

# compass<sup>®</sup>

JUNE 2013 ISSUE TWENTY THREE



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REGISTERED AUDITOR — A FIRM OF CHARTERED ACCOUNTANTS(SA)  
AN APPROVED FINANCIAL SERVICES PROVIDER

AUDIT • TAX • ADVISORY

 M A Z A R S

# GROWTH IN MAZARS' INTERNAL AUDIT DIVISION

**INTERNAL AUDIT IS AN OBJECTIVE ASSURANCE AND CONSULTING ACTIVITY DESIGNED TO ADD VALUE AND IMPROVE AN ENTERPRISE'S OPERATIONS.**

Mazars Internal Audit has entered a new growth phase with the commencement of national internal audit services from Mazars' Johannesburg office. The objective is to grow the internal audit client base substantially during the next year and to differentiate Mazars' service offering by speed and quality of response and work performed. Operationally, Internal Audit is an objective assurance and consulting activity designed to add value and improve an enterprise's operations. Our aim is to assist the client realise their objectives by making recommendations which may, if appropriately implemented, improve the effectiveness of processes, risk management and governance.

Internal Audit reports on the adequacy of controls, and if found that the controls in place are adequate, further work is done on the effectiveness and appropriateness of these controls. Our findings are reported to executive management and ultimately the Audit Committee. Audit work is performed on:

- safeguarding of assets
- integrity and reliability of information
- compliance with acts, statutes, laws and regulations
- efficient and economical use of resources
- operational and strategic goals and objectives

The Internal Audit function at Mazars aims to become synonymous with responsiveness and assisting executive management with achieving their business objectives consistently. Internal Audit can be outsourced, co-sourced and insourced and we can play a role in any one of these models.

Our services include:

- internal audit outsourcing and co-sourcing
- evaluation of internal audit functions
- risk management implementation and advice
- corporate governance evaluation and support
- project governance
- board and committee evaluations
- Public Finance Management Act, King III and Companies Act implementation and guidance
- performance audits

Please contact me on +27 11 547 4000 for further information.



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# MAZARS' ICTA SERVICE GIVES YOU THE ADVANTAGE

Mazars has established an Information, Communication and Technology Advisory (ICTA) service line to complement our existing external audit, internal audit and forensics service offering. The ICTA department is based in Johannesburg and will provide services to Mazars nationally .

The department specialises in the various IT related audit, assurance and consulting services, which includes governance, risk management and data engineering. The ICTA team is comprised of qualified individuals who have extensive academic and technical expertise across a variety of IT related areas, such as governance structure, risk and internal controls, operating systems, databases, Enterprise Resource Planning (ERP) systems, networking topologies and legal requirements. The ICTA teams' diverse background, exposure and experience in risk assessment, assurance, auditing, data engineering and consulting across a wide range of clients has enabled them, through their quality programme, to deliver high quality work to the Mazars client base.

Our core service portrait currently includes:

- assurance service: the audit, assurance and evaluation of the underlying environment on which financial and reputational systems reside, from design to operation effectiveness of IT controls
- risk management services: evaluation and identification of an organisation's risk appetite in relation to risk management practices and principles, to ensure that the actual risks do not exceed the board's risk appetite
- continuity management: the audit and evaluation of company-wide business continuity processes used to drive the development of disaster recovery and IT contingency plans
- application control reviews: consisting inter alia of the audit of the financial or reputational system(s)/ applications which manage business data and information. Application control reviews also include pre-, present and post-implementation reviews in relation to the planning, execution and finalisation of application implementation
- quality and compliance reviews: independent quality reviews of IT audits that have been performed by other IT auditors, and has a particular interest in IT governance, IT security services, IT project management and data engineering

- IT governance: evaluation and/or development of the organisation's IT governance structure regarding strategy alignment with business goals, value delivery, resource management, risk management and performance management
- IT security services: the audit, evaluation and applicability of security protocols that manage logical security of systems that protect the business' IT assets
- IT project management: evaluation of the initiation, planning, execution, controlling, closing as well as checkpoints and approval of IT projects
- data engineering: to be formalised and rolled out later in the year

The ICTA team looks forward to providing our service nationally to all Mazars clients who are ICT dependent or dominant, in conjunction with other service lines or independently.

We believe that identifying our clients ICT weaknesses and recommending value adding resolutions thereto will aid Mazars' clients in achieving a competitive advantage, while improving security and process management of their ICT, financial and business assets. ICTA will in the near future have its representatives stationed at the major Mazars centres nationally.



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# THE NEW UNDERSTATEMENT PENALTIES REGIME (PART 2 OF 3)

THE NEW UNDERSTATEMENT PENALTIES REGIME WAS INTRODUCED IN THE PREVIOUS EDITION OF COMPASS. THIS IS PART TWO OF THREE ARTICLES.

In a nutshell, the key consequences of the Tax Administration Act (TAA) are:

- increased risks that understatement penalties will be levied
- significantly increased risk that understatement penalties will not be reduced or remitted

These increased risks are regardless of a good track record with SARS or an assessed loss.

## How much is chargeable?

The percentage penalty is the **highest** percentage **applicable** in the following table, considering:

- when** the understatement came to SARS' attention – the columns<sup>1</sup>
- SARS assessment of the taxpayers '**behaviour**' – the rows. In this edition of Compass, we will discuss the meaning of the 'behaviour' terms used in the Understatement Penalty rows

The TAA provides that SARS may **only** remit an understatement penalty imposed for 'substantial understatement' (row 1). It thus follows that there is **no remittance if SARS' decision is, for example, that the taxpayer has not taken "reasonable care" in completing their return (row 2).**

A concerning aspect is that **SARS' decision as to which behaviour is applicable cannot be objected to.** If taxpayers wish to object to SARS' decision regarding which behaviour was applicable, this would need to be argued in terms of alternative Acts, for example, Promotion of Administrative Justice Act (PAJA) or the Constitution.

While the terms used under 'behaviour' are therefore extremely relevant, these are not defined in the Act nor has SARS issued a formal Interpretation Note. We will therefore draw on SARS' Short Guide to the TAA and international interpretation.

<sup>1</sup>This article is issued for the use of clients, associates and staff only. While every care has been taken, no liability is accepted for the consequences of any inaccuracies.

1 Item	2 Behaviour	3 Standard case	4 If <b>obstructive</b> , or if it is a 'repeat case'	5 Voluntary disclosure <b>after</b> notification of audit	6 Voluntary disclosure <b>before</b> notification of audit
i	Substantial understatement	25%	50%	5%	0%
ii	Reasonable care not taken in completing return	50%	75%	25%	0%
iii	No reasonable grounds for tax position taken	75%	100%	35%	0%
iv	Gross negligence	100%	125%	50%	5%
v	Intentional tax evasion	150%	200%	75%	10%

## Intentional tax evasion

Per SARS' Short Guide to the TAA, intentional tax evasion includes:

- actions that are intended to reduce or extinguish a tax liability or inflate a refund
- a false statement or not filing a return
- a **deliberate** act, wholly disregarding a known obligation

Therefore, it is considered that **knowledge of illegality** is crucial.

## Gross negligence

It is important to bear in mind that the term is **gross** negligence, requiring something more than just 'negligence'. Per SARS' Short Guide to the TAA, gross negligence is:

- doing, or not doing, something in a way that suggests or implies a high level of **disregard** for the circumstances
- involves **recklessness**

## No reasonable grounds for tax position

Per SARS' Short Guide to the TAA, the purpose of this row in the table is to penalise taxpayers who assume an **unreasonable** interpretation of a tax Act. The Short Guide explains that the penalties percentage in this row would not apply if "having regard to the relevant authorities, it would be concluded that what is being argued by the taxpayer is at least as likely as not, correct". Taxpayers are thus expected to adopt a "**sensible approach** in the process of adopting a tax position and to have **considered the integrity** of the tax position taken".

## Reasonable care not taken

This is the term which is of **particular concern**. According to SARS:

- "a taxpayer is required to take the degree of care that a **reasonable**, ordinary person would take to fulfil their obligations"

**First provisional tax period  
for February 2014 year-ends on  
30 August 2013**

- "if a taxpayer uses an advisor to complete a return and the practitioner does not exercise reasonable care, the taxpayer is liable to pay an understatement penalty"

An important conclusion we can draw is that a taxpayer must ensure that their tax practitioner has been provided with **complete** and **accurate** information for filing.

This article was meant to be a two-part series, but to ensure that you are thoroughly informed about the consequences of the TAA, I have decided to add another article to this series which will consider the term 'substantial understatement' and the limited circumstances in which substantial understatement penalties can be remitted

To conclude, here are some important notes:

- do not assume that where penalties have been previously reduced, that they will in future be waived on the same grounds
- exercise caution and take additional steps to verify tax consequences of, in particular, unusual or large transactions, for example, those of a capital nature or of a considerable quantum
- implement systems and processes that will provide accurate information required for filing all tax returns, eg. to identify instances where accrual dates for accounting and tax are different
- where tax consequences are not certain or subject to interpretation, taxpayers should obtain a written opinion from a tax practitioner which meets the requirements set out in section 223(3)(b) of the Tax Administration Act
- if advised of an audit by SARS, taxpayers should consider engaging with a tax consultant for an income tax accrual, PAYE or VAT review, in order to reduce potential understatement penalties



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# BUSINESS RESCUE SERVICES

OUR PRIMARY GOAL IS TO ASSIST FINANCIALLY DISTRESSED COMPANIES TO FIND THE BEST POSSIBLE SOLUTION, WHATEVER THE SITUATION. THIS IS DONE IN A MANNER THAT BALANCES THE RIGHTS AND INTERESTS OF ALL RELEVANT STAKEHOLDERS.

## A NEW DISPENSATION HOLDING MUCH PROMISE

Presently, there is a worldwide trend towards business rescue, instead of liquidation. The replacement of judicial management by new business rescue legislation and regulations, heralds a new future for financially distressed but economically viable companies in South Africa, where turnaround during informal workout has failed or was not deemed a viable option.

It places South Africa on par, with the exception of certain small procedures, with modern business rescue legislation in overseas jurisdictions.

Mazars South Africa, like most of our offices worldwide, has decided to broaden our offering to include business rescue services. We have a dedicated team of practitioners and employees attending to business rescue assignments with support structures in all our offices in South Africa. We have attended to a number of national assignments with the value of the assignments ranging between R10 million and R250 million.

Our primary goal is to assist financially distressed companies to find the best possible solution, whatever the situation. This is done in a manner that balances the rights and interests of all relevant stakeholders. This often means our business rescue team works closely with in-house specialists in asset tracing and recovery, forensic investigations and corporate finance in Southern Africa.

During the past 12 months, we have been involved with a number of business rescue assignments and were able to ensure better exit routes for the affected parties on three of these assignments. On these assignments, the assets were sold to a listed company for substantially more than breakup value, and we were therefore able to create value for the body of creditors that would not have received any dividend under liquidation circumstances.

We were also able to ensure that almost half the employees retained their employment. This was critical, as the companies are situated in an area where there are not many employment opportunities available. The secured creditor was settled in full (R110 million) and we are currently implementing the sanctioned business plans.

The Mazars Business Rescue team strives to strengthen the economy through the restoration of corporate value. Corporate renewal, in turn, enables economic growth and allows financially distressed businesses to be saved, thereby continuing in the economic mainstream, preserving jobs and paying taxes. The advantage we have to most of our competitors in South Africa is that we offer an integrated and independent practice specialising in audit, accounting, tax, advisory services and now business rescue services across a range of markets and sectors.

Should you wish to discuss the process in more detail, or require further information, please contact either **Neil Miller** on **021 818 5074** or **Daniël Terblanche** on **021 818 5004**.



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# TAX COMPLIANCE HAS BECOME MORE ONEROUS

On 5 April 2013 SARS issued a notice requiring certain persons to submit additional 'Third Party Returns' in respect of certain transactions<sup>1</sup>.

The persons specified in the notice will need to complete two returns every year disclosing the required information. The return for the six months, 1 March to 31 August, is due by 31 October and the return for the 12 months, 1 March to 28 February, is due by 31 May. The notice requires submission of returns for the 2013 and subsequent years, including the submission of the **31 May 2013 return, covering the 12 months 1 March 2012 to 28 February 2013**.

The information required by these returns is quite extensive and cannot necessarily be easily extracted from taxpayers' information systems, which makes the 31 May deadline even more daunting for taxpayers.

The notice requires, inter alia, the following third party returns to be submitted:

- estate agents and attorneys are required to disclose amounts paid or received in respect of any investment, rental of immovable property, interest or royalties which are recorded in their trust accounts
- any person (including a co-operative) who purchases any livestock, produce, timber, ore, mineral or precious stones from a primary producer, other than on a retail basis, is required to submit detail in respect of purchase, sale or shipment transactions of these items
- companies listed on the JSE, and connected persons in relation to these companies, which issue bonds, debentures or similar financial instruments are expected to complete an IT3(c) which details amounts paid in respect of the purchase and disposal of financial instruments
- certain financial institutions (defined in the notice) are required to submit detail on:
  - amounts paid or received via trust accounts in respect of any investment, rental of immovable property, interest and royalties
  - amounts paid in respect of the purchase and disposal of financial instruments
  - the purchase of, and contributions made in respect of any retirement annuity policy or income protection policy

- payments in terms of an insurance policy upon the death of a person

Other parties affected by the notice are certain banks, co-operative banks, the South African Postbank, state-owned companies, organs of state and medical schemes.

There are currently no definitions contained in the notice and SARS has not yet released any guides or other documentation in this regard.

Submission of the returns may pose another concern. Where a return comprises of 21 to 50 000 detailed records, the declaration portion is submitted electronically using the SARS e-filing platform, while the detailed portion of the return will need to be submitted electronically using the SARS hypertext transfer protocol secure (https) bulk data file platform. Smaller returns can be submitted via e-filing or manually, while larger returns will need to use the electronic SARS managed data transfer platform.

This may have far reaching effects on smaller taxpayers. Returns may easily fall within the https bulk data file format, but taxpayers may not be familiar with the use of the specialised formats or may not have the necessary software in place to comply with the requirements.

Overall, this notice places an administrative burden on taxpayers, not only because it may require significant changes to their software in future to enable them to extract the relevant reports, but the requirement is to report on a past 12 month period with only 2 months in which to extract from their systems and submit the information in the required format.

Failure to submit these returns may result in administrative non-compliance penalties in terms of the Tax Administration Act, 2011.

<sup>1</sup>Notice 260 Government Gazette 3646

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# YEI: RECRUIT AND UPSKILL

The Youth Employment Index (YEI) is a joint initiative between Mazars; leading rewards and recognition company, Uwin Iwin; and strategic communications agency, Pleiades Media – all of which have a shared passion to see sustainable youth employment placed firmly on the agenda of business South Africa. The YEI was launched on 23 April 2013 in Johannesburg and aims to encourage businesses to employ young South Africans.

The growing challenge of unemployment among South African youth is an issue that has far reaching economic and social implications. The current unemployment rate among the 15-to-24-year-old age group is estimated to be 48.2%, just short of double the national unemployment average of 25%<sup>1</sup>.

The 2012 World Bank report, *Inequality of Opportunity in SA* supports this bleak statistic, attributing the country's weak economic performance to slow job creation and highly unequal access to employment opportunities among the 15-to-24-year-old age group in particular, which is among the most challenged group within the country's population.

The YEI is corporate South Africa's response to the current youth employment situation. It is an online index ([www.yeindex.org](http://www.yeindex.org)) where employers of all sizes, be they government, parastatal, corporates or SMEs, can register and be recognised for their efforts to actively promote and support youth employment. Organisations that wish

to participate in the YEI will be asked to register the number of young people between the ages of 16 and 35 that they employ and to commit to developing these employees.

Registration fees will fund the running costs of the YEI initiative and will also cover the costs of ensuring that registered companies are correctly audited. Since the YEI is a registered NPO (N2165/ANJS), these fees are tax deductible.

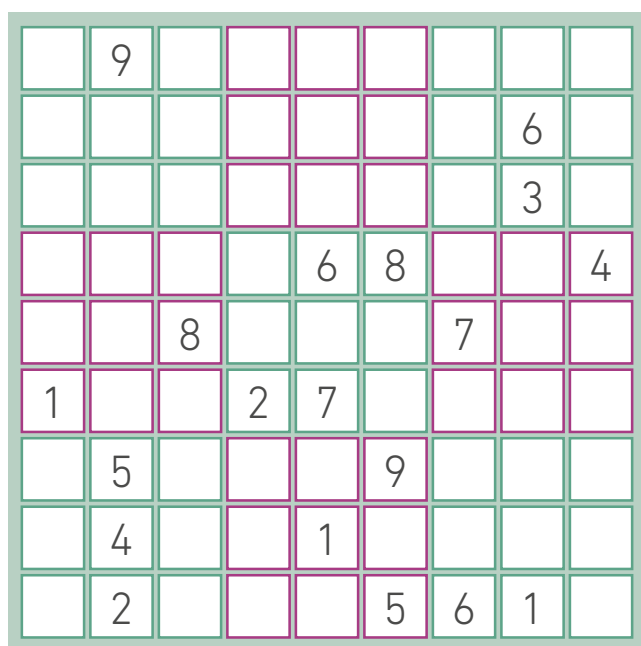
Apart from the website, the YEI plans to identify 12 founder members to help devise a viable framework for sustainable youth employment and constructive skills transfer in the workplace. This framework will encourage job creation and promote sustainability.

"The role of the founder members, drawn from different industry sectors, will be to formulate best practice for youth employment and integration in the workplace and to develop appropriate benchmarks against which companies can be measured for their youth employment effectiveness," says Nazreen Sekao Pandor, Chairperson of the YEI and Associate Director at Mazars.

In addition to the recognition that the top performing companies will receive, by registering as a YEI supporter, participating companies align themselves with the vision of youth employment. This will position them as organisations that go beyond merely making a profit, but which also take an active role in contributing to the betterment of the younger generation.

**FOR MORE INFORMATION OR TO REGISTER, VISIT [WWW.YEINDEX.ORG](http://WWW.YEINDEX.ORG).**

<sup>1</sup>Source: Quarter Three 2012 Statistics South Africa Report



level: evil

Contact your nearest Mazars office on **0861 MAZARS**

In South Africa, Mazars employs over 750 professionals in ten offices nationally, located in Cape Town, Durban, East London, George, Johannesburg, Kimberley, Paarl, Plettenberg Bay, Port Elizabeth and Pretoria. Mazars is represented in 21 African countries.

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Detailed information available on [www.mazars.co.za](http://www.mazars.co.za)

The information in this publication should not be used as a basis for action without further professional advice.