Paying Taxes: SARS’ unpopular shift to credit push creates multiple stresses for practitioners

Small Business Tax Calculations

Share Trading - Consideration of factors indicative of a business being conducted

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The cost of tax evasion
It is unbelievable that we have come to the end of 2013, a year that has been filled with a lot of excitement and challenges. It saw the launch of the CoTE (Centre of Tax Excellence) within the Technical and Standards Department. SARS initiated the recognition of controlling bodies with SAIPA being one of the first five bodies that achieved this recognition. Every tax practitioner registered with SARS must belong to a recognised controlling body.

The CoTE team took office and had to hit the ground running to catch up with the huge demand for professional tax designations. The CoTE team comprises of CoTE has grown in stature and membership numbers, with nearly half the SAIPA membership taking up professional tax designations, and numbers of new affiliate members being admitted into SAIPA membership as Professional Tax Technicians, Professional Tax Practitioners as well as Professional Tax Specialists. The basket of services for CoTE members was established, and the centre continues to seek further enhancement of the services for the benefit of all tax practitioners. The brand-new pocket VAT guide was distributed to all CoTE members together with their tax membership certificates.

The first Tax conference was hosted by CoTE in partnership with Norton Rose Fullbright in early November 2013.

This year also had challenges for the tax practitioner, with SARS discontinuing the ‘debit pull’ system and replacing it with a ‘credit push’ system which was a major blow to us. We made various submissions to SARS indicating the problems with the immediate termination of the debit pull to credit push system.

CoTE is looking forward to the New Year and has various activities planned for the year. The centre will continue to pursue the goal of achieving of excellence. Those that have not yet affiliated to CoTE must do so immediately to avoid losing out on the benefits aimed at CoTE members.

Faith Ngwenya, Technical & Standards Executive

Keith Pietersen: Tax Manager
kpietersen@saipa.co.za

Mahomed Kamdar: Tax Advisor
mkamdar@saipa.co.za

Aysha Naino: Tax Administrator
anaino@saipa.co.za

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A common source of frustration for many businesses is the perception that perhaps the only government department to function with any measure of efficiency is the South African Revenue Service (SARS). While widespread problems of incompetence, maladministration and corruption are reported on a practically daily basis, and involve every government department from the Presidency to Home Affairs and the South African Police Service, SARS brooks no nonsense: former commissioner Oupa Magashula resigned on the mere whiff of scandal. That’s a standard that simply isn’t applied anywhere else in government.

At the same time, PwC has just released its ‘Africa Tax Report’ in which it says South Africa is seen as an increasingly difficult place in which to do business, owing to tax and regulatory requirements placed on companies operating here.

The apparent double standard - where departments that fritter away millions operate with impunity and seem to add little value to citizens, while the one that brings in the money operates with ruthless efficiency - gives rise to an ethical quandary. Even as the screws are tightened in terms of regulation and taxation, there is a zeitgeist in terms of which taxpayers feel they are getting very little for the contributions they make, both in terms of company tax and personal tax. In other words, there is a perception that government has broken the social contract; business owners and private taxpayers increasingly feel that they are not getting fair value for money. As a result, many face an ethical dilemma – but it is a dilemma that Deon Rossouw CEO of the Ethics Institute of South Africa and Extraordinary Professor, University of Stellenbosch, believes should not lead to the conclusion that non-payment of tax is morally justified: “As individual and corporate citizens we have an obligation to contribute; if we don’t, we become free-riders on the societies we live in,” he says.
These findings and comments from de Chalain aren’t surprising in the least; those who do or have done business in Africa have found multifarious difficulties, especially in regard to the application of tax and regulatory regimes. In many instances, these are entirely arbitrary and instead serve as thin smokescreens for the easy extraction of bribes; for example, the report notes rather drily that ‘In Tanzania, all territories suffer from the arbitrary application of political rulings that may have nothing to do with the law’ and ‘The Nigerian way of business is very challenging as customers and suppliers tend to not always operate as agreed beforehand.’

“Overall, tax is mentioned as the second-most significant threat for companies doing business in the African countries, after political instability”

South Africa has long enjoyed some status as a country in which such shenanigans are not to be expected – but the crown is slipping, as the PwC report states that countries considered in particular difficult in which to do business, from tax and regulatory perspectives, include the DRC, Angola, Nigeria - and South Africa. ‘Overall, tax is mentioned as the second-most significant threat for companies doing business in the African countries, after political instability. Certainty around the tax position remains one of the main concerns for companies doing business in Africa.’

The real rub is this, notes the report: ‘A further 10% of respondents consider South Africa to be the most difficult place from a business and regulatory perspective. Overall, South Africa was considered by one-third of respondents (33%) to be among the three most difficult countries in which to operate, cumulatively making it the most difficult. South Africa’s position is somewhat surprising, as in our [PwC’s] experience countries like Angola, Mozambique and the DRC pose far greater practical difficulties for businesses. However, respondents’ feedback suggests South African foreign exchange control regulations and other restrictions present significant obstacles […] such rules are a hindrance to South Africa achieving its ambition of becoming a hub for regional investment.’

Ethical considerations

Paying tax and complying with applicable regulations is a moral and ethical responsibility of all citizens, whether private or corporate. In terms of the King 111 Report on corporate governance, Rossouw says the idea of ‘Corporate Social Responsibility’ has given...
way to the notion of ‘responsible corporate citizen. “The minimum of duty for such citizens is to obey the law and pay taxes and other responsibilities. People agree on that.”

Parmi Natesan, Senior Governance Specialist at the Institute of Directors of South Africa, adds to Rossouw’s position. “It’s very difficult for us at the IoDSA to have a feel for (taxpayer issues) without having access to detailed studies or surveys, but what I can tell you from a general governance perspective is that compliance with taxation laws falls within King III Chapter 6, ‘Compliance with laws, rules, codes and standards’.”

That chapter states: ‘Companies must comply with all applicable laws. Exceptions permitted in law and shortcomings in the law that present an opportunity for abuse which is contrary to the spirit, intent and purpose of the law, as well as proposed changes expected in legislation and regulation, should be handled in an ethical and responsible manner.’

Furthermore, continues King III, ‘Corporate governance is the expression of ethical values and standards. As such, compliance should also be understood to be an ethical imperative for the governance of companies.’
Tax, regulation and the social contract
But in terms of the ‘social contract’, there is another side – that fulfilled by the state and its representatives, including regulatory authorities. “When you make your contribution, there is an expectation that the money paid over is spent wisely. There should not be wasteful expenditure, there should not be corruption, there should not be the enrichment of individuals. When these things happen, people feel they are being done in and the social contract is damaged,” notes Rossouw.

In an environment where scandal is never far from the front pages of newspapers, ethical responsibility, which for most businesspeople is a somewhat black and white issue, is potentially thrown into murky grey areas. “It is necessary to point out that besides the damage to the social contract [caused by corruption and other scandals of malfeasance], some citizens won’t and don’t play their part. Tax evasion is a reality, whether that is, like in the United Kingdom where some people enjoy the benefits of society and declare income elsewhere at the cost of that society, or through justification of avoiding paying legitimate taxes,” he explains.

Rossouw, therefore, says it is important to acknowledge that it is not only government that breaks the social contract, but also individuals and corporate citizens who do so.

And there is a difference between morally justified objections to tax – such as in response to corrupt and wasteful expenditure (‘here you have a moral right to object,’ he notes) - and rationalisation of failure to comply with legitimate tax and regulatory obligations (‘where you make good what cannot be morally justified’). In other words, using the corruption, perceived or actual, of the government as an excuse to avoid or evade tax, is not ethically justifiable.

We should not forget the role that private citizens play; there are always two sides, and in some cases the initiative is not taken by public officials but by individuals or businesses to buy an advantage

In an environment where scandal is never far from the front pages of newspapers, ethical responsibility, which for most businesspeople is a somewhat black and white issue, is potentially thrown into murky grey areas. “It is necessary to point out that besides the damage to the social contract [caused by corruption and other scandals of malfeasance], some citizens won’t and don’t play their part. Tax evasion is a reality, whether that is, like in the United Kingdom where some people enjoy the benefits of society and declare income elsewhere at the cost of that society, or through justification of avoiding paying legitimate taxes,” he explains.

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Confidence undermined
Instead, Rossouw prefers to couch the responsibilities of taxpayers and corporate citizens as distinct from those of government. “However, the various incidents of corruption undermine the morale of taxpayers. Further, the fact that the tax rate is fairly high plays on minds, especially when additional taxes such as VAT, fuel levies and e-Tolls are factored in. People do feel that if government just spent the revenue at its disposal more judiciously, these things [additional taxes] would not be necessary.”

More than undermining morale, he also says such a situation doesn’t make South Africa an attractive investment destination. “The cost of doing business goes up.”

Not only that, but arguably, those businesses that are committed to doing business ethically may find themselves out in the cold as they play by a different set of rules from those that are willing to compromise principles and obtain an unfair advantage through underhand means.

Two to tango
Public sector corruption usually (but not always) involves collaboration with private sector operators. This is an explanation often advanced by those in power, that their agents or representatives are corrupted by businesspeople. “We should not forget the role that private citizens play; there are always two sides, and in some cases the initiative is not taken by public officials but by individuals or businesses to buy an advantage,” notes Rossouw.

Some might contend that, as the entity and representatives tasked with creating and enforcing legislation and regulations, and raising taxes and spending them to the advantage of society at large, the government and its agents carry a higher moral responsibility to act ethically. By contrast, the primary concern of business is to turn a profit.

However, Rossouw says this is not the case (and, in any event, there is no absolute measure of ‘ethical behaviour’). He explains: “The government is the party that must look after the public interest; that is why we give it the democratic right to raise taxes and spend on behalf of citizens. On the other hand, modern business isn’t solely about generating profit; in terms of King III and the Companies Act, the purpose of business is defined as ‘creating value for all stakeholders. Specifically, section 1.3 of King III states that the board is and must be seen to be a responsible corporate citizen and that includes the introduction of social and ethical committees tasked with putting the interests of society, the economy and the environment in context.”

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Paying taxes is a reality for sole proprietors and corporates. But significant tax relief is available for small business corporations and sole proprietors. The tax relief measures are aimed at assisting small businesses by reducing their administrative and tax compliance costs as well as their tax bills overall.

The relief measures are also in a sense levelling the playing fields for this segment, as these businesses would not necessarily have the same administrative capacity that large corporates have.

**What are the tax relief measures?**

For tax relief purposes, small businesses are segmented in two categories, namely businesses (whether incorporated or not) with an annual turnover of R1 million or less, and incorporated businesses (i.e. generally companies) with an annual turnover of not more than R20 million.

**Incorporated small businesses (‘Small Business Corporations’)**

For Small Business Corporations (SBC’s), three relief provisions are available. These are:

- significantly reduced tax rates;
- a tax-free threshold; and
- accelerated depreciation measures;

The tax rates and tax-free threshold for years of assessment ending anywhere between 1 April 2013 and 31 March 2014 are as follows:

<table>
<thead>
<tr>
<th>TAXABLE INCOME</th>
<th>TAX RATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 – 67 111</td>
<td>0%</td>
</tr>
<tr>
<td>63 111 – 365 000</td>
<td>7% of the amount above 67 111</td>
</tr>
<tr>
<td>365 001 – 550 000</td>
<td>20 852 + 21% of the amount above 365 000</td>
</tr>
<tr>
<td>550 001 and above</td>
<td>59 702 + 28% of the amount above 550 000</td>
</tr>
</tbody>
</table>
The accelerated depreciation measures are focused on assets used for purposes of trade, and are broadly set out as follows:

In respect of assets acquired under an instalment credit agreement and used directly in a manufacturing or similar process, the depreciation deduction is equal to the total cost of the asset(s);

In respect of other assets, the depreciation deduction equals 50% of cost in the first year, 30% in the second and 20% in the third year. If the normal depreciation rules in respect of a particular asset provide a higher depreciation deduction, then the higher is allowed as a deduction.

Other small businesses (whether incorporated or not)
A turnover tax (TT) was introduced in 2009 for small businesses with an annual turnover of R1 million or less.

The TT dispensation is a simplified ‘one-stop-shop’ tax that replaces normal income tax, capital gains tax, dividends tax, and (at the option of the business) value-added tax (VAT). It simply refers to the turnover of the business for purposes of calculating tax.

Using the TT dispensation, therefore, means less returns to be filed, no complicated calculations, a simplified record-keeping system and, above all, more time to spend on running and growing the business.

Another feature of the TT-dispensation is that tax is calculated on a receipt basis, and not on the accrual basis that is associated with normal tax and VAT calculations. This facilitates the cash-flow position of the business, because it taxes only on actual receipts. Further enhancements to the TT-regime will come into effect on 1 March 2014, whereby the business may elect to submit and pay VAT (if opted in) and payroll taxes (PAYE, UIF and SDL) twice yearly, as opposed to the current bi-monthly and monthly returns.

The TT tax rates are as follows (1 April 2012 - current):

<table>
<thead>
<tr>
<th>TAXABLE TURNOVER</th>
<th>TAX RATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 – 150 000</td>
<td>0%</td>
</tr>
<tr>
<td>150 001 – 300 000</td>
<td>1% of the amount above 150 000</td>
</tr>
<tr>
<td>300 001 – 500 000</td>
<td>1 500 + 2% of the amount above 300 000</td>
</tr>
<tr>
<td>500 001 – 750 000</td>
<td>5 500 + 4% of the amount above 500 000</td>
</tr>
<tr>
<td>750 001 and above</td>
<td>R15 500 + 6% of the amount above 750 000</td>
</tr>
</tbody>
</table>
**Who is eligible?**

Small Business Corporation (SBC) qualification requirements

The SBC dispensation is available to listed companies, close corporations and co-operatives. However, it must be noted that there are certain limitations, which would preclude a company from participating in the SBC dispensation. These limitations are linked to gross income, nature of income earned and shareholding limitations. The following questions will assist in determining whether one qualifies for the SBC dispensation or not (note that if any of the answers are ‘No’, the business will not qualify):

<table>
<thead>
<tr>
<th>QUESTION</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Will / Is the ‘gross income’ of the business (be) less than or equal to R20 million for the year of assessment?</strong></td>
</tr>
<tr>
<td><strong>Is 80% or more of total (non-capital) receipts, accruals and capital gains from sources other than investment income or income from rendering a ‘professional service’?</strong></td>
</tr>
<tr>
<td><strong>Will you be able to declare that the business is not a ‘personal service provider’ as defined in the Fourth Schedule to the Income Tax Act, 1962?</strong></td>
</tr>
<tr>
<td><strong>Are / Were all of the shareholders/members natural persons (individuals) throughout the year of assessment?</strong></td>
</tr>
<tr>
<td><strong>With the exceptions listed below, would you be able to confirm that none of the shareholders, members or the business itself holds shares or interests in another close corporation, company, or cooperative?</strong></td>
</tr>
<tr>
<td>(exception applies in the case of shares or interests in listed South African companies; Collective investment schemes; Body corporates and share block companies; Venture capital companies; Less than 5% in social or consumer co-operatives; Less than 5% in co-operative burial societies or primary savings co-operative banks; Friendly societies; Any company that did not trade during any year of assessment; and which did not own assets with a total market value that exceeds R5 000 during any year of assessment; Any company that has taken steps to liquidate, wind up or deregister.)</td>
</tr>
</tbody>
</table>

**Turnover Tax (TT) qualification requirements**

The TT dispensation is available to individuals, close corporations, companies and co-operatives. In the case of an individual, it can apply to a person who is trading as a sole proprietor or by way of a partnership. Again, it must be noted that there are certain limitations, which would preclude a business from participating in the TT dispensation. These limitations are linked to turnover, nature of income earned and shareholding limitations.

The following questions will assist in determining whether one qualifies for the TT dispensation (note that if any of the answers are ‘No’, the business will not qualify):

<table>
<thead>
<tr>
<th>QUESTION</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Will the ‘qualifying turnover’ of the business be less than or equal to R1 million for the year of assessment?</strong></td>
</tr>
<tr>
<td><strong>Will you be able to confirm that the business is not a ‘personal service provider’ or a ‘labour broker’?</strong></td>
</tr>
<tr>
<td><strong>Does the business trade in one of the following forms: sole proprietor, partnership, close corporation co-operative or company?</strong></td>
</tr>
</tbody>
</table>
If the business is a partnership, will you be able to confirm that all the partners will be individuals throughout the year of assessment?

If the business is a close corporation, co-operative or company, will you be able to confirm that all of the shareholders/members will be individuals throughout the year of assessment?

Will you be able to declare that the business is not a public benefit organisation or a recreational club?

Does the business have a year of assessment that ends on the last day of February every year?

Apart from the exceptions listed below, will you be able to confirm that the shareholders, members and the business itself do not hold shares in another close corporation, co-operative or company?

(the exceptions are:
Listed South African companies;
Collective investment schemes;
Body corporate and share block companies;
Venture capital companies;
Less than 5% in social or consumer co-operatives;
Less than 5% in co-operative burial societies or primary savings co-operative banks;
Friendly societies;
Any company that did not trade during any year of assessment, and which did not own assets with a total market value that exceeds R5 000 during any year of assessment;
Any company that has taken steps to liquidate, wind up or deregister.)

If you are an individual, would you be able to declare that the income from ‘professional services’ is not expected to exceed 20% of your total receipts for the year of assessment

If the business is a company, close corporation or co-operative, would you be able to declare that the income from ‘professional services’ and ‘investment income’ is not expected to exceed 20% of the total receipts for the year of assessment

Would you be able to declare that the income from the disposal of assets by the business during the current year of assessment and the previous two years of assessment is not expected to exceed R1.5 million in total?

Would you be able to declare that the business was not previously registered for turnover tax?

### How to register?

#### SBC

A company must already be registered for income tax purposes before it can make use of the SBC dispensation. The SBC dispensation is not separate from income tax but a tax incentive contained therein.

#### Turnover Tax

Should a new micro business start trading activities during a year of assessment and wish to register for turnover tax, a TT01 application form must be completed. The application must be done within two months from the date that business activities started.

For existing taxpayers who wish to switch to the TT dispensation, the TT01 application form must be submitted before the beginning of a year of assessment (a year of assessment runs from 1 March to 28 February), or a later date that may be determined by the Commissioner in a Government Notice.

The completed application form can be sent to your nearest branch or by post to:

SARS Branch Office
PO Box 1003
Alberton
1450

SARS will issue a letter confirming the outcome of the application. Where the submitted TT01 form is incomplete, the applicant will be notified and the application will be re-considered once all of the required information has been provided.

If further information is required with regard to the SBC and TT dispensation, please visit the SARS website, www.sars.gov.za.
South Africa’s tax and labour laws are preventing the country from fostering entrepreneurial talent with the result that opportunities to create new jobs are being significantly limited.

While South Africans have a natural tendency towards running their own businesses, the government needs to do far more to help nurture SMEs.

There are too many rules and regulations currently restricting the growth of new businesses, which either makes it more difficult to start a business or constrains entrepreneurs who have managed to do so. According to the Doing Business 2014 Report, it takes 19 days on average to register a new firm in South Africa. This is roughly a week longer than it takes in OECD high-income countries.

South African labour laws are far too rigid. The labour laws do not favour a meritocracy, where those who add more value are recognised. Instead, the laws have created an administratively intensive process, which costs time and money when dealing with problem employees. As a result, the law tends
to entrench those who are employed and does not favour the creation of new jobs.

For a services-based business in particular, such as a retailer or food operator, where staffing costs result in high initial overheads, it is important to provide appropriate incentives, as these businesses have the potential to add real value to the local economy through the creation of new jobs.

The skills levy that is paid also often returns little value. It would be preferable to scrap the Services Education Training Authorities (SETAs) and instead institute some form of training tax rebates back to those SMEs that actually demonstrate a financial commitment towards training their employees.

The current tax system also creates an unnecessary burden for small businesses. Entrepreneurs have to deal with multiple tax structures including VAT, PAYE, SDL, UIF, income tax and workmen’s compensation. These are all important but it can be hugely cumbersome and complex for a new business. A simplified tax regime for SMEs or for start-ups would help to nurture a business in the first few years of its existence.

A further constraint for entrepreneurs is limited access to finance. Banks should be encouraged to lend and provide support to SMEs at acceptable rates of interest, through some form of guarantee system. Many banks simply do not have the risk appetite to finance early stage SMEs; their credit models are also often restrictive and interest rates are too high.

While BB-BEE is well intentioned, there should be a reduced burden on smaller businesses. Compliance with BB-BEE can prove a major distraction to a small business that should be purely focused on growth. If SMEs up to a certain turnover, say R100-million, were exempt from these requirements it would help them to focus on managing the actual business.

There is also the additional cost of BB-BEE accreditation, in addition to procurement stipulations on what to spend and who to spend with, all of which takes time and effort to comply. This time would be better spent on growing the business, increasing turnover and thereby creating more economic value and jobs.

Even with instituting changes to tax structures, labour law and access to finance, many South Africans are fearful of starting a business, as failure is severely punished. The penalties for failure, such as bankruptcy laws, are too penile. A sequestrated person (failed business owner) needs to first rehabilitate themselves before they are able to begin a new business, which does not encourage risk taking.

The following are tips for the government regarding South African entrepreneurs:

- Ensure that labour laws help to focus more on rewarding merit and less on administration-intensive processes.
- Institute a simplified tax regime for SMEs or for start-ups in the first few years of their existence.
- Encourage banks to lend money to SMEs at acceptable rates of interest and offer their support through some form of government backed guarantee system.
- Provide appropriate incentives for services-based businesses that have high staffing costs, but great potential to create new jobs.
- Institute some form of training tax rebates back to those SMEs that demonstrate a financial commitment towards training their employees.
- Reduce the BB-BEE requirements on smaller businesses by exempting smaller SMEs with a lower turnover from the standard requirements and giving them high procurement spend recognition, to allow them to focus on managing and growing their actual business.

SMEs can have a hugely positive impact on the local economy but this sector of the market needs to be prioritised by the government through the creation of policies aimed at assisting small businesses and the removal of obstacles to help with these issues.”

Andrew Brown is a Director at The Daily Buzz.

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SUSPENSION OF PAYMENT OF DISPUTED TAX
Graeme Palmer, Senior Associate, Garlicke & Bousfield Inc.

It is a well-established principle of tax law to “pay-now-argue-later”. In other words, the obligation to pay tax arises when an assessment is issued and it is not suspended by an objection or an appeal against such assessment. A taxpayer who pays the disputed tax, and has his appeal or objection upheld is entitled to interest from the date of payment of the disputed amount to the date on which such amount is refunded.

There is no automatic right of suspension of disputed tax; however, a taxpayer may request a senior South African Revenue Service (SARS) official to suspend the payment of tax disputed under an assessment. The due date for the payment of tax under an assessment is usually before the due date for lodging an objection and therefore a suspension request may be made before an objection is lodged.

When exercising his discretion on whether to grant the suspension the SARS official must have regard to the following factors:

• the compliance history of the taxpayer;
• the amount of tax involved;
• the risk of the taxpayer dissipating assets during the suspension;
• whether payment of the amount involved would result in irreparable financial hardship to the taxpayer;
• whether insolvency proceedings are imminent;
• whether fraud is involved in the origin of the dispute;
• whether the taxpayer has failed to furnish information requested required to make a decision on the suspension.

There is a possibility that the suspension provisions can be abused to delay payment of tax. SARS can therefore reconsider its decision, and if for example, it can be shown that the objection or appeal lodged by the taxpayer is frivolous, vexatious, or the taxpayer is employing dilatory tactics in conducting the objection or appeal, then the suspension can be revoked.

When SARS receives a request for a suspension, no tax recovery proceedings may be taken against the taxpayer. If SARS refuses the request for a suspension, or revokes a suspension, then SARS cannot take any recovery steps for ten business days after the notice of its decision or revocation has been issued to the taxpayer. This will give the taxpayer time to consider SARS’s decision, and if necessary, bring an application to review the decision.

If the taxpayer is unsuccessful in disputing liability for the tax in the objection, appeal and court processes, then the suspension is revoked with immediate effect.

Graeme Palmer is a Senior Associate in the Commercial Department at Garlicke & Bousfield Inc.
In the recent case Stabilpave (Pty) Ltd v South African Revenue Services (SARS) the taxpayer (Stabilpave) was due a tax refund of R728 474 plus interest. The banking details of the taxpayer were not available to SARS and they therefore posted a cheque for the refund. The cheque was stolen by a Mr Mtima, who through a shrewd and fraudulent scheme orchestrated that the funds were paid to him instead of the taxpayer. The taxpayer having not received the tax refund instituted action against SARS for payment.

SARS admitted that a refund was due but defended the action saying that the taxpayer had been paid. SARS raised an alternative defence based on the wording of the tax assessment, which was that by not providing banking details the taxpayer accepted payment could be made by cheque. By “requesting” SARS to settle the refund by sending a cheque through the post the taxpayer agreed to run the risk in the transit. The taxpayer, on the other hand, contended that SARS had not fulfilled its obligation because in law there is no payment if a cheque is posted and lost before it reaches the creditor.

Having been unsuccessful in the High Court the taxpayer took the matter to the Supreme Court of Appeal (SCA). According to the SCA the decisive question was whether the tax assessment gave the taxpayer a choice as to the mode of payment, and if it did, whether the taxpayer made a choice (expressly or impliedly) that SARS should effect payment by cheque through the post.

The SCA concluded that the assessment form did not give the taxpayer a choice as to the mode of payment. There was no invitation to the taxpayer to furnish banking particulars, nor was there a cut-off date within which banking details were to be supplied by the taxpayer if it wanted payment by electronic fund transfer. No choice was afforded to the taxpayer, the method of payment being dictated to entirely by SARS. Accordingly, the risk of loss of the cheque was not assumed by the taxpayer and remained with SARS.

Although in this instance the taxpayer was successful as SARS was ordered by the SCA to pay the tax refund, it is advisable to make sure SARS has your correct banking details to avoid cheques going astray in the mail.

This article has been written by Graeme Palmer a Senior Associate in the Commercial Department at Garlicke & Bousfield Inc.
With the recent announcement that it has discontinued debit pull transactions in favour of credit push, the South African Revenue Service has unleashed a storm of protest from tax professionals and, potentially, taxpayers. While change is often unpleasant, even if it is for the better, practitioners across the country aren’t happy with SARS’ new payment methods, with their responses spanning from including suspicion and annoyance to downright despair.

Le Roux van der Walt, principal of Cape-based tax and accounting practise Lighthouse Consulting, says there is nothing he likes about the new system. “I dislike the fact that a gap has now been created between the point where payment is loaded and where payment is actually ‘effected’ - some of the banks allow this. During that time, it is very difficult to see on Efiling what the status of that payment is because it’s in limbo, or pending. Then, since the payment goes off the bank the day it is authorised in most instances, clients are loathe to do it in advance, and we are stuck with loading and getting authorised many payments on one day: the deadline day. That
creates bottlenecks, and God help us if there is an electricity outage! We cannot even load the payment and inform the client they have a week to authorise, because with some banks the payment lapses and with others, the payment goes off when authorised even if the ‘payment date’ was entered as a future date, the day of the deadline.”

In other words, van der Walt is saying the new system is cumbersome, potentially error prone and decidedly inconvenient. So why would SARS initiate the change?

**Reasonable notice**
This is the advisory from SARS which introduced the change:

“Starting 4 September 2013, debit pull transactions on eFiling will be phased out and discontinued. This process will take place over a month. A warning message will appear on eFiling, where a debit pull transaction is no longer available. You are encouraged to perform credit push transactions or use one of our alternative methods of payment.

Please note:

Where you do not register for credit push transactions immediately, a Debit Pull payment option will be allowed, on condition that you agree to the declaration which appears on the screen. “Additional Payments” on eFiling for Income Tax, Provisional Tax, Value-Added Tax (VAT) and Pay-As-You-Earn (PAYE) is not available via the Debit Pull facility. In such instances please use the Credit Push facility.

A credit push transaction refers to a payment transaction that is initiated on eFiling and presented to the banking product as bill presentation, i.e. at the bank as a payment request awaiting authorisation. Taxpayers are required to log into the banking product (e.g. internet banking) and authorise the payment request to finalise the transaction.”

Van der Walt has no problem with the manner in which SARS communicated the change. “It provided extensive information in this regard – no problem there, and it was easy enough to figure out how it works,” he says.

However, the information was provided on the SARS website, which he says very few taxpayers visit. More than that, he says most tax professionals don’t have the time to browse the web. “Only when a problem arises we go to the website. We do not have time to read through their media releases on a daily basis – but, when we looked for information, it was there.”

As for the reasoning behind the change, SARS says it is making sure taxpayers pay their dues, while also removing a potential security issue: “There are risks associated with this product [debit pull] in that payment is not guaranteed and can be reversed at the request of the client and can also be rejected due to insufficient funds.”

**Additional Payments**

“Why change something that is working? We are already doing so much work on behalf of SARS, why do they complicate our work?”

Additionally, “SARS is unable to validate that the person authorising SARS to initiate the debit pull is mandated to do so which can result in payments being withdrawn from incorrect accounts. SARS could be placed at risk as a result of such unauthorised actions.”

However, some tax professionals believe there is more to it than that. Commenting on the announcement at www.thesait.org.za, Ernest Dicker sums up the suspicion with which some regard the taxman: “This smacks of a plan by SARS to generate more income from interest and penalties.”

Comments are universally negative. Ina Mouton says “Why change something that is working? We are already doing so much work on behalf of SARS, why do they complicate our work? And reading through the comments, it is shocking about the additional costs from the banks!”

Johannesburg taxpayer and financial adviser Anthony Field-Buss has this to say: “[When my tax
agent] did my PAYE in October and requested SARS to pull the amount from my account, I got levied nearly R20 by FNB for this service. I now pay all my taxes by EFT...a bit more effort from my side but the banks will not make an extra cent out of me.”

**How the change affects you**

Continuing, van der Walt says what may seem like a relatively minor change from SARS, has major implications for tax professionals. “Some of the previous ‘inherent’ service we provide to clients has now fallen away. It now becomes ‘their problem’.” Explaining, he says that previously, a payment was ‘OK’d’ with the client before being loaded and put through. “We had record thereof, and knew it was paid. Done and dusted. The client also did not have to bother with it further – they trusted that it was done and didn’t have to worry.”

Now it is necessary to adjust this business process considerably. “We have to first ok the payment with the client, load it - with different processes for different banks - instruct the client that we have loaded it, check to see if it appears on their banking, and then explain to them by when they have to log in and authorise, since some payments fall away if not authorised on the same day. Once this is done, we have to go back and check whether clients’ authorised the payment. If we don’t hear from them, or whether they received the email instructing them to attend, because if the deadline is missed, there is a penalty, and we will be the ones to blame.”

**Unnecessary work**

Dicker’s comment echoes and Linda Wearne, also commenting at www.thesait.org.za, notes “SARS very obviously does not want tax practitioners and are phasing out our usefulness to our clients. We used to arrange the SARS payments which worked and didn’t require anything further from the client, and now as far as the client us concerned, we even hassle them with a payment’s authorisation.”

Van der Walt concurs: “This has added work onto our workload, and also added extra administration stress for our clients. Clients want to be hassled and bothered with SARS and tax stuff as little as possible, and that is the value in our service. We worry about it for them, and we keep records, so that they don’t have to.”
The issue of share trading and whether the profits or the losses derived therefrom should be treated on capital or revenue account for tax purposes, has been a contentious issue in South African tax law for quite some time.

For South African income-tax purposes, the general rule in determining the nature of the proceeds or the losses derived from share market activities is to determine the intention with which the shares were acquired and held by the taxpayer.

Accordingly, South African tax law gives effect to the intention of the taxpayer in order to determine whether the proceeds or the losses derived from share market activities should be treated on capital or revenue account.

In the recent Australian case of Hartley and Commissioner of Taxation [2013] AATA 601, the Australian Administrative Appeals Tribunal (Appeals Tribunal) was asked to determine whether the applicant conducted the business of share trading in order to claim deductions for the relevant years.
of assessment or whether the applicant was in fact a share investor and accordingly did not carry on the business of share trading. The facts of the case were that the applicant was, at all relevant times, a full-time employee of the council, a position which occupied him for 38 hours a week. For many years the applicant was also actively involved in the share market and according to his testimony, that activity occupied him for about 15 hours per week, which activity was mainly conducted during his ordinary working day.

Based on the applicant’s assertion that his share market activities constituted a business for tax purposes, the applicant, through his tax agent, lodged income tax returns wherein he claimed significant amounts as deductions for each of the three tax years ending 30 June 2009, 2010 and 2011. These deductions were claimed by the applicant for the losses that he suffered as a result of his participation in the share market activities.

However, the Commissioner of Taxation (Commissioner) argued that the applicant was not entitled to claim the deductions for the losses suffered, due to the fact that the applicant was a share investor or possibly a speculator and therefore the shares should be treated as assets only for purposes of capital gains tax.

The Commissioner therefore conducted an audit on the tax affairs of the applicant for the three years in question and made a determination that the applicant was a share investor and was not carrying on the business of share trading. The Commissioner subsequently imposed an administrative penalty on the applicant for the 2009 year of assessment, based on a lack of reasonable care. The applicant lodged an objection against the notices of assessment and the shortfall penalty imposed by the Commissioner and the Commissioner subsequently issued the objection decision that allowed the objection in part by reducing the penalty shortfall to nil for the 2009 year of assessment.

Not being satisfied with the Commissioner’s decision, the applicant applied to the Appeals Tribunal for a review of the objection decision.

The essential issue before the Appeals Tribunal was whether or not the applicant was carrying on the business of a share trader for income tax purposes.

In determining the issue at hand, the Appeals Tribunal held that the question as to whether someone is engaged in a business is a question of fact, the answer of which depends on the impression which the decision-maker forms having regard to all the surrounding circumstances.

The Appeals Tribunal further held that the more usual approach and the one adopted in the income tax context, is to consider a number of accepted factors which point in one direction or the other. In summarising the objective factors that should be considered in determining the existence of a business for income tax purposes, the Appeals Tribunal referred specifically to the factors as listed by the Deputy President Todd in AAT Case 6, 297 (1990) 21 ATR 3747, which was cited with approval in the case of Shields and Deputy Commissioner of Taxation (1999) 41 ATR 1042 at 1048. The factors to be considered are:

- The nature of the activities and whether they have the purpose of profit-making
- The complexity and magnitude of the undertaking.
- An intention to engage in trade regularly, routinely or systematically.
- Operating in a business-like manner and the degree of sophistication involved.
- Whether any profit/loss is regarded as arising from a discernible pattern of trading.
- The volume of the taxpayer’s operations and the amount of capital employed by him.

“For South African income-tax purposes, the general rule in determining the nature of the proceeds or the losses derived from share market activities is to determine the intention with which the shares were acquired and held by the taxpayer.”
In light of the factors set out above, the Appeals Tribunal held that the factors in favour of the applicant’s argument was that the turnover in gross terms was quite large, particularly having regard to the applicant’s salary which he received by virtue of his employment. The Appeals Tribunal further held that the applicant did, in fact, maintain an office specifically for the purpose of conducting his share purchase and sale transactions and further maintained records of transactions for the purpose of doing accounting and tax calculations.

On the other hand, the Appeals Tribunal held that there were also a number of factors in favour of the Commissioner’s argument. In particular, the Appeals Tribunal held that looking at the totality of the evidence, it could not be said that the applicant’s activities demonstrated an intention to trade regularly or routinely. Furthermore, the applicant was engaged in another full-time profession as a council employee and lastly, the operation of the applicant was very simple, lacked any real sophistication and was not consistent with the operation of a business.

The Appeals Tribunal concluded by stating that although the matter was finely balanced, those factors pointing against the existence of a share trading business were more significant than those pointing in favour of the existence of a share trading business.

Accordingly, the applicant’s application for a review of the Commissioner’s objection decision was dismissed and the Commissioner’s objection decision was confirmed.

Based on the discussion set out above, it is clear that the Australian tax authorities, like the South African tax authorities, also determine the nature of proceeds derived from the sale of shares with reference to the taxpayer’s intention. However, the factors considered by the Appeals Tribunal in this case, as well as the previously decided case law, is useful in determining the true intention of the taxpayer from an objective point of view.

It would be interesting to see whether the South African tax authorities would adopt a similar set of guidelines to enable one to determine the true intention of the taxpayer, insofar as share market activities are concerned.
The National Development Plan (NDP) aims to eliminate poverty and reduce inequality by 2030. The vision of the NDP is to create long-term growth and sustainability for South Africa, and in order to meet the 2030 deadline, the transformation begun by Black Economic Empowerment (BEE) and Broad-based Black Economic Empowerment (BBBEE) needs to be taken to the next level. While state-owned entities have been mandated supplier development and localisation - in other words keeping skills and money within local communities - government and government-operated businesses cannot be expected to transform the country on their own. Corporate South Africa plays a critical role in transformation, and initiatives such as Enterprise Supplier Development (ESD) are key in driving sustainable and commercially viable local development.

At its heart, ESD is about leveraging procurement spend to promote skills development and job creation. Although this topic is high on the national agenda, it is often difficult to implement effectively at an organisational level. Small, black-owned suppliers face a number of challenges, including insufficient skills, and for start-up organisations, a lack of track record. Funding can also be an issue, as these organisations do not have the capital available that their larger counterparts have.

In order to effectively assist these companies - and the economy as a whole - South African enterprises need to take a multi-faceted approach that ensures growth whilst providing skills transfer, helping to achieve sustainability, skills development, employment and job creation.

Organisations within South Africa need to create ESD strategies that enable localisation – the creation of jobs and skills within previously disadvantaged communities to enable the upliftment of these communities, often in rural areas. One of the ways to do this, especially for large multinational corporations with a footprint across South Africa, is to outsource some of their own competencies in geographically dispersed regions to small BEE businesses, giving them access to the long-term business contracts they need to grow. These businesses can then be

“Organisations within South Africa need to create ESD strategies that enable localisation – the creation of jobs and skills within previously disadvantaged communities to enable the upliftment of these communities, often in rural areas.”
mentored and provided with the necessary support, financial and otherwise, to ensure their success.

Other strategies for the development of suppliers include preferential payment terms, enabling them to manage cash flow and not having to wait the usual 30-60 days for payment. Corporates should also give these small suppliers advice and access to knowledge in areas where they may be lacking, such as sales, procurement and legal. Financial support can be used to incubate small suppliers, ensuring that skills gaps within these businesses are addressed, and enable the management teams to gain the right tools and knowledge to become successful.

Ultimately, creating a sustainable and economically sound future for South Africa is of benefit to every business in the country, and should form part of responsible business strategy. With the codes surrounding BEE on the brink of change, this will become increasingly important, since ESD is set to become one of the pillars of the BEE scorecard. ESD goes beyond BEE and Corporate Social Investment, incorporating skills development, procurement, enterprise development and socio-economic development, helping to ensure transformation and the empowerment of previously disadvantaged individuals and enterprises, as well as sustainable job creation and a more stable economic future for the country.
DO YOU WANT TO AVOID MEETING THE SAIPA INVESTIGATION AND DISCIPLINARY COMMITTEES?

Here are some helpful hints to help you do just that:

- Make sure you have a letter of engagement which sets out all the work you will perform for the client. If you are performing work for the client as an entity and in their personal capacity make sure you have two different letters of engagement explaining all the work to be carried out for each client.
- Make sure you invoice your client on a monthly basis for all work performed for the month and that you have reconciled the client’s account each month. Remember to invoice each client separately.
- DO NOT accept client monies from SARS or from the client PAYABLE to SARS. Professional Accountants (SA) do not operate trust accounts and should not be performing such acts, especially because the professional indemnity cover will not assist in this regard if you have funds stolen. Make sure you understand what your professional indemnity covers and that you have additional cover if necessary.
- Cooperate and communicate with the client regularly.
- If you have an annual increment in fees inform the client. Do not take it for granted that the client will oblige. Be reasonable with your annual increments.
- Ensure your letters of engagement, alternatively, invoice stipulates an hourly rate or fixed rate for work performed.
- Where a client terminates your mandate, make sure you have a list of all documents you are handing over to the client and ensure you have a signed copy. DO NOT take longer than 7 days to complete the handing over process.
- Where client owes you money, please make yourself familiar with the policy applicable in this regard. This is not an automatic right to retain documents.
- Make sure you are organized and prepared for the tax deadline. Don’t leave your client’s work for the last minute because you were too busy doing someone else’s work. Every client is important. Any penalties that a client incurs because of the Professional Accountant (SA)’s negligence must be compensated by the Professional Accountant (SA).
- Make sure you have a paper trail especially when clients don’t return calls, or respond to emails. They will come back to blame you for not doing the work timely.

Professional Evaluation Update
The Professional Evaluation Exam which is the Institutes gateway to membership is becoming increasingly popular. The November 2013 exam had over 600 candidates writing across the country. The next exam is scheduled for the 10 May 2014. To support candidates with exam preparation, the preparation course will be held during April 2014. Further details are available on the website, www.saipa.co.za.

Exam Extension!!
No examination required until 17th December 2013 Due to the enormous response received from our existing members to become members of CoTE, SAIPA has decided to extend the “grandfather period” for Centre of Tax Excellence registrations to 17th December 2013 giving all SAIPA members a last opportunity to register without having to be subjected to an examination.

Only SAIPA CoTE members will be allowed to use the SAIPA CoTE Member Corporate Identity on all their business stationery assuring clients that they are recognised by SARS as a credible tax practitioner. Other valuable benefits of SAIPA CoTE are:
- Dedicated Tax and Accounting support within ONE Institute;
- Access to a fully resourced online tax library, working paper templates, sample engagement letters, alerts and notifications for breaking news on any tax legislation changes;
- Verifiable online tax CPD hours on manuals and publications;
- Invaluable telephonic and email support by SAIPA CoTE for tax related technical queries and questions;
- New members receive R2.5m SAIPA Professional Indemnity (PI) cover which is included in their annual CoTE membership fee

Visit our website www.saipa.co.za and register before 17th December 2013
S

AIPA-CoTE receives many queries on Small Business Corporations (SBC). Below are some examples of typical situations experienced by tax practitioners on SBCs. The examples are fictitious and the solutions could assume different scenarios.

1) Does an SBC include shareholders who are natural persons only for the entire year of assessment?
   Answer: Yes

2) Will an entity whose shareholder is also in full-time salaried employment qualify for classification as a SBC?
   Answer: Yes

3) Can shareholders of a SBC hold shares in a listed company as defined in Section 1 of the Income Tax Act no 58 of 1962, as amended?
   Answer: Yes

4) Will the ‘personal service’ restriction apply if the SBC employs three or more persons who are ‘unconnected’?
   Answer: No

5) Must the ‘unconnected persons’ referred to in (4) above satisfy the following?
   i) Full-time employees and employed for the full year of assessment;
   ii) Engaged in the ‘core’ function of the SBC;
   iii) Not shareholders or members of the SBC;
   iv) Not related to any Members of the SBC;
   Answer: Yes

SBC and Closed Corporation: A case study

Sunny Singh owns all the interest of a South African resident entity, Vula Enterprises. It provides technical financial services and sells financial magazines. Mr Sunny Singh also earns a salary as an employee of a State Department. The salary after tax is R80 000.

Given Information: Vula Enterprises for the tax-year end 31 March 2013

- Sale of financial magazine: R 200 000
- Technical financial services supplied by Mr S. Singh: R 400 000
- Tourism services supplied by Mrs Venita Singh: R 180 000
- Dividends received: R 18 000
- Interest Income: R 15 000
- Total: R 813 000

Additional information
- Capital Gain from the sale of a building: R 2 000 000
- Proceeds from the sale of building: R 10 000 000
- Tax deductible expenses: R 250 000

Required
1) Determine if Vula Enterprises complies with the definition of SBC as per Section 12 (E) of the Income Tax Act No 58 of 1962. Provide reasons and show calculations where possible

2) Calculate the tax payable by Vula Enterprises for the year ended 31 March 2013. Hint: The
Tourism sector is **not** a separate income stream of the entity.

**Solutions**

1)  
- Mr Sunny Singh is a natural person  
- The gross income is not more than R14 million  
- It is not ‘Personal Service Provider’  
- The other ‘salaried earning’ is permitted  
- Revenue, receipt and CGT gains  
  \[(R813\,000 + R\,2\,000\,000) \times 20\% = R562\,600\]  
- Income from personal services and investment income  
  - Mr Sunny Singh  
    \[R400\,000\]  
  - Dividends  
    \[R\,18\,000\]  
  - Interest  
    \[R\,15\,000\]  
  - Total  
    \[R433\,000\] \[\text{which is less than} 20\% \text{of receipt (R562\,600).}\]

The salary of R80\,000 is not included. The salary earned, in this context, does not suggest that the amount earned can be a ‘personal service’ as defined by s 12E(4)(d).

Proceeds of R10\,000\,000 not taken into account because it is of capital nature and, therefore, not part of the total on which the 20\% is based.

Services of Mrs Venita Singh not taken into account in calculating income from personal services and investment income because she is not a member of the SBC.

2)  
**Calculation of taxable Income**

\[
\begin{align*}
\text{Gross Income} & = R\,813\,000 \\
\text{Less Exempt} & = R\,18\,000 \\
\text{Income} & = R\,795\,000 \\
\text{Less Deductions (given)} & = R\,250\,000 \\
\text{Add: capital gain} & = R2\,000\,000 \times 66.6\% \\
\text{= Taxable Income} & = R1\,877\,000
\end{align*}
\]

\[
\begin{align*}
\text{Tax payable} & = R\,63\,556 \\
\text{R350\,000 – R63\,556} & = R286\,444 \times 7\% \\
\text{R1\,877\,000 – R350\,000} & = R1\,527\,000 \times 28\% \\
\text{Tax payable} & = R\,447\,611
\end{align*}
\]

Although Services of Mrs Venita Singh (the wife) is not taken into account in calculating income from personal services and investment income, the income generated from the tourism sector must be included in the taxable income of the entity. The income generated by the tourism sector is not a separate income stream, accrues to the entity and not to the wife personally. Work done by the wife is work done for the close corporation.
Recently, tax evasion cases have become more and more public. It is estimated that the collective cost of tax evasion in the US over the last decade amounts to $3.09 trillion. Some high-profile cases of tax evasion in the US:

• A professional race-car driver has been charged with filing years of false tax returns and evading $80 million in income taxes. His defence attorney does not deny the charges, but says that the racer is not to blame due to a brain injury which had compromised his decision-making abilities.
• An actor who starred in several movies in the 90s and early 2000s failed to pay taxes from 1999 to 2004. He tried to make the claim that he was a resident alien of the United States (he failed to realize that they have to pay taxes too). Naturally, because he was born in Florida, the IRS didn’t accept his claim and he was sentenced to 3 years in prison. He managed to get out on bail, but he owes the IRS $17 million in taxes.
• A famous movie star failed to pay $6.2 million in taxes on the $24 million he earned in 2007. He claimed that his accountant made mistakes. In the end, he had to sell several of his houses to obtain the money to pay back the IRS.
• A contestant on a popular reality TV show neglected to pay income taxes on the $1 million prize he won on the game show in 2000. He was found guilty and sentenced to time in prison. After his release he was sent back to prison, this time for violating the terms of his release by failing to file his income taxes again. He claimed that he was innocent and was being discriminated against because he is gay.
• A famous and ruthless gangster ran a bootlegging business during Prohibition, and that brought him incredible profits, but he concealed them from the IRS. When he was captured and put on trial for handgun charges, the IRS was able to prosecute him for tax evasion, and he received a sentence of 11 years in jail.
• A famous daytime TV host failed to pay $220,000 worth of taxes on an estate she owned, claiming that she wasn’t there enough, so she shouldn’t pay them. The IRS disagreed.
• In 1990, a famous country singer owed the IRS $16.7 million in unpaid taxes. The IRS proceeded to seize most of his possessions, but that wasn’t enough to cover the amount he owed. He released an album specifically to raise money to pay off his tax debt. Interestingly enough, most of his possessions that were seized by the IRS were later bought at auctions by his fans and friends who were more than happy to return them to him. After he paid back the IRS, he sued his accounting firm for an undisclosed amount, blaming them for his troubles.
• A famous baseball player was accused of betting on baseball games, which he adamantly denied, but was later found guilty. In addition, the IRS accused him of not reporting income from special appearances and autographs, which led to a

Income tax has made more liars out of the American people than golf. - WILL ROGERS
$50,000 fine and 1,000 hours of community service. In 2003, he was found guilty of not paying taxes again, and had to pay $154,000 and sell his condo in Los Angeles.

- Despite selling 50 million records, thanks to his 1990 hit, a famous rapper owes the IRS and the state of California a total of $671,000. Looks like he got hammered by the IRS.

- One famous movie star reportedly owes the IRS over $11 million in unpaid taxes.

- A famous bounty hunter and reality TV star reportedly owes the IRS $2 million in unpaid taxes dating back to 2002.

- In 2009, a successful boxer with a history of tax problems was given a $5.6 million bill by the IRS for unpaid taxes. He has agreed to pay them since then.

- A rock’n’roll legend spent most of his time on tour in the 1970s and was paid in cash for his performances. The IRS charged him with failure to pay taxes on those earnings and he pled guilty in 1979. He was sentenced with 4 months in prison and 1,000 hours of community service, which he fulfilled by performing benefit concerts.

- One IRS commissioner made, and won, a $1,800 bet that Truman would win the presidential election. However, he neglected to report those winnings when filing his taxes. In 1952, his story became public and he was convicted of tax evasion.

- A former mayor of a major US city, and current council member, was accused of failing to pay his taxes after he left his post as mayor in 1999.

- A moderately successful rapper and actor was charged with 3 counts of tax evasion for neglecting to pay his taxes from 2004 to 2006. He could face up to 3 years in prison and a fine of $300,000.

- A famous real estate investor was convicted of tax fraud in 1992 for claiming $2.6 million in ineligible business expenses. She reportedly said, “We don’t pay taxes, only little people pay taxes”.

- A famous comedian spent 10 days in jail in 1974 for not paying his taxes. During his trial he told the judge that he forgot to pay them.

- A popular R&B singer gained his fame in the 90s and early 2000s and sold an estimated 50 million records worldwide, earning him a great fortune. However, he failed to pay his taxes between the years 2005 and 2010 and reportedly owes $4.8 million for that time period. In addition, he owes nearly $1.4 million for 2011.

Infamous International Tax Evaders

- A famous 80s movie star was linked with Australia’s 300 million dollar tax evasion probe which involved 23 companies, including one that he owns. The Australian Taxation Office claimed that he owes as much as 37.5 million Australian dollars in unpaid taxes, and banned him from leaving Australia without first paying his taxes. Since then, he has been allowed to leave Australia as part of a deal, and in early 2011 he decided to sue the Australian government over false accusations of tax evasion, which he claimed damaged his reputation.

- In early 2000s the former Number 1 male tennis player was accused of living in Germany while claiming to live in Monte Carlo, and thus not paying 1.7 million euros in taxes to the German government from 1991 to 1993. He admitted to tax evasion, and received a $500,000 fine and 2 years of probation. He later moved to Switzerland to avoid paying taxes.

- An octogenarian New York resident and former customer of UBS was accused of conspiring with the Swiss bank to hide $4.9 million in a foreign account between 2000 and 2002 to avoid paying taxes. He was convicted on five counts of filing false income tax returns and was forced to pay a fine of $940,381.

- In 1982, a famous Italian actress served 18 days in prison for tax evasion.

- A founder of 1980s computer retail chain reportedly owes over $100 million in unpaid taxes to the IRS. After selling the company in the late 1980s he moved to the Northern Mariana Islands, which is a U.S. commonwealth. He never reported his income to the IRS while in the commonwealth, and thus paid no taxes during that period. Soon after he disappeared, and it is reported that he now resides in the Cayman Islands, a notorious tax haven.

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
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