

TAX AND EXCHANGE CONTROL ALERT

**INCLUDING NEW ADDITION:
Custom and Excise Highlights**

IN THIS ISSUE

REINSTATEMENT OF A DEREGISTERED COMPANY IN THE CONTEXT OF AN AMALGAMATION TRANSACTION

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CUSTOMS AND EXCISE HIGHLIGHTS

We will be providing a brief overview of the Customs and Excise environment in our weekly Tax Alert. This is the second instalment of the series.

REINSTATEMENT OF A DEREGISTERED COMPANY IN THE CONTEXT OF AN AMALGAMATION TRANSACTION

In order for a transaction to qualify as an "amalgamation transaction", the existence of the amalgamated company has to be terminated. Accordingly, the Company was deregistered with the Companies and Intellectual Properties Commission (CIPC).

The concern for the Applicant and the Company appeared to be whether they would still enjoy the relief provided by s44 of the Act, as well s8(25) of the Value-added Tax Act, No 89 of 1991.

The South African Revenue Service recently released Binding Private Ruling No 237 (Ruling), which dealt with the reinstatement of a deregistered company in the context of the transfer of immovable properties in terms of an amalgamation transaction.

A company (Company) had previously sold its business as a going concern to another company (Applicant) in terms of an "amalgamation transaction" as defined in s44 of the Income Tax Act, No 58 of 1962 (Act). The assets of the business included certain immovable properties.

In order for a transaction to qualify as an "amalgamation transaction", the existence of the amalgamated company has to be terminated. Accordingly, the Company was deregistered with the Companies and Intellectual Properties Commission (CIPC).

Unfortunately, due to a *bona fide* error, the relevant immovable properties were never transferred from the Company to the Applicant prior to the Company's deregistration.

Accordingly, the Company was still reflected as the owner of the immovable properties in the deeds registry, despite the Company's deregistration.

It appears that, in order to effect the transfer of the immovable properties to the Applicant, the Company's registration with the CIPC had to be reinstated. It was accordingly proposed that application would be made to the CIPC for such reinstatement.

In order to reinstate the registration of the Company, the steps set out in the CIPC's Practice Note 6 of 2012, will have to be followed. These steps include:

- Receiving confirmation from National Treasury, as well as the Department of Public Works, that they have no objection to the reinstatement of the registration. This step is specifically intended to address the issue of the assets of a deregistered company being forfeited to the State as *bona vacantia*.
- Advertising the application for reinstatement of the Company in a local newspaper, giving third parties an opportunity to object.

It was further proposed that, once the Company's registration was reinstated, the immovable properties would be transferred to the Company. Thereafter the Company would again be deregistered.

From a tax point of view, the concern for the Applicant and the Company appeared to be whether they would still enjoy the relief provided by s44 of the Act, as well s8(25) of the Value-added Tax Act, No 89 of 1991 (VAT Act), in respect of the transfer of the immovable properties after reinstatement.

REINSTATEMENT OF A DEREGISTERED COMPANY IN THE CONTEXT OF AN AMALGAMATION TRANSACTION

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It appears that the process would cause the final deregistration of the Company, after transfer of the immovable properties, to only occur after the 36 month period allowed for in terms of s44(13)(a) of the Act.

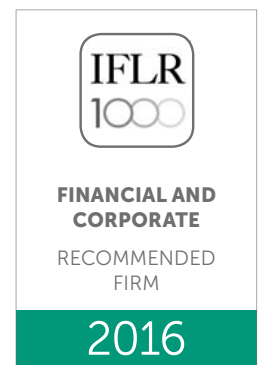
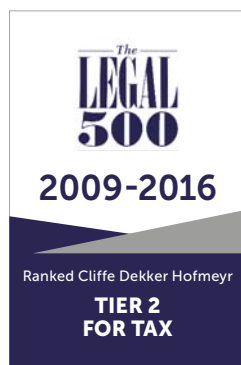
Specifically, s44(13)(b) of the Act provides that the relevant roll-over relief will be denied where any step taken to deregister the amalgamated company is withdrawn, or if anything is done to invalidate such step, with the result that the amalgamated company is not deregistered.

In addition, it appears that the process would cause the final deregistration of the Company, after transfer of the immovable properties, to only occur after the 36 month period allowed for in terms of s44(13)(a) of the Act.

In this regard SARS ruled that:

- the roll-over relief provided for in s44 of the Act would continue to apply;
- the reinstatement of the Company's registration, and subsequent deregistration after transfer of the immovable properties, will not be in breach of s44(13)(b) of the Act;
- the 36 month period provided for in s44(13)(a) of the Act would be extended;
- the transfer of the immovable properties would be treated as a non-supply in terms of s8(25) of the VAT Act; and
- the transfer of the immovable properties would be exempt from transfer duty in terms of s9(1)(l)(iB) of the Transfer Duty Act, No 40 of 1949.

Heinrich Louw



CUSTOMS AND EXCISE HIGHLIGHTS

Please note that this is not intended to be a comprehensive study or list of the amendments, changes and the like in the Customs & Excise environment, but merely selected highlights which may be of interest.

In the event that specific advice is required, kindly contact our Customs and Excise specialist, Director, Petr Erasmus.

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Below are this week's selected highlights:

1. Note 6(a)(x) in Part 3 of Schedule No. 6 have been amended with regard to electricity generation plants.
2. Proposed amendments to s64D and s120 relating to the movement of new imported vehicles on own wheels. Comments due on 30 June 2016.
3. SARS announced changes of its Electronic Manifest System and Processes. Per the SARS communication:

The changes on the weekend of 17 June will include a back-end system migration of the current cargo reporting system (ACM) to the Interfront Customs Business System (iCBS), which will have no significant impact on the Customs clearance process. However, there will also be enhancements to the cargo arrival management process at land border posts which will impact road hauliers and truck drivers.

Additionally, SARS will be implementing an electronic acquittal manifest reporting capability for compliant cargo reporters and an interim matching capability for sea and air modalities (only for imports and only at master bill level).

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Those who have not yet registered to use SARS's electronic cargo reporting system are urged to do so as soon as possible as you will not be able to submit manifests electronically without first registering.

We are available to assist with registration.

4. Schedule 1 Part 1 has been amended as it relates to "offset duplicating masters and lithographic plates, of aluminium", TH3701.30.25.
5. Schedule 1 Part 1 has been amended as it relates to heading 7208.10: "Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, hot-rolled, not clad, plated or coated ... In coils, not further worked than hot-rolled, with patterns in relief".
6. Creation of rebate item 311.40 for TH5513.21.
7. Amendment of Schedule 2 as it relates to heading 201.02: "Meat and edible meat offal".

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Petr Erasmus

OUR TEAM

For more information about our Tax and Exchange Control practice and services, please contact:



Emil Brincker
National Practice Head
Director
T +27 (0)11 562 1063
E emil.brincker@cdhlegal.com



Mark Linington
Private Equity Sector Head
Director
T +27 (0)11 562 1667
E mark.linington@cdhlegal.com



Lisa Brunton
Senior Associate
T +27 (0)21 481 6390
E lisa.brunton@cdhlegal.com



Petr Erasmus
Director
T +27 (0)11 562 1450
E petr.erasmus@cdhlegal.com



Heinrich Louw
Senior Associate
T +27 (0)11 562 1187
E heinrich.louw@cdhlegal.com



Dries Hoek
Director
T +27 (0)11 562 1425
E dries.hoek@cdhlegal.com



Mareli Treurnicht
Senior Associate
T +27 (0)11 562 1103
E mareli.treurnicht@cdhlegal.com



Ben Strauss
Director
T +27 (0)21 405 6063
E ben.strauss@cdhlegal.com



Tessmerica Moodley
Senior Associate
T +27 (0)21 481 6397
E tessmerica.moodley@cdhlegal.com



Ruaan van Eeden
Director
T +27 (0)11 562 1086
E ruaan.vaneeden@cdhlegal.com



Yashika Govind
Associate
T +27 (0)11 562 1289
E yashika.govind@cdhlegal.com



Gigi Nyanin
Associate
T +27 (0)11 562 1120
E gigi.nyanin@cdhlegal.com



Nicole Paulsen
Associate
T +27 (0)11 562 1386
E nicole.paulsen@cdhlegal.com



Louis Botha
Candidate Attorney
T +27 (0)11 562 1408
E louis.botha@cdhlegal.com

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JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa. Dx 154 Randburg and Dx 42 Johannesburg.

T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.

T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

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