



**E M LUIZ**  
Chartered Accountants  
Registered Auditors

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- Pastel Accounting
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**June 2018 Newsletter**

## Estate Plan Review

While it makes sense to review one's estate plan on annual basis there are some key events which should ring a bell for an estate planner to revise their estate plan immediately. The following are some key events:



### Divorce

The Wills Act states that except where expressly otherwise provided, a bequest to a divorced spouse will be deemed revoked if the testator dies within three months of the divorce. This provision is to allow a divorced person a period of three months to amend their Will, after the trauma of a divorce. Should one fail to amend their Will within three months after divorce, the deemed revocation rule will fall away, and the divorced spouse will benefit as indicated in the Will. In addition, review beneficiary nominations on any policies, retirement annuities, and trust deed provisions (all subject to the divorce order).

### Sale or donation of asset specifically mentioned in Last Will and Testament or Inter vivos trust

### Marriage

#### Birth of a child or grandchildren:

If children are minors the estate planner needs to ensure that the assets they inherit are protected through the estate planners Will.

#### Estate planner acquires significant property

#### Downturn in estate planner's financial position

#### New business ownership:

Provide for business succession planning in the partnership, shareholders or association agreement(s).

#### Change in legislation having an impact on the estate plan:

For example, annual Budget speech announcements and tax legislation amendments.

The estate planner will need to decide whether it is practical and viable to merely amend current documents or create entirely new documents to account for any changes. Estate planning is a complex matter and requires the input of various professionals in order to consider all relevant tax and legal implications. We strongly suggest you contact us for professional advice in this regard.

## Trusts - Liability of Trustees

Trusts have recently come under the spotlight from a SARS perspective. With the recent amendments, it is important for a trustee to fully understand their role and responsibilities. Although a trustee may not act in the capacity of trustee until he/she has received a letter of appointment from the Master, he/she is still liable for any unlawful act committed in the handling of trust affairs prior to the issue of the letters.



Once a trustee has accepted the position and is authorised to act, the trustee must act at all times in the best interests of the trust's beneficiaries and fulfil all duties in terms of the trust deed and the law. A trustee may not be negligent when performing their duties. A trust itself cannot be sued as it is not recognised as a legal person in South Africa (unless a statute defines it as such). It is the trustees in their official capacity who can be sued.

An indemnity clause in the trust deed which exempts trustees from liability for breach of trust is void and does not exempt a trustee from actions involving ordinary or gross negligence or intentional wrongdoing. Criminal liability may be imposed on a trustee who commits a crime in the course of the trust administration e.g. theft or fraud.

Trustees are jointly and severally liable for damages (delict). Beneficiaries or third parties (e.g. creditors) who have suffered a loss as a result of breach of trust are entitled to bring a damages claim against the trustees. Trustees can be sued for damages by beneficiaries if they act negligently (even if they act in good faith) and/or if they intentionally act wrongfully. A co-trustee who was not involved with a breach of trust may nevertheless be liable for any wrongful action of another trustee if the "innocent" trustee's ignorance and/or inactivity is causally connected to the damage incurred. For example: where the "innocent trustee" is aware of a breach of trust by co-trustees but does not report it, or where the "innocent trustee" improperly allows trust funds to remain in the sole control of co-trustees.

Being a trustee is no light matter. If you are a trustee and would like to find out more about your roles and responsibility's please feel free to contact us for professional advice in this regard.

## Reckless Trading

The recent Steinhoff and Gupta debacle's have highlighted a number of issues, least of all Directors Liability and other governance issues. But was the company itself trading recklessly?

A company must not carry on its business recklessly, with gross negligence with intent to defraud any person or for any fraudulent purpose. If the Companies and Intellectual Property Commission(CIPC) has reasonable grounds to believe that a company is engaging in reckless conduct or is unable to pay its debts as they become due and payable in the normal course of business, it may issue a notice to the company, to show cause why the company should be permitted to continue carrying on its business, or to trade, as the case may be.



The company is required to provide information to CIPC within 20 business days of having received the notice. If the company fails to satisfy CIPC that it is not engaging in prohibited conduct or that it is able to pay its debts as they become due and payable in the normal course of business, CIPC may issue a compliance notice to the company requiring it to cease carrying on its business or trading. The Commission could also accept the information and confirm the company's right to continue carrying on business.

If a person to whom a compliance notice has been issued fails to comply with the notice, CIPC or the Executive Director (in the case of the Take-over Regulation Panel), as the case may be, may either:

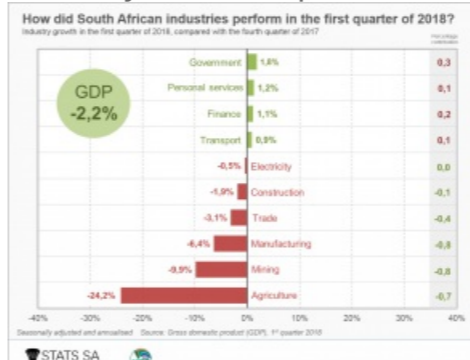
- Apply to a court for the imposition of an administrative fine, or
- Refer the matter to the National Prosecuting Authority for prosecution as an offence in terms of section 214(3), but may not do both in respect of any particular compliance notice.
- A director could still be subject to significant civil liabilities for any loss, damage or cost suffered by the company as a result of a contravention of section 22.
- Directors have a duty to initiate voluntarily Business Rescue Proceedings where it seems the company will become insolvent, so as to avoid the serious consequences contemplated in this section.

At the end of the day it is the Directors of a company that are ultimately responsible for the companies' affairs. If you are a director of a company and would like to know more about your roles and responsibilities, please do not hesitate to contact us for professional advice in this regard.

## Economy Contracts in First Quarter 2018

Shock figures from STATS SA reveal that our economy has shrunk by 2,2% in q1 2018. The following extract from Stats SA paints the picture:

After growing by 3,1% in the fourth quarter of 2017, the South Africa economy wobbled in the first quarter of 2018, shrinking by 2,2% quarter-on-quarter (seasonally adjusted and annualised). Agriculture, mining and manufacturing were the main contributors to the slowdown, with the electricity, construction and trade industries also recording negative growth.



The 2,2% fall is the largest quarter-on-quarter decline since the first quarter of 2009. In that quarter, the economy contracted by 6,1%.

After recording four consecutive quarters of robust growth in 2017, the agriculture industry lost ground in the first quarter of 2018, contracting by 24,2%, the largest quarter-on-quarter fall since the second quarter of 2006.

Agriculture's relatively strong performance in 2017 is one of the positive factors that helped keep the economy afloat in 2017. This momentum failed to carry through to 2018, with decreased production in field crops and horticultural products contributing to the decline in the first quarter.

Mining entered into recession with its second consecutive quarter of economic decline. Production was down 9,9% in the first quarter of 2018, following on from a decrease of 4,4% in the fourth quarter of 2017. Lower production in gold, platinum group metals and iron ore were the main contributors to falling performance.

Manufacturing also failed to make a positive contribution to economic growth, falling by 6,4%. The decline was driven largely by a fall in production of petroleum and chemical products, as well as basic iron and steel.

The trade, construction and electricity industries also recorded negative growth in the first quarter of 2018 compared with the fourth quarter of 2017. Trade activity fell by 3,1%, on the back of weaker wholesale, retail and motor trade sales and lower activity in catering and accommodation.

The construction industry continued to contract, experiencing its fifth consecutive quarter of decline. The industry has lost R1,7 billion in value since the fourth quarter of 2016, falling from R110 billion to R108 billion in the first quarter of 2018 (constant 2010 prices, annualised).

Economic activity in transport, finance, personal services and government increased in the first quarter of 2018. The 1,8% rise in general government was mostly related to increased employment numbers in the public sector.

Commentators are hoping that the influence of Ramaphosa succeeding Zuma will work its way into the next quarter's results. We will keep you informed of any updates in this regard.

Sincerely,



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