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June 2017

#### LEAN TIMES AHEAD: 6 STEPS TO HELP YOU THROUGH THEM

*"We have seen better days"  
(Shakespeare)*

When you read that nearly 75% of the middle class experience financial difficulty and a similar percentage are in debt, it is time to worry.

Add to this the economic difficulties the country is going to experience flowing from the ratings downgrades and it will not be just the poor who will suffer but many middle class South Africans will also find themselves in a crisis.



*The "phony war"*

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In the Second World War, the winter of 1939-1940 saw no activity but in the spring Nazi Germany blitzkrieged Europe and all hell broke loose – the “phony war” was over. It seems inevitable that our own “junk status phony war” will soon be over.

Don't be fooled by the fact that the country has successfully weathered the first month or two of the downgrades. Remember that only our US Dollar denominated debt has been downgraded and this amounts to ten percent of South African bonds. The rating agency, Moody's, has yet to decide whether or not it will also downgrade us to junk status. Even if we don't get a downgrade from Moody's now, it will probably come in the latter part of the year.

There are several rungs in the ladder below junk status. When this happens to a country its economic growth, currency, unemployment and investment show further declines. If South Africa takes no action to improve State Owned Enterprises and corruption, we will face such further downgrades.

### **6 steps to take and avoid**

Lock down for the lean times with these –

1. Don't take on more debt to supplement monthly living. This amounts to postponing a day of reckoning which more debt will only worsen.
2. Budget carefully and understand your spending patterns. For example, analyse the times when you spend unnecessary money and consciously avoid these occasions. Make a plan to cut spend and be disciplined about it.
3. Plan to live below your current means. This may sound daunting but will enable you to become frugal. Some simple planning around your habits and strengths (if, for example, you are good with your hands, maintain your own car and home) will help you achieve this.
4. If you succeed in either breaking even or saving money, think how it will improve your morale – just think of not waking up at 3 a.m. with a knot in your stomach as you worry about money.
5. Learn to distinguish between a want and a need. Once you have done this, reduce or cut out things you want.
6. The most important thing is realising your situation will get worse unless you cut costs. Then you must have the willpower to implement living frugally.

### **Employers: Help your staff through this**

Why not share these ideas with your staff – not only can it help them navigate these choppy waters, but it will improve morale and productivity in your workforce.

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## **NON-EXECUTIVE DIRECTORS: INCOME TAX AND VAT IMPLICATIONS**

There has been uncertainty for some time as to whether employees' tax (PAYE) should be deducted from payments made to Non-Executive Directors (NEDs) for the services they perform. There has also been debate around whether NEDs should charge VAT for their services.

The Minister of Finance undertook to clarify this in the February 2016 Budget Review.



Note that in this context “SARS considers an NED to be a director who is not

involved in the daily management or operations of a company, but simply attends, provides objective judgment, and votes at board meetings.”

### ***SARS’ ruling on PAYE***

SARS has issued a Binding General Ruling (BGR) which is effective from 1 June 2017.

For an NED to be considered subject to PAYE, two conditions would need to be met:

1. The “Premises test” whereby more than 50% of the services performed by the NED are at the company’s premises, and
2. The “manner in which the duties must be performed” or hours worked are subject to “the control or supervision test”.

Both of these stipulations would need to apply. Because SARS accepts that NEDs work independently of the company and thus do not earn employee remuneration, the second condition is not met. **Therefore (for NEDs resident in South Africa), no PAYE needs to be deducted.**

This also means that NEDs can deduct normal expenditure, allowances and losses from their NED income. This is in favour of NEDs as employees’ deductions are severely limited by the Income Tax Act.

**Note this does not apply to non-resident NEDs and their fees are subject to PAYE.**

### ***SARS’ ruling on VAT***

Another BGR has also been issued regarding VAT, also effective 1 June 2017.

Employees subject to PAYE are typically not considered to be carrying on an “enterprise activity” and cannot register for VAT. The only exception to this general rule is that non-resident NEDs are, as part of government’s new systems to tax money before it goes offshore, subject to both PAYE and VAT.

The VAT Act recognises “independent contractors” as carrying out an enterprise and thus being subject to registering for VAT if earning R1 million or more per annum.

Accordingly, the services provided by NEDs fall within the ambit of the VAT Act and qualifying NEDs (the main qualification is earning R1 million or more p.a.) will be required to charge the company VAT when submitting invoices.

As stated above, non-resident NEDs are also required to register for VAT to the extent that they carry on their NED activities within South Africa.

These rulings provide welcome clarity for companies and NEDs.

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## **LESSONS FROM THE WANNACRY RANSOMWARE ATTACK**

The mid-May WannaCry “ransomware” virus affected more than 100 countries, including South Africa. It showed that these types of attacks can be spread incredibly



quickly and that we can expect similar incidents in the future. And experts warn that a new cyber-attack (“Adylkuzz”) is already underway.



#### ***What should we do to protect ourselves?***

- Old software like Windows XP is particularly vulnerable (the reason the National Health was shut down in the UK is that their MRI machines run on Windows XP). Windows 10 has to date been unaffected. Use an up-to-date operating system and software (particularly anti-virus software).
- Off-site back-ups are now more important than ever – if you can quickly access your backed-up data you only suffer the inconvenience of recapturing the current day’s data. The WannaCry attack only asked for ransom money to unlock files but there are no guarantees you will ever see your data again no matter what you do and **the virus is capable of permanently wiping out all of your data.**

#### ***Directors and management: The significance of vigilance and care as new virus threats emerge***

Computers have become integral to our daily activities. It is not surprising that, as the risks posed by Information Technology (IT) grow, it has become a growing focus of Boards and senior management.

In the King Governance Codes, a whole section is dedicated to managing IT. The Companies Act gives directors and senior managers wide powers to run the business but it also makes them accountable. They need to show due care and be informed when managing the company. Civil liabilities can result should these duties not be adequately performed. IT management is important to a business and care and effort need to be exercised.

**Computer criminals are getting more brazen and sophisticated, so be prepared.**

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#### **SARS STREAMLINES ITS ALTERNATIVE DISPUTE RESOLUTION SYSTEM VIA EFILING**

Often in the dispute process, vital documents cannot be accessed. For example, a request to SARS to explain an assessment (Request for Reasons) is lodged but it gets either lost or stuck in the SARS system. By the time it is located and SARS has responded to the taxpayer, the SARS system will have timed out an objection. Thus, if an objection is then received, SARS will disallow it.



Similarly SARS may email a taxpayer who may be slow to respond due to circumstances such as, he/she is travelling abroad.

#### ***The 3 new eFiling upgrades***

Now however welcome enhancements have been made to the eFiling system from 17 May 2017 -

1. The first upgrade is an automated Request for Reasons which will automatically give you thirty business days to lodge an objection once SARS has responded to the Request for Reasons.

This facility can be used for income tax (personal and corporate) and for VAT.

2. The second change is to allow VAT taxpayers to request a suspension of payment via eFiling, pending the resolution of the dispute process. Current law uses the “pay now, argue later” rule unless taxpayers can defer the payment.

This is similar in principle to the Request for Reasons and has also been welcomed by taxpayers and tax practitioners.

3. Finally, SARS has introduced on eFiling the facility to apply for late submission of a dispute – you ask for a Request for Reasons, Notice to Appeal or Notice of Objection after the period to complete these steps has lapsed. You will have to submit reasons for the lateness of your actions. SARS will then consider the reasons for the late application before considering Reason for Request etc. Tax experts have questioned how this will work as clearly the substance of your objection is crucial in deciding whether or not to allow you to enter into a dispute with SARS.

These are sensible improvements and should reduce communication failures. SARS eFiling is a central point of reference for both you as taxpayer and SARS, and having one channel of information will assist both parties.

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### **WHICH IS BETTER FOR YOUR BUSINESS? LOTS OF RULES OR A FEW GOOD PRINCIPLES?**

Most of us are weighed down by compliance. Think of FICA, more onerous tax compliance, BBBEE, Employment Equity - the list is endless, more rules to deal with increasing complexity.

How does business manage its operations with all these external regulations?



#### ***The importance of strong leadership***

Leadership plays a crucial part in any organisation and successful, sustainable businesses all have strong leaders. The example that leaders set filters down the business and becomes an integral part of the organisation's culture.

To counter the increasing complexity of our times, many owners and senior managers use a decentralised structure to manage the business. In doing this, it is important to have the right people as managers. They need to be principled, self-motivated and prepared to be accountable.

In this type of structure, the owner or CEO sets out key principles for his/her managers to govern their sections. A key component of these principles is enforcing controls and acting when they either suspect or become aware of a breach in the company's policies and/or controls. It is critical they follow the breach to its logical conclusion: either there is no breakdown, or commensurate action is taken against offenders.

Warren Buffett, for example, writes to his senior managers every two years stressing the organisation's key principles and the importance of investigating any failures of controls or systems in the company. He also stresses these principles in meetings so that they become embedded in the organisation's culture.

If breakdowns are not acted upon, an error invariably escalates until it is dealt with, by which stage it can have serious implications for the business.

### ***Whistle-blowers – protect them***

It is amazing how many people make use of hotlines or other whistle-blowing facilities. It is relatively simple to set one up but even though the vast majority of items reported are insignificant, following up on potential frauds or other offences sends a powerful signal to the company. Staff understand their misdeeds are likely to be reported and investigated.

Whistle-blowers need to be guaranteed they will be fully protected and, if they wish, remain anonymous.

**You can never discover all the breakdowns in a company but good leadership can detect most of them without loading your business with more rules, policies and bureaucracy.**

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## **YOUR TAX DEADLINES FOR JUNE, AND ANOTHER SCAM WARNING**

There are only run-of-the-mill tax reporting deadlines in June.

As SARS is an obvious target for scams, always be cautious when receiving communication from SARS. Make sure it is actually from SARS and not a fraudster. See [here](#) for a sample of the latest "SARS: Letter of Demand" scam email.



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