the CORE group | 360°

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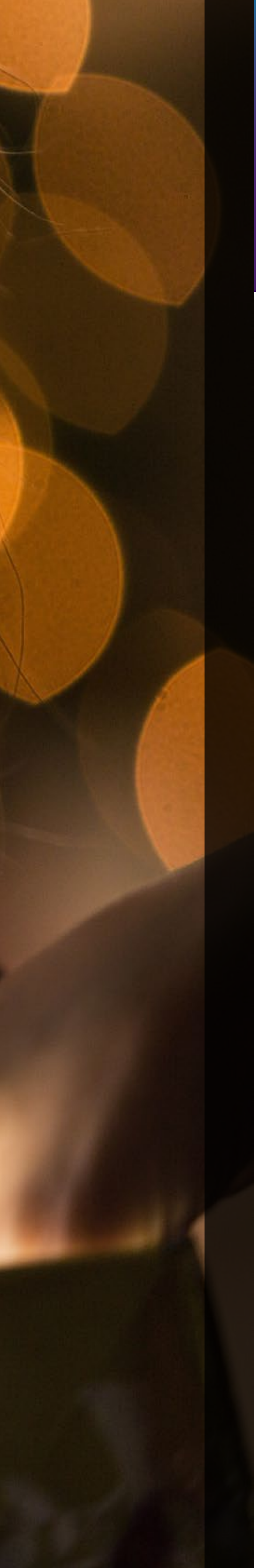
MERRY CHRISTMAS

the future - **now**



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CORE co-services

Re-instatement of companies and close corporations due to non-compliance

Annual returns on your company or close corporation have to be submitted yearly to CIPC to prevent deregistration. These returns are payable annually on the date of registration of the company. The amounts payable to CIPC are determined by your annual turnover as per the table below:Let's look briefly at the following learnerships:

ENTITY TYPE	ANNUAL TURNOVER	PRESCRIBED CIPC FEE	PRESCRIBED PENALTY ON LATE PAYMENT
COMPANIES & NPCs:	< R1 MIL	R 100.00	R 50.00
	R1 MIL - R10 MIL	R 450.00	R 150.00
	R10 MIL - R25 MIL	R 2,000.00	R 500.00
	R25 MIL +	R 3,000.00	R 1,000.00
CCs:	R0 - R50 MIL	R 100.00	R 150.00
	R50 MIL +	R 4,000.00	R 150.00

If these annual returns are not paid, CIPC starts with the deregistration process of the entity. Should an entity be in "deregistration process" with CIPC, the status of the said entity can be restored back to being compliant and "in business" easily by merely paying the outstanding annual returns and penalties and submitting the annual returns with CIPC. Should an entity be in "final deregistration", no annual returns or objections can be processed and the route of re-instatement of the entity should be followed.

In terms of the Companies Act and the Close Corporation Act, any interested person may apply, as per CIPC's guidelines, to re-instate a company or close corporation. The re-instatement process is however timeous, and it may take a couple of months until the entity is fully restored.

Briefly stated, the following guidelines pertain to the process to re-instate a company or close corporation:

- An advertisement is to be placed in a local newspaper where the applicant gives notice of the intention to re-instate the company.
- 21 business days have to pass after the placement of the advertisement in order to make provision for any possible appeals against the re-instatement.
- A full deed search must be done to determine if there is any immovable property registered to the entity.
- Should the entity have immovable property, a letter needs to be send to the Department of Public Works, enquiring whether they have any objection to the re-instatement.
- Other supporting documentation include bank statements, an affidavit indicating the reasons for the non-filing of annual returns, and any other documentary proof of the entity's economic value.

After the application has been submitted to CIPC, the status of the company will be changed to "re-instatement process", during which time all outstanding annual returns have to be paid and filed to complete the re-instatement process. After annual returns were paid and filed, the status of the entity will be changed back to "in business". The entity will be compliant and will appear as if it has never been deregistered at all.

Prepared by CORE Bloemfontein.
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CORE tax

Loans to companies under threat

Section 7C of the Income Tax Act was introduced in 2016 in order to address avoidance of donations tax and estate duty through the transfer of assets to trusts on loan account. Generally, section 7C, which applies from 1 March 2017, deems the interest foregone on a loan made to a trust to be a donation that attracts donations tax.

Taxpayers have now found a way to circumvent the application of section 7C by advancing the relevant loan to a company, the shares of which are owned by a trust. The application of section 7C is also in some cases avoided by the transferring of loan claims to current or future beneficiaries of trusts.

The National Treasury released the Taxation Laws Amendment Bill, 2018 during October 2017. The Bill proposes two sets of amendments relating to section 7C: one set addresses certain avoidance schemes that have been identified by government, and the other provides for an exclusion from the application of section 7C in the case of certain employee share schemes.

Anti-avoidance measure (1): Loans made to companies

In order for section 7C to apply, a loan must have been made by a natural person (or, at the instance of a natural person, by a company that is a connected person in relation to the natural person) to a trust. In addition, the trust must be a connected person in relation to the natural person, the company or any other person that is a connected person in relation to the natural person or the company.

Accordingly, in the Amendment Bill, it is proposed that in order to curb the abovementioned avoidance, interest free or low interest loans, advances or credit made by a natural person or a company (at the instance of a natural person) to a company should also fall under the anti-avoidance measure.

The Amendment Bill proposes that all loans made by a natural person to a company, where at least 20% of the equity shares are held directly or indirectly or if the voting rights in that company can be exercised, by the trust or by a beneficiary of that trust that loan will also be subject to the anti-avoidance provisions of Section 7C.

An example of where Section 7C will apply is where XYZ Trust owns 25% of the shares in company Y and Mr X makes an interest free loan to Company Y.

Another example of where indirect shareholding will lead to the application of section 7C is where XYZ Trust owns 22% of the shares in company Y. Company Y own 100% of shares in Z Ltd. Mr X then makes a loan to Z Ltd.

Exclusion of employee share incentive scheme trusts

From the introduction of section 7C, one of the main criticisms of the section was that it ignored the fact that trusts are used for various legitimate purposes other than the transfer of wealth through the use of interest-free or low interest loans.

The Amendment Bill proposes that, in addition to the existing exclusions from section 7C (which are listed in section 7C(5)), a specific exclusion for employee share incentive schemes should be provided. In order to prevent the abuse of the exclusion, there is a number of requirements which should be met.

Anti-avoidance measure (2): Transfer of loan claims to current or future beneficiaries of trusts
Where section 7C is triggered and applies in respect of a loan made by a natural person (or by a company at the instance of the natural person), the natural person must treat the interest foregone by the trust on the loan as a donation.

Taxpayers have apparently therefore argued that where the loan claim is transferred to another natural person (usually a current or future beneficiary of the trust), the link between the loan and the natural person who advanced that loan is broken. Because this link is broken, it is argued, the natural person to whom the loan claim is transferred need not account for the deemed donation. In order to address this avoidance, it is proposed where a connected person acquires a loan claim to an amount owing by that trust in respect of a loan that was originally advanced by a natural person or a company to that trust, the person who acquires that claim will be deemed to have advanced the amount of that claim as a loan on the date that person acquired that claim.

Conclusion
It was to be expected that anti-avoidance measures would be introduced to counter avoidance that only became apparent after the introduction of section 7C. However, it may be argued that the anti-avoidance measure dealing with loans made to companies is far too broad. This is because the relevant trigger for the proposed measure is the shareholding in the company by a trust and not necessarily the historic transfer of assets to the company to avoid estate duty or capital gains tax.

CORE business development

Farmers are 'in spite of' doers and not 'because of' followers

Farmers who excel are widely acknowledged, including Farmer of The Year, Emerging Farmer, Agricultural Expert of the Year, Mega Food Producer and many more. However, one would be able to argue that there is still not enough recognition for those who do the "invisible" work to get food on the table. Encouraging though is the bigger appreciation from government in this regard.

Acknowledging top performers is necessary for a variety of reasons, but not for honour. None of the winners wants to be honoured through this acknowledgement. These top performers stand out and lead by example – they become a prototype for others to follow, to catch up to and to surpass. True leaders enjoy when they "fall behind" others taking up the task where only excellence can win continuously. Each nominee has to go undergo a strict set of tests and their feedback is that these tests are an enriching experience in itself. They are used to being measured and new measurements strengthen and bring out the best in someone.

What is important is that none of the nominees and/or eventual winners play for the pavilion. Instead they are inspired by the commitment to their dreams, the successful implementation of strategy and impatience with the status quo. They are brave implementers and their courage is breath-taking. Their progress is the result of an "in spite of" approach rather than shirking responsibility with "because of" excuses.

These icons in the process to improve agriculture continuously easily pass an eight-point prototype test. Firstly their attention to detail is crucial – small things that could hamper the development, implementation and improvement of strategy. This makes them strategically adept. Secondly they understand the difference between processes and outcomes. They always start with the end in mind, but do not bend that which is procedurally essential. Process is important for any desired outcome and entails a range of aspects such as the people involved, key factors and a step-by-step progression at the hand of goals. They are excellent examples of the key requirement of being able to build the road while walking on it.

Thirdly they have patience with processes and they demonstrate that it takes time to excel. It is not a result of a collection of quick fixes but they acknowledge and recognise the value of "small/short wins". In the fourth place they understand the art of continuous recalibration of the balance between optimism and critical scepticism to such an extent that they can perform in the current situation while adapting to the future.

They know what makes a team work and are an example of how a true leader can make a team stronger and that it is more valuable than a strong leader. This is the fifth test and in this regard they are a testimony to the African saying, "If you want to walk fast, walk alone but if you want to walk far, walk with someone." It is also clear that these leaders are humble. Not only do they not think a lot of themselves, but they also do not think a lot about themselves. See for yourself how many "leaders" pass the sixth point. In the seventh place their view of character versus reputation is crucial. Character reflects who you truly are and reputation refers to what others think of you. Leaders of value have impeccable character.

Finally, it is about your legacy in terms of life, principles and those affected. The extent to which these leaders' approach and life can be taken further through empowerment is measured at the hand of how it is able to keep a light burning. In Nelson Mandela's words, "Do not judge me by my successes, judge me by how many times I fell down and got back up again."

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CORE
financial solutions

Time is your best asset

We have reached the end of a year that will be remembered for a long time for various reasons. Ministers were appointed and fired (think of Pravin Gordhan!) and ratings agencies downgraded us to junk status. And despite all of this it seems that Number 1 is laughing at everybody and ignoring all the warning signs.

Then the news broke … Gupta leaks, Bell Pottinger, Eskom, SABC, McKinsey, KPMG! Each time there was speculation that this will be the end of Number 1 and his cronies. They are not going to get away with this one! Or are they…? The ANC's election in December is still ahead and there is speculation that there might be efforts to disrupt the election. We will have to wait and see.

Despite all these events no one predicted the following: Since August the JSE has increased with 15.43% and during October with 9.24%! Where did all this growth come from despite everything happening in our country? The answer is relatively simple: America, Europe and the East have inflation again. In other words there is a demand for products. Although South Africa forms a mere 0.5% of the world's economic activities, more than 60% of the companies on the JSE earn their money abroad. In addition the exchange rate weakened from 12.46 R/$ to 14.42 R/$ over the last 52 weeks. This gave us a yield of 15.73% simply in terms of the poorer exchange rate. Six percent of this weakening took place during the last three months.

Why is this information important? For one simple reason: Despite everything happening in our country the rest of the world is moving on. No one is waiting for South Africa and, as we saw, growth in the markets can come when we least expect it, let alone predict it. We often get caught up in asset classes such as shares, property, effects, cash, etc. Although these factors are important we neglect the most important asset available to us, namely TIME!

If your investment consists of a good balance of funds, allow your best asset to do its job … TIME!

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When tough times come knocking on HR's door

Unfortunately, more and more companies face the reality and consequences of our current economic situation. When a company experiences a decrease in demand, the quest for survival and contingency often result in staff reductions. Section 189 and 189A of the Labour Relations Act 66 of 1995 deals with dismissing employees based on operational requirements. When dealing with retrenchments, it is important to keep in mind that this is a "no fault" process. Poor performers, incapacity and staff misconduct cannot and should not be dealt with by means of a retrenchment process.

This article only deals with Section 189 of the Labour Relations Act, specifically for small-scale retrenchment where companies have less than 50 employees. As soon as retrenchments become a possibility for employers, they have a duty to ensure the process is followed as per the Labour Relations Act (LRA) and decisions should be made in good faith. As with many other procedural requirements in the LRA, the first step is to consult. Collective agreements and registered trade unions should be incorporated in this consultation. The aim of the consultation is to reach consensus between the parties and to minimise the negative effect of dismissal on the employees.

The onus is on the employer to proof the reasons for contemplating retrenchments are valid. Employers are required by the LRA to invite the other party to consult and disclose certain prescribed information in writing. During the consultation meeting, it is important to allow the other party the opportunity to make representations that must be responded to with the necessary consideration. Where there is no collective agreement and no specific criteria selection was agreed upon, the employer should apply selection criteria that are fair and objective. The criteria most often applied is the LIFO (Last In First Out) principle but employers must not be blinded by this principle, as employees with key skills or poor performance records may be used as alternative selection criteria.

Severance pay is applicable to employees who have been employed for more than 12 months. Where there is no collective agreement relevant, the severance pay is calculated at 1 week's remuneration for every completed year of service. It is important to note that according to the Basic Conditions of Employment Act 75 of 1997, chapter 5 section 41(4), severance pay is not applicable to employees who reasonably refuses to accept the employer's offer of alternative employment.

After the consultation process has been completed, the final decision to retrench is a decision not to be taken lightly by the company. Retrenchments have an undeniable financial impact on affected employees. Where possible, the company needs to consider accommodating the employees within the company in alternative positions. Retrenching employees should be seen as a last resort for relieving the company's pressing financial position.

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CORE executrain

CORE Executrain reaches new heights

When CORE Executrain opened its doors in 2014 it was immediately clear that the team had the power to make a change in the business world by focusing on the individuals who form part of it. CORE Executrain prides itself on the quality of the training presented to participants. In order to better the method of delivering relevant knowledge to clients, CORE Executrain teamed up with ProBeta Training, a recognised leader in professional practice support in Southern Africa. Together, CORE Executrain and ProBeta have presented over 155 live and recorded webinars to train individuals and companies across Southern Africa. Over the past three years CORE Executrain and ProBeta's joint resources have become synonymous with effectiveness, efficiency and excellence!

In 2017, CORE Executrain reached new heights with the hosting of live seminars. In collaboration with CORE Tax and CORE Trusts and Estates, a total of three very successful seminars were held in Bloemfontein, Pretoria and Stellenbosch. The anticipation of growing this number soon realised when the word started spreading about the success of these seminars. As we head into 2018, CORE Executrain has already obtained eight confirmed bookings for seminars to be held across South Africa.

As part of CORE Executrain's continued efforts to share and expand knowledge amongst professionals, an agreement was secured with the University of the Free State's Business School. In accordance with this agreement, CORE Executrain will be collaborating with the UFS to bring valuable courses to students seeking to expand their knowledge, skills and horizons in the business world. During 2018, the focus will be on the development, launch and marketing of this significant opportunity. This relationship will surely see hundreds of aspiring professionals attain greatness.

The Online Academy training programme was introduced to CORE member firms for free. It will start in January 2018. This unique online training platform is designed to help the working professional to continuously develop the necessary competencies needed not only to succeed, but to excel in their career goals. With a variety of short courses varying from Life Skills to Management Skills, one can conveniently obtain the necessary professional and personal skills to build a brighter future. Suggestions on the most effective enrolment structures for these courses will soon be conveyed to all employees and member firms, encouraging Continuing Professional Development. As the great Nelson Mandela said: "Education is the most powerful weapon which you can use to change the world."

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