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COMMERCIAL ATTORNEYS

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*"I do not know anyone who has got to the top without hard work. That is the recipe. It will not always get you to the top, but should get you pretty near." - **Margaret Thatcher***

TAX LAW: A SHAREHOLDER'S LIABILITY FOR THE TAX DEBTS OF A COMPANY

According to Section 181 of the Tax Administration Act No 28 of 2011 (the "**Act**"), the shareholders of a company can be held jointly and severally liable for the tax debts of their company. The intention here does not appear to be to punish the shareholders in any way, but rather to dissuade the shareholders from asset or dividend stripping the company. As such, Section 181 will only apply to shareholders in very specific circumstances.

Section 181 applies (and shareholders can only be held liable) in the following circumstances:

1. When a company is wound up, other than by means of an involuntary liquidation. The section is therefore triggered by a voluntary winding up of the company.

2. When a company has not satisfied an outstanding tax debt. This will include any tax (or type of tax) due under the **Act**.

3. When the shareholder receives the assets of the company within 1 year prior to the company being wound up. This includes all types of assets (movable, immovable, corporeal, incorporeal etc.).

4. The shareholder must have received the assets of the company in his / her capacity as share-holders. This could also include preference shareholders but not nominee shareholders.

5. The section does not apply to a listed company or a shareholder of a listed company.

All of these elements must be present in order for **Section 181** to apply, as such, a shareholder of a non-listed company would only be liable for the tax debts of the company in the event that the company has been voluntarily liquidated and he / she received the assets of the company within a year prior to such liquidation in his / her capacity as shareholders.

Although it seems that these triggers would not be commonplace in day to day business, taxpayers must still be aware of actions that may be perceived as asset or dividend stripping by SARS.

Law & Laughter

Q: ***Mrs. Jones, do you believe you are emotionally stable?***
A: ***I used to be.***
Q: ***How many times have you committed suicide?***

INFORMATION TECHNOLOGY LAW: CYBER CRIME AND YOUR BUSINESS

It is important for all companies to be aware of the following guidelines when considering the IT used in everyday business operations, whether such IT belongs to the company itself or to a third party:

- IT governance is the responsibility of the Board of Directors and executive management: IT Governance Institute and King III (sub principle 106)
- A company's Board must take ownership of IT governance and set the direction that all levels of management should follow: King III (principle 111)
- A company must protect its intellectual property at all times.
- A company must endeavor to implement policies regulating IT Governance.

Relevant Legislative Protection

- Section 14 of the Constitution sets out the right that everyone has the right to privacy, which includes the right not to have- the privacy of their communications infringed
- The Protection of Personal Information Act of 2000 (“POPI”) intends to protect individuals from harm resulting from the processing of information about them. Personal information must be processed lawfully and in a reasonable manner that does not infringe the privacy of the person (the “data subject”). Cyber Crime and the implications of POPI will affect nearly every area of business.
- The Electronic Communications and Transactions Act of 2002 (“ECTA”) regulates electronic communications and information systems. ECTA makes provision for the investigation of cyber crime and procedures to be followed, activities that constitute cyber crime and applicable penalties for such contravention. The Consumer Protection Act of 2008 must be applied in conjunction with the ECTA as far as information and communication technology is concerned.

Although it appears that the authorities have tried to legislate on cyber crime and its prevalence in everyday business, it seems thus far that legislation is not developing at the pace of technology- therefore at this stage, prevention is better than cure.

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