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A Perfect Storm Brewing For

June 2015

LOAD SHEDDING AND YOUR EMPLOYEES

Note: Our labour laws are complex and the penalties for getting them wrong are serious – what is set out below is of necessity just an overview of the legal situation so take full advice on your particular circumstances.

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Your Tax Deadlines For June

We are getting used to load shedding and it almost certainly is going to be around for several years. Business is already feeling the effects of time disruptions and a major area of concern is how you deal with your workforce in this testing period. A good place to start is with current labour law.

Must you pay for time lost during power cuts?

In terms of labour legislation, the concept of paying for agreed output or performance does not apply. If for example your employee is expected to work from 8.30 a.m. to 5 p.m. and at 9.30 a.m. load shedding takes place, you are obliged to pay the employee in full. The fact that work cannot take place for reasons outside the control of the business, does not affect the employer-employee contract. If your employee is available and ready to work, then that employee is to be paid.

Should you ask your employees to make up for the load shedding downtime, then you are potentially liable for overtime if working hours are extended beyond the norm.

If employees are required to take their lunch period during load shedding, the employer is required to pay the employee for lunch periods greater than seventy five minutes. With loadshedding usually lasting several hours, this puts you in another dead end.

There is only so much training and staff meeting time a business needs to have, so what else can an employer do?

Speak to your employees

The best way to break this logjam is to negotiate an agreement with your labour force (and any union/s in the workplace) to adjust working hours and conditions to minimise the impact of load shedding for everyone's benefit. Remember that any alteration to their working conditions requires their consent to make these changes legally acceptable. It is not in their interests to refuse a reasonable proposal as you can still go down the retrenchment route (see below).

It is worth noting that some industries have already negotiated loadshedding procedures which enable flexibility in working hours and conditions.

What happens if you can't agree?

Failing agreement with your employees, if load shedding is significantly impacting the business you may be forced to begin a process of restructuring the business in terms of the Labour Relations Act. The process will involve steps like negotiating that there is no pay when there is load shedding, or reduced overtime and/or changes to working hours. Employees who refuse to go with this process face retrenchment proceedings.

The difficulty with this approach is it is time consuming, the requirements for successful retrenchment are complicated and strictly enforced, and if it goes to the Labour Court, it could be costly and take further time.

A PERFECT STORM BREWING FOR OUR ECONOMY? EL NINO IS COMING BACK

"Forewarned is forearmed" (wise old proverb)

Recent research has quantified the impact El Nino has on the global economy. In some parts of the world (for example U.S.A.) it has positive effects on the economy. In other parts it reduces growth, increases food and oil prices and inflation. South Africa unfortunately falls into the second category.

Not only does it have adverse economic implications but the El Nino of 2009-2010 caused food prices to rise rapidly which was one of the catalysts that contributed to the Arab Spring in 2011.

One of the good things about El Nino is that it is usually accurately forecasted and this gives countries and businesses time to react.

Weather forecasters say El Nino has just started, so we can expect either a drought or a dry summer in 2015-2016.

What is El Nino?

It is the warm phase of the "El Nino Southern Oscillation" which causes air pressure to rise off the coast of Peru. This is counter cyclical to normal weather patterns and causes drought in certain areas and abnormally high rainfall in others. El Nino occurs irregularly (roughly every three to seven years) and the severity of its impact is also variable.

What effect does it have?

It leads to widespread fluctuations in the production of primary products (agriculture, fishing, mining and forestry). As primary products in South Africa contribute 10% to Gross Domestic Product (GDP), this results in a 0.72% drop in the country's GDP during an El Nino episode.

The current forecast in 2015 is for 1.4% GDP growth, so this could be more than halved.

As the export of primary products is more than half of our exports, this immediately has an adverse effect on our balance of payments – less exports and increased imports of food and oil. The Rand has weakened over the past few years to near record lows, so this will exacerbate this trend. The knock on effect of this is higher inflation which usually then pushes interest rates up.

Get ready now!

The rise in food prices is especially harsh on food importing nations (such as the Middle East). Oil prices also increase as hydroelectric energy decreases resulting in more fuel demand. This could be devastating for some of our Northern neighbours such as Zimbabwe and Mozambique. Considering the recent xenophobic attacks, another influx of refugees could lead to more social unrest.

We could potentially be in for "the perfect storm" as El Nino further undermines the economic and social fabric of South Africa and its neighbours.

Those businesses that are dependent on the performance of GDP growth, the cost of primary products and imports have time to put mitigating strategies into effect before the expected 2015 El Nino.

UPDATES – UIF, BEE, SARS AND CYBER CRIME

Some timely updates on topics we have covered previously -

Canned: The UIF Tax Holiday

In his February Budget speech, the Minister of Finance announced a one year reduction in UIF (Unemployment Insurance Fund) payments from a monthly maximum of R148.92 individual deduction to R10 per individual. This was to reduce the R72 billion surplus sitting in the fund. This would have put R15 billion back into consumers' and businesses' pockets (the employer matches the individual's contribution to UIF).

The proposal has been withdrawn, at least for the moment, "to allow more time for consultation".

This is a pity as a UIF tax holiday would have helped counteract the impact of the income tax increase also announced in the February speech.

How Broad Based Is Black Economic Empowerment Going To Be? Ownership Element Plan Ditched

The Department of Trade and Industry (DTI) released new sector codes early in May. Although a detailed handbook of how to implement the codes is still outstanding, there were some welcome clarifications such as businesses with existing scorecards can keep these to 30 October 2015.

What was surprising was the DTI clarification concerning the ownership element. This downgraded employee and broad based ownership schemes – out of 25 points, broad based schemes could, per the proposal, only claim 3 points. As approximately 80% of BEE deals have been done on this basis, this created confusion and anger from business. DTI then issued a further clarification saying that existing BEE deals would not be affected and would still get maximum points. It also said a task team had been set up to give recommendations to the Minister within the next 30 days.

Then on 15 May, the DTI withdrew this notice altogether, with the end result that broad based ownership will no longer be penalised as was proposed. No mention is made of the task team in the withdrawal notice.

What seems to be driving the DTI's thinking is the idea that moving to individual equity ownership will give more meaningful participation to black shareholders. The DTI also see broad based ownership programs as a potential vehicle for fronting.

Companies should carefully consider this new thinking and seek advice if in doubt, as it could have serious ramifications for your business.

SARS Exceeds Its Collection Target – But Expect More Tax Increases

With much fanfare SARS announced recently that it had exceeded its 2014-2015 collection targets by R7.4 billion. The reason for the fanfare was SARS has had bad press of late – resignations of key officials, investigation of a rogue spy unit set up by SARS – and pundits were predicting that SARS would not be able to keep up its high performance standards.

This should be put in context –

1. The R7.4 billion additional inflow was against the estimate made by Minister Nene in the February 2015 Budget address. Compared to the original Budget, the collections are actually down by R7 billion.

2. When you look closer at the numbers, personal income tax accounts for 35.6% of total collections. This is not sustainable and has risen from 29.5% of collections in 2008. The problem is that corporate tax, VAT and other indirect taxes are dependent on a growing economy to show growth in government revenues and the future outlook for the economy is for relatively low growth. This puts a question mark on future SARS collections.

3. R8 billion was collected from gains made by individual taxpayers who were on corporate share incentive programs – effectively the difference by which the amended collection targets were exceeded. In 2010, legislation was changed which made individuals liable for tax the moment their share incentives vested (i.e. they were entitled to cash in their share options). As most share incentive schemes take several years to vest and how well they perform depends on market performance, this will be an uncertain future source of income.

4. Finally, it needs to be accepted that stepping up compliance programs

cannot bring in increasing revenue indefinitely.

The government is committed to its social welfare programmes but is going to find it difficult to fund them out of an under-pressure revenue base. It is unlikely that VAT will be raised and other indirect taxes such as the fuel levy have already been substantially increased.

That leaves personal income tax and it looks more and more likely that there will be more income tax increases.

Beware Cyber Crime: It's Getting Worse

In the first quarter of 2015, the number of cyber-attacks doubled over 2014. The message is clear – cyber criminals are getting more sophisticated (for example, one of their new weapons resides in your hardware which makes traditional anti-virus techniques ineffective) and are stepping up their activities.

Research has also shown how seldom people change passwords and how many people use the same password for their applications. Worse still, 43% of us don't place much value in passwords. We are making it easier for cyber criminals to access our data.

Remember that everyone – from banks to businesses to individuals – is considered to be fair game by the hackers.

YOUR TAX DEADLINES FOR JUNE

There are only run-of-the-mill deadlines this month.

Have a Great June!

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