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In this Issue

SEPTEMBER 2013

VAT REGISTRATION BLUES – THERE'S LIGHT ON THE HORIZON!

VAT

Registering for Value Added Tax (VAT) has become a slow and frustrating process for taxpayers with more and more documentation and proof required by SARS. The reason given for this by SARS is the amount of fraud and abuse that crept into the registration system where taxpayers would get large upfront VAT refunds.

The recently published Taxation Laws Amendment Bill, 2013 ("TLAB"), shows a compromise by Government aimed on the one hand at allowing the free flow of commerce but on the other hand at blocking abuse of the VAT system. New legislation (to be effective 1 January 2014) will amend VAT registration as follows:

Compulsory registration

This caters for the normal VAT registration where a vendor makes more than R1 million taxable supplies in a twelve month period – this criterion remains. Up to now vendors who **expect to** make R1 million in taxable supplies were also obliged to register. This has been amended to vendors who have a **contractual written obligation** to make R1 million supplies in the next 12 months. In essence, SARS have added certainty into compulsory registration and this will materially reduce workload for SARS, reduce disputes with taxpayers and speed up the registration process.

Traditional Registration

Organisations like municipalities and non-governmental organisations may still continue to register for VAT. SARS have added to this category businesses which have incurred R5 million in expenditure (for example mines which often have large upfront capital expenditure) in the previous 12 months. Refunds for expenditure incurred will be given to this category and no threshold tests will be required by SARS.

Voluntary registration

SARS intends scrapping the section allowing vendors who have made R50,000 in taxable sales in their past 12 months of trading to register voluntarily.

SARS will allow a "fast track approach" whereby businesses may register and will not be required to pass any threshold tests. However, they will not receive refunds until they have made R100,000 in turnover (taxable supplies) in a continuous 12 month period. In this period deductions will be allowed to the extent they equate to taxable supplies made. This is the area where SARS is most at risk and hence the new regulations.

SARS will reserve the right to de-register any businesses that do not make R100,000 in taxable supplies in any 12 month period during the 24 months after the entity has registered for VAT.

The bottom line

Thus, the system should work faster and SARS will be able to reduce abuse and fraud. The only downside is for businesses that incur expenditure up front. Typically, these are entities that win a tender and need to spend upfront money to be able to supply the tender. They will lose cash flow, as their refunds will only come as their sales increase.

Note that interested parties, such as SAICA, are still lobbying Government and there may be further amendments before the Bill becomes law.

LABOUR BROKING – IS IT DEAD OR ALIVE?

In recent times there has been much debate as to the future of labour broking. The unions want to see it banned and sections of Government have been sympathetic to union arguments. Legislation, hostile to business broking, has just been passed by parliament (no commencement date has however been set at date of writing). Is the end in sight for business broking?

Labour broking has been popular with business as it circumvents many of the most onerous aspects of labour legislation for employers. You need to keep a close eye on this - your cost structure and the way you employ staff could be affected by this legislation.

Why do unions want to stop labour broking?

Labour brokers take on the employment risks for their clients. Thus, labour is employed by the broker and outsourced to the client. In the event that an employee is dismissed, the broker indemnifies the client against any liability and handles any CCMA hearings and picks up the cost (if any) relating to the dismissal. The client can get on with his business and is not side-tracked by South Africa's labour laws. Labour broking is often seen when there are seasonal demands for labour, such as the surge in hospitality entertainment over the festive season.

Employees of labour brokers do not have the same rights as full employees of a business and the unions have long argued that this is an unfair labour practice.

The legislation is aimed at workers who are subject to the protections of the Basic Conditions of Employment Act (BCEA). People earning less than R193,805 per annum are guaranteed a maximum number of working hours per week, leave and sick leave entitlement, lunch and tea breaks etc. The vast majority of labour broker employees are within the BCEA threshold and work for a client for more than three months.

The legislation makes any employees of labour brokers into full time employees of the client if they work three months or more for the client. In effect, the rationale for labour brokers will, in principle at least, fall away as the labour broker’s employees become employees of the client.

This legislation’s impact is compounded by allowing the employee to declare a dispute with either the client, or the labour broker, or both. Clearly labour broking will suffer a potentially mortal blow.

Is there a way out?

People employed as independent contractors fall outside the ambit of the legislation. It may thus be feasible for labour brokers to employ labour as independent contractors and to sub-contract this labour to the client. It is vital that this be a proper arm’s length contract, so take advice from an expert if you consider doing this.

Labour broking has been a target of the unions since the late 1990s - don't be surprised if labour broking stays as part of the economic landscape in one form or another.

RETIREMENT 101 - HOW PROPOSED LEGISLATION WILL CHANGE THE LANDSCAPE

We have looked at various aspects of retirement planning and it is important we look at how the Government intends altering the retirement industry from 2015.

The proposals will affect all your planning so take them into account now.

The reasons given for the proposed changes are mainly -

- The need to simplify the industry. As we have seen there are different outcomes for pension funds, provident funds and retirement annuities.

- The desire by Government to bring more fairness into retirement. There is no current cap on the amounts that can be deducted for tax purposes which give the affluent an advantage over lower income individuals. Government proposes that this be capped at R350,000 per annum in tax deductions allowable.

What will the new legislation look like?

- ***Contributions to retirement funds***

  All retirement contributions will be treated identically and each individual will be allowed to deduct 27.5% of their taxable income or remuneration, whichever is higher. There will be no benefit from employers making a contribution on your behalf as this will be taxed as a fringe benefit. Currently, employers are allowed to deduct 20% of your remuneration to a pension or provident fund – in future there will be no limit set.

  As indicated above, the maximum deduction allowable will be R350,000 per year. Any amounts not allowable in the applicable tax year can be carried over to future years. In general this will benefit most taxpayers as the majority of taxpayers are not currently getting a 27.5% deduction on retirement contributions. High income earners however will lose out to the extent that their current retirement deductions exceed R350,000 per annum. This is due to the proposed cap of R350,000 to be allowed on retirement funding contributions.

- ***Lump sum pay-outs and pension annuities***

  One area that will be addressed immediately is that you will be allowed to deduct contributions not allowed on annuities. For example, you may have carried over contributions to retirement which were not allowed. Currently, you can only deduct non-allowable contributions against lump-sums – from 1 March 2014 you will be able to do this on annuities you receive as part of your retirement.

  The aim of the legislation will be to harmonise the different products and thus with provident funds you will also be required to take out an annuity of ⅔ of the value of the fund (currently you can take out the full amount of a provident fund). Note that the new provident fund rule will apply only to contributions made after the law becomes effective – in other words no change to contributions made up to that point.

- ***Preservation of Funds***

  One aspect that has disturbed Government thinking is the amount of lump-sum pay-outs before retirement. For example, suppose you change jobs at age 40 and cash in your pension fund capital amount. This is a widespread practice but clearly is not good for savings or retirement. Legislation plans to ensure that you will only be able to withdraw 10% of these lump sums per annum. Again this will only apply to amounts generated after the legislation is passed.

- ***Costs and governance***

  These are also a focus of the proposed legislation. You are no doubt aware how costs can eat into your pension pay-out and Government intends opening up living annuities to other entities like unit trusts. This will encourage competition and should bring down costs. Another aspect is to enforce proper governance in these funds and prevent trustees from having conflicts of interest such as selling annuities to members of the fund.

  All in all, these proposals will improve the likelihood of more people retiring with adequate savings. Take them into account in all your retirement planning.

YOUR TAX DEADLINES FOR SEPTEMBER

- Remember that if you are going to submit your income tax return manually, it needs to be in by close of business on 27 September.
- Employer Interim Reconciliation season begins from September and your EMP 501 must be submitted by end October. As there are penalties if the return does not reconcile, it is worth working on it as early as possible.

Have a great September!

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