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October 2016

Are You Ready for the Upturn?

For the past few years, economic data has been negative. It pays to remember that the economy goes in cycles and there will be a return to economic growth. Remember we recorded 3.3% economic growth in quarter two and the current account deficit shrank significantly.

In the fast-moving world we now live in, those businesses prepared for the next growth cycle will get an edge on their competitors.



5 steps to take now

1. Fight for margin. Many firms discount their products or services to maintain sales in the bad times. Every percentage point of margin you give away impacts directly on your profitability. Many customers will not agree to pay more when you stop giving discounts.
2. Make sure you have the capacity to grow. Maintain capital spend to ensure this and when you embark on cost-cutting don't cut to the extent it will impinge on your capacity to grow.

3. Look at your product/service mix as some items do better in the lean times and be ready to put your efforts behind products and services that do well in times of growth. For example, consumers who have traded down on wine purchases will be ready to buy four and five star wine again.
4. Keep in contact with important customers and maintain a presence in segments/areas which will respond to an upturn. Many of the African markets have reduced spend but this will tick up once growth returns.
5. Keep an eye on your borrowings. Usually when a growth cycle has started, interest rates tend to increase to cut off any inflationary pressures. So, balance your money management.

It's hard to believe that good economic times will come back but they will. The currency has firmed in recent months and Rating Agency Fitch has predicted there will be no further interest rate hikes. **A recovery could happen faster than you think, so be prepared to respond quickly.**

The Updated Credit Provider Registration Threshold – Are You Still Exempt?

“Aye, there’s the rub” (Hamlet)

If you are a credit provider and required to register as such in terms of the NCA (National Credit Act), not doing so can have drastic consequences for you. For a start, a court can make any “just and equitable order” in relation to your credit/loan agreements, including an order that they are declared void and unenforceable.



Important: The NCA and Regulations are convoluted with a lot of technical requirements and pitfalls for the unwary. What is said below is of necessity just a summary of some very complex definitions and issues, so **get help from your accountant if you are unsure of anything!**

Do you need to register?

Not every category of credit provider is required to register. Answer these questions to find out where you stand –

1. Are you a “credit provider”? The formal definition in the NCA is very broad, and if you grant credit or advance loan/s in any form you are likely to fall within it. If you answered “yes”, read on.....
2. Is your agreement a “credit agreement”? Again the formal definition in the NCA is widely worded to include any credit facility, transaction or guarantee, including any agreement where monies are lent or goods or services are supplied but payment is deferred, “and any charge, fee or interest is payable to the credit provider”. So an interest-free and fee-free loan for example wouldn’t fall into the definition.

Note here that six months ago, registration was only compulsory if you had over 100 credit agreements but that has changed – **you are in line for compulsory registration even if you have only one agreement.**

Again, if you answered “yes” here, read on.....

3. Does the total principal debt owed to you under all outstanding credit agreements exceed the gazetted threshold? **And here's the rub** – the threshold is currently R500,000, so until now if you are a small lender you will probably have been exempt from registration. But (effective 11 November) **the threshold has been reduced to nil**. In other words, from 11 November, you will be answering this question “yes” regardless of the amount owed to you.

You needn't register if

Let's move on to circumstances in which you don't have to register -

1. If the agreement is an “Incidental Credit Agreement”. This is where you haven't given credit, but you charge interest or some other fee for overdue accounts, or give early settlement discounts.
2. If your credit consumer is a “juristic person” (broadly, a company, partnership, or trust with 3 or more trustees) and either –
 - a. It (together with all “related” juristic persons) has an asset value or annual turnover of R1m or more, or
 - b. Your agreement with it is a “large” one (more than R250,000).
3. The NCA only applies if you are “at arm's length” with the debtor. “Arm's length” is not defined but it generally means you are independent of each other. Note that there are some specific rules to be applied here, for example a personal loan to a family member will generally not fall under the NCA where there is a state of “dependency” or “co-dependency” between you.
4. Certain agreements are specifically excluded from the definition of “credit agreement” – for example insurance policies and leases of immovable property, so landlords need not register. And, as noted above, an interest-free and fee-free loan would also fall outside the definition.

As we said above, full advice from your accountant is essential here in any doubt – there is too much at stake to take any chances. And don't forget that even if you don't have to register, other provisions of the NCA, such as the prohibitions against reckless lending, may well still apply.

If you have to register, the deadline is 11 November 2016 and registration is a complicated process, so don't delay!

Staff Dismissals: Beware, There's No Honour Amongst Thieves and No Short Cuts

***“A plague upon it when thieves cannot be true one to another!”
(Falstaff, in Henry IV Part I)***

We know how time consuming dismissing staff can be. It leads to loss of productivity and extra legal costs can be incurred. But be careful if you are considering taking short cuts to get the matter out of the way. A recent case illustrates this.



The employer's quandary

An employee's position was terminated after the employee resigned (that, at least, was the employer's version – the employee characterised it as an unfair dismissal/retranchment in the CCMA). Soon afterwards, said the employer, the employee's union asked the employer to change the reason for leaving employment to "retranchment". The employer was placed in a quandary – to refuse the request meant the employee would almost certainly approach the labour courts for wrongful dismissal. To agree to the union's request would 'make' the problem go away as the employee would then be able to apply for and receive UIF benefits.

The employer agreed to the union's request. The bad news was only just beginning as the employee promptly went to the CCMA claiming, amongst other things, that she had not been paid her retranchment package. The CCMA arbitrated the case as a retranchment dispute - the employer having agreed to present the "resignation" of the employee as a retranchment during the arbitration - and found in favour of the employee.

Naturally the employer was furious – not only had it ended up in a labour forum but it had also been required to pay a retranchment package. In essence, to appeal meant exposing the employer to the risk that that the case would be seen as fraudulent all along.

It just gets worse

However, the employer did appeal the case to the Labour Court. In the appeal the employer had to argue that the employee was never retrrenched. The Court was understandably angry that a fraudulent claim had been entered and the employer had never raised this in the original hearing.

The appeal was dismissed with some strong wording: *"The court turns its face against any fraud, particularly fraud perpetrated in respect of the processes that bear on the administration of justice.....It is remarkable that the [employer] has the temerity to seek recourse from a court of law in the light of its admitted fraud. The conduct of the applicant is a perversion of the administration of justice."*

Don't take the easy way out – there is no honour among thieves. The employer's business not only spent far more time and money on two cases but also suffered reputational damage as well.

Will The Mooted Minimum Wage Be Good For The Economy and For You?

For several years there has been considerable pressure put on government to institute a national minimum wage. The Deputy President has been heading a panel on this topic and in principle government, business and the trade unions have agreed to institute a minimum national wage - but there are many issues to still iron out.



Do minimum wages affect employment?

It is generally agreed that the greatest problem we have is our high unemployment and nothing should be done that would exacerbate this.

Findings from other countries have been mixed with some reporting more unemployment and others showing it had no effect on employment. The downside of this research is that nations most likely to see more unemployment are developing countries – a recent case is Brazil which instituted a national minimum wage and this is given as one of the contributors to Brazil's recent economic misery.

This research shows that the lower-skilled workers are most vulnerable when a minimum wage is introduced as they lose their jobs as businesses compensate for losses they incur by cutting the least-needed employees. Currently, the biggest issue with unemployment is amongst the youth, where unemployment is above 50% and clearly the youth are most at risk if a minimum wage is introduced.

As South Africa shed 500,000 jobs in the first six months of 2016, the question has to be asked – can we afford a minimum wage?

In South Africa, proponents of a minimum wage point to the positive impact income grants had on the economy – 17 million people are now on grants like child grants, disability grants and age old pensions. They have given considerable impetus to the economy, particularly the retail sector. Opponents don't deny this but say the grants were introduced when the country could afford them. Currently, the country's budget deficit is stretched and letting it go out further will almost certainly attract a ratings downgrade.

Moreover, argue the opponents, many sectors have statutory minimum wages, so why overlay this with a national minimum wage?

The lost third

Currently one third of our population are out of work. This, economists say, is the main reason why our economy is weak. Every effort should be made to find ways to remove obstructions which prevent the unemployed from participating in the economy.

This has led to many calls for labour, business and government to remove blockages in the economy rather than risk growing unemployment with a minimum wage. Meanwhile, the debate around the pros and cons continues.

Tax Time – October Updates

The New Tax Compliance Certificate Process Made Easy

SARS has recently introduced a new Tax Compliance Status (TCS) process which will enable you to see at a glance your tax compliance status.



You need to be on eFiling and to activate your TCS. Once activated, TCS will stay active on your eFiling profile.

One of the best features of the TCS is that it will tell you why you are non-compliant. Four boxes will be shown with each box either **green** (compliant) or **red** (non-compliant). The boxes are:

- Registration Status – obviously you need to be registered and have an active status.
- Submission of Returns – are all your returns in and up to date?

- Debt – do you owe SARS money without having made a payment arrangement with SARS?
- Relevant Supporting Documents – if you have been asked to supply data to SARS ensure you have submitted it.

If you don't agree with your TCS, you can query this on eFiling by clicking on the "Challenge Status" tab. There will also be drill-down information when your status is **red**, giving more detail and most importantly how to get your status into **green**.

There is also a facility where you can allow authorised users to see your TCS by requesting a PIN code from SARS which you can share with those parties who will need access to your TCS.

This is another excellent improvement offered by SARS.

Your Tax Deadlines for October

The Interim Employer Reconciliation (EMP501) is due on 31 October. It pays to begin this early as there have been several significant changes to PAYE this year, such as:

1. New retirement funding deductions from 1 March including provident and retirement annuity contributions are deductible as part of the monthly PAYE calculation. Note the new source codes for retirement deductions.
2. Employees over 65 are allowed to have their Medical Tax Credit expenses deducted as part of their PAYE (there's also a new source code for this).

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