ACCOUNTING TALENT WAR
ADDRESSING THE FINANCE SKILLS SHORTAGE IN SA

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This year as we welcomed ourselves back to the new year we hit the ground running with the release of our Special Entrepreneurship Report in February 2014.

Some of the major obstacles facing the growth of the SME sector in South Africa include school and university teaching of the ‘science’ of entrepreneurship instead of the practical aspects of owning and operating a business, as well as a lack of business and financial skills among entrepreneurs. These are some of the issues addressed in the new SAIPA report.

Perhaps the most pressing issue addressed in the report, is the need for an efficient schooling system that provides high-quality education for all citizens. This is undoubtedly the most cost-effective way of supporting South Africa’s long-term economic growth and development. The incorporation of the essential practical elements of entrepreneurship into the curriculum should be reinforced. Greater focus is also needed on initiatives that develop the financial and business management skills of entrepreneurs, supported by the government and promoted through public-private partnerships.

The report mentions factors that would create a more enabling environment such as mentorship programmes that connect aspirant businesspeople with mentors, and development by universities of the ‘science’ of entrepreneurship, including measuring the impact and efficacy of mechanisms introduced by policy makers to ensure that scarce resources have the best possible effect on the promotion of entrepreneurship and job creation.

In addition to lack of skills and inadequacy of business education, the report also cites other barriers to small business success, provides comparisons to other countries success, identifies the shortcomings in SA and suggests methods for entrepreneurial success.

The SAIPA Entrepreneurship Report is available in eBook format to all members on the SAIPA website: http://www.saipa.co.za/page/344022/saipa-entrepreneurship-report

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The newspaper headlines are alarming: a typical example is a Business Day headline in October 2013 which screamed, ‘Standard of maths teaching in SA at rock bottom, report shows’. This particular article was as a result of a report published by the Centre for Development and Enterprise (CDE) titled ‘Mathematics Outcomes in South African Schools’ which revealed that, amongst other findings, the majority of Grade 6 teachers could not answer a question that their pupils ought to be able to answer based on the Grade 6 curriculum. The CDE report went a step further stating that the teaching of mathematics in South Africa is among the worst in the world.

The CDE is not the only organisation finding that South Africa’s teaching of maths is problematic. The World Economic Forum’s Global Information Technology Report, also released during 2013, ranked South Africa’s maths and science education second-last in the world, ahead only of Yemen.

Tertiary institutions and businesses alike have long called on government to do more to improve the quality of South Africa’s education system. However, despite spending liberally on the sector, education, particularly the teaching of critical subjects such as maths and science, is beset with poor standards.

According to Professor Jonathan Jansen, rector and vice chancellor the University of the Free State, the problems begin even before children start primary school. “The problems start at home, actually,” he insists. “Alert parents already optimise children to the concept of numbers through play and gradually more structured activities such as counting the number of peas in a pod. The love of numbers, ingrained early, often lasts a lifetime, especially if introduced through the daily experiences of life rather than through formal education alone.”

Jansen admits that maths education at primary school level, however, is vital. “Without a strong base in learning numbers in the early grades, it is almost impossible to compensate fully for a weak knowledge base in mathematics in high school,” he says.

Navin Lalsab who heads SAIPA’s (ACD) Accreditation, Compliance and Development division, says from his organisation’s perspective
and their observations, the biggest challenge is the lack of sufficient maths education at school level, and the problems appear to start during the primary school years. “According to one survey we saw, approximately 80% of primary school leavers do not have the requisite numeracy skills to undertake high school maths,” he reveals. “These problems are then compounded at high school level. As learners then start to struggle with maths at high school they elect to drop to maths literacy which immediately precludes them from studying towards a number of degrees that require maths or accounting at university level. It’s an easy option at the time but learners don’t understand the long-term ramifications.

“We have liaised with the Department of Basic Education and the feedback we are getting is that teachers are not adequately qualified to teach maths,” reveals Lalsab.

Jansen supports Lalsab’s findings. “At both primary and senior school level the twin problems facing the education of maths are teachers without solid subject matter knowledge (SMK) in mathematics and without solid pedagogical content knowledge (PCK),” he points out. Simply put, what the latter means is that teachers don’t know how to teach maths or how to make abstract knowledge of maths meaningful for young learners. “Qualifications don’t mean competence,” insists Jansen.

Previously disadvantaged schools and rural schools appear to be worst hit by a severe shortage of adequate teacher competence. Private schools, believes Lalsab, are better at addressing the problem but, as he points out, this could also be because the learners attending private schools generally come from homes which will provide the additional maths support children require at school level.

Senior lecturer and Deputy Head at UCT’s College of Accounting, Goolam Modack, is hesitant to comment on whether learners from private schools cope better at university level than learners from government schools and whether they are equipped with better maths skills. “It’s got more to do with how much what we are doing here – and what they are learning here – is reinforced at home. If the dinner table discussion focuses on related topics to what the student is studying, that obviously influences success to some extent.”

The solution, believes Jansen, is through thorough training of teachers in maths accompanied by close mentorship of maths teachers from Grades 1 through 12. “Formal workshop training alone is a waste of time,” he says.

“‘The love of numbers, ingrained early, often lasts a lifetime, especially if introduced through the daily experiences of life rather than through formal education alone.’”

His opinion is supported by the CDE report which stated that, “If South Africa is to be realistic about having a knowledge economy and creating more and better jobs, it will required a sustained focus on teacher and teacher-training enhancement, particularly in mathematics teaching, which – given its scale and current attitudes – will likely take a decade or more to achieve significant results.” For its part, SAIPA is assisting with providing more education for the educators. “Specifically, we’re focusing on those areas where teachers have problems understanding certain areas themselves,” explains Lalsab. “We therefore present seminars to breakaway groups of teachers on particular areas which need additional support.”

Universities, too, are very cognisant of the fact that students arrive at university ill-equipped for a degree in maths or accounting, and are therefore increasingly realising the value of offering student support in order to bridge the skills gap. The University of Cape Town is perhaps the tertiary institution offering the most comprehensive support both from an academic and cultural/emotional perspective. A number of mechanisms are in place at the university to address the skills gaps and to assist what the university terms ‘at risk’ students.

At a UCT College of Accounting and Commerce Faculty level, an Education Development Unit (EDU) works closely with students from historically
disadvantaged backgrounds, addressing issues around language and culture. In addition, all students receive early assessment reports which inform them how they are doing relative to their peers, and aim to identify those students who need additional support. “Our aim is to reach as many at risk students - those who have not met all the requirements and have not passed adequately - as possible,” reveals Modack.

“The University of the Free State provides the poorest schools with a structured programme for maths training and intervention though their Family Math and Science Project in primary schools. In 2013 UFS introduced a competency-based short learning programme for teachers in the Foundation Phase to develop and enhance the pedagogical content knowledge of Foundation Phase teachers with regard to both the teaching and learning of mathematics concepts. Satellite projects, sponsored by corporates or the Department of Education, extend the project into more rural areas surrounding Bloemfontein, including the Eastern and Northern Cape. It’s not only primary schools that benefit from UFS interventions: The Schools Change Project provides mentorship and support to teachers in high schools.

Jansen’s advice to learners wishing to pursue a career in finance or accounting is not to drop to Maths Literacy ‘under any circumstances, because you will not be able to follow a career in finance or accounting’. “Spend at least five hours a day on mathematics outside the classroom if you really want to do accounting or a finance-related career,” he says.

On the upside, Modack admits that the faculty has seen a significant change in the racial profile of students in the past 20 years. But as demand for university places grows, so have class sizes grown significantly.

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THE WAR ON TALENT AND FINANCIAL SKILLS SHORTAGE

Dr Thomas Hoepli, Economic Research Analyst, SAIPA

The shortage of skills in South Africa is a recurring topic, not only in the financial sector but in many other sectors of the economy. While some of these shortages are sector-specific, others affect businesses in most sectors of the economy and have severe consequences. South Africa’s business leaders have repeatedly cited the unavailability of a skilled workforce as the key growth constraint.1 Together with other systemic constraints (such as regulations and red tape), the lack of skills prevents companies from growing and thereby thwarts efforts to jump-start economic growth and employment.2

The reasons for the shortage of skills are manifold and include both demand and supply factors. Similar to many advanced economies, the tertiary sector (also known as the service sector or the service industry) has gained in importance and is now an integral part of the local economy. Contrary to the primary and secondary sectors, which tend to become smaller as an economy advances, the tertiary sector relies to a much larger extent on skilled staff than on manpower alone. And with the development of the economy, even the primary and secondary sectors increasingly require skilled staff, rather than just labour. However, the supply of skilled professionals has not managed to keep pace with the increasing demand.

One of the sectors that suffers from shortages of skills is the sector covered by Fasset, the Finance and Accounting Services Sector Education and Training Authority (Seta) for organisations in the accounting and finance sector. This sector mainly provides professional services and therefore crucially depends on professionals who have the requisite skills and expertise to produce these high-quality services. A growing demand for the services rendered by this sector directly translates into a higher demand for suitably skilled staff. The latest Talent Shortage Survey 2013 from Manpower Group South Africa shows that ‘accounting & finance staff’ is among the top 10 vacancies that employers in South Africa are having difficulty filling. ‘Accounting & finance staff’ has even moved up by four positions compared with the 2012 survey, indicating that the shortage of these skills has increased rather than decreased.3
In its most recent Sector Skills Plan, Fasset identifies a need of 2,154 professionals to fill vacancies in occupations in which a scarcity of qualified staff was identified. These vacancies exist in the Fasset sector alone, not taking into account the vacancies in other sectors that require financial skills too. In an economy-wide study, the shortage of skills in the financial divisions of companies and organisations was found to exist both at the professional level and at lower levels. A conservative estimate of the skills shortage in the private sector, and particularly in the public sector, indicated a need for in excess of 22,000 people to fill financial vacancies in South Africa.

Accounting and financial skills are in particularly short supply in the public sector, and even more so in local government. The steady decrease in the number of departments, legislatures, public entities and other entities in the national and provincial spheres of government who receive clean audits from the Auditor-General may be a direct consequence of the shortage of financial skills in the public sector. The effects of the countrywide shortage of financial skills are further aggravated by the need for organisations to meet their employment equity targets. Against this background, it is evident that there is a pressing need for more transformation as well as for larger numbers of skilled professionals that can fill existing vacancies in the financial and accounting services sector.

Recent SAIPA research shows that despite higher pass rates in the 2013 matric exams, the future prospects in terms of skills for the financial sector do not look promising. Mathematics and Science are commonly seen as ‘gateway subjects’ for many careers, such as engineering, economics or physics, as well as for careers in the financial sector. Focusing on the 2013 matric age cohort, i.e. the total number of students who started Grade 1 with the 2013 matriculants, the research findings show that as few as 5.0% of this matric age cohort reached the threshold of 50% that is relevant for admission to Bachelor’s studies. The respective pass rate in Physical Sciences is even lower – only 3.7% of the 2013 matric age cohort reached this threshold.

These results indicate that the potential pool of young talent with sound financial skills is very small, and hardly large enough to fill the skills gap in the sector. Fasset estimates that in terms of accountants, financial and investment advisors and financial analysts alone, the total number of key professional positions that will need to be filled annually will increase from 3,170 in 2013 to 3,530 in 2018. The challenge is further exacerbated by the fact that skills shortages are not only experienced in South Africa, but in many countries. Being a global phenomenon, South Africa has to compete for scarce skills with other countries. There is thus both a local and international ‘war’ on talent, which is likely to continue and even intensify in the future, particularly if the local supply of young skilled professionals will not grow in pace with or exceed the growth in demand.
Education and training are key to ensure a sufficient supply of the skills the economy requires as well as to solve the paradox of a skills shortage that co-exists with an unemployment rate persisting at around 25%\(^9\). There is currently a serious mismatch between what the economy and the companies therein need and what the majority of the unemployed can offer. The growth of the tertiary sector and the increasing need for more skilled staff in the primary and secondary sectors has contributed to a high structural unemployment: Many workers remain unemployed as they lack the requisite skills to find a job in the formal economy, while there are vacancies that cannot be filled.

As the demand for financial skills clearly exceeds its supply, finding and retaining qualified staff is a challenge for companies. Moreover, a persisting skills shortage and a high demand for certain skills tends to raise the salaries of those who possess these scarce skills, which further increases the wage gap between low- and highly-skilled workers and thereby income inequality. Training, further education and skills development are essential as it will help more people become employable and at the same time ease the shortage of certain skills. Job creation will continue to be hampered if business growth is constrained by skills shortages. In order for businesses to grow and thereby create new jobs – not only for skilled professionals, but also for people with lower qualifications – such constraints to be reduced and eventually removed.

“\text{A conservative estimate of the skills shortage in the private sector, and particularly in the public sector, indicated a need for in excess of 22,000 people to fill financial vacancies in South Africa.}”

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(1) AGSA (2013). PFMA 2011-12 – Impact of key role players on audit outcomes and commitments. CONSOLIDATED GENERAL REPORT on NATIONAL and PROVINCIAL audit outcomes. [online]. http://www.agsa.co.za/Portals/0/PFMA2011-12Extracts/PFMA_extracts/12_Impact_of_key_role_players_on_audit_outcomes_and_commitments.pdf (06/02/14)

1  Grant Thornton (2013a).
2  Grant Thornton (2013b).
4  Fasset (2013).
5  SAICA (2008).
6  The shares and absolute numbers of entities that achieved clean audits dropped from 31% (152) in 2009/10 to 25% (132) in 2010/11 and finally to 22% (117) in the 2011/12 audit (AGSA, 2013).
7  Fasset (2013).
8  The minimum requirements for admission to Bachelor’s studies are a pass in four subjects chosen from the recognised 20 credit-bearing National Senior Certificate (NSC) subjects at 50% and in the remaining subjects at a minimum of 30% (Department of Basic Education, 2014).
9  Baseline estimate – Fasset (2013).
10 The official unemployment rate was at 24.7% in February 2014 (StatsSA, 2014).
South Africa’s volatile rand brings with it a number of issues to deal with across the country’s many business sectors. For accounting practitioners, handling foreign exchange transactions in the appropriate manner is of the utmost importance. SAIPA’s Technical Executive, Faith Ngwenya, delves deeper into the matter.

The current state of the rand has earned South Africa a place in the so called ‘Fragile Five’, along with other emerging markets such as Turkey, Indonesia, India and Brazil. Indeed, over the past year, the rand has plunged against the dollar, bringing with it an increase in interest rates and inflation.

In 2013 alone, the rand lost at least a quarter of its value and more recently, in January 2014, it has slid to the weakest it has been against the US dollar since the start of the recession in 2008. Five-year lows against the US Dollar, British Pound and Euro have increased concerns around South Africa’s economy. Just 15 months ago, the rand stood at R10 to the Euro. Today, realistically, you will look at paying around R15. Indeed, many believe that the rand has failed to show strong growth since 2009 and more than that, economists have predicted that these weaker rand levels are likely to persist and that by 2015 one can look at paying around R20.48 for a British Pound and R16.23 to the Euro.

**Influencing factors**

There are a number of factors at play that have had a role in the concerning depreciation of the rand over the past few years. Mine strikes; emerging market sell-off; weak growth forecasts and the GDP have all played their part. Of equal concern are
international market perceptions of President Jacob Zuma's competence and government's inability to combat issues around poor service delivery and corruption. There is a belief that government has played a significant part in weakening South Africa's currency, as they have created a general distrust in the country's authority figures.

Interestingly, the role of human behaviour in the decision-making process and in predicting the economy's future outlook should not be overlooked when it comes to explaining the rand's poor performance of late. Factors such as fear, risk aversion and anxiety, as well as greed and risk-taking behaviour influence the way people make decisions and, ultimately, the way they buy and sell in foreign markets.

There is a belief that government has played a significant part in weakening South Africa’s currency, as they have created a general distrust in the country’s authority figures.

Other industries benefit, too. The depreciation of the rand increases the prices of new cars, which means there is generally a shift from the new to the used-car market. Moreover, according to Toyota, the weaker rand has prompted the production of automotive parts.

Manufacturing production also benefits at the expense of imports. The weaker exchange rate reduces the cost of South African products in dollars, which means that foreign markets are more likely to purchase South African exports ahead of those of our competitors.

Foreign currency transactions
According to Ngwenya, the rand’s volatility means that accounting practitioners must have a thorough understanding of the accounting treatment of these foreign transactions. Indeed, adhering to the correct treatment of foreign exchange transactions is imperative, particularly when dealing with small and medium enterprises (SMMEs).

Benefits of a weak rand
It’s not all doom and gloom however. With the fall of the rand, comes the rise of certain industries. Take tourism for example. A weakened rand makes it economically viable for overseas tourists to visit South Africa, especially those from European countries. As such, the country’s hospitality industry has outperformed the more traditional drivers of the economy such as mining and manufacturing. International investors, such as the American Marriott Hotel Group have seized the opportunity to capitalise on the nine million tourists that visit South Africa’s tourist attractions every year. To this end, the Group has purchased the Protea Hotel Group for R2 billion.

Exchange differences that arise when monetary items are settled or translated at rates that differ from those at which they were initially translated must be reported in profit or loss. The same goes for exchange differences appearing in previous financial statements. There is one exception: where exchange differences arising on monetary items form part of the reporting entity’s net investment in a foreign operation. These are recognised in the consolidated financial statements that include the foreign operation in other comprehensive income and they will only be recognised in profit or loss on disposal of the net investment.
Translation from the functional currency to the presentation currency

The results and financial position of an entity whose functional currency is not the currency of a hyperinflationary economy are translated into a different presentation currency. “There are a number of procedures that must be followed,” advises Ngwenya. For example, assets and liabilities for each reporting period presented (including comparatives) are translated at the closing rate at the date of that balance sheet. This would include any goodwill arising on the acquisition of a foreign operation and any fair value adjustments to the carrying amounts of assets and liabilities arising on the acquisition of that foreign operation. These are treated as part of the assets and liabilities of the foreign operation. Secondly, income and expenses for each income statement (including comparatives) are translated at the exchange rates at the dates of the transactions and, finally, all resulting exchange differences are recognised in other comprehensive income.

Disposal of a foreign operation

When there is a disposal of a foreign operation, the cumulative amount of the exchange differences recognised in other comprehensive income and accumulated in the separate component of equity relating to that foreign operation shall be recognised in profit or loss when the gain or loss on disposal is recognised.

The tax effects of exchange differences must be accounted for using Income Taxes Standards.

Disclosure

The amount of exchange differences recognised in profit or loss (excluding differences arising on financial instruments measured at fair value through profit or loss in accordance with IAS 39) must be disclosed, as must the Net Exchange differences recognised in other comprehensive income and accumulated in a separate component of equity, as well as a reconciliation of the amount of such exchange differences at the beginning and end of the period. Disclosure also applies when the presentation currency is different from the functional currency. “Here, one must disclose that fact, together with the functional currency and the reason for using a different presentation currency,” Ngwenya points out. Finally, a change in the functional currency of either the reporting entity or a significant foreign operation, and the reason thereof, should also be disclosed.

Convenience translations

“Sometimes, an entity displays its financial statements or other financial information in a currency that is different from either its functional currency or its presentation currency simply by translating all amounts at end-of-period exchange rates,” says Ngwenya, adding that this is sometimes called a convenience translation. Making a convenience translation means that the resulting financial information does not comply with all IFRS/IFRS for SMMEs, and accounting professionals will be required to make a number of disclosures. These include clearly identifying the information as supplementary information to distinguish it from the information that complies with IFRS/IFRS for SMEs, disclosing the currency in which the supplementary information is displayed and disclosing the entity’s functional currency, as well as the method of translation used to determine the supplementary information.

Ngwenya concludes that it is vital for accounting practitioners to be aware of foreign loans and acquisitions on behalf of their clients and to ensure that they are performing the relevant annual foreign currency translation, particularly in a country like South Africa, which is characterised by a volatile rand.
The Protection of Personal Information Act, 2013 (POPI) was signed by the President late last year and sets out the minimum requirements that must be followed when processing personal information. Accounting and tax professions use personal information all the time in the course of providing services to their clients. Whilst the tax and accounting professions already have strict rules governing the confidentiality of their clients’ information, POPI will bring new requirements and ways in which confidentiality must be managed.

When does POPI apply?
POPI applies where personal information is processed through automated (read: technologically automated) means, and to manual collection and storage of personal information, provided that manually collected information is stored in a filing system.

POPI is concerned only with personal information. Personal information concerns information that is associated with, or which identifies, an individual or a corporation. It includes that person’s confidential correspondence, their views and opinions as well as the opinions of others about that person. Information about a person that does not fall within the definition of personal information is not regulated. For example, anonymised information about an individual used for statistical purposes or a photograph of a person without accompanying identifying information of the individual is not personal information and the POPI rules do not apply.

How do you comply?
Most of the information processed by the tax and accounting professions is personal information. These professions are involved in collecting, using, storing and transmitting more personal information than many other industries. POPI should, therefore, be of considerable interest to professionals in these fields. In light of the impact it will have on the tax and accounting professions it would be prudent to start planning for the advent of POPI right now. POPI will probably come into operation during 2014 and processors of personal information will then have a period of one year within which to become compliant. In many cases, existing confidentiality systems will only need small adjustments to bring them into line with POPI, but people who overlook the need to take action risk administrative fines of up to R10million. In most instances, large fines in foreign jurisdictions have resulted from leaks of private information rather than non-compliance with processing obligations. POPI sets out the minimum security safeguards to be adhered to when storing and handling personal information. The security guidelines are broad. Appropriate, reasonable, technical and organisational measures must be taken to prevent loss of or unauthorised access to, personal information. Apart from physical and electronic security to protect personal information, attention needs to be given to protecting the information contractually. For example, a company’s information technology outsource service provider will inevitably have access to personal information stored by that company. Traditional confidentiality clauses are usually insufficient to...
guarantee that the service provider can process the information and act in a manner which enables the company to adhere to POPI. This is important, because if any personal information is leaked, it is not the service provider that is liable but the tax or accounting firm itself. Additional contractual protections are needed to ensure that the agreement is POPI compliant.

The separation of records containing personal information from records which do not contain personal information must be considered. If it is impractical to separate personal information, the full set of records should be treated as if they contain personal information and they must be secured in accordance with the standards of POPI.

POPI cannot be interpreted so as to require this, as it could mean the destruction of thousands or millions of records simply to delete one record which the responsible party is no longer authorised to retain. Parliament could surely not have intended this. A more sensible interpretation in our view is that the Act requires deletion or destruction in a manner which prevents reconstruction in an intelligible form without the use of specialist skills or equipment or significant effort. In the same way, a responsible party would comply with the requirement by deleting the personal information which it holds in a cloud environment, without requiring the cloud service provider to take drastic measures to effect the deletion of other personal information which continues to be legitimately stored in the cloud.

Cross-border considerations
POPI also governs personal information sent outside of the country. This includes the storage of personal information in cloud environments located outside of South Africa. Generally, if the jurisdiction in which the cloud server is located has laws which are similarly protective of personal information as POPI, personal information may be sent there without restriction. If no such laws exist, then other considerations such as consent of the data subject and contractual provisions governing the treatment of the personal information must be included in your terms. Personal information should never be sent outside South Africa’s borders without first contemplating the implications of POPI, even if the information is sent to a parent or subsidiary of the professional advisory firm.

Clients must ‘opt-in’, too
Tax and accounting professionals should think twice before sending out an e-mail blast to their client mailing list. POPI has stringent requirements for the sending of direct marketing material. Except in limited circumstances, companies need the consent of a data subject before sending them direct marketing material. POPI introduces an ‘opt in’ requirement, a much stricter qualification than the commonly used ‘opt out’ requirement.

All of these requirements undoubtedly add to the regulatory burden faced by South African companies. POPI is, however, a welcome law for some important reasons. South Africa has been given poor marks in a number of cybercrime surveys performed in the last year. POPI will enforce better control of personal information which is often used to perpetrate these crimes. POPI also makes South Africa a more attractive investment destination because companies from jurisdictions which already have privacy legislation prefer to do business in countries which also protect personal information by statute. A proactive and observant approach to POPI will, therefore, yield benefits in the future, both for South Africa and the companies that comply.
Although many individuals and organisations claim that ethics matters, they would often modify its importance with limiting factors – the proverbial qualifying ‘but’. These limitations include whether ethics applies to some people or organisations and not to others, or in certain circumstances but not in all. The central question that these issues reflect is whether ethics should be constant and unchanging or if it can be selective.

Different rules for different people?
A good starting point is to consider whether ethics applies equally to everyone. Do values and rules, as key determinants of ethics, apply differently for different people?

Within an organisation, exercising values and rules differently can translate into many scenarios: different qualifying criteria for different suppliers or different criteria for promotions and increases amongst employees. The consequences of this risks not only casting the organisation as being unfair and discriminatory, but also exposes it to reputational damage and legal action – which illustrates clearly that the equal application of ethics makes good business sense.

When leaders appear to be above the law or when their actions flout the rules of their organisations, an inappropriate ethical message is sent to their followers and stakeholders, as well as to observers. Countering unethical leadership behaviour with a ‘do as I say, not as I do’ response does not address the problem at all. (As many parents know, this response rarely achieves the desired behaviour in their children.) Instead, this approach erodes the leader’s position as a role model worth emulating – again, not a desirable outcome.

Another pertinent question is whether ethics applies to some people or organisations and not to others. In terms of organisations towards which it may appear to be acceptable to behave unethically, cheating insurance and medical aid companies seems to be widespread. When a home or office has been burgled, does the claimant submit a list of exactly what was stolen, or is the list inflated? Inflating the claim is often seen as a means to ensure a fair pay-out for what has been stolen, and to compensate for the perceived likelihood that the insurance company will do its best to reduce the claim as far as it legally can. However, in reality, this kind of claim often amounts to so-called ‘soft fraud’ when it is used as an opportunity to get an increased pay-out, a factor that is often relevant when the economy is weak. To such ‘soft fraud’ can be added ‘hard fraud’ when someone deliberately plans or invents a loss, such as a collision or theft that is covered by their insurance policy, in order to receive payment for damages.
Statistics reveal that medical aid members and service providers are the greatest perpetrators of such conduct by far – and it’s important to recognise that ‘such conduct’ amounts to fraud. The many medical aid members who fail to disclose prior ailments would probably rationalise their behaviour, but would certainly not see themselves as fraudsters. But they should. After all, their selective ethics have gone totally contrary to the ethical principle that one should ‘do unto others as you would have them do to you’. Instead they have stooped to ‘doing unto others before they have a chance to do to you’.

**Selective ethics**

Another prominent ‘but’ factor is the question of whether ethics only matters sometimes. Or, phrased differently, when is it OK to behave unethically? The simple answer, ‘never’, is not the norm. Rather, it is likely to be: when it suits me or the organisation; when it’s convenient; when it furthers my self-interest or wellbeing; when it builds my self-esteem; or when it prevents or avoids an unpleasant or difficult situation.

This stance is particularly applicable to the introduction of e-tolls in Gauteng. The arguments against e-tolls have been wide-ranging, including that there may have been better and more cost-effective ways to finance the upgrading of the roads. Although these arguments appear to be valid, the government nonetheless decided to go ahead with the implementation of e-tolling. Despite noteworthy legal challenges, primarily by the Opposition to Urban Tolling Alliance (OUTA), it has been held to be a valid law passed by a democratic government.

But many motorists are refusing to buy e-tags, implying that they will also refuse to pay the tolls. This response is being supported by organisations such as OUTA. Wayne Duvenage, who heads OUTA, stated in a January 2014 article in the Daily Maverick that, ‘The law must be rational and acceptable to the masses expected to apply and obey it’. He continues to outline the situation ‘that sparks citizens to see nothing wrong with breaking the law to enforce their rights’.

It would, of course, be ideal if all laws were acceptable to everyone all the time. But, in reality, many citizens may disagree with policies and laws passed by the government. While there are actions that those who oppose a law can pursue (such as legal protests), it does not include the ‘right’ to choose which laws to obey or disobey. In a democracy, obedience to the law is neither optional, nor can it be exercised sporadically.

Pierre De Vos, writing in Constitutionally Speaking, presents a sound argument against such selective obedience to the law, noting that non-payment amounts to refusal to obey a validly passed law that does not infringe on the fundamental human rights of anyone. He adds that protestors need to recognise that disobeying the law promotes lawlessness: “They demand a right to be lawless in order to oppose e-tolls, while criticising others who are lawless” – others being, for example, strikers who break the law or mini-bus taxi drivers who refuse to obey traffic rules.

He also acknowledges that exceptions may arise when the democratically elected government acts to undermines democracy. In such cases, he recognises that, ‘ignoring the law is aimed at protecting democracy itself and would be morally justified’. Although the impact of e-tolls may be negative for many people, they do not constitute such as an exception because they do not undermine our democracy.

**Consistent ethical behaviour**

There are many other scenarios that question whether ethics should be constant and unchanging or if it can be selective. But, the overriding issue is that being ethical entails constantly and consistently abiding by the applicable values and rules, be they the values enshrined in the Constitution or the company’s values, or the laws of the state or the organisation’s rules and policies. It is the constancy of ethical behaviour that builds ethical organisations and ethical countries. And we have need of both.

Therefore, for those individuals and organisations who accept that ethics is ‘the right thing to do’ and appreciate the benefits of a more ethical society, ‘selective’ or ‘part-time’ ethics is not ethical. Rather, it erodes their ethical status and negatively influences those around them.

Cynthia Schoeman is MD of Ethics Monitoring & Management Services and the author of Ethics: Giving a Damn, Making a Difference. © Cynthia Schoeman
On a daily basis complaints are received against SAIPA members. The complaints are investigated by the legal department, attempts are made to mediate the complaints lodged, and complaints are then referred to the Investigations Committee. Finally, members are charged at the disciplinary Committee either for unprofessional behaviour or misconduct. Approximately 88 per cent of all complaints received have their origin in the fact that there is no agreement letter or contract between the accountant and his/her client.

Why is the Engagement Letter so important?
Issues often arise once a client is issued with an invoice for services rendered and disputes arise between the accountant and his client. This destroys the amicable relationship between the parties. It is then the accountant’s word against the client’s as to the exact nature of the services expected from the accountant as well as precisely what fee is payable to the accountant. Most clients, once they have appointed an accountant, expect all their accounting work to be in order. It is precisely for this that an accountant is appointed - the client has little or no knowledge of financial affairs and prefers to utilise the services of an accountant to deal with his finances. Once complaints are laid against the accountant, members have a tendency to shift the blame for inaccurate records to the client, their defence in most cases being that they were mandated to prepare financial statements or management accounts, and not any other accounting-related work.

An example of a professional relationship that turned sour is of one of the cases received by the legal department. The facts are as follows: A complaint was received from Mr X against BAD Accountants wherein he alleged that they failed to file his Annual Financial Statements on time and as a result he was penalized R60 000. The defence by BAD accountants was that they were not mandated to prepare the financial statements of Mr X. The matter was heard by the IC and it was decided that the accountant is expected to have advised the client that the Annual Financial Statements were due for filing even if he was not mandated to prepare them. Member was penalized R25 000 for this. It is on this premise that members are warned not to do work without proper mandates.

It must furthermore be taken into account that the internal structures of the Institute cannot make recommendations or rulings as regards ‘money lost’ by the complainant as a result of the accountant’s unprofessional behaviour, or his failure to provide a service. For example, if the complainant believes that his/her accountant has submitted his tax return to SARS, but the accountant has, however, failed to do so with the result that SARS imposed fines on the complainant, the complainant cannot recover this money through the internal processes of SAIPA. He/she must approach a civil court for this purpose. This can be a very costly exercise for the complainant as well as for the accountant.

The letter of engagement or contract should always be used when a contractor (the accountant) agrees to provide accounting services to a business owner or individual. This type of service contract is absolutely necessary when engaging the services of an accountant, as it not only clarifies the exact role and responsibilities of the accountant, but it also protects the interests of the business owner.

The contract must be a detailed agreement, covering such matters as the commencement of the appointment, scope of services and duties of consultant, fees and payment, confidentiality, ownership of developments, dispute resolution, etc. It is absolutely essential to have a signed document of this nature when entering into a freelance relationship.

Furthermore, this document defines the financial and administrative services to be provided by the accountant and includes clauses that protect the client’s confidential and proprietary information. In addition, this agreement reaffirms that an employer/employee relationship is not created between the parties.

Members are, therefore, advised to make sure that proper mandates are in place prior to doing work for their clients to prevent formal complaints at a later stage. It is furthermore of great importance to keep the letter of engagement updated. This should be done whenever circumstances change (either the accountant’s or the client’s). The contract should be reviewed annually to ensure that all the parties are still clear as to what is expected of them.
Flexible working is fast becoming the norm in many business sectors, including micro and small businesses. As hours of work become less defined and work/life balance improves, we look at how businesses can improve their productivity, while employees are generally happier.

Progressive and forward-thinking businesses are increasingly offering their workforce the opportunity to work from home for some or part of their working hours.

For your employees, the advantages include:
- Cost savings on commuting to work
- More flexible hours to accommodate family responsibilities
- More comfortable and peaceful environment
- For you and your business, the benefits include:
  - Higher productivity, as employees can work longer, with fewer interruptions
  - More loyal, motivated employees
  - Wider pool of potential employees to recruit

Improves reputation as a family-friendly and socially responsible organisation
- Reduced office space and resource needs
- Less stressed employees

Don’t rush in
Before you let your employees pack their things and start working from home, there are some important considerations that you need to take into account.

First, home working clearly suits some roles more than others. Traditional desk-based office jobs are among the most suitable roles to be performed from home, along with:
- Customer service
- Administration
- Telesales
- Marketing

If some of your employees are allowed to work from home while others aren’t, then you need to consider what kind of a message that sends out. Where possible, it’s best to keep your whole workforce happy, rather than just some.

Next, it’s important to ask each employee how they feel about working from home. It may be perfect for some employees, but others may thrive in a busy office environment and feel disillusioned and lonely at home. Think about how working from home could affect team spirit and the culture of the workplace: do you want to risk changing it?

Finding the right balance
If you do opt for a home-working approach, then the next thing to consider is the amount of time that your employees spend at home and in the office.

If you allow your employees to work from home entirely, it’s important not to lose touch with them. You should still manage and support them as you did before. They should still attend any important meetings, 1-2-1 sessions and development plan meetings. Sickness, holiday, discipline and grievance procedures should also be followed in exactly the same way.

Make sure that you include any adjustments to policies, procedures and methods of management in your home-workers’ contract of employment. You may need specialist help with this to ensure that you have covered all legal requirements. Some businesses opt for a mixture of working locations, spread between the home and office environment throughout the week.

SHOULD YOU ALLOW YOUR EMPLOYEES TO WORK FROM HOME?
Keeping track
It may be a bit more difficult to monitor your employees’ performance and productivity levels. Make sure that you have a robust tracking system in place, so that you can accurately determine how much work your employees are getting through, and whether this is better, worse, or the same as before.

Setting up for success
For most businesses, sending employees to work from home means providing, installing and setting up equipment, including things like:

- A workstation: usually a desk and a chair
- A laptop or PC, with the necessary software licences and internet connection
- A dedicated phone line
- A printer
- Some stationery

Additionally, you may need to upgrade your business insurance to cover this equipment and employer’s liability.

Safety first
It’s also worth remembering that even though they work in their own houses, home-workers are still your responsibility in terms of health and safety.

This means carrying out a relevant risk assessment, taking into account:

- The testing of any electrical equipment
- A workstation assessment
- Lighting levels
- Trailing cables and other trip hazards
- Employee training to ensure they work safely
- Recording accidents or near misses.

Safe and secure
Another consideration for you is how to keep your data secure. Any sensitive client, employee or business information must be treated in exactly the same way, wherever it’s stored.

You need to make sure that secure passwords and encryption software should be used for all PCs, as well as internet security and firewall protection.

Trial period
In many cases, it’s best to consider a trial home-working period, with a small group. Monitor how it affects productivity, motivation and your business in general before making a decision on extending the programme.

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Employees who feel their employers aren’t investing in their continuous professional development are far more likely to think about leaving to pursue better opportunities than those who are given this opportunity. So, why are some companies dragging their feet and refusing to invest enough in their employee development programmes?

Irwin van Stavel, Managing Executive and Senior Partner at LRMG, a local performance agency, says that in some cases it comes down to an insecurity most managers don’t want to acknowledge: the fear an employee may become overqualified, outgrow his job, and leave the company to pursue a better position elsewhere before a promotion is available. “This fear isn’t completely baseless either. Young high achievers job-hop frequently to earn a higher salary and, on average, leave their jobs after only 28 months. Research also shows that Generation Ys will have had 10 different jobs by the age of 38!”

Yet, withholding professional development from employees is not the right response to this fear; it’s a self-fulfilling prophecy, he stresses. “Fact is, employees seek professional development to achieve successful careers, and when companies don’t invest in this development, employees leave.”

The true cost of disengaged employees

The real cost of insufficient continuous professional development equates to unmotivated and disengaged employees. Citing Gallup’s 2013 State of the American Workplace Report, van Stavel points out that 70% of American workers are ‘not engaged’ or ‘actively disengaged.’ That’s a scary thought.

“While statistics for the South African market are not readily available at this point, having dealt with numerous organisations of varying in size around the country, we believe this statistic is even worse in South Africa,” says Guy Martin, founder and Managing Director of Bluprints. The impact of disengagement on productivity can also be devastating for a business. When employees are less engaged in their work, they require more supervision, make more mistakes, and cost their companies more money.

“On the other hand, employees who know their employers not only value them, but also invest in their future, become more engaged and motivated at work,” says van Stavel. Engaged employees see higher productivity, higher profitability, and higher customer satisfaction ratings. They also make fewer mistakes. Perhaps surprising to some is that engagement levels play a bigger role in employee satisfaction than corporate perks like vacation days and flexi-time.

“Most employees feel satisfied and engaged when they’re encouraged and equipped to contribute to the company’s overarching mission. This mission must, of course, be well-communicated, focused around a greater purpose, and go beyond the shareholders’ value. Employees want to feel like strategic partners. When they are given the necessary educational tools to participate, they become more motivated to help the organisation work toward its goals - and will stay longer at the company.”

Make your training worthwhile

However, employee training is often viewed as tedious, dull, and time-consuming - not exactly a recipe for employee satisfaction. So, how do you develop a training programme that your employees will enjoy and actually find valuable? Van Stavel points out that the key to effective employee development lies in thinking beyond traditional training, putting the infrastructure for learning in place, rewarding ongoing education, and getting out of the way so employees can teach themselves.

1. Understanding Employees’ learning styles

People learn in different ways: There are visual
“Employees want to feel like strategic partners. When they are given the necessary educational tools to participate, they become more motivated to help the organisation work toward its goals”

learners, auditory learners, or kinaesthetic (tactile) learners. Others learn best on their own or in small groups with other people. For example, an employee may decide to read training materials on his smartphone while riding the Gautrain, instead of on his computer at work. “The more flexibility offered to your employees for their training, the better,” van Stavel says.

2. Play to employees’ strengths instead of improving weaknesses
According to Gallup, building employees’ strengths is a far more effective approach than trying to improve their weaknesses. “The benefits of the strength-based approach range from better relationships with managers and increased productivity at work to decreased stress levels, fewer sick days, and fewer instances of developing a chronic disease.”

3. Don’t waste their time
During a learning “intervention,” people sometimes feel the opportunity cost for learning is greater than the benefit of the lesson learned. Van Stavel suggests staying mindful of this as a manager. “Don’t create a five-hour sales meeting that could occur in three 30-minute increments, or require people to read a full book on a topic when they could grasp the concepts from brief summaries.”

4. Let them take charge of learning
Employees are also adults who are fully capable of teaching themselves what they are motivated to learn as long as they have access to the right resources and experts. A good leader has a teacher mentality and motivates his team to learn. After providing the right learning assets and opportunities (on an ongoing basis), these leaders step back, and they allow the employees to build their own development plans, apply their lessons, and collaborate with others, he points out.

“The fastest way to capture the hearts and minds of employees is to make them feel valued and, thus, motivated in their jobs. While it may seem counterintuitive to train employees to advance beyond their current roles, investing in employee development will increase their loyalty to the company, help them stay longer, and allow the employee to build bench strength at the same time. As a result, you’ll have a highly engaged team of productive employees working to advance the company as a whole,” van Stavel concludes.
THE IMPACT OF THE AMENDED BEE CODES ON YOUR BUSINESS

Chris van Wyk, CEO, AQRate Verification Services

The amendment to the BEE Codes of Good Practice was finally unveiled on Friday 11 October 2013. The Codes will only be applicable to businesses measured in terms of the general codes, while the Sector Codes will remain applicable to businesses operating within those sectors.

The most important provisions with respect to Exempted Micro Enterprises (EMEs) being measured in terms of the Revised Codes areas follows:

- The threshold for EMEs has increased from R5 mil to R10 mil. Businesses with an annual turnover below R10 mil are now regarded as EMEs.
- An EME receives an automatic Level 4 BEE Status as was the case in the past, but
- 51% Black-owned EMEs receive an automatic Level 2 BEE Status; and
- 100% Black-owned EMEs receive an automatic Level 1 BEE Status.

- Start-up enterprises are measured as EMEs.
- A sworn affidavit is sufficient proof of a business’s turnover and black ownership status for purposes of qualification as an EME.

Impact on Accounting Officers

The increase of the threshold for qualification as an EME and the elevated status for 51% and 100% black-owned EMEs is good news, and if viewed in isolation means that the market for Accounting Officers issuing certificates has now dramatically increased. However, some of the enthusiasm with which this amendment was anticipated was, at first glance, somewhat tempered by the provision that sworn affidavits would be sufficient evidence for the EME status of such a business. We say ‘at first glance’ because upon closer inspection, the following soon became clear.

Statement 005 of the existing Codes has not been repealed. It states that Statement 000, Section 4 of the B-BBEE Codes of Good Practice (the current Codes) still applies for determining eligibility of an
EME. Section 4.5 of Statement 000 of the current Codes states that sufficient evidence of qualification as an EME is an auditor's certificate or a similar certificate issued by an Accounting Officer or verification agency.

Even though EMEs will, therefore, be able to merely make a sworn affidavit with regard to their turnover and black ownership status, it will not affect, now or in the future, the validity of certificates issued by auditors, Accounting Officers or verification agencies with respect to EMEs. Accounting Officers will still be able to issue certificates as evidence of the EME status of a business, except now they will also be able to do it for businesses with a turnover between R5 mil and R10 mil, which they were previously not allowed to do.

We also anticipate that very few businesses will make use of the option to use merely an affidavit for the following reasons:

i) It lacks the professional appeal that a certificate affords them;
ii) It is not an independent confirmation like that afforded by a certificate;
iii) Inadvertent misrepresentation in the affidavit with respect to the BEE Status level could be met with fines of up to 10% of the annual revenue of the business or imprisonment of up to 10 years;
iv) Tender Boards of Government are not allowed to rely on affidavits in terms of the 2011 Preferential Procurement Policy Framework Act Regulations, but only on certificates;
v) An affidavit can only be used to attest to black ownership and turnover, but aspects which have become relevant in terms of the new Codes, such as the EMEs ‘designated group status’ and ‘enterprise and suppliers development beneficiary status’, can only be attested to by means of a certificate.

In those limited cases where businesses would still want to merely use an affidavit, they will still require assistance with the content thereof, and in this regard, professional accountants (especially those who are Commissioners of Oaths) are, in our view, best positioned to assist those clients. SAIPA has partnered with BQSystems to provide Accounting Officers with an on-line tool to produce an appropriately worded affidavit, in addition to a certificate, which a client can use to make a sworn affidavit with. See more on this tool at www.bqsystems.co.za. Although the above is good news for Accounting Officers, unfortunately the Revised Codes brought with them a lot of uncertainty as to their application and legal status as a whole. However, the overall state of affairs is positive for Accounting Officers as their market share of the verification industry has just increased significantly.

Legal Status of Revised Codes

The Revised Codes only come into effect on 11 October 2014, and although they contain a clause that attempts to introduce a transitional period for the next 12 months in terms of which businesses may opt into the Revised Codes, legal commentators are of the opinion that even the transitional clause can only become effective on 11 October 2014. Bad drafting has, therefore, once again led to mass confusion and you can expect many requests from clients to be issued with a certificate or affidavit in terms of the Revised Codes. Although this confusion will exist for the next 12 months, we trust that the Dti will provide clarity before the commencement of the Codes on 11 October 2014. We have just been informed that the commencement date for the new codes is delayed to April 2015.

In the interim, we expect that there will be mixed acceptance, both in the private sector and more specifically at government tender boards, of certificates or affidavits issued in terms of the Revised Codes. The reason we expect government tender boards and those of parastatals to be reluctant to accept certificates or affidavits in terms of the Revised Codes is because they are compelled to make use of the scoring mechanism provided for in terms of the Preferential Procurement Policy Framework Act and its 2011 Regulations. The Act and the Regulations have not been aligned to the Revised Codes and won’t be for at least the next year. As far as the larger businesses in the private sector are concerned, we also believe that very few, if any, will opt into the Revised Codes in the next 12 months because of the onerous requirements it introduces for these entities. As a consequence, some of them will not be accepting certificates in terms of the Revised Codes for purposes of calculating their procurement status under the existing Codes.

However, this will not deter some of your clients to insist on a certificate in terms of the Revised Codes. Accounting Officers will, therefore, be met on the one hand with a demand for certificates in terms of the Revised Codes, but will on the other hand also need to be aware of the risks explained above for their clients when tendering for business with these certificates in terms of the Revised Codes.
In June 1973, in recognition of the rapid globalization of the world’s capital markets, the professional accountancy bodies in nine countries, including the United States, created the International Accounting Standards Committee (IASC). The IASC’s stated mission was to ‘formulate and publish in the public interest, basic standards to be observed in the presentation of audited accounts and financial statements’. Those nine professional bodies pledged in writing to use their best efforts to get the newly launched set of International Accounting Standards (IAS) adopted in their home countries and to ‘promote their worldwide acceptance’ and observance.

By 2000, the IASC had pretty much done what was expected of it—that is, develop a comprehensive body of accounting standards that was endorsed by the International Organization of Securities Commissions (IOSCO) and by the International Federation of Accountants (IFAC). The trouble was that not one of the nine founding countries had yet adopted these standards. At that same time, the European Union (EU) was debating whether to develop its own accounting standards for listed companies across Europe or to adopt the IAS as Europe’s standards. It chose the latter, which triggered similar adoption decisions in a number of jurisdictions outside of Europe, including Australia, New Zealand, Hong Kong, and South Africa. Most of those adoptions were effective in 2005.

Public expressions of support for the concept of global accounting standards were soon forthcoming from the G20, the World Bank, the International Monetary Fund (IMF), and the Basel Committee, among many other groups concerned with the global financial system.

Formation of the IASB
As a consequence, in 2001 the old part-time, poorly resourced IASC was restructured into the full-time, better financed IASB, under the supervision of a new IFRS Foundation. In the 12 years since the reform of the IASC, the IASB has produced many new standards under IFRS and has overhauled the standards it inherited from the IASC. More than 100 jurisdictions have now adopted IFRS.

But during that time, an odd thing was happening: the producer of the IFRS product (the IASB and IFRS Foundation) did not pay close attention to exactly...
who the consumers were or exactly how they were using the product. Adoption of IFRS is not black or white (yes or no)—it is shades of grey. For example, is IFRS for listed companies only or unlisted as well? Is it only for some unlisted companies, such as financial institutions? Is it required or permitted? Is it for consolidated financial statements only or also for separate company statements? Is it for domestic listed companies only or foreign listed companies as well? Are IFRSs written into law? Is there some sort of endorsement process and, if so, is that done on a timely basis? Did the jurisdiction add any disclosures or other requirements? Did it make any modifications to IFRS? Did it change the effective dates? Does the process for translating IFRSs from the original English ensure a faithful translation?

In February 2012, the Trustees of the IFRS Foundation completed a strategy review and published their report. They reaffirmed their commitment to achieving the vision of global accounting standards. At the same time, the Trustees acknowledged that they needed detailed answers to adoption questions country by country. The Trustees’ report said: The Trustees remain committed to the belief that a single set of International Financial Reporting Standards (IFRS) is in the best interests of the global economy, and that any divergence from a single set of standards, once transition to IFRS is complete, can undermine confidence in financial reporting.”

The trustees went on to say: With co-operation from national and international market and audit regulators, accounting standard-setters, regional bodies involved with accounting standard-setting, and accountancy bodies, the IFRS Foundation should seek full disclosure where adoption of IFRS is incomplete or where there is divergence from the full set of IFRS as issued by the IASB. The Foundation should seek a mechanism to highlight instances where jurisdictions are asserting compliance with IFRS without adopting IFRS fully.

Assessing IFRS Adoption
In late 2012, the IFRS Foundation began working on a comprehensive project to assess progress toward the goal of global accounting standards, directed by this author.

Using information from various sources, including a survey of standards-setting bodies, the foundation drafted the profiles and invited the respondents to the survey and others (including regulators and international audit firms) to review the drafts. Their comments are reflected in the reported findings.

Currently, profiles are completed for 122 jurisdictions. Each profile shows, among other things, details on the survey participant, whether the jurisdiction has made a public commitment to global accounting standards; the extent of IFRS application (Which companies? Required or permitted? Consolidated only? Unlisted also?), the endorsement process;

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<td>The Trustees of the IFRS Foundation are currently working to develop several dozen more jurisdiction profiles beyond the 122 already posted. The goal is to have a profile for each jurisdiction that uses IFRS or is on a path toward adoption. In addition, the Trustees plan to do a follow-up survey in early 2014.</td>
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The formation of the IASC in 1973 was based on a vision of a common accounting language around the world, so that capital providers would not be forced to make back-of-the-envelope adjustments to try to compare investment opportunities across borders—or worse, so that capital providers would not end up making suboptimal decisions because of false or misleading comparisons. The first 122 profiles of jurisdictions regarding their adoption or consideration of IFRS provide solid evidence that IFRS has already become the de facto global language for financial reporting; 101 of those jurisdictions already require IFRS for all or most domestic listed companies, and many of the remaining 21 permit IFRS for at least some domestic listed companies. Very few jurisdictions have made modifications to the standards. As Loretta Lynn sang back in 1978, ‘We’ve come a long way, baby.’

Paul Pacter, PhD, CPA (inactive), is a former member of the IASC and currently manages the IFRS Foundation’s study of IFRS use around the world.
The 2013 tax seminar hosted by SAIPA and Norton Rose Fulbright reiterated the importance for the Professional Accountant (SA) of planning and executing all accountancy activities from a platform of compliance, as well as from a point of view that will aid business growth.

Elias Masilela, CEO of the Public Investment Corporation, and Commissioner of the National Planning Commission, opened the seminar with remarks on the important role to be played by the Professional Accountant (SA) in the execution of the National Development Plan. “It is only through professions like yours that we can realise our dreams as a nation and as a country. Less than optimal cooperation between state and private sector are inhibitors to optimal implementation of NDP.”

“To tackle inequality, we propose a progressive tax system. However, progressive taxation on its own is not enough. Risks rise with a progressive tax system, and tax professionals will need to assist the Commission in enhancing compliance from taxpayers.”

Prof Osman Mollagee, partner at PWC warned that, ‘tax avoidance by large corporates has recently become a matter of morality and fairness, and the distinction between tax avoidance and evasion may now be blurred in the mind of society’. Tax professionals therefore have a harder job than ever to advise their clients on a comprehensive and compliant tax strategy. He also advised that, ‘a tax strategy needs to start from what the business wants, and fitting the tax around that, not having a tax strategy upfront and forcing the business around the tax strategy’.

Zee Cele, Tax Specialist and Professional Accountant (SA) provided insight into how South African tax professionals will need to adapt when expanding into BRICS countries and the African continent. The BRICS block provides a substantial opportunity for South Africans to expand their current local business, especially when it concerned tax advisory services. According to Zee, language and culture play a critical role. “What works in one market, may not necessarily work in another. Confirmation and affirmation of instructions received is critical to serving your clients needs. What you heard might not be what has been requested.”

Professor Jennifer Roeleveld, Associate Professor and Head of Taxation at the Department of Finance and Tax of the University of Cape Town informed delegates that reviews by the Global Forum on Transparency and Exchange of Information revealed a substantial increase in requests for information between tax authorities from different countries. This is especially important when one considers the rapid increase in the size of the digital consumer space. Prof Roeleveld commented further that, ‘we need the young minds that developed the digital consumer space to advise us on how to go about taxation issues relating to digital purchases’.

Faith Ngwenya, Technical and Standards Executive at SAIPA presented considerations when buying or selling a business, with the emphasis on both buyer and seller to beware during the entire transaction. Valuation, due diligence, solvency and liquidity, and potential impact stemming from the macro environment need to be taken into account to ensure the fairest possible transaction.

During the panel discussion on the second day of the tax seminar, Ettiene Retief, Tax Specialist, noted that there has been a shift in boardroom from, ‘how do we work around tax, to how do we comply with tax requirements’. This needs to be supported by tax professionals by a mindset shift towards performing all actions and providing advice in a compliant manner.

Ettiene also admonished that auditors and independent reviewers should not be part of the tax computation exercise. “A Professional Accountant (SA) should be able to provide readily available tax packs at any time during regular accounting periods.”

“In establishing taxable income, the focus should be on capturing information in a way to inform detailed, transparent, compliant data that can be easily used for accounting, business, tax and auditing functions,” advised Ettiene. “Proper accounting policies and quality of staff is key to creating consistency.”

Relying too much on systems and processes, and not applying reasonability testing and/or systems testing often enough is, however, also risky. The same is true for implementing new systems to try and fix problems. Ettiene suggested, “Start focusing on using systems that already exist to better analyse the data for early identification of potential problem areas. Focus proper documentation and proper systems to inform proactive stance to tax, instead of reactive stance to potential penalties.”

Catinka Smit, Senior Specialist at SARS, shared the good news of the vast majority of taxpayers being compliant, or at least trying to be compliant, with only a minority who seek to evade tax or defraud.
An increase in the number of schools that participated in the 2013 National Accounting Olympiad reflects an increasing awareness of the value of professional accounting as a career choice and the growing stature of the competition. The number of Dinaledi schools rose by more than 60% in 2013, with 199 Dinaledi schools represented among the 471 schools involved, and the number of pupils who took part increased from 632 last year to 1,051 this year.

The National Accounting Olympiad is an initiative of the South African Institute of Professional Accountants (SAIPA) whose objective is to spur interest in accounting among school goers exploring career opportunities.

The total number of learners who wrote the first round of the SAIPA accounting Olympiad exams in 2013 was 2,536, compared with 2,144 in 2012, says SAIPA’s accreditation compliance and development executive, Navin Lalsab. “The pass rate rose by an encouraging 390% to 819, following a modest increase the year before of 16% over 2011,” he adds. “However, we need to continue to improve this performance year-on-year if we are to produce future professional accounting leaders in the numbers required to build the economy and create jobs.”

“Given the importance of maths and accounting in the world of work, the scarcity of qualified professional accountants in South Africa and the government’s emphasis on bringing up the matric pass rate in the subject, SAIPA will continue - through the Olympiad - to promote professional accountancy as an attractive option for school leavers and to develop much-needed maths skills to bolster the economy.

Following the second two-hour exam in August, Ebrahiem Abrahams and Muiazzam Rawoot, both of Rondebosch Boys High School in Rondebosch, Western Cape), emerged national winner and runner-up respectively. Third was A Abdul Ahmed (Star College Girls High School, Westville North, KwaZulu-Natal).

The national winner in the Dinaledi schools category was Lebogang Mnguni (Letsibogo Girls High School, Soweto, Gauteng); second was Zinhle Tabete (Siphapheme High School, Umzinto South, KwaZulu-Natal), and third Matsepe Tsiu (Sutherland High School, Pretoria, Gauteng).
It’s a bitterly cold Johannesburg morning. Outside the offices of Blenkinsopp & Batterwack - makers of fine envelopes for over 100 years – arctic wolves are howling, and a kindly pensioner with arthritic fingers is using a small chisel to hammer off icicles frozen on the tiny beak of a quivering green honey bird. A hapless gate guard is feebly shouting for help as his ungloved fingers have stuck to the security boom. It’s not a nice day. Not at all.

Inside, receptionist Dazuluka Deliwe is simultaneously trying to e-mail her union rep while trying to contain a stream of mucus pouring from her influenza-ridden nostrils. Since the onset of winter her condition has swiftly deteriorated and she fears she might have developed rapid-onset gangrene on her left foot. She dares not look. With one trembling hand she tries to answer the phone but she can only articulate a, ‘Good Morning Blenk …’ before she painfully drops the receiver. How has Ms. Deliwe found herself in this pitiful position and can she survive her tundra-like working conditions before her medical aid self-payment gap kicks in?

To answer that we need to examine more closely the head office and manufacturing plant of Blenkinsopp and Batterwack – makers of fine envelopes for over 100 years. It is a cavernous building, much like an aircraft hangar circa Battle of Britain, that looms dark and large in the north-west corner of an office park in a natural hollow. Its first hint of sun is as the orange orb dips in the late afternoon, just as people are leaving to go home and thaw out. Due to Victorian austerity measures, the still-living founding partner of the company Ebenezer Batterwack eschews all forms of interior heating, believing in a deranged way that productivity increases the more the mercury drops.

“She comes to work wrapped in seven layers of clothing – the innermost tested on the Khumbu Icefall on the slopes of Everest. And it makes little difference”

In Ms. Deliwe’s case, the unsealed front revolving door of the business lets in a shrieking tunnel of subzero polar wind every time the door opens, and behind a flimsy plywood reception desk there is no cover or respite from the elemental winter onslaught. She comes to work wrapped in seven layers of clothing – the innermost tested on the Khumbu Icefall on the slopes of Everest. And it makes little difference. Her balaclava-ed face is further insulated by silver duct tape that she wraps around her head, and on really cold mornings she’s taken to wearing a pair of welding goggles to stop her red eyes streaming. Cries for warmth have gone unheard. She is at the end of her teeth-chattering tether.

And she is not the only corporate receptionist who has to deal with the frontline assault of winter. So often we encounter these brave people – the gatekeeper of the company - having to work in conditions cold enough to freeze corpses. So this year before the winter season approaches, we implore you to fix the seals on the office front door and buy a two-bar foot heater. They’ll thank you, and the sound of those wolves will disappear.
THE NEW COMPLIANCE RISK MANAGEMENT PLAN (CRMP) WEBSITE IS NOW AVAILABLE AT WWW.CRMP.CO.ZA.

This project was spearheaded by the Compliance Institute Southern Africa in line with their Generally Accepted Compliance Practice framework.

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- Document any additional controls required; and
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- FAIS Act suite (3 Plans);
- Financial Intelligence Centre Act;
- Occupational Health and Safety Act (Core duties) and (Offices) (2 Plans);
- Companies Act
  - Private companies (Governance) and (Authorisations) (2 Plans);
  - Public companies (Governance) and (Authorisations) (2 Plans); and
- Municipal Finance Management Act (Municipality accounts).

The site will continually be updated with new CRMPs as they become available.

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THE EMPLOYMENT TAX INCENTIVE FROM AN ADVISOR PERSPECTIVE

RETIREMENT REFORM HOW TREASURY HOPES TO REDUCE RETIREMENT COSTS
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For the first time in 2013, SAIPA-CoTE released two tax guides within one year viz: the annual Tax Guide and the VAT Guide for CoTE members. Incidentally, the latter provides CoTE members with four hours of FREE continuous development points if they complete the questions online. This VAT guide will continue to traditionally be distributed during 2014 as gradually more and more SAIPA members become CoTE members.

SAIPA-CoTe will, however, in 2014 release two more brand-new guides - the 2014 Tax Update and the Employer Tax Incentive Guide which will be released under the same cover to save on costs. The new 2014 tax guides will be released by the end of April which is two and a half months before filing season starts (1 July).

Members are reminded to book ahead of time for the upcoming seminars. Go online at www.saipa.co.za to reserve your seats. Upcoming seminars can be found at the following link: http://events.saipa.co.za/

CoTE welcomes all existing SAIPA members to apply for their additional tax designation; Professional Tax Technician (SA), Professional Tax Practitioner (SA) and Professional Tax Specialist (SA) before this offer of membership expires. To apply for the Specialist designation, it is required of members to furnish CoTE with a post graduate qualification in Taxation and at least three years’ experience in an advanced Tax environment or just being a full SAIPA member with a relevant master’s degree. The Tax Specialist designation allows members to represent taxpayers in a tax court, write tax opinions and mediate in tax disputes.

“RCB vs. SARS gatherings are intended to provide all stakeholders, such as professional bodies, accounting establishments and tax firms, an opportunity to gain closer insight into tax legislation and also to review tax practices. All discussions are aimed at addressing a broad range of tax issues as well as some understanding of the basic principles underlying tax policies.”

Keith Pietersen, Tax Manager, Technical & Standards Department
kpietersen@saipa.co.za

TURBULENT TIMES BUILD GREAT LEADERS

A WORD FROM SAIPA

TURBULENT TIMES BUILD GREAT LEADERS

RCB vs. SARS gatherings are intended to provide all stakeholders, such as professional bodies, accounting establishments and tax firms, an opportunity to gain closer insight into tax legislation and also to review tax practices. All discussions are aimed at addressing a broad range of tax issues as well as some understanding of the basic principles underlying tax policies.”

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Softbyte Computers
Members are reminded that the RCB vs. SARS gatherings are intended to provide all stakeholders, such as professional bodies, accounting establishments and tax firms, an opportunity to gain closer insight into tax legislation and also to review tax practices. All discussions are aimed at addressing a broad range of tax issues as well as some understanding of the basic principles underlying tax policies. Meetings are often well attended and participants express their gratitude for opportunities offered for insights and views that are expressed. Every effort is made to find consensus in the varying and conflicting viewpoints that are aired in such a forum.

The procedure followed is that each unit or organization is permitted two representatives. Discussion seeks to consider broad issues and avoids individualistic concerns of any particular taxpayer. Copies of minutes of these stakeholders’ meetings are made available to members and are cited on the SAIPA website within days of a meeting.

We are assured of the beneficial results that flow from these meetings. A striking example is of the legislative change made as a result of a participant at an earlier stakeholders’ forum. The member, in the course of discussion, raised an objection to the calculation of the basic amount used to determine a taxpayers’ provisional tax. When attendees at these fora presented this plea to SARS, the relevant clause was immediately re-formulated.

We urge you to ensure that your professional body recognizes the significance of these stakeholders’ forums and that you submit appropriate recommendations that may well be of benefit to many taxpayers. We strongly appeal to all of you to raise concerns which can be tabled at the forum, and thus enjoy the benefit of wider discussion resulting in relevant information and feedback. Once a submission has been received from our members, the Provincial Chairpersons of SAIPA review the various submissions, a SAIPA-CoTE institute-wide consensus is arrived at, and thereafter a formal submission is made to the stakeholders’ forum.

I trust that you will consider taking advantage of this opportunity that offers huge benefits to your clients and, more generally, taxpayers as a whole that may benefit from your invaluable contribution. SAIPA members are informed that these stakeholders’ meetings are not designed merely to address procedural operational and administrative issues experienced by our members. Such issues that have not been resolved by the regional SARS branches, regional stakeholder meetings or the SSMO, with SARS national offices can be submitted to SAIPA’s tax desk throughout the year.

Turbulent times build great leaders – Robin Sharma, The Monk Who Sold His Ferrari

Just keep in mind that difficult days never last, but strong people always do. Hard conditions are nothing more than chances to become heroic. Challenging times in both business and in life are incredible opportunities to transform mess into success. Don’t worry - in the end everything will be OK. If things are not OK, then it is not the end!

Keith
The Employment Tax Incentive (ETI) advocates the enabling of unemployed youth to participate in economic activity, this stemming from the high rate of unemployed youth with lack of skills and low economic drive. The ETI is not without risks. There are heavy penalty provisions, and the employer claiming must make absolutely sure that they understand the parameters of the claim and they have the correct processes and risk-management in place. This is where the role of the professional advisor becomes very important – to create a framework that ensures compliance and keep clients protected against the inevitable SARS audits that will happen hereon.

The ETI incentive encourages employers to hire the younger and more inexperienced because, by doing so, it aims to reduce cost through a cost-sharing mechanism with the government. With the ETI, the wage of the employee remains unaffected. The incentive is not merely aimed at the youth with no work experience as this is not a requirement. The incentive is founded solely on age restriction.

To question whether the ETI will work should probably not be the focus, but rather to make use of the incentive opportunity as it will provide significant savings for employers who employ under the category which encompasses the incentive. The National Treasury and SARS will monitor the
incentive closely to evaluate its potential impact. After the review of impact of the incentive after two years, the second phase may include additional policy features and refinement.

The Employment Tax Incentive came into effect on 1 January 2014, as it stands, only employers who are registered for employees’ tax can claim and only as a reduction for employees’ tax payable. There are future enhancements to be promulgated dealing with refund cheques (thus not settlement through reduced PAYE) and also for employers who are not employees’ tax registered.

Claim formula
The claim is simple-formula-driven and summarised in the below:

<table>
<thead>
<tr>
<th>Monthly Remuneration</th>
<th>Employment Tax Incentive per month during the first 12 months of employment of the qualifying employee</th>
<th>Employment Tax Incentive per month during the next 12 months of employment of the qualifying employee</th>
</tr>
</thead>
<tbody>
<tr>
<td>R0 – R2 000</td>
<td>50% of Monthly Remuneration</td>
<td>25% of Monthly Remuneration</td>
</tr>
<tr>
<td>R2 000 – R4 000</td>
<td>1000</td>
<td>500</td>
</tr>
<tr>
<td>R4 000 – R6 000</td>
<td>Formula: R1 000 – (0.5 x (Monthly Remuneration – R4 000))</td>
<td>Formula: R500 – (0.25 x (Monthly Remuneration – R4 000))</td>
</tr>
</tbody>
</table>

In the first year of employment the employer can deduct the full value of the incentive, but in the second year of employment the incentive is halved throughout the salary ranges. There are ample practical examples in the SARS guides hereon and no need for repetition.

Whilst there have been many articles in the press on the law, and we also have the benefit of the explanatory memorandum and SARS guides on the ETI, the professional advisor needs to be aware of the risks and complexities of this law, in addition to the normal operating procedures which is very much a given. We note some of the most prominent issues which come to mind.

Qualifying Employee
One of the requirements of being a qualifying employee, an employee on who you can claim, is that the employee ‘was employed by the employer or an associated person on or after 1 October 2013 the employer, however, is permitted to claim the incentives from 01 January 2014 only - there are no retrospective incentives available.

Foreign workers
Another requirement of a qualifying employee is that it only covers an employee who ‘is in possession of an identity card referred to in section 14 of the Identification Act, 1997 (Act No. 68 of 1997), issued to that employee after application for the card in terms of section 15 of that Act; or(ii) is in possession of an asylum seeker permit, issued to that employee in terms of section 22(1) of the Refugees Act, 1998 (Act No. 130 of 1998), after application for the permit in terms of section 22(1) of that Act.’

This means we are dealing with citizens and asylum seekers only. Strangely, the explanatory memorandum refers to also permanent residents as qualifying, but this appears not supported by the law.

Wage regulating measures
The ETI does not allow an employer to claim where the employer pays less than the amount payable by virtue of a wage regulating measure applicable to that employer. Wage regulating measures refers to collective agreements, sectorial determinations and binding bargaining counsel agreements. It appears practically difficult for some employers to always get certainty on whether they are covered by certain agreements and others have interpretation problems on whether they meet the minimum payment levels. This is obviously an area best served best by labour consultants and specialists, but the potential issue should nevertheless be highlighted.

Pro rata salaries and working for less than a month
The claim is determined on an employee’s ‘monthly remuneration’. This definition refers to an employee’s remuneration per the Fourth Schedule, i.e., the same value on which PAYE and SDL is computed. It is, therefore, possible that where an employee earns a bonus or overtime in a month, the employee will be over the R6, 000 limit and that month will not qualify. The month, then, is not a qualifying period and the employer can start commencing the claim again in a subsequent month when below the qualifying conditions are met.
Where an employee works for less than a month, a pro rata formula must be used. The treatment is simple, therefore, where an employee starts working during a month. The position is far more complex where an employee works for wages or not normally for monthly earnings. The law reads in these instances that -

Where the employee is employed for less than a month, an amount that bears to the amount of R2 000 the same ratio as the number of days that the employee worked during that month bears to the number of days that the employee would have worked had the employee been employed for a full month.

On wage earning, daily paid and hourly paid employees, an exercise must be done to get income to a monthly level. Practically, it seems to work best to determine the hourly rate of pay and then to work the normal monthly rate, based on normal monthly hours. Each employer should have a very clear computation method here, which aligns to their employment practices.

A 100% penalty applies to where you claim the incentive incorrectly, getting this wrong and specifically enacted in section 4(2) of the Act.

**Domestic worker exclusion**
The ETI does not apply to domestic workers and the legal definition hereof is -

An employee who performs domestic work in the home of his or her employer and includes
- A gardener;
- A person employed by a household as driver of a motor vehicle; and
- A person who takes care of children, the aged, the sick, the frail or the disabled.

Farm workers are not under this definition, so you can claim on farm workers.

**Roll-over of amounts**
The Act offers two instances where an incentive amount available may be rolled over. First, if the incentive amount exceeds the employees’ tax otherwise due in that specific month, the excess may be carried forward to the subsequent month within limits. There is a periodic limit on the excess that may be carried forward. On the first day of the month following the end of the employees’ tax reconciliation period, the amount may not exceed R6, 000 per qualifying employee. Secondly, if the employer was not allowed to reduce employees’ tax due to outstanding or SARS debt, the incentive may be carried forward for future use, if so agreed upon by SARS.

**Penalty and Disqualification of Displacement**
Where you displace an employee, you get a R30, 000 penalty per displacement (per employee).

Also, you can be Gazetted as an employer who no longer qualifies for the incentive. The meaning of displacement is linked to section 187(f) of the Labour Relations Act. Thus, whilst you can dismiss an employee in many illegal ways, it is specifically the following breach of employment law, and replacing the wronged employee with a qualifying employee, where large penalties are at stake –

that the employer unfairly discriminated against an employee, directly or indirectly, on any arbitrary ground, including, but not limited to race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, political opinion, culture, language, marital status or family responsibility.

**Tax Compliance – a critical role for the accountant and tax advisor**
An employer may not reduce the employees’ tax payable by that employer in respect of a month by the amount of the employment tax incentive available to that employer in that month if, on the last day of that month, the employer has any tax returns outstanding or has any outstanding tax debts which are not proactively managed. It should be noted that a properly suspended tax debt per section 164 of the Tax Administration Act, means you can still claim, and tax debts below R100 are ignored. Where you cannot claim for a month, the rollover provisions apply.

The role of accountant/tax practitioner sign-off for tax compliance is very important; otherwise the employer may again make an incorrect claim.
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A number of neighbouring African countries impose withholding taxes in respect of services rendered abroad and on sales of goods if funded by payments from their local (own) residents. Neighbouring African countries’ imposition of these withholding taxes in respect of South African-sourced services is based on these countries’ domestic tax legislation - and not on South African legislation. These countries are entitled to craft their own tax legislation and consequently apply it appropriately.

Services rendered include management fees and technical advisory services to a non-resident company by a South African resident company that does the work in South Africa. In this situation, both the sale of goods and services rendered are South African-sourced income. The net result of these African withholding taxes is double taxation with little relief. The South African tax system did not provide credits in respect of these foreign withholding taxes prior to 1 January 2012.
Section 6quin has changed this situation with effect from 1 January 2012. A rebate against a South African resident’s normal tax liability of foreign taxes paid on income from a South African source is now possible! The requirements of Section 6quin are as follows:

- The foreign tax may not be deducted in terms of section 6quat (deduction);
- The taxpayer must be a South African resident;
- The income received must be from a South African source;
- The South African-sourced income must be included in the taxable income – not an exempt income – of the South African resident taxpayer;
- The South African-sourced income must be subject to a foreign tax; and
- The maximum rebate in respect of foreign tax levied is the lesser of either:
  
  i) The amount of normal tax that is attributable to the amount that is received or accrued, or
  
  ii) The amount of foreign tax levied or imposed.

The taxpayer is reminded that any excess amount of foreign taxes, as per section 6quin, is forfeited and may not be carried forward to the following years.

“The foreign tax must be translated to rands on the last day of the year of assessment in which that foreign tax is levied by using the average exchange rate for that year of assessment.”

60 days from the date the tax was paid to the foreign revenue office, otherwise it is likely that the rebate will not be allowed. Some of the information required when completing the FTW01 form is as follows:

- Passport details of the South African Taxpayer
- Country code where foreign tax was paid
- Whether a DTA agreement is in force between the two countries
- Foreign tax Reference number
- Nature of services rendered
- Gross income denominated in original foreign currency
- Date and amount of foreign tax withheld in original foreign currency
- Relevant section of the foreign tax law that provides for the withholding of the tax and a copy thereof
- Whether the South African Taxpayer contacted the foreign Tax Authority

The name and contact details of the person in the foreign Tax Authority, and lastly, Postal address of the Foreign Tax Authority.

The South African taxpayer has to complete the declaration form (FTW01) in order for SARS to determine whether the neighbouring country has correctly imposed the withholding tax in terms of a Double Taxation Treaty (DTA) if there is a DTA.

So it is legal for these countries to impose a withholding tax if their domestic legislation provides for it, but these provisions must be evaluated against a DTA. Hence, SARS requires South African taxpayers to complete the declaration form (also known as a return) to assess the correctness of the withholding tax against a DTA if one exists between the countries of the contracting parties.

**“Foreign tax must be translated to rands on the last day of the year of assessment in which that foreign tax is levied by using the average exchange rate for that year of assessment.”**

Furthermore, the foreign tax must be translated to rands on the last day of the year of assessment in which that foreign tax is levied by using the average exchange rate for that year of assessment.

Taxpayers are alerted to the fact that for years of assessment commencing on or after 1 July 2013, a taxpayer has to submit a FTW01 Form to SARS within
Making retirement savings compulsory for all formally employed South Africans, improving fund disclosure and making products portable between providers are some of the measures proposed by National Treasury in its 2014 Budget update on retirement reforms released on Friday.

This paper, together with its 2013 paper on charges in South African retirement funds, will form the basis of engaging with key stakeholders and finalising the legislative framework for retirement reform.

The charges paper released last year generated more than 30 submissions from a variety of industry stakeholders, most of whom acknowledged the need for improvement, but had widely divergent views on Treasury's proposed policy interventions.

The charges paper found that the voluntary nature of our retirement system and the low rate of preservation drive cost significantly so that, according to Treasury, our system “appears to be expensive by international standards”.

Further findings included that disclosure to members on charges was low; remuneration structures for financial advisors created conflicts of interest where advisors were incentivised to direct client business to providers offering the greatest rewards, rather than those providing the best value for money to clients; and the layered charging structures of investment platforms added complexity and cost to retirement funds.

Timeline for reform
With a focus on “the underlying structure of the retirement industry and poor market conduct practices”, Treasury has proposed a range of goals that will be achieved through various regulatory interventions, and in consultation with the industry, over the next few years.

In the short-term, Treasury plans to tackle intermediary remuneration on investment products, including retirement annuity policies, through the release of the Financial Services Board’s (FSB) Retail Distribution Review (RDR) in May 2014.

Broadly speaking, RDR plans to replace high upfront sales commissions on insurance policies with
transparent fees negotiated between intermediaries and their customers. Rebates on investment platforms, whether paid to the platform or other intermediaries, will be phased out.

**Draft regulations**

Also for release in May 2014* is a set of draft regulations on default strategies for retirement funds. There are currently no regulations in South Africa that either require funds to create defaults or that lay out the requirements with which such defaults should comply.

“Correct default policies could ensure that funds use their size and substantial bargaining power to provide better terms upon which individual members can access financial services (such as annuities) than if they purchased them in the retail market,” Treasury’s paper notes.

The regulations will require funds to have default investment portfolios for retirement savings; default annuity products for members on their retirement; and default preservation rules for members on termination of membership before retirement, each to be chosen by fund boards subject to certain restrictions.

Later this year or early next year, Treasury and the FSB will release draft regulation on how retirement fund charges should be quantified and disclosed.

“It is imperative that disclosure of charges be improved in the South African retirement industry as a whole,” the paper continues. Treasury contends that certain parts of the market, particularly the umbrella fund market that is not subject to retail disclosure requirements, appear to downplay significant portions of charges such as investment management charges.

Non-disclosure of payments made to related parties, such as trustee conferences, may be prohibited from a governance perspective to prevent conflicts of interest or dependence on key stakeholders.

**Mandatory retirement saving**

In the medium-term, Treasury intends to make retirement savings mandatory for all formally employed workers; provided this is well managed and adequate provision is made for low-income workers who do not have easy access to the existing voluntary model.

One option to lower the costs of retirement provision to low-income workers currently under consideration is a retirement fund exchange or clearing house integrated with the South African Revenue Service, which would collect retirement fund contributions directly from employers as part of their employee tax returns and pay them to highly standardised, qualifying funds listed on the exchange or clearing house.

A paper on simplifying retirement savings products, so that product providers compete on price and service, rather than “complex product designs”, is expected for release in late 2015. This will also propose that products be portable between different providers of retirement funding vehicles and between different products offered by the same provider.

“There are currently more than 3 000 active retirement funds in South Africa and Treasury feels that many of these lack the economies of scale and strong governance required to operate efficiently.”

This would prevent consumers from being locked into a particular product or provider so that they fail to benefit from increases in market efficiency and product innovation.

Fund consolidation and increased standardisation in the benefit offerings of funds is highlighted in the paper as an important driver of improved efficiency. There are currently more than 3 000 active retirement funds in South Africa and Treasury feels that many of these lack the economies of scale and strong governance required to operate efficiently.

Treasury’s latest paper will facilitate consultations with the Association for Savings and Investment South Africa (Asisa) in order to formalise the in-principle agreement to lower costs in the retirement industry.

*An update on retirement reform was released on 14 March 2014 by National Treasury and SAIP-COTE will be responding to this draft document. Members are encouraged to make submissions for inclusion in this draft.

This article first appeared on Moneyweb.co.za and is published with permission.
Tax practitioners are reminded that with effect from 1 March 2014, rules for the deduction for medical expenses changes again, perhaps with taxpayers being further disadvantaged. It is given that the amount of tax credit, which is deductible from the individual’s normal tax payable, is as follows:

- R257 per month if the medical benefit is only to the taxpayer who paid the medical aid contribution and the first dependent on the medical aid scheme, plus
- R172 in respect of medical benefits to each additional dependant.

New Rules for deduction of medical expenses
CoTE undertakes the responsibility to inform tax practitioners and taxpayers of the new rules for the calculation of deductible medical expenses. Section 6B (2) (b) of the Income Tax Act, as amended, is relevant. This section of the Income Tax Act implies the following:

In the case of –

i) An individual who is 65 and older, or if that person, his or her spouse or child is a person with a disability, 33.3% of qualifying medical expenses paid and borne by the individual and an amount by which medical scheme contributions paid by the individual exceeds three times the medical scheme fees tax credits for the tax year;

ii) Any other individual, 25% of an amount equal to qualifying medical expenses paid and borne by the individual and an amount by which medical scheme contributions paid by the individual exceeds four times the medical scheme fees tax credits for the tax year, limited to the amount that exceeds 7.5% of taxable income (excluding retirement fund lump sums and severance benefits).

The changes to the 2014/15 tax-year rule for the deduction of medical expenses paid are applicable only to those individual taxpayers who are 65 years and older, with and without disability. The tax deduction rule for medical expenses has not changed.
for the under-65 individual without disability when compared with the tax year commencing 1 March 2013 till 28 February 2014.

In other words, a taxpayer over the age of 65 will receive the following medical tax credits:
- The usual monthly medical tax credit in respect of contribution to a registered medical aid scheme;
- 33.33% medical tax credit for any contribution paid that exceed three times the medical tax credit mentioned above;
- 33.33% of additional tax credit on out-of-pocket medical expenses.

A taxpayer under the age of 65 and without a disability is allowed the following medical tax credits:
- The usual monthly medical tax credit in respect of contribution to a registered medical aid scheme;
- A credit equal to 25% of the sum of:
  - Medical aid contribution paid that exceed four times the tax credit as calculated above, and
  - Qualifying out-of-pocket expenses that exceed 7.5% of the taxable income.

**Examples**
It is appropriate that practical examples be supplied in order to clarify tax implication of the new rules.

**Taxpayers: Individuals older than 65**

**Facts given:**
- Citizen X: Taxable Income R 500 000
- Married with two children & Pays R 5 000 pm to a registered medical scheme
- Qualifying medical expenses R 25 000

**Calculations**
- Normal tax payable R 100 000
- Section 6A rebate for tax year ending February 2015 (R 257 X 12) = R 3 084
- The medical expenses are deducted as follows:
  - Contribution paid for the year (R 24 000 less three times the annual Section A rebate = R 24 000 – (R 3084 X 3) = R 24 000 – R 9 252 = R 14 748)
  - Section 6B Credit is R 14 748 x 33.33% = R 4 915.50
- Given: Qualifying out-of-pocket medical expenses = R 25 000 x 33.33% = R 8 332.50
- Primary rebate (R 12 726)
- Secondary Rebate (R 7 110)
- Tax payable R 63 832

**Conclusion**
The medical tax credit does not affect taxpayers 65 years and older for the tax year ending February 2014 because all medical expenses are used to reduce the taxable income. The medical tax credit, however, will affect taxpayers 65 years and older for the tax year ending February 2015. It is tax-efficient for one spouse to contribute to a registered medical scheme if the other spouse is also employed. The effect of this is that the out-of-pocket medical expense is not split between spouses. A split out-of-pocket expenses may not be sufficient to exceed the threshold in order to obtain the medical tax credit.

**Persons with a disability**
If the taxpayer, the spouse or child has a disability, the tax credit is calculated in the same way as if the taxpayer were 65 years or older on the last day of assessment.

**Person less than 65 years old and without disability**
From 1 March 2014 the medical tax credits are calculated as follows:

**Facts given**
- Citizen X: Taxable Income R 500 000 (does not include retirement fund lump sum benefit)
- Normal tax payable R 100 000
- Married with two children & Pays R 5 000 pm to a registered medical scheme
- That is R 60 000 for the year

**Calculations**
- Normal tax payable R 100 000
- Medical rebate: taxpayer plus three dependants
  - (2 x R 257 + 2 x 172) = R 858 pm
- Rebate for the year R 10 296
- Deduct tax rebate from normal tax: R 100 000 – R 10 296 = R 89 704
- Given qualifying contributions paid R 60 000
- Deduct from his amount
  - 4 x tax rebate: R 60 000 – (4 x R 10 296)
  - R 60 000 – R 41 184 = R 18 816
- Plus qualifying medical expenses (R 18 816 + R 25 000) = R 43 816
- Deduct 7.5% of R 500 000 = R 37 500
- Deductable out-of-pocket expense
  - R 43 816 – R 37 500 = R 6 316 x 25% = R 1 579
- Therefore,
  - Tax payable R 100 000 – (R 10 296 + R 1 579 + R 12 726 – primary rebate)
  - R 100 000 – R 24 601 = R 75 399
REGISTRATION OF E-COMMERCE SUPPLIERS FOR VAT

SAIPA TAX Committee

Current legislation does not require foreign suppliers of e-commerce (electronic books, music and programmes) to register as a VAT vendor. International e-commerce suppliers merely transact over the Internet with their customers. Although the international e-commerce suppliers have no physical presence in South Africa, they have many South African domiciled customers. Local South African suppliers are disadvantaged because it is cheaper to purchase, for example, books via the Internet from foreign e-commerce suppliers who are not required to register for VAT. Local suppliers of e-books are VAT-registered.

New amendments with effect from 1 April 2014

With effect from 1 April 2014 foreign suppliers of e-commerce are required to register for VAT. The new amendment indicates that although the customer location is unknown, a customer proxy will be used. Payment from a South African Bank will also be used to determine residency of the customer. Foreign suppliers are required to register on a payment basis and the turnover threshold is R50 000.

The practical difficulties in implementing the new amendments

Generally, in the case of VAT and cross-border trade, the VAT liability will occur in the country where consumption takes place. The requirement to register is saddled with many practical problems and it is not clear whether considerations were given to the physical and practical impediments. Some of the obstacles are as follows:

- How will foreign suppliers verify the country of residence of their many global-wide customers?
- How will revenue authorities monitor the VAT registration threshold of foreign suppliers?

According to the new amendments, the turnover registration threshold for foreign suppliers of e-commerce is R50 000. How will the local revenue authorities know whether the registration thresholds are met?
The location of consumption for cross-border supply of ‘standard’ or ‘usual’ goods is the recipient’s address where the goods are delivered. In the situation of e-commerce goods downloaded electronically via the Internet, there is no physical address. How will the transaction be recorded so that VAT can be declared and paid over to the revenue authority?

How would a local revenue authority compel a foreign entity to register for VAT when it has no legal jurisdiction (or control) over the non-resident suppliers?

Will there be a list of foreign suppliers which the local revenue authority (SARS in this case) identified for VAT registration?

The international supplier is likely to incur substantial registration compliance cost without any significant benefit from such registration.

The collection method of the VAT receipts will be complex, and it is unsure what method will be followed.

It appears that the requirement to register for VAT by foreign suppliers of e-commerce is based on the goodwill of the supplier without the existence of penalty for non-registration. If this assertion is correct, then the ‘goodwill’ requirement to register for VAT is unlikely to witness significant numbers of registration. A tax system without the simultaneous existence of a penalty system cannot succeed. Moreover, a local revenue authority has no jurisdiction (or control) over foreign e-commerce supplier, therefore the local revenue authority would, in any event, not be in a position to impose penalties for the unwillingness of foreign suppliers of e-commerce to register for VAT.

The essence of this brief is that it is likely that South African-domiciled customers will not be paying VAT for their imported e-commerce supplies for a long time, unless other unknown developments take effect and change the existing situation.

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The 2013 Taxation Laws Amendment Act, No.31, introduces fundamental amendment to the Value-Added Tax Act in relation to the activities of the Home Owners’ association. The existing provision in the Valued-Added Tax Act stipulates that the supply of services by a sectional title body corporate to its members in the course of the body corporate management is exempt from VAT.

TAX IMPLICATION FOR HOME OWNERS’ ASSOCIATION (HOA)

The activities of Home Owners Associations (HOA), however, are not exempt from VAT. Although the activities and the supply of services by both the sectional title body corporate and the HOA to their members is essentially the same – that is a supply of services to members in the course of property management – the activities of the HOA are not exempt from VAT.
New amendments
The new amendments as articulated in the recently promulgated Taxation Laws Amendment Act, No.31 of 2013 stipulates that the supply of services by a HOA to any of its members will be exempt from VAT. This exemption will be on par with the current exemption for sectional title body corporate. In addition, HOAs that are currently registered as a vendor for VAT are eligible to deregister for VAT with effect from 1 April 2014. The HOA, in this situation will be given a concession to pay over the VAT liability in six monthly equal instalments. Major HOAs that are likely to incur large exit VAT liability could be awarded a flexible payment schedule by the SARS Commissioner.

Implication of the new amendments for the HOA
Two important implications arise from these amendments. These are as follows:

- HOAs with non-levy income exceeding R1 million have to retain their vendor status although the activities of the HOA are exempt.
- The deregistration of the HOA is for VAT only - HOA’s registration for income tax will remain intact. The HOAs are still liable for income tax depending on the circumstances.

These proclamations require clarification.

- The amendments refers to the exemption of Home Association for VAT only and not for the Income Tax Act.
- The provisions of the Vat legislation must be separated from the provisions of the Income Tax Act.

It is important to consider the following:

- Section 10 (1) (e) of the Income Tax Act exempts from income tax the levy income of body corporate, share block company, and an association of persons.
- Non-levy income below R50 000 is exempt from income tax. The amount that exceeds R50 000 will be subject to income tax at the current rate of 28% of taxable income.

Examples of a levy income

- Daily expenses incurred by HOA for managing the common property
- Special levy for capital expenses
- Building penalty levies is different from a penalty or fines
- Stabilization fund levies – if included in founding document.

Example of income sources other than a levy

- The use of facilities and equipment such as squash courts, tennis courts, and washing machines;
- Rental income from the letting of immovable property such as parking bays, servants’ quarters and a demarcated area for a cell phone mast;
- Investment income;
- Interest received or accrued from members as a result of the late payment of amounts due by them;
- Income received for services rendered; and
- Amounts receivable as a result of non-compliance (excluding building penalties).

Receipts and accruals derived from these sources (less the basic exemption), less allowable expenditure attributable to them, will constitute taxable income if the total receipts exceed R50 000. Therefore, if the income other than levy (also referred to as non-income) exceeds a million rand, then the HOA will have to retain its vendor status if the HOA is already registered as a vendor as at 1 April 2014. If the HOA is not a vendor as at 1 April 2014 but has a million-rand non-levy income, then the HOA must register as a vendor for VAT. If the non-levy income of HOA exceeds one million rand, vat registration is required by the HOA. The non-levy income does not arise from the VAT-exempt activities of the HOA - non-levy income arises from HOA business activities which is a taxable supply for VAT purposes.

“HOAs that are likely to incur large exit VAT liability could be awarded a flexible payment schedule by the SARS Commissioner.”
The Minister of Finance, Pravin Gordhan, officially launched the SA Tax Ombud whose objective is to review and address complaints by taxpayers regarding service, procedural or administrative issues relating to their dealings with the SA Revenue of Service (SARS). As announced in October 2013, retired Judge Bernard Ngoepe is the Tax Ombud.

Minister Gordhan said the creation of the Tax Ombud’s office added to the sound institutional framework that has been a characteristic feature of our democracy since 1994, a framework that has sustained South Africa’s social and economic progress during the past 20 years.

“As the 2013/14 preliminary tax and customs revenue announcement last week illustrated, our tax policy framework has proven to be resilient during the global economic turmoil that has tested South Africa’s public finances, its economic policy framework and its regulatory environment.”

“We owe a debt of gratitude to the millions of taxpayers in our country who have provided the state with the means to fund its programmes which, in a virtuous cycle, will stimulate growth, job creation and generate higher future revenue. We owe them our deep gratitude and a commitment to spend this money wisely, honestly and efficiently. But also we owe to these taxpayers a tax system that treats them fairly.”

“The Tax Ombud is an additional and free avenue to deal with complaints by taxpayers that cannot be resolved through SARS’s internal mechanisms. The Tax Ombud’s office draws on comparable institutions in Canada and the United Kingdom,” Minister Gordhan said.

The Ombud is intended to be a simple and affordable remedy to taxpayers who have legitimate complaints that relate to administrative matters, poor service or the failure by SARS to observe taxpayer rights.

The Tax Ombud may not review:
- Legislation or tax policy;
- SARS policy or practice generally prevailing, other than to the extent that it relates to a service matter or a procedural or administrative matter arising from the application of the provisions of a tax Act by SARS;
- A matter subject to objection and appeal under a tax Act, except for an administrative matter relating to such objection and appeal; or
- A decision of, proceeding in or matter before the tax court.

In discharging its mandate, the Tax Ombud’s office must review a complaint, and if necessary, resolve it through mediation or conciliation with SARS officials specifically identified to interact with the Tax Ombud’s
Office. The Tax Ombud may only review a complaint after a taxpayer has exhausted SARS’ internal complaints resolution mechanisms. Direct access to the Tax Ombud will only be allowed if there are compelling circumstances for doing so.

Tax Ombud Judge Ngoepe said: “Our challenge as the office of the Tax Ombud is not just about affording the taxpayer a fair hearing, or the provision of service; it is much more than that. It is also about providing information that is easily accessible and understandable. In addition, the office treats the taxpayer public with utmost dignity and respect, and provides an open, accountable and timely service. It also renders well-reasoned decisions in respect of actions taken by it.”

“The office operates independently of SARS, and also treats with strict confidence the communication between it and the taxpayer. Given all these as well as other considerations, the office of the Tax Ombud expects to contribute towards boosting the taxpayers’ confidence in tax administration, resulting, hopefully, in even better tax compliance,” Judge Ngoepe said.

“The office of the Tax Ombud expects to contribute towards boosting the taxpayers’ confidence in tax administration, resulting, hopefully, in even better tax compliance.”

Acting SARS Commissioner Ivan Pillay said: “I am sure that I speak for all at SARS when I say that we will do all we can to ensure that the Ombud’s office succeeds. The Ombud will keep us on our toes. That’s good for the taxpayers. That’s good for tax compliance. That’s good for SARS. And that is good for South Africa.”

“The credibility of SARS and the success of the Ombuds’ office will depend on how SARS handles complaints. This is not only a matter of how we handle an individual complaint. It is more importantly, about the system by which we recognise, treat and report on complaints. It is also about how complaints are treated as a way of improving the quality of our work as a whole. We will analyse the root causes of complaints, find a way of dealing with them quickly and determine the long term corrective actions necessary to resolve them fully.”

The Tax Ombud reports directly to the Minister of Finance and the Ombud’s annual report must be tabled in parliament by the Minister.

Contact the Tax Ombud:
Phone: 0800 662 837 | +27 12431 9105
Fax: (+27) 12- 452-5013
Email: complaints@taxombud.gov.za

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From 1 January 2015, the interest paid or due to non-residents from a source within South Africa (SA) will be subject to a 15% withholding tax, according to sections 50A to 50H of the Income Tax Act ("the Act"). These provisions do not affect interest paid by, amongst others, any sphere of government, or any SA bank and will most likely affect loans from foreign shareholders and from other group companies located beyond the borders of SA.

The effect on non-resident persons
The withholding tax doesn’t apply in respect of interest paid to a non-resident natural person who has been physically present in SA for more than 183 days in aggregate during the twelve month period preceding the date of payment. It is also not applicable if the loan in respect of which the interest is paid exists to establish that foreign person in SA permanently and that the person is a registered SA taxpayer. In these instances however, the foreign person will not enjoy the exemption in terms of section 10(1)(h) of the Act and will be subject to normal income tax on the interest.
To benefit from the withholding tax exemption, the non-resident person will need to submit a prescribed declaration confirming that the person qualifies for the exemption before the date of payment or another date that can be determined by the person paying the interest. If the foreign person is entitled to a reduced rate of tax through the application of a double taxation agreement (DTA), then a prescribed declaration, within similar time limits, is required together with a written undertaking to advise the borrower of any subsequent change in status.

If the DTA concerned prohibits the withholding of tax in SA, the provisions of the newly introduced Section 23M will require a specific calculation which is likely to result in the deferral of at least portion of
the interest deduction in the hands of the borrower where this person is in a controlling (connected person) relationship with the non-resident lender.

In order to comply with these requirements in full by 1 January 2015, consider the following advice:

- Make the foreign lender aware of these requirements;
- If the foreign lender is a natural person, ensure the time he or she spends in SA is properly monitored and that procedures are put in place to ensure the necessary exemption declaration is received timeously if the 183 day threshold is breached;
- If the loan is effectively connected with the permanent establishment of the foreign lender in SA, ensure the necessary exemption declaration and proof of registration as a taxpayer in SA are in place;
- Examine any DTA between SA and the foreign jurisdiction and if relief from the withholding tax is stipulated or provision is made for a reduce rate of tax, ensure the necessary declaration and written undertaking to advise the borrower of any change in status are in place;
- If full relief from the withholding tax is stipulated in the DTA, determine whether the foreign lender is a connected person and, if so, understand the calculation of the interest deduction that will be required;
- Formalise the loan arrangements if no loan agreement exists and obtain exchange control approval;
- Review any existing loan agreement and consider all amendments that may be appropriate to:
  - Regulate the timing of interest payments. Monthly interest payments may result in excessive administrative work to meet withholding tax payments that fall due at the end of the next month after the interest is paid. This will also require continuous calculations for determining periods of physical presence in SA, if the foreign lender is a natural person. In the case of annual interest payments with an anniversary arising after 31 December, consider making an early payment on or before 31 December 2014 to minimise exposure to the withholding tax.
  - Comply with the revised transfer pricing and thin capitalisation rules for which purpose an arm’s length character needs to be demonstrated for both the level of funding and the interest charged thereon.
  - Comply with all current exchange control regulations. These include a maximum interest rate equivalent to the prime lending rate in the case of shareholder loans. This may not necessarily coincide with an arm’s length rate of interest for transfer pricing purposes.

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<td>≥50</td>
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The basic principle of a trust is that a trustee controls and administers property on behalf of and for the benefit of other persons (beneficiaries of a trust).

It is given that trusts play a significant role in the lives of taxpayers; the constant surfacing of questions at the SAIPA-CoTE tax helpdesk relating to the taxation of trusts is therefore, not surprising. It is appropriate that this edition of Tax Professional (and future editions) addresses questions relating to the taxation of trusts.

The taxation of a trust is always a complex issue and whilst this article will not address all issues involved, but SAIPA-CoTE pledges that future editions of publication will explore many of the areas of concern. The mandate of the CoTE is to provide members with guidelines and a discussion of principles only, so that members can efficiently manage the tax affairs of their clients.

It is often assumed that trusts are a legitimate instrument to evade tax liability; this is a myth. Trusts are, however, extremely useful in protecting assets for the enjoyment by the future generation of the founder of the trusts.

**Administration of Trusts**

Often the SAIPA-CoTE tax helpdesk is asked to comment on the tax implication of a transaction in relation to a trust. After much probing of the transaction, it is discovered that the entity may not be a trust after all, because the administrative requirements are not adhered to or the administrative requirements are not in place.

So what are the requirements of a trust? There are many administrative requirements that must be adhered to and the list below is not exhausted. Briefly, the following requirements must be noted:

- The founder must be capable of entering into a contract and must have an intention to create a trust;
- The founder’s intention, assets and beneficiaries must be expressed unambiguously so that there is an obligation on the trustees to administer assets for the benefit of beneficiaries;
- The objective of the trust must be lawful and the trust deeds must not be in violation of any laws;
Trustees must be appointed in order to ensure that there is a separation of enjoyment and ownership of trust’s assets. Trusts are recommended to have a minimum of three trustees and at least, one of the trustees must be independent who understands the responsibilities of being a trustee and who will be impartial but still add value to the objectives of the trusts. The Master of the Courts has the authority to ensure such independence. The Master of the Court has the authority to appoint trustees/co-trustees; 
- The trust must have its own bank account; 
- Trust property should not form part of the personal estate of the trustee; 
- A trustee must account to the Master for the administration and disposal of trust property when requested to do so; and 
- Trustees must distribute trust income in accordance with the trust deeds.

It is likely that the courts may never uphold a trust if any of the aforementioned requirements are not met.

“...It is often assumed that trusts are a legitimate instrument to evade tax liability; this is a myth. Trusts are, however, extremely useful in protecting assets for the enjoyment by the future generation of the founder of the trusts..”

**Tax implication of a trust**

There are three parties to a trust – founder, trustee and beneficiary.

The founder establishes the trust; the founder hands over property (broadly defined to include assets- tangible or intangible – shares or cash) to a trustee. A trustee receives the property and is obliged to administer trust property for the benefit of the beneficiary.

A trust in terms of the Income Tax Act of 1962, as amended, is deemed to be a person. A trust, excluding a special trust, is taxed at a rate of 40%.

A special trust is taxed at the same rate as a natural person but it is not entitled to primary, secondary or tertiary rebates, nor to the basic interest exemption on local interest earned. It is noted that a trust is not a natural person.

A special trust is created for the sole benefit of one or more persons who has a disability – a moderate to severe limitation in a person’s ability to function or perform daily activities – this disability must have lasted for than a year and must have been diagnosed by a registered medical practitioner.

Essentially, when a trust receives income, the trust may do one of the following:
- Retain the income in the trust, or
- Distribute the income to a beneficiary.

It is expected that the income is taxed in the hands of the party where it ultimately ends, that is the trust or the beneficiary. However the Income Tax Act of 1962, as amended, stipulates that a particular income may be taxed neither in the trusts’ hands nor in the beneficiaries’ hands but in the hands of the person (often the founder of the trust but not limited to the founder) donating, settling or disposing to the trusts.


But section 25B is subject to section 7 of the Income Tax Act, so if this section applies and not section 25B, then either the founder/donor of the trust may be taxed on the income practically received by a trust or a beneficiary. In these circumstances, neither the trust nor the beneficiary will be taxed.

In other words, when a trust receives income, either one of the following will be taxed:
- Trusts, or
The beneficiary, but if Section 7 applies, then the donor / founder of the trust will be taxed on income received by the trust or beneficiary.

What is Section 7 of the Income Tax Act?

Section 7 is a deeming provision and it is aimed at taxing the hands of a donor/founder when assets/income are disposed of, in such a manner that the donor/founder might still have some of the benefits of the property (assets/income/shares) without incurring an appropriate tax liability. This section of the income Tax Act essentially taxes the person who introduces the assets to the trusts and the income generated thereof.

Section 7 (2) (a) refers to donation, settlement or other disposition. This section refers to any disposition made gratuitously or without consideration. If a person (spouse A) makes a gratuitous disposition to spouse B, then any income which is received by spouse B will be accrued to spouse A and be taxed in the hands of spouse A. This section will only apply if the donation is made with the main objective of reducing or postponing the tax liability.

Section 7 (3) refers to transaction between parents and children. This section deems income to be received by the parent if:
   a) It has been received by or accrued to a minor child of that parent, and
   b) It was received because of interest-free loan, donation or settlement.

The Income Tax Act (section 68) requires that each parent must include in his/her ITR12 any income received by or accrued to or in favour of minor children, directly or indirectly. A minor child is any child under the age of 18 and who has not been married. It is further noted that a divorced person under the age of 18 does not obtain the status of a ‘child’ again.

Section 7 (5) refers to income retained in the trust. If a person makes a donation, settlement or other disposition to a trust, the income arising from such a transaction is deemed to be the income of the person making the donation, settlement or disposition – if the income in the trust is linked to a stipulation in the trust deed that states that the income shall not be distributed until the occurrence of some events. This section applies to the undistributed income of the trust.

Section 7 (6) refers to a donation made to a trust but the control of the asset is still retained by the donor. If a person donates an asset to a trust in favour of the beneficiary of a trust but stipulates that such person retains the right to reverse the income of the beneficiary, such income is taxed in the hands of the person who retains the power to revoke the right.

Section 7 (7) refers to the donation of income such as rent, dividends, interest, royalties or similar income in respect of movable or immovable assets. The donor is taxed on the income if the donor/founder donates the income to a trust but retains the property giving rise to the income. The donor is also
taxed on the income if the property giving rise to
the income is ceded but has the right of ownership
at a future date. The donor may, however,
surrender the income before it is due to him/her,
and consequently, the taxable income could be
reduced by this amount.

Section 7 (8) refers to a donation by a resident
to a non-resident. It applies when any donation,
settlement or dispositions made by a South
African resident to a non-resident; the amount
received by the non-resident would have
constituted income as defined, in the Income tax
Act had the non-resident been a resident; the
amount received by the non-resident would be
included in the income of the resident that is the
person making the donation or disposition.

Section 7 (9) of the Income Tax Act, deals with a
situation whereby a direct donation or an asset sold
to a trust for less than market value at the date of
sale, the shortfall will be deemed to be a donation.

Section 7 (10) stipulates that a resident must at all
times inform SARS that a donation, settlement or
other disposition has been made.

If none of the aforementioned provisions in Section
7 apply, the income is taxed either in the trust or in
the hands of the beneficiaries.

What is Section 25B of the Income
Tax Act of 1962, as amended?
Essentially, this section is the principal taxing
section for trusts. A quick and relevant synopsis of
this section of the Act reads as follows:

25B. Income of trusts and beneficiaries of trusts
1) This section is subject to the provisions of
Section 7. If the provisions of Section 7 are
not applicable, then this section determines
the tax consequences of the trusts. The
income of a trust will be taxable in the hands
of the beneficiary (if the beneficiary has a
vested right to the trust’s income). If the
beneficiary does not have a vested right to
the trust income, the income will be taxed in
the hands of the trust. A trust may be taxed
on retained income and on income to which
beneficiaries have no vested right.
2) Where a beneficiary has acquired a vested
right to any amount as a result of a trustee’s
discretion (reflected in the deed of trust,
agreement or will of a deceased person)
that amount is deemed to be derived for the
benefit of the beneficiary.

In Part 1, this article unpacks the basic rules on
the taxation of trusts. In future editions of Tax
Professional, we will deal with the more complex
issues relating to the taxation of trusts, such as:
- Trust income and trust capital
- Capital gain tax (CGT) and trust
- Losses in a trust
- Special trusts
- Offshore trusts
- Estate planning and trusts.

Future tax seminars on trusts
SAIPA-CoTE will be convening seminars on taxation
of trusts. The following dates must be noted:

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<td>Potchefstroom</td>
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<td>Wed, 8 Oct</td>
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<td>Somerset West - Lord Charles Hotel (Cape)</td>
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<td>Fri, 10 Oct</td>
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<td>Bloemfontein</td>
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<td>Mon, 13 Oct</td>
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<td>Nelspruit</td>
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<td>Wed, 15 Oct</td>
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<td>Port Elizabeth - The Kelway Hotel</td>
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<td>Fri, 17 Oct</td>
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<td>Polokwane</td>
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<td>Mon, 20 Oct</td>
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<td>Wed, 22 Oct</td>
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<td>Durban - Durban Country Club</td>
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seminar, visit http://events.saipa.co.za/
T
he Economic Psychology of Tax Behaviour was written almost seven years ago, but it remains a compelling read for those interested in this discourse. It is worth reviewing the book at this juncture not only due to its relevant arguments, but also given the fact that the revenue authorities have not taken notice of its contents, and its importance should be highlighted.

Not only is the book written in a readable style, but it sustains the interest of the reader throughout the journey on tax discourse.

The book provides an integrated account of how taxpayers follow the slippery path of non-compliance, while most taxpayers willingly say no to non-compliance. The book also places tax authorities on the radar screen, and the authorities are certainly not ‘left off-the-hook.’ Tax authorities simply do not communicate respect and trust to the taxpayer; instead they elect to play the ‘cop’ who is single-mindedly in pursuit of the ‘robber’ taxpayer.

Tax laws are, for the most part, ambiguous. When the tax law is precise, it is not known to the taxpayer. Tax laws have become so intricate that even accountants, lawyers and tax accountants have difficulty in interpreting much of the tax legislation. Examples of unnecessary complexities are: the high level of abstraction in the language; the use of long and complex sentences; the targeting of readership who are experts rather than ordinary citizens. It is alleged that British tax laws require thirteen years of tax education while the average citizen has nine years.

Therefore, empirical evidence suggests that the services of a tax practitioner are sought-after due to the uncertainty surrounding tax legislation, and how to correctly file tax returns. The services of tax practitioners are not usually sought out in order to avoid paying taxes or to undermine tax systems. Research studies confirm that taxpayers do not want to submit incorrect tax returns and, therefore, elect to use the services of tax professionals. It is further alleged that taxpayers believe that the primary responsibility of tax practitioners is to prepare their tax returns accurately.

Tax practitioners investigated in Australia claimed that maintaining an appropriate level of professional competence by ongoing development of their knowledge and skills is the main problem with regard to correctly filing income tax returns.

With reference to the ‘shadow’ economy, defined as including activities involving illegal production of trademarked goods, drug dealing, commercial vice, illegal gambling, attempt to control the ‘shadow’ economy and tax evasion, becomes a colossal task in the environment where uncertainty in law exists. This uncertainty in law makes it difficult for both taxpayers to follow the law and difficult for tax authorities to decide unequivocally what is legal and what is at
the peripheral of the law. Thus the complexity and ambiguity of tax laws leads to abuse without an actual intention to violate the law.

‘Tax compliance’ is described as the willingness to pay taxes. Non-compliance is defined as the failure to meet tax obligation, whether or not those failures are intentional. Compliance issues depend on the capacity of law enforcement strategies and on the decisions of taxpayers to conform to the objectives of tax policy.

The book distinguishes between different forms of compliance which are as follows:

a) Committed compliance is taxpayers’ willingness to pay the taxes without complaints;

b) Capitulative compliance is defined as reluctantly giving in and paying taxes, whereas;

c) Creative compliance is defined as engagement to reduce taxes by taking advantage of possibilities to re-define income and deduct expenditures within the brackets of the law.

In most countries, there is a legal distinction between tax avoidance and tax evasion. Tax avoidance is not illegal. It is an attempt to reduce tax liability by legal means, taking advantage of loopholes in the law and the ‘creative designing’ of one’s own income and deductions.’

Tax evasion is illegal; it entails deliberately breaking the law in order to reduce the amount of taxes due. Some examples of evasion are the omission or failure to report assets, and the false reporting of personal expenses as business expenses. It is explicitly stated that tax evasion excludes inadvertent non-compliance resulting from memory lapses, calculation errors and inadequate knowledge of tax laws.

So while tax avoidance is legal and within the framework of the law, tax evasion is illegal. The book makes a further point by citing a hypothetical example. It mentions that, ‘The house painter who does a bit of extra work in the black economy violates the law, while the wealthy investor who engages a tax lawyer to look for tax havens does not. From a moral point of view their behaviour may not be seen to be all that different. Clearly, the borderline between what seems morally right and wrong does not always coincide with the border between what is legal and illegal.’

An interesting chapter of the book refers to the ‘Social representation of taxes’. At an individual level, subjective knowledge and perceptions of taxes and tax non-compliance are part of social representations, as well as attitudes and behaviour intentions. At a societal level, social representation of tax are ethics and values, social norms and tax morale (which is defined as intrinsic motivation to comply), as well as a sense of civic duty. The book also mentions that some studies refer to tax morality as ‘tax mentality’. Society’s attitudes such as perceptions of fairness and attitudes towards government such as trust in the government and trust in government spending are included in social representation of taxes.

With regard to subjective knowledge and social representation of tax, reference is made to ordinary people’s understanding of tax which is important in understanding why people behave as they do. Subjective knowledge as a component of social representation does not focus on whether knowledge of tax is correct or not, but is focused on how this knowledge is organised to form meaningful representation. A person’s tax ethic is related to personality factors such as moral reasoning, influence by religious beliefs and political party preferences, whether or not these parties favour co-operation and willingness to comply. Other studies in the book argue that ‘one’s political affiliation is related to attitudes towards taxes.’

Individual attitudes towards tax are also influenced by a ‘reference group’. The book quotes studies which argue that if a taxpayer knows many people in a group which is important to them, who evade taxes, then their commitment to tax compliance will be weaker. If a taxpayer believes that non-compliance is widespread and a socially accepted behaviour, then he is more likely not to comply with tax laws.

So while tax avoidance is legal and within the framework of the law, tax evasion is illegal. The book makes a further point by citing a hypothetical example. It mentions that, ‘The house painter who does a bit of extra work in the black economy violates the law, while the wealthy investor who engages a tax lawyer to look for tax havens does not. From a moral point of view their behaviour may not be seen to be all that different. Clearly, the borderline between what seems morally right and wrong does not always coincide with the border between what is legal and illegal.’

In conclusion, the book argues that a ‘cops and robbers’ approach to tax establishes a climate of distrust, while a ‘service and client’ approach is assumed to reduce animosity between taxpayers and tax authorities, thereby creating a climate of mutual trust and voluntary co-operation.

Ultimately, the book is a valuable reference for any person undertaking studies in tax in order to graduate to a more senior level of professional tax qualification offered by SAIPA-CoTE.
TAX SNIPPETS

INDUSTRY NEWS

TAX COMPLIANCE IN SA SET TO GET HARDER
South Africa’s tax system is among the most sophisticated in the world, surpassing many of its African peers while comparing favourably with countries such as Brazil, Russia, India and China.

However, of concern is that the gains made over the past years may be eroded, particularly regarding the ease in the payment of taxes.

South Africa is ranked 24th out of 189 economies in terms of how easy the tax authority has made it for a small to medium-sized domestic company to pay its taxes. According to the ninth Paying Taxes report by the World Bank and PwC, it takes a typical medium-sized company in South Africa 200 hours to comply with its tax obligations.

It would make seven tax payments and has a total tax rate (the cost of all taxes paid) of 30%. This is against the global average of 268 hours of compliance time, almost 27 payments and a total tax rate of 43%.

Extract from - Tax compliance in SA set to get harder, Amanda Visser, 19 December 2013

WHAT IS TAX CRIME?
Tax crime is manifested in many forms. Here are some prime examples:

- People don’t declare income in order to not pay the tax on that income.
- People lie about their expenses to reduce the tax they pay. For example they may lie about their business mileage, business expenses or even medical contributions.
- People simply don’t submit a tax return to SARS or fail to truthfully respond to our questions.
- Employers sometimes deduct tax from employees and never pay it over to SARS.
- Businesses sometimes charge VAT and never pay it over to SARS.

Source: www.sars.gov.za

IMPORTANT TAX DATES

01-04-2014 - Employer Annual Reconciliation starts
25-04-2014 - Submission and Payment of VAT201 (Manual Registered Vendors)
30-04-2014 - Submission and Payment of VAT201 (Registered VAT eFilers)
07-05-2014 - Submission and Payment of EMP201
23-05-2014 - Submission and Payment of VAT201 (Manual Registered Vendors)
30-05-2014 - Submission and Payment of VAT201 (Registered VAT eFilers)
30-05-2014 - Employer Annual Reconciliation ends
06-06-2014 - Submission and Payment of EMP201
25-06-2014 - Submission and Payment of VAT201 (Manual Registered Vendors)
30-06-2014 - Submission and Payment of VAT201 (Registered VAT eFilers)
01-07-2014 - Start of Tax Season for Individuals
07-07-2014 - Submission and Payment of EMP201
25-07-2014 - Submission and Payment of VAT201 (Manual Registered Vendors)
31-07-2014 - Submission and Payment of VAT201 (Registered VAT eFilers)

Source: www.sars.gov.za

Source: BDLive.co.za
THE NEW COMPLIANCE RISK MANAGEMENT PLAN (CRMP) WEBSITE IS NOW AVAILABLE AT WWW.CRMP.CO.ZA.

This project was spearheaded by the Compliance Institute Southern Africa in line with their Generally Accepted Compliance Practice framework.

The CRMPs are exclusively available to companies that employ members of the Compliance Institute Southern Africa, IoDSA, SAICA or SAIPA.

A CRMP is an invaluable compliance tool that will assist you to:
- Easily identify and assess applicable regulatory requirements;
- Analyse the objective of the requirement and how it applies to you;
- Identify the associated compliance risk;
- Record the control measures that are in place to mitigate this risk;
- Document any additional controls required; and
- Email additional controls and target dates to responsible person.

CRMPs currently available:
- Consumer Protection Act (Rights) and (Interactions) (2 Plans);
- FAIS Act suite (3 Plans);
- Financial Intelligence Centre Act;
- Occupational Health and Safety Act (Core duties) and (Offices) (2 Plans);
- Companies Act
  - Private companies (Governance) and (Authorisations) (2 Plans);
  - Public companies (Governance) and (Authorisations) (2 Plans); and
- Municipal Finance Management Act (Municipality accounts).

The site will continually be updated with new CRMPs as they become available.

Visit www.crmp.co.za and “take a tour” to learn more about features such as:

- Related laws;
- Dashboard;
- Diagrams and reports; and
- Hyperlinked references.
The career call that counts

One call can give you access to attractive Fasset benefits, incentives and programmes paving the way for your future.

Make the pivotal call on your future. If you are an employed learner, call Fasset on 086 101 0001 to find out about all our benefits including free Lifelong Learning training events, career building learnerships and the tailor-made NSFAS Loan Repayment Grant for employed learners.