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February 2016

Employers: How To Avoid Expensive Employee Recruitment Mistakes And Improve Productivity

"An ounce of prevention is worth a pound of cure" (Benjamin Franklin)



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In South Africa it can be difficult to dismiss employees due to our inflexible labour laws. This makes firing employees a potentially expensive and time consuming exercise, which tends to put the business on a defensive footing and distracts it from performing its core functions.



Prevention being better than cure, having well-thought-out recruitment procedures is thus an important issue for any business.

What does a prospective employee have to disclose in the recruitment process?

In general the onus falls on the employer to find out information that would preclude a person from getting a position. In a recent case for example a CCMA Commissioner found there is no general requirement for an employee to disclose information prejudicial to the employee applying for the job.

However, it also recognised that there are occasions when an applicant needs to make disclosure, such as a mine manager who was an alcoholic. A cashier convicted of fraud or theft would be another example. The onus would generally only rest on the employee to provide adverse information during the recruitment process if the information is crucial to the performance of the job.

Also, in general the more senior the job, the greater is this onus on the applicant.

Of interest is that our courts have in the past upheld dismissals when the employee has given false answers relating to aspects such as:

- The employee's identity
- The CV submitted
- Qualifications and
- References given

What employers can and can't ask

The employer needs to take care about what information they can request. The Employment Equity Act prohibits questions on such topics as race, religion, sexual orientation and political opinion unless any of the criteria is directly relevant to the job in question.

The employer should be satisfied that the knowledge gleaned from questions asked is pertinent to the particular position being filled. Remember a prospective staff member can challenge why information is requested. Generating interview questions from a job description helps ensure that relevant questions are asked.

So, be thorough in the recruitment process. **Seek professional advice** and ensure that before any sensitive data is requested (criminal checks for example) you obtain written consent from the applicant. There should also be a signed declaration by the prospective employee that all information supplied is truthful and accurate. Also plan and be thorough when checking references, as you can get crucial information from this.

What if an applicant withheld information?

If you subsequently find out that material facts were not disclosed by the employee and you wish to sanction him or her, make sure your decision can withstand scrutiny – for example in the CCMA case referred to above a senior manager was dismissed for not disclosing that criminal charges had been laid against her by her previous employer, nor that she had been dismissed for fraud and dishonesty. The Court held that as the manager had not actually been convicted of the charges, and hadn't been asked about any charges in the interview process, there was no onus on her to disclose this information. Again this emphasises the importance of carefully planning interview and reference-checking questions.

Clearly recruitment is a delicate process. It is well worth investing in this to ensure employers find out all relevant employee information before hiring. The onus for this lies mainly with the employer.

It is far better to have a rigorous recruitment process than for you to spend futile time

trying to manage (and dismiss) staff who probably should never have been appointed in the first place.

Getting the right staff members means higher productivity which can only benefit your organisation.

Note: Our labour laws are complex and this topic in particular is fraught with grey areas and differences of opinion. The consequences of getting this wrong are serious, so take professional advice upfront to cover your position!

A New Tax: What Sort Of Footprint Will The Carbon Tax Leave?

Government is looking to spread its revenue base and from 2017 will almost certainly introduce the much debated Carbon Tax.

South Africa is one of the world's worst offenders when it comes to greenhouse gas (GHG) emissions due to our relying on coal fired power stations and large scale mining. On the plus side South Africa has become an enthusiastic participant when it comes to mitigating climate change and has committed to reducing GHG by 34% by 2020.



Punishing the polluter

The proposed tax aims to put the country on a sustainable low carbon emission basis by "punishing the polluter".

Initially the proposed tax will have a three year introductory period (2017-2020). In this period the important points are:

- The threshold for attracting tax liability is to have the thermal capacity of 10 MW.
- Agriculture, forestry and waste management will be excluded.
- The tax will be R120 per ton of GHG. This will be discounted in the introductory phase by 60% to 95%.
- Main businesses affected will be:
 - Petrol, electricity and mining companies
 - Chemical companies
 - Transport sector
 - The metal industry.
- The actual contribution to the fiscus will be modest – probably 2 to 3% of tax revenue.

Carbon tax will be a complicated affair – the calculations as to how it is made up are based on work done by, inter alia, the Ministry of Environmental Affairs.

Those responsible for implementing a business's liability for carbon tax will need to understand carbon market laws, environmental law and tax law. So don't underestimate the amount of work involved.

Still, why introduce it?

Over the past several years South Africa has substantially reduced its GHG emissions. Emissions tax on new vehicles, the fossil fuel levy on electricity, the introduction of wind and solar power to the Eskom grid and load shedding have contributed to this. The Chamber of Mines has concluded that we have already met our 2020 GHG emission targets.

There is also a strong lobby advocating that we need to be an active participant in this.

Finally, government has committed so many resources to quantifying the emissions to be used to calculate the tax, that it is almost as if the Carbon Tax has acquired a life of its own.

The tax is complicated and it is worth speaking to your accountant and environmental experts about the impact it will have on your business.

Our Economy In 2016 –Trends To Look Out For

Last year was a difficult year with low economic growth, a declining currency, an increasing budget deficit and a substantial trade shortfall. The shock firing of Finance Minister Nene in December threatened to put the country into a downward economic spiral. The reappointment of Pravin Gordhan as Minister of Finance partially restored credibility to this crucial post. However, it has left South Africa entering



2016 with record currency lows, a need to re-establish fiscal discipline and restore confidence with our (mainly off-shore) creditors and investors.

Some thoughts on what the year may hold

Predicting future trends can never be an exact science, but a consensus of expert opinion points to a number of likely trends -

- **US Interest Rates:** For the first time in nearly a decade, the US Federal Reserve increased interest rates in December 2015. The Federal Reserve Governor has forecast that rates will increase quarterly in 2016. This will force South Africa to respond by raising interest rates to protect the currency, resulting in a knock on effect of lower consumer spending. In turn, this will put pressure on already fragile economic growth prospects.

Effectively the days of cheap money are ending. In reality this is positive as it indicates the world, led by America, is shrugging off the financial crisis of 2008 and the global economy is slowly returning to normal.

- **Commodity Prices:** Prices of commodities have been in a prolonged slump since the financial crisis. Some forecasters (Goldman Sachs) are predicting that commodity prices, led by oil, will start to climb in 2016.

If commodities start to recover, this will assist South Africa as commodity exports play a crucial role in our trading account. This will help stabilise the currency and improve the economy.

To see how this is developing follow the prices of platinum and iron ore.

- **Fiscal Discipline:** This will be extremely important as indicated above. Finance Minister Gordhan has vowed that he will follow a fiscally prudent

course. Already he has forced the Board of SAA to adopt Treasury policy in its negotiations with the Airbus group. Whilst this is a good start, he will need to prove to a sceptical global audience that South Africa will indeed follow sound fiscal lines. Look for the Budget speech in February to reinforce financial discipline. Things to look for are a budget deficit of less than 4% and our overall debt levels at below 50% of GDP.

Once markets are convinced that Minister Gordhan will achieve fiscal conservatism, the currency and economy should begin to show improvement.

The downside of this for taxpayers is that more tax increases are almost a certainty to keep the budget deficit at acceptable levels.

- **Junk Status:** Over the past few years ratings agencies have been downgrading the nation's debt. We are now just one level above junk status. Another downgrade would force foreign investors to sell South African bonds (most of them are not allowed to invest in Junk Status bonds). This could send the currency into another crash with the Rand falling potentially to 20 to the US dollar.

Fiscal prudence is the key to preventing this happening, so watch how Minister Gordhan manages the budget deficit.

- **The BRICS (Brazil, Russia, India, China, South Africa):** The major reason for the fall in commodity prices is tapering Chinese demand as the Chinese economy manages slower economic growth. Brazil and Russia are in outright recession and only India is showing increasing growth.

Watch how events unfold in China.

- **Policy Certainty:** At present we seem to have various Ministers pulling in different directions which exacerbates the current confusion in economic policy. The National Development Plan is a coherent policy document which the government pays lip service to. Putting the NDP at the forefront will dispel the uncertainty.
- **The Drought:** The region has experienced its worst drought in decades, with 2015 being the driest year on record. As a result, South Africa will need to import about 6 million tons of maize, leading to rising food inflation. This will add to the pressure on the Reserve Bank to hike interest rates (see above – U.S. Interest Rates).

2016 will be a challenging year with economic growth expected to be in the 1.5% area – much like 2015. At least the return of Pravin Gordhan as Minister of Finance gives some cause for optimism.

Tax Update 1: Disputes Can Now Be Lodged Via eFiling

As part of the process of improving customer service, SARS have added a new facility to eFiling.



Taxpayers can now:

- Lodge a dispute
- Request suspension of payment
- Request remission of interest and penalties (RFR)

These processes can also be carried out electronically at a SARS branch.

Taxpayers wishing to lodge a dispute and simultaneously request a suspension of payment can do this electronically at a SARS branch but not via eFiling which cannot currently accommodate this facility as it only supports standalone Suspension of Payment and not Suspension with Dispute.

RFRs can only be completed after an IT34 (assessment) has been issued.

These new facilities will make it easier for taxpayers in their interactions with SARS.

Tax Update 2: Use The Correction Facility On eFiling

Don't forget the Correction function on eFiling. This allows taxpayers to correct errors made in income tax and VAT submissions (you can only use the VAT Correction tab for understatements or overstatements). If you realise a mistake has been made, it pays to correct it. This should improve communications with SARS – if SARS pick up this error before you do, it could lead to unnecessary disputes and all the anxiety this can bring upon a taxpayer.



Note you can only use this Correction tab to amend the last version submitted to SARS, so make sure the correct submission is with SARS.

Submit Your Budget 2016 Tips!

Minister of Finance Pravin Gordhan makes his budget speech on 24 February and would like to hear your tips for the budget. Follow the [“Budget Tips”](#) link under “Treasury Links” on the National Treasury website at <http://www.treasury.gov.za/> to submit your suggestions.



Your Tax Deadlines For February

The second provisional tax payment for the 2016 tax year is due by 29 February. Taxpayers are required to estimate their total taxable income (i.e. including any capital gains) for the tax year.



Penalties will apply where your estimate is not accurate enough -

- **If your taxable income is less than R1 million**, you will have penalties levied if your estimate of taxable income is less than the “basic amount” (essentially your latest assessed taxable income escalated by 8%) and also less than 90% of your actual taxable income for the year. Taxpayers who estimate their taxable

income to be less than the “basic amount” must justify such lower estimate.

- **If your taxable income is greater than R1 million**, your estimated taxable income must be within 80% of the actual taxable income for the year to avoid penalties.

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