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Middle Managers – They're Vital to Your Success!

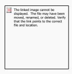
- *As in sport …*
- *… so in business*

Groundhog Day with SARS for Deceased Estates: Expect Delays

- *Taxing the estate and a problem for SARS*
- *The new position*

December 2017

MIDDLE MANAGERS – THEY'RE VITAL TO YOUR SUCCESS!



"The conductor of an orchestra doesn't make a sound. He depends, for his power, on his ability to make other people powerful" (Benjamin Zander, Conductor and author of "The Art of Possibility")

It is generally accepted that the most successful companies have visionary leaders, with good and empowered middle management to implement this vision. Yet conventional wisdom looks down on middle management – they are often associated with bloated bureaucracy where nothing much happens.

As the famous quote goes "I was appointed to middle management; I didn't know I could sink so low". In fact, most middle managers won't admit that they are middle managers – invariably a distribution manager will say he runs distribution.

As in sport …

Most people know that José Mourinho is the Manager of Manchester United. Similarly, Lionel Messi is celebrated as the great star of

- *But it gets worse*

Are You Part of a Product Supply Chain? Beware the CPA

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from the captain unless he happens to also be the star player.

Yet when we look at teams that often win tight matches, they invariably have a good captain. The captain makes sure the game plan is adhered to, makes key decisions (like kicking for touch or going for poles) and he or she is the one who inspires the team when the game gets tough.

… so in business

70% of middle managers say they have no or very little input into strategy and 80% feel undervalued by senior management. They are the ones though who interpret the vision and on a day to day basis make this vision a reality. They are also the conduit between the workforce and senior management.

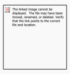
Middle management are the "captains" of business. They have access to key information before senior management – for example they can douse a potentially dangerous situation by defusing conflict before it escalates. When a policy runs into practical difficulties, they can fine-tune it to be successfully implemented.

Once senior management have set out the objectives they should, as the saying goes, "*appoint good people and get out of their way*".

If you want your business to run successfully, don't forget the vitally important role middle managers play.

GROUNDHOG DAY WITH SARS FOR DECEASED ESTATES: EXPECT DELAYS

"A situation in which a series of unwelcome or tedious events appear to be recurring in exactly the same way" (Oxford English Dictionary definition of "Groundhog Day")



Recent changes to legislation have made it more frustrating and time-consuming to wind up deceased estates.

Taxing the estate and a problem for SARS

Prior to 1 March 2016, any taxable income that accrued to a deceased estate was taxed in the hands of the heirs of the estate.

The problem for SARS with this was that often the heir was unaware that part of the inheritance was in fact taxable income and thus this was not declared to Revenue resulting in it "slipping between the cracks".

Estates where the person died on or after March 1 2016 are required to register the deceased estate as a taxpayer and to account for income and expenditure until the liquidation and distribution account of the deceased estate is drawn up. Whilst this adds to the administration burden on the deceased estate, it ensures that SARS do not lose this erosion in the tax base.

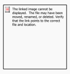
But it gets worse

When the final liquidation and distribution account is completed (this reconciles all the assets and liabilities of the estate, how much is due to the authorities and the balance distributed to the heirs) there is a time lag of a few months due to it being checked by the Master of the Court, then by SARS, and then it is open to public scrutiny for any creditors or heirs to query it.

In this period, more income can accrue to the estate which means tax needs to be paid to SARS and another final liquidation and distribution account be drawn up. This can become a “groundhog day” event, causing delay and frustration

Hopefully, sense will prevail and SARS will amend this legislation to provide that from the date of the lodging of the final liquidation and distribution account, the heirs and beneficiaries become liable for any further tax.

ARE YOU PART OF A PRODUCT SUPPLY CHAIN? BEWARE THE CPA



The Consumer Protection Act (CPA) exposes you to some harsh remedies if, for example, a consumer suffers harm from a product supplied to him or her.

Affected businesses should take steps to reduce their exposure to such liabilities as they may be **jointly and severally liable** to compensate the consumer. These claims could be huge.

Brief summary

A producer or importer, distributor or retailer of any goods is liable for any injury or loss due to -

1. Supplying any product that is not safe,

2. A product failure, defect or hazard in any goods, or

posed to the consumer by the product.

Significantly, there is no requirement for there to be negligence involved by anyone in the supply chain supplying the goods - **you are "strictly liable" for any harm suffered by a consumer.**

It is also worth bearing in mind that the supplier of products definition includes installers and anyone providing access to the goods – if that includes you, it is worth clarifying your position by taking expert advice. The "harm" for which you face liability means:

- Death, injury or illness to a person,
- Economic losses, or
- Loss or damage to physical property.

Your to-do list

In terms of 3 above, detailed instructions should be given to the consumer on the uses and potential dangers of the product, when the product is purchased.

If you are a distributor or retailer of the product consider getting an indemnity from the producer of the goods. Understandably, this may be difficult to get but if you cannot get it, seek written assurances that all standards of production are met as are all quality controls.

Another avenue is for the various parties in the supply chain to cross-indemnify each other. Thus, for example, a distributor may indemnify the other parties whilst he holds the product in stock, the retailer will do likewise in terms of supplying a pamphlet setting out all known product risks to consumers, and the manufacturer will indemnify the other parties on production processes.

You could also get the consumer to sign that he or she is aware of the risks of the product and is prepared to still purchase the product. The difficulty with this is there is no certainty that it will negate the "harm" clauses.

There is plenty to think about with this legislation. It is worth taking expert advice in protecting yourself.

One good thing though is that the quality and standard of goods should rise, which is to the benefit of us all. Already consumers are increasingly using the CPA to lodge claims for product defects.

WHAT'S BEHIND THE SARS INQUIRY?

The Minister of Finance has announced that the President has agreed to an independent inquiry chaired by a judge to probe why SARS is missing its revenue targets – this year it is forecast to miss budgeted tax collections by R50.8 billion and in excess of R200 billion in the next three years.

With the country facing a funding crisis and some credit rating agencies having downgraded South Africa's debt, the Minister considers it imperative to investigate if this shortfall is due to:

- The economy, where low growth is impacting revenue collections,
- Inadequate tax collection systems and governance at SARS,
- Increasing reluctance by taxpayers to pay tax.

Tax experts reckon that just over one third of the shortfall (about R18 billion) is due to poor economic performance, with the balance explained by declining tax morality and administrative difficulties within SARS.

The decline in tax morality is driven by incessant stories of government corruption and by the fact that the income tax rate is reaching a point whereby further increases could result in further declining tax collections (the "law of diminishing returns").

SARS has lost many of its most skilled staff over the last few years. This is particularly concerning considering that SARS should be focusing on complex areas of taxation, for example, Base Erosion and Profit Shifting (BEPS), whereby multi-national enterprises (MNEs), among other things, move their profits to low-tax countries. As tax practitioners globally are sophisticated and well resourced, tax consultants have expressed concerns over SARS' ability to counter these practices.

One also has to question if the rating agencies will respond favourably to the inquiry. Their recent pronouncements indicate they require evidence of growth strategies and cost cutting.

Let's see how this unfolds.

TAXPAYERS: GOOD NEWS IN THE SEASON OF GOOD CHEER?

There are no important tax deadlines for December, so let's look at some potentially great news for taxpayers.

Could the "pay now, argue later" principle be repealed?

The Davis Tax Committee (DTC) has recommended that taxpayers be given a Taxpayer Bill of Rights (TBOR). Some twelve years ago, SARS drafted its first Taxpayer Service Charter but this has never been issued in final form.

Not only will it align South Africa with best practices but it will improve trust between the taxpayer and SARS, which is essential to stopping the slide in taxpayer morality.

The DTC also points out that the tax system is subject to the Constitution. In this spirit, it makes recommendations that if adopted will make taxpayers happy, such as:

- Taxpayers should only need to pay tax when any dispute has been impartially reviewed. This would do away with the "pay now, argue later" principle currently applied by SARS. This is anticipated to not only significantly improve taxpayers' cash flows but also to bring about more fairness in the SARS/taxpayer relationship; and

- More deadlines will be specified for SARS. Currently, for example, no time limit is set for the finalisation of a tax audit. This is unfair towards taxpayers, considering the length of time that SARS audits tend to take. The DTC recommends that the TBOR be enforceable on both taxpayers and SARS.

As it is the season of good cheer, let's hope the TBOR gets adopted!

Thank you for your support in 2017.

Have a Wonderful Festive Season, and a Happy and Prosperous 2018!
