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E M Luiz Chartered Accountants (SA) Registered Auditors

Liz Luiz CA (SA), B Comm, Dip Acc, Dip Tax
Suite 4A, Mahogany Court, Redlands Estate, 1 George Macfarlane Lane, Pietermaritzburg, 3201, South Africa
PO Box 3143, Pietermaritzburg, 3200 Tel : +27 33 345 0282 Fax : +27 33 394 0746
Email : info@emluiz.co.za Website : www.emluiz.co.za

March 2019 Newsletter

Corporate Governance and The Prescribed Officer

Corporate governance is under scrutiny like never before in South Africa. While most people believe that it is only appointed directors of a company who can be held personally liable, the Companies Act provides for a wider definition and includes Prescribed Officers.

A Prescribed Officer is a title created by the 2008 Companies Act and is anyone who fulfils the role of a director but who is operating (intentionally or otherwise) under a different designation.

Regulation 38 states that, despite not being a director of a particular company, a person is a "prescribed officer" of the company for all purposes of the Act, if that person:

- Exercises general executive control over the management of the whole, or a significant portion, of the business and activities of the company, or
- Regularly participates to a material degree in the exercise of general effective control over, and management of the whole, or a significant portion, of the business and activities of the company.

The Regulation applies to such a person irrespective of any particular title given by the company to:

- An office held by that person in the company, or
- A function performed by the person for the company.

A company secretary, may, for example, fall within the definition of a prescribed officer in terms of the Act, even although he may not be a director appointed to the Board of the company.

Prescribed officers are bound by the same codified duties and liabilities of directors which are referred to in numerous sections of the Act.

It is very important that the board is able to identify who the prescribed officers are. Equally important is that the prescribed officers know who they are, and that they understand their responsibilities in terms of the Act.

Not doing so puts both the board and the prescribed officer at risk of non-compliance with the Act, which in turn could lead to activities that may result in personal liability.

SARS Clean Up on The Cards

There has been a lot of banter about Tom Moyane's time at SARS. The recent SARS commission has highlighted several issues and, in the recent budget, a number of commitments were made in this regard. We summarise these for you below

Ensuring transparency in tax administration

To raise the revenue needed to fund its social and economic policy commitments, South Africa requires its tax administration to be efficient, effective and impartial. Reports by the SARS Commission highlight maladministration and abuse of tender procedures that occurred at the entity between 2014 and 2017. The Commission's main finding is that these failings stem from a "massive failure of governance and integrity" after the appointment of the entity's previous commissioner in 2014. Government has started implementing the most urgent recommendations, as discussed below. A new commissioner is expected to be appointed in the near future. The Minister of Finance intends to introduce legislative amendments this year giving effect to a number of the Commission's governance recommendations.

Implementing the SARS Commission recommendations

Government is considering a comprehensive response to the SARS Commission's report.
In the interim, it is implementing the Commission's most pressing recommendations, including the following:

- The Presidency has started the recruitment process for a new SARS Commissioner, who will have to consider the Commission's recommendations concerning management of the revenue service.
- SARS is re-establishing a division that will focus on large businesses. This process, which includes the recruitment of specialists, is expected to be completed by April 2019.
- In August 2018, SARS launched an Illicit Economy Unit to investigate syndicated tax evasion schemes in high-risk sectors, including the tobacco trade. This unit has also begun to investigate potential tax-related offences in relation to some of the activities highlighted by various commissions of inquiry.
- SARS has taken steps to strengthen the management of its information technology systems, rebuild its technical prowess, and harness opportunities arising from information-sharing agreements between national tax authorities.
- Through internal processes, SARS is implementing recommendations concerning inappropriate actions, fruitless and wasteful expenditure, unfair labour practices and maladministration.
- SARS is reviewing contracts that breached public procurement regulations and will act to recover funds spent.

The implementation of the above is most welcome and we look forward towards a bigger pool of taxpayers all paying their fair share on taxes!

Employment Tax Incentive

The employment tax incentive was introduced on 1 January 2014 to share the cost of hiring young, inexperienced workers between employers and government. The incentive was reviewed and extended in 2016 and 2018. The most recent review found that the incentive's positive benefits are more pronounced in small firms.

In 2015/16 about 31 000 employers claimed the incentive for 1.1 million individuals. The tax expenditure associated with the incentive amounted to R4.3 billion in 2017/18. The National Economic Development and Labour Council conducted a review of the incentive, drawing on independent research on the effects of the programme in 2014/15 and 2015/16. The review found that:

- The number of employees and employment growth rates increased significantly in firms claiming the incentive.
- Effects were most pronounced in firms with less than 50 employees, though positive effects held for all firm sizes.
- There is no significant evidence that the incentive displaces older workers.
- The incentive improves employment growth in firms that were growing before claiming, and firms with shrinking employment, demonstrating that it also plays a role in halting job losses.
- Employers tend to retain workers after the two-year eligible period passes because the employees have gained experience and on-the-job training. Young workers indicated that the incentive created opportunities they would not otherwise have.

In 2018, government extended the employment tax incentive by 10 years. In addition, the eligible income bands will be adjusted upwards to partially cater for inflation. From 1 March 2019, employers will be able to claim the maximum value of R1 000 per month for employees earning up to R4 500 monthly, up from R4 000 previously. The incentive value will taper to zero at the maximum monthly income of R6 500An additional incentive for special economic zones has also come into force. This enables employers to claim for all eligible workers hired in these zones, taking into account wage criteria but not age.

For Professional advice in this regard please do not hesitate to contact us.

Update on Implementation of Carbon Tax

The carbon tax will be implemented on 1 June 2019. It gives effect to the polluter-pays principle, prices greenhouse gas emissions and aims to ensure that businesses and households take these costs into account in their production, consumption and investment decisions. The tax will assist in reducing emissions and ensuring South Africa meets its commitments under the 2015 Paris Climate Agreement. It will be reviewed after three years.

SARS and the Department of Environmental Affairs will jointly administer the tax. To ensure a smooth administration, SARS will publish draft rules for consultation by March 2019.
These rules will complement three sets of regulations:

- A draft Regulation on the Carbon Offsets was published in June 2016. A revised regulation, taking public comments into account, was published for further consultation in November 2018. A consultation workshop will be held in March 2019 to finalise the regulation.
- Trade exposure regulations, which provide for higher allowances based on trade intensity, will be published before the end of February 2019, following extensive consultations on methodology.
- Benchmarking regulations will be published in March 2019 for further consultation.

It appears after many years of dragging its feet, carbon tax will be implemented. We will keep you posted on developments.

Sincerely,

E M LUIZ
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