

Supply Chain Management

VENDOR CLASSIFICATION

PRESENTED TO SACAFMA MEMBERS

18 November 2011

exxaro

POWERING POSSIBILITY



WHAT WE WILL BE LOOKING AT:

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➤ A BIT OF HISTORY

➤ WHAT THE LAW SAYS

- Tax Act No. 58 of 1962: Fourth Schedule Para 1
 - Employee
 - Labour Broker
 - Personal Service Provider

➤ GENERAL DEFINITIONS AND EXPLANATIONS

- Connected person
- Full time employees (not connected)
- Subject to control and supervision
- 80% income from single or associated source

➤ HOW EXXARO APPROACHED THE SITUATION

- Identifying and accepting Governance and Compliance
- Developing the various controls and forms
- Determining the status

➤ ACHIEVING THE OBJECTIVE



A BIT OF HISTORY:

- Tax legislation has for many years placed the responsibility on employers to deduct income tax from the employee. Employee in this context included the independent contractors.
- The whole IRP30 exemption certificate issue was viewed by many to be “historically off flawed and frustrating”, especially by companies and closed corporations.
- The initial problem for SARS originated from the practice where (especially) individuals would be employed on one day and then become “self-employed” contractors the next, performing in most instances exactly the same functions as before.
 - The normal PAYE that was paid over to SARS now dries up and the “self-employed” contractor only brings out a tax return at year end which includes all the deductions allowable (fair and not-so-fair). This was achieved mainly by a strategy of forming a company, CC or trust as a front, thereby circumventing the withholding of PAYE by the client (employer).
- In order to counter the tax avoidance measures related to above, SARS, with effect from 1 March 2009, introduced amendments to the Tax Act (Schedule 4) and , with reference to the issue being addressed here, the most important amendments would be the exclusion of companies and closed corporations from the definition of a Labour Broker and the introduction of the definition of a Personal Service Company or Trust. This has recently been amended again to the all-inclusive Personal Service Provider, but the effect basically remains the same.



WHAT THE LAW SAYS:

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Some extracts from the Tax Act:

➤ **"employee"** means--

- a) any person (other than a company) who receives any remuneration or to whom any remuneration accrues;
- b) any person who receives any remuneration or to whom any remuneration accrues by reason of any services rendered by such person to or on behalf of a labour broker;
- c) any labour broker;
- e) any personal service provider

➤ **"labour broker"** means any **natural person** who conducts or carries on any business whereby such person for reward provides a client of such business with other persons to render a service or perform work for such client, or procures such other persons for the client, for which services or work such other persons are remunerated by such person.

➤ **"personal service provider"** means any company or trust, where any service rendered on behalf of such company or trust to a client of such company or trust is rendered personally by any person who is a connected person in relation to such company or trust, and—

- a) such person would be **regarded as an employee of such client** if such service was rendered by such person directly to such client, other than on behalf of such company or trust; or
- b) where those duties must be performed **mainly at the premises of the client**, such person or such company or trust is **subject to the control or supervision of such client** as to the manner in which the duties are performed or are to be performed in rendering such service; or
- c) where **more than 80 per cent of the income** of such company or trust during the year of assessment, from services rendered, consists of or is likely to consist of amounts received directly or indirectly **from any one client** of such company or trust, or any associated institution as defined in the Seventh Schedule to this Act, in relation to such client, except where such company or trust throughout the year of assessment employs **three or more full-time employees** who are on a full-time basis engaged in the business of such company or trust of rendering any such service, other than any employee who is a shareholder or member of the company or trust **or is a connected person** in relation to such person;



GENERAL DEFINITIONS AND EXPLANATIONS:

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➤ **Connected person:**

A connected person is defined as a member, shareholder or a beneficiary (if the shareholder is a trust) of the service provider, as well as any relative to the 3rd degree of consanguinity ie. Extending to great-grandparents, great-grandchildren, uncles, aunts, nieces, nephews and first cousins.

➤ **Full time employee (not connected):**

An employee who is not connected (refer definition above) and is in full time service of the service provider. This employee also has to be engaged (part of service delivery process) in the business of the service provider (cleaners and garden attendants will typically be excluded).

➤ **Subject to control and supervision:**

Control and supervision means that the person works under the control of the client. It further means that the service will be provided mainly (more than 50%) at the premises of the client. This will include:

○ **Control**

- Fixed working hours
- Use of own equipment
- Use of own technology
- Does the client provide training in methodology to be applied
- Can the client take disciplinary steps for unacceptable performance

○ **Supervision**

- Does the client instruct as regards location where to work
- Does the client instruct as regards order or sequence to work

➤ **80% of income:**

It has to be determined whether more than 80% of the service provider entity gross income will be derived from the client or associated institutions (typically subsidiaries).



HOW EXXARO APPROACHED THE SITUATION:

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- **Identifying and accepting Governance and Compliance:**
 - Exxaro accepted the phenomenon of being an agent for SARS
 - Exxaro accepted that governance and statutory compliance are corporate requirements and entrenched it in the Exxaro values
 - Exxaro realized that there were shortcomings in the ability to accurately determine its accountability at the hand of available data

- **Developing the various controls and forms:**
 - Specialist departments such as Tax, Finshare and SCM got together to analyse the data requirements and shortcomings and developed the required controls and documentation:
 - Form A – the explanatory letter
 - Form B – the information gathering declaration
 - Form C – the advice of the outcome of the classification exercise
 - Route maps to guide the classification process
 - Introduction of the procedural guidelines to govern the process
 - Develop the required Account Groups and configure the ERP system to accommodate them

- **Determining the status:**
 - Specialist functionary analyse data provided and allocate account groups according to the requirement

✓ [SUPPLIER MANAGEMENT\Tax Classification\Form A \(Exxaro\) SN 2009-05-08.doc](#)

✓ [SUPPLIER MANAGEMENT\Reg & Change Appl Docs\Form B \(Exxaro\) SN 2011-05-31.docx](#)

✓ [SUPPLIER MANAGEMENT\Tax Classification\Form C.xlsx](#)

❖ [SUPPLIER MANAGEMENT\Tax Classification\Contractors classification flowcharts SN 2009-05-09.xls](#)



ACHIEVING THE OBJECTIVE:

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➤ Current situation:

- Vendor creations and maintenance are not fully centralised
- Only a portion of service providers are identified and classified in accordance with the standard
- So-called sundry vendors (cash book vendors, open screen vendors, park doc vendors etc) have to date been created and maintained at Business Unit level and have not been classified
- All trade vendors are created and maintained centrally and are classified

➤ The to-be situation:

- The above shortcomings have been addressed
- All vendors are created and maintained centrally
- Incomplete or defective information will lead to creation or maintenance delays
- All service provider vendors are classified according to the statutory requirements and required compliance is achieved

REMEMBER THAT STATUS DETERMINATION MUST BE PERFORMED ANNUALLY

(but it is almost impossible and we don't)