective and independent justice system so that we need no longer live in fear of crime.

What are the critical actions required?

Something as over-arching and sweeping as the NDP needs a “social compact” between labour, business and the government. This will enable investment, job creation and the reduction of poverty and inequality. This reminds us of the negotiations in the early 1990s that paved the way to 1994.

There are many other critical actions like improving state capacity, improving infrastructure, education and public health. The private sector should focus on areas where the country is competitive, can develop export markets and strengthen employment. The state is to invest 10% of GDP to infrastructure, professionalise the public service and reduce corruption.

The bottom line

As this is now official policy, it is worth getting to know. What is heartening about the NDP is that it favours pragmatism over competing political ideologies. It is a well researched document rooted in common sense.

TAX CORNER

Phishing scams



SARS has warned taxpayers to be aware of phishing email scams. These emails appear to come from SARS stating you have a refund and asking you to “verify” your banking details. Of course these are aimed at getting access to your bank account so the fraudsters can help themselves to your money!

The SARS website <http://www.sars.gov.za/home.asp?pid=42736> has a helpful article about this including “How to Detect if a Website is Fraudulent”.

New version of e@syFile launched

SARS has released the latest version 6.2.0 of “e@syFile™ Employer”. It is available from the SARS eFiling website <http://downloads.sarsefiling.co.za/easyfilehome/easyfile.html>.

There are also some notes to assist you: the Release Notes for e@syFile™ Employer (Version 6.2.0) at <http://www.sars.gov.za/home.asp?pid=326&toolid=&Page=58>. **Ask your accountant for advice if you have any queries.**

THE BUDGET

We’ll have a look at Budget 2013/14 – and how it will affect you – in next month’s issue.

Have a Great March!

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