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In this Issue

Your Board: Maximise Its Effectiveness With Term Limits And Appraisals For Directors

We all know that leadership is crucial to an organisation. The board of directors sets strategic direction and exercises control over the organisation. How does an organisation ensure it has an effective board of directors in place?

The importance of independence

The Companies Act tells us that directors need to always act in the best interests of the company. They also must have the skills, experience and knowledge to fulfil their duties.

Another key ingredient is independence. It is incumbent on a director that he/she applies his/her mind independently to the issues facing the business. It is important that the board exercises judgement with some degree of separation from the management of the company. One of the findings in the financial crash of 2009 is that boards had got too close to management and thus didn't see how risky the company's investments were until it was too late. Thus, independent non-executive directors are of fundamental importance.

Your Tax Deadlines For April

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How to get this independence?

The King 3 Committee talks of regular appraisals by the board of its members. This keeps board members alert to their responsibilities, as there is a massive loss of face to a director who is given an unfavourable appraisal. Going hand in hand with this are term limits for directors. It has become common practice to put in place procedures that every two or three years, directors should resign. Most South African companies put re-election clauses in place whereby a resigning director can stand for re-election. It is unlikely a director receiving poor peer reviews will stand for re-election. Even if he does, the remaining directors can vote against re-election of the director.

This works well in South Africa as there is a shortage of skills at director level. Also, businesses don't want to lose the institutional memory built up by a director. The inter-relationships within the board need also to be borne in mind and it may upset the balance of the board to let a director resign.

Thus, term limits (including reappointment for resigning directors) and regular appraisals help ensure directors act independently.

What about small businesses?

It is true that smaller entities do not have the resources of the larger corporates. However, it can be argued that independent thought is an excellent counter-balance to owner-manager entities who can become too involved in day-to-day operations. It is well worth considering what factors will ultimately contribute to the growth and sustainability of your business.

Beware Of Fixed Term Contracts: What You Need To Know About Amendments To The Labour Relations Act

Government has followed through on its intention of improving the rights of temporary lower paid workers. Employees with fixed term contracts are now, subject to the exceptions set out below, deemed to be part of the permanent labour force if their contract runs for more than three months.

Whilst this legislation is primarily aimed at labour brokers, **all** employers need to be aware of the key elements of the legislation as failure to adhere to it can be extremely costly.

Note: Our labour laws are complex – take advice on your specific circumstances!

What does the new law say?

Any workers whose fixed term contract runs longer than three months will (again, subject to the exceptions below), be deemed to be employed for an "indefinite duration". Effectively, these workers' contracts can only be terminated by death, resignation or dismissal.

The law is retrospective and applies to any fixed term contracts including those concluded before 1 January.

The exceptions and exclusions

Excluded are –

1. Employees earning over R205,433-30 (the current Basic Conditions of Employment Act threshold),

2. Small employers (less than 10 employees) and start-ups (under 2 years old and less than 50 employees). Note that this exclusion does not apply if you have split your operation into separate units or if you run more than one business,

3. Fixed term contracts permitted by statute, sectoral determination or collective agreement.

Employers may continue using and renewing fixed term contracts if the nature of the work done is itself subject to a definite or limited time period. Examples would be seasonal fruit picking or a one-off project.

Alternatively you must be able to demonstrate “any other justifiable reason”.

What is “justifiable”?

One of the core principles of the revised Act is that employers need to justify why they are issuing fixed term contracts. If they can justify them, then the Act permits them. **This becomes a key area for employers to focus on.**

Examples are given in the legislation of what can be justified. Briefly, these include interns, a temporary surge in workload (not more than twelve months), filling in for a full-time employee (e.g. a staff member on maternity leave), an externally funded project (this often applies to non-governmental organisations) and extending the working period for retired or about to retire staff members.

Other new requirements

Fixed term contracts are to be in writing and are to state the reason for the fixed-term nature of the contract. Both parties need to agree to the period of the contract.

Fixed term contract workers are entitled to apply for any position offered by the employer.

If a contract lasts two years or more, then on termination of the contract that person is entitled (with a few specific exceptions) to a severance package of one week’s salary for every year worked.

Whilst the legislation favours lower paid workers, it clearly reduces flexibility for employers.

Economics 101: India’s Budget Versus South Africa’s - Why Is India Forecasting A Growth Rate Four Times Higher Than Ours?

Since South Africa was admitted to the BRIC (Brazil, Russia, India and China) nations, we have developed a closer relationship with the BRIC countries. Two new BRICS finance ministers released their budgets in the last week of February. As two developing countries you would expect that there would be many similarities between the budgets. In fact, they are almost diametrically opposed.

Some background

Until 1991, India had governments (like current South Africa) which believed the State needed to play a strong role in developing the economy. India then began a process of partial deregulation whereby private enterprise was allowed to play a more prominent part. Rapid economic growth followed and India joined China as one of the fastest growing global economies. As with all nations, the financial crash in 2009 slowed India's growth and in the 2014 election a pro-business candidate won and was given a mandate to stimulate the economy.

The two budgets – 2% growth forecast v 8.5%

Both countries are running budget deficits – India's is slightly higher than South Africa's at 4.1% of GDP. There are two options to reduce the deficit – cut costs or grow the economy. The second scenario means that government collects more taxes as this follows from higher economic growth.

This is where the two budgets diverge – South Africa's main focus is fiscal consolidation. Government debt has been growing and needs to be reined in. As South Africa's projected economic growth rate is only 2%, the main features of the budget were increases in personal income tax and in the fuel levy.

By contrast, India announced a reduction of 5% in company tax, streamlined bureaucracy and announced measures to encourage young entrepreneurs. India is projecting to grow at 8.5% this year and some commentators are forecasting it will overtake China's economy.

In short, the South African budget is defensive and will not usher in the sort of growth required to cure our biggest problems such as unemployment.

Why the big difference?

Perhaps the most glaring difference is that India is business-friendly and is expecting a $50 billion investment inflow in 2015. India is clearly successfully wooing foreign investment. In South Africa there is uncertainty for investors as government has failed to issue cohesive investment guidelines and is suspicious of business.

India learned in 1991 that too much government interference leads to low growth and little foreign investment. Nearly twenty five years of deregulation has resulted in India becoming one of the global economic success stories.

If we are serious about forging closer ties with the BRIC community, India is a good place to start.

Good News: Employment Tax Incentive Act Refunds Now Claimable

An amendment to the Employment Tax Incentive Act (ETI) brings good news to those employers who have made use of this incentive. If you were unable to offset the full amount of ETI due to you against employees' tax, SARS has now instituted a refund process.

This is now claimable at the end of each six month employees' tax reconciliation period (1 March to 31 August and 1 September to 28 February). Amounts due to taxpayers will only be payable if the taxpayer is fully tax compliant.

SARS are giving taxpayers six months to get their tax affairs in order – if you were not tax compliant at 28 February, you have until 31 August to get compliant and the refund will be paid in that reconciliation cycle. If you are still not tax compliant your refund will be forfeited.

Reporting Tax Cheats – A Simple New Online Process

SARS has created a simple online form for people to report any suspicious tax or customs practices. The more information that can be given to SARS (names, addresses, ID numbers etc) the easier it will be for SARS to investigate.

People completing the form have the right to anonymity.

There will be no feedback from SARS as taxpayer confidentiality is guaranteed by SARS.

South Africa: More Interesting Facts

- Sport: We are the only country to have hosted all three of the Soccer, Cricket and Rugby World Cups
- Industry: South African Breweries is the world's largest beer producing country by volume
- World History: Jan Smuts, the former Prime Minister, was the only person to sign both the treaties ending World War 1 and World War 2
- Tourism and Conservation: South Africa, Mozambique and Zimbabwe are forming the largest conservation area in the world – 35,000 square kilometers.
- Health and Infrastructure: South Africa is rated third in the world in terms of safe drinking water.

Your Tax Deadlines For April

Only the normal run-of-the-mill tax deadlines in April, but the annual employer PAYE reconciliation (EMP501) is due on 29 May. As this can take some time to do, the earlier you begin this process, the more time you leave yourself to iron out discrepancies and errors.

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