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In this Issue

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'Tis the Season for Giving but Beware the Taxman!

"Think of giving not as a duty but as a privilege." (John D. Rockefeller Jr.)

Christmas is a time for giving, and in our local business environment, as well as in many other markets around the world, it may even be unofficially expected of companies to give generously to their employees, to their clients and suppliers, and to the communities in which they operate. Many companies give generously in these ways, but may not be aware of the tax implications of their generosity.

In this article, we briefly look at some of the tax implications of various forms of giving, to emphasise that before any corporate giving decisions are made, companies should seek professional advice about the tax implications.

Giving to employees

- *Company Christmas party:* For many employees the annual office Christmas party or lunch is a highlight: a great meal, free drinks and the opportunity to mingle socially with colleagues. Although the costs of such an event would have to be carefully considered, this would be a tax-deductible expense, regarded as a non-taxable occasional meal.

- *Gifts:* Whether you are considering gift vouchers, physical presents or intangible gifts, there is no minimum value below which employer-provided gifts are tax free. If it can be regarded as an asset, it will be seen by SARS as a taxable benefit in the hands of the employee.

  Some examples include gift vouchers, prizes or awards; physical items such as a mobile device; and intangible gifts such as flights or accommodation. This applies whether the gift is given to an employee or an employee's family member, such as a spouse or child. The cost to the employer of any such gift must be reflected as a taxable fringe benefit on the employee's payslip, and PAYE must be calculated and deducted.

  There are some exceptions. For example, in the case of a long service award (15 years or more), the first R5 000 of the cost of such a gift is not taxable, but any amount in excess thereof is taxable as described above. Other possible exceptions include where the employer incurs no cost in conferring the gifts, or where the gifts are utilised by the employees for business purposes. However, even these simplified scenarios are subject to complex considerations and should first be discussed with a professional.

- *Bonuses:* When considering giving annual bonusses or "13th cheques", remember that a bonus is taxed at the same rate as other remuneration. This means that the amount of the bonus will be added to an employee's annual salary to determine the rate of tax payable for the year. However, the bonus amount might push some employees into a higher tax bracket, significantly eroding the amount of the bonus the employee receives after tax. Be sure to get professional advice on structuring bonuses to be tax efficient.

Giving to clients/suppliers

- *Christmas functions:* Where clients or suppliers are entertained at a Christmas function, expenses such as meals, venue hire and live entertainment can be claimed as a tax deduction. However, this is only allowed where the taxpayer can prove that expenses were incurred in pursuit of business. It will be necessary to keep a comprehensive schedule of the entertainment expenses along with the date, the venue, the company and people entertained, and the purposes of that entertainment (for example prospecting for a new client) to prove to SARS that the expenses were genuinely business-related.

  In the past, this deduction was prone to abuse. Consequently, a claim for entertainment expenses is likely to be flagged for investigation by SARS, and taxpayers should not risk this unless they have verified their tax position with a specialist and are certain they are able to prove the expenses claimed are again, genuinely business-related.

  In addition, input VAT cannot be claimed on entertainment expenses, including but certainly not limited to business lunches and dinners; annual functions; and expenses incurred for entertaining clients at restaurants, bars and night clubs.

- *Gifts:* Many companies show their appreciation and build relationships with clients and suppliers with corporate gifts that can range from bottles of wine to keyrings. These expenses could be tax deductible as marketing expenses or as cost of sales expenses, but the onus will rest on the taxpayer to prove that these expenses were incurred in the production of income.

Giving to charities

- *Donations:* Before making a donation, consider that there may be donations tax implications. A company will not incur donations tax for the first R10,000 per annum in donations. However, any amounts over this limit are taxed at a flat rate of 20% on the value of the donation up to R30 million, and at a rate of 25% on donations over and above R30 million. Furthermore, any donations made to a registered PBO (Public Benefit Organisation) are not subject to donations tax, even for amounts over the limits set out above. The PBO must have been approved by SARS – have a professional check.

  The deduction may, however, not exceed 10% of the donor's taxable income during any year of assessment. Should the company (donor) have given more than 10% of taxable income in one year, the excess over 10% can be carried over to the next year.

Staff can also get tax relief on their PAYE through “payroll giving” whereby the employer donates on their behalf up to 5% of remuneration to qualifying section 18A PBOs. The donation relief will be reflected on the employee’s IRP5 at the end of the year.

Ask for professional advice to structure your company’s donations in the most appropriate and tax-efficient manner. You may also require assistance to declare and pay donations tax, as it does not form part of the business’ normal tax returns. Following a donation, you will need to submit a donor declaration (IT144 form) and pay any donations tax owing by the end of the month following the month during which the donation was made.

The Hybrid Workforce Debate: What SMEs Need to Know

“Success in a hybrid work environment requires employers to move beyond viewing remote or hybrid environments as a temporary or short term strategy and to treat it as an opportunity” (Vice President of Gartner, George Penn)

The gradual transition from the conventional office environment to a remote, tech-savvy workforce has been topical in various industries for a while. However the pandemic has accelerated acceptance of the reality of remote working.

The recent Digital Corporation in South Africa 2021 study, conducted by IT research organisation World Wide Worx with the support of Syspro, Dell Technologies, Intel and Cycan, looked into the hybrid work place model among enterprises in South Africa. It found that a third of respondent companies did not foresee their workforce returning to the office environment.

The hybrid workplace is an operating model incorporating both remote and in-office working. This is made feasible by cloud computing together with collaborative tools such as direct messaging tools like WeChat, WhatsApp and Facebook Messenger, as well as task management tools like Asana, Google Workspace and Trello.

The above-mentioned research also analysed the spending habits and investment trends of companies concerning hybrid environment technologies, among other things.

Budgeting is a critical consideration in remote working. Cloud computing - an important aspect of hybrid working, is second only to business intelligence, which is software designed to retrieve, analyse and report data for business improvement, in terms of budgeting for specific technologies in South Africa, according to the report

“Spending is surprisingly uniform across numerous operational categories, from computers and cyber-security to accounting and ecommerce,” says Arthur Goldstuck, CEO of World Wide Worx and principal analyst on the project.

Furthermore, remote working involves tax considerations for both employees and employers – an area best tackled only with professional advice.

For example, employers are often requested to issue letters confirming that employees performed their duties mainly in a home office and the difficulty is that the employer has to vouch that all requirements were met.

In general, the hybrid workforce debate is of particular interest to SMEs, particularly since they may be able repurpose the savings of reducing office space and overheads.

The three pillars of a functional hybrid working model

The University of Cape Town's Graduate School of Business lists the following pillars as vital to a functional hybrid working model:

1. Trust: This is the foundation of the employee-employer relationship. The working model requires both parties to actively work on making it a success.

2. Practicality: The nature of the business offering should determine the inner workings of the model and budget.

3. Organisational policy: Policy needs to complement the working environment.

Take professional advice on how hybrid working can impact your business' bottom line.

What To Do When Preparing to Sell Your Business

> ***"As much as you might love running your business, you must have an end-goal in the plan. At the very least, an exit strategy keeps you from turning your business into a glorified job – working from home, but with longer hours." (Kevin J. Donaldson)***

A new year beckons, and you may be thinking that it will soon be time to sell your business. Perhaps you are nearing the age of retirement, or want to move on to a new endeavour? Whatever your reason, your business could well be your most valuable personal asset, and something you have invested in for years, if not decades. The prospect of selling can therefore feel overwhelming, and clearly you want to receive a fair price for the asset you've worked so hard to create.

Selling your business is therefore likely to be not only a busy period, but an emotional one too and you'll need to engage in extensive preparation if you want to come out satisfied at the other end.

These tips will help you to prepare for a business sale and get the price you deserve for your company.

1. **Have a reason why it is for sale**

   Anyone who is going to buy your business will want to know the reason why it is for sale. Your reason should be clearly thought out and easily explained to avoid spooking potential buyers. Simply saying "It's time for me to move on" will not build anyone's confidence. The aim here isn't to obfuscate your reasons; honesty will always be appreciated.

   A serious buyer will spend time doing their due diligence investigation and so know a fair amount about your business, its reputation and sustainability. So remember that whilst your books are likely to tell them more about the health of your business than your words, your words will give them an idea of what the reputation of the business might be and just what they are likely to be dealing with when it comes time to deal with existing clients and suppliers. Common reasons for exiting a business include retirement, partnership disputes, illness or death, feeling overworked or even plain old boredom. When explaining why you are exiting there is an opportunity to add in some of the strengths of the business. “I am feeling overworked”, becomes a lot stronger from a sales perspective when it’s backed up by, “We have so many orders” or “We have a reputation for never letting our customers down”.

2. **Give yourself time**

   Selling a business takes time and should not be done in a hurry. Trying to sell in a hurry can only mean the correct things are not in place, and buyers will sense your urgency. In general, you should give yourself at least one year to sell a business and preferably two.

3. **Get your finances in order**

   A company with clear, legible finances is also going to sell much quicker than one with a drawer full of receipts and a box of demands from SARS. It is essential at this stage to liaise with your accountant to ensure that all financial records are in place, fully up to date and that any outstanding issues are cleared up.

   The more organised and accurate your accounting records are, the easier it is for a potential buyer to assess your company’s value. A potential buyer needs a clear picture of your financial condition, and that includes accurate financial statements for the past several financial years. When someone buys your firm, they may need to integrate your accounting data into their systems, and your accounting transactions must follow industry standards.

   A company's finances tell potential buyers a lot about a business and very few will take the plunge if things aren't organised and transparent. For example, a purchaser can review your interest expense to determine if the expense is increasing as a percentage of sales. If interest expense climbs say 5% to 8% of sales, your firm’s total debt is also increasing.

   There is a second, even more important reason your finances need to be accurate, and this is that you will need them to determine the value of your company. It is impossible to sell something if you don't know what it is worth, and just how much value there is in it. Knowing your bottom-line price will be important come time for negotiations.

   A vital consideration in determining the price is future prospects and profitability. The final purchase price will not be simply based on net asset value but also on likely future profits giving a potential return on investment (the purchase price). **There is no substitute for professional advice here!**

   Also, be clear in your mind how you expect the payment to be made – a lump sum, an earn-out over so many years based on the projected profits being realised. A note here – most sale agreements have clawback clauses if the future profits do not materialise. You will need sound advice on what is in the agreement in this and other considerations.

4. **Succession Planning**

   Making sure your business can thrive after you have left will make it a far more attractive proposition for a potential buyer. Hopefully you have always had a succession plan in place in the event that something happens to you, but if you don't it's time to get to work.

   A succession plan may require you to train and mentor a successor, and to put legal documents in place (be sure to incorporate some flexibility in case a buyer has other ideas!). Both of these tasks are time consuming. If you plan on selling the business on to the employees then an Employee Stock Ownership Plan (ESOP) will need to be developed and, employees funding the ESOP will need a number of years to accumulate the funds to buy out the owner.

   For each of these reasons, you should plan for succession as soon as possible. Putting a detailed plan in place can help you avoid a forced sale. A forced sale occurs when the owner is under pressure to sell the business, or the owner's heirs are trying to sell the company. The seller does not have any bargaining power and will likely receive far less for the business when the sale is finalised.

Finally, in this regard: Consider your reaction and plans should the buyer ask you to stay on for a term or two while they prepare their own successors to take over from you.

5. **Increase the value of your business**

   While it may be tempting to take your foot off the gas pedal as you prepare for a sale, this is exactly what you shouldn't be doing. Businesses whose performance noticeably declines before all the documents are signed only give the impression that the owner is the only thing that matters, and this will give prospective buyers all the excuse they need to make a lowball offer.

   On the contrary now is the perfect time to perform a SWOT (strengths, weaknesses, opportunities, and threats) analysis. Write down the key issues in each of those four areas. Get input from your staff, share your SWOT analysis with your team and ask them for feedback. Once you perform this analysis, you can start focusing on business improvements.

   The aim is to make sure that the year before you sell is a record breaker. Imagine you are starting all over again and spend this year getting the word out about your business, building clientele, cementing long term contracts and relationships and cutting back on costs. **So ideally start planning to maximise value at least a year before you sell!**

   Make sure that you account for every cost you incur to operate your business and if there are areas of the company that are not profitable, consider closing them. Now is not the time to be keeping your pet projects alive. Having a great year, cleaning out the business chaff and showing investors that the company has a strong future will undoubtedly provide a huge boost to your sales price.

6. **Identify target buyers**

   As already indicated, selling a business takes time. You can speed up this process if you identify potential buyers and understand exactly why they might be eager to put in an offer. There are generally two types of reasons for buyers to take on a new going concern: financial and strategic.

   Financial buyers treat the purchase as an investment, looking at the potential returns they can achieve. Their aim is to make an acceptable return on their investment and then flip the business either to another buyer or through an IPO. Financial buyers will consider the company's track record based on a history of strong financial statements, and potential for solid growth. They won't necessarily worry about flaws in the business as they will see these as opportunities to quickly increase the value before selling it off, but they will haggle every cent on the sales price to ensure the most profit for themselves.

   Strategic buyers look for purchases that will fit into their own long-term business strategy. They may, for example, be competitors who are looking to expand vertically (to different parts of the supply chain) or companies that need to expand horizontally to a new industry to diversify their portfolio. Strategic buyers are typically larger and willing to pay more for the purchase, since they can immediately take advantage of economies of scale.

7. **Bring a good team on board**

   The final step before actually putting the business up for sale is bringing in a strong team of experts. At the very least you will need an accountant to handle any financial questions the buyer may have and to advise you on choosing a lawyer to attend to the contractual side.

   Seek advice also on whether you should employ the services of a specialist broker to help oversee and facilitate the sale. Negotiating a sale yourself allows you to save money and avoid paying a broker's commission, so it may be the best route to take when the sale is to a trusted family member or current employee, but still bounce that off your accountant first.

In other circumstances, getting a broker on board can help things run more smoothly as the broker will help free up your time to keep the business up and running, will help keep the sale quiet and get the highest price, because brokers are incentivised to maximize their commission.

At the end of the day, having the right people working toward your sale means that at the very least they will pay for themselves, and more often than not they will increase your profit.

Festive Season Cybercrime Alert: Tips from SARS

"Cyber Attack: An attack, via cyberspace, targeting an enterprise's use of cyberspace for the purpose of disrupting, disabling, destroying, or maliciously controlling a computing environment/infrastructure; or destroying the integrity of the data or stealing controlled information." (CSRC - Computer Security Resource Center)

South African businesses, already facing significant risk of cyberattacks, have been warned to step up their cybersecurity as the festive season is expected to see significantly more and increasingly sophisticated cyberattacks. Below are listed some of the common types of cyberattacks.

Common cyberattacks

- Phishing (random fraudulent emails), spear phishing (emails targeting specific people or companies), vishing (voice phishing) and smishing (SMS phishing) – these all refer to fraudulent communications that appear to come from a reputable source, such as a bank or a government organisation, with the aim of tricking employees or individuals to share data, pay money to criminals or download malware.

- Malware - including viruses, worms, trojans, spyware, rootkits - typically used to breach a network when a user clicks a link or an email attachment from an apparently trusted source that then installs risky software.

- Ransomware attacks - ransomware infects networks and encrypts or locks data, allowing attackers to demand a ransom for unlocking or releasing the data.

- Hacking - including distributed denial-of-service attacks (DDoS) and keylogging.

- Man-in-the-middle (MitM) or eavesdropping attacks in which attackers insert themselves between a user's device and a network to filter and steal data, commonly through unsecure public Wi-Fi and compromised devices.

SARS: a favourite cyberattack ruse

SARS says that there is a steady increase in scams and attacks in which the SARS brand is abused, via the Internet, emails, spoofed websites, SMSes, unsolicited telephone calls and even social networking sites such as Facebook, Twitter and others.

A firm criminal favourite are phishing scams involving false “spoofed” emails made to look as if they were sent by SARS. These fraudulent emails contain links to fake forms and malicious websites purporting to be authentic and lure unsuspecting taxpayers to disclose private and confidential information such as bank account details. Examples include emails that appear to be from “returns @sars.co.za” or “refunds @sars.co.za” indicating that taxpayers are eligible to receive tax refunds.

The latest scams involve smishing, which is phishing via SMSs, and vishing which most recently involves taxpayers being called by a person purporting to be a SARS employee to inform them that SARS owes them money.

Another common cyberattack approach involves refund scams in which identity thieves use a legitimate taxpayer’s identity to file a tax return and claim a refund fraudulently. Yet another threat involves cybercriminals using personal or company information to change the banking details on the taxpayers’ SARS profiles.

A further version involves criminals purporting to be SARS auditors or employees contacting businesses using all the means described above to inform taxpayers that they are under investigation and that an audit will be conducted.

SARS Tips for Improved Cybersecurity

- Do not open or respond to emails from unknown sources and beware of false SMSes.
- Be suspicious of emails and/or SMSes that request personal, tax, banking and eFiling details.
- SARS will not request your banking details, login credentials, passwords, pins, credit/debit card information, or other confidential information by phone, SMS, email or websites.
- SARS will never notify you about refunds by telephone, SMS or email.
- Immediately report a notice or letter from SARS that states:
    - More than one tax return has been filed in your name
    - You have a balance due, refund offset or have had collection actions taken against you for a year in which you did not file a tax return
    - SARS records indicate you received a salary from an employer that you don’t work for
    - there has been a payment error or incorrect refund requiring you to deposit the “overpayment” into a bank account.

Speak to your accountant first!

It is easy for criminals to dupe unsuspecting taxpayers, and yet, at the same time, taxpayers should never simply dismiss or ignore a notice or demand from SARS as a scam.

The best line of defence against cyberattacks that misuse the SARS brand is to get advice before taking any action. If you suspect the legality of a particular communication or believe you have been contacted by a fake SARS representative, immediately contact your accountant, who will be able to verify the communication or report suspicious activity for you.

This will ensure that you never fail to respond timeously and correctly to legitimate SARS communications, while also safeguarding you from becoming a victim of a cyberattack, especially during the upcoming festive season which promises to be a busy one for cybercriminals.

Your Tax Deadlines for December 2021

- 2 December – Extended filing season deadline for non-provisional individual taxpayers (originally 23 November 2021)
- 7 December – Monthly Pay-As-You-Earn (PAYE) submissions and payments
- 24 December - Value-Added Tax (VAT) manual submissions and payments
- 30 December - Excise Duty payments
- 31 December - Corporate Income Tax (CIT) Provisional Tax payments where applicable
- 31 December - Value-Added Tax (VAT) electronic submissions and payments.

Thank you for your support in 2021.

Have a Wonderful Festive Season, and a Happy and Prosperous 2022.

Enjoy the Break!
