



## Mazars grows presence in Africa

**A**s part of a drive to enlarge its footprint in Southern Africa, Mazars is now operating in Botswana with six offices, making it one of the largest practices in the country. In addition to Botswana, expansion initiatives are also underway in Zambia, Angola, Mozambique and Mauritius.

Business conditions in Botswana are favourable for the firm largely because the new Botswanan Companies Act requires certain categories of private companies, not just those listed on the Botswana Stock Exchange, to be audited. This applies to companies with an annual turnover of 10 million Pula (R11.5 million) per annum or an asset base of 5 million Pula (R5.76 million).

This opens up a much wider market for audit work given the entrepreneurial nature of the population and their propensity to operate even their personal affairs through companies.

We see this as a huge growth opportunity.

Botswana's economy as a whole is very stable and apart from its dependence on minerals, government policy going forward is to diversify economic growth away from diamonds

by encouraging other sectors such as export manufacturing and financial services in addition to farming and tourism.

Beyond Botswana, Mazars also operates in Mauritius where we are gearing up for the increased investment interest in that country by South Africans as well as increasing trade between Mauritius and Asia. The firm recently concluded an agreement that saw it appoint a strong local firm in response to this demand.

In Angola, the firm's expansion initiative is being spearheaded by Mazars offices in Portugal and Brazil, in conjunction with the South African offices, all of which already have existing clients in the area.

**Hilton Saven**



Hilton Saven

# PAYE changes: it's vital to prepare

**T**wo years ago SARS embarked on a journey to transform the income tax process from a complex, paper-based and labour-intensive process to a simplified, automated and electronic one. In reality, however, the new process imposes new burdens on employers, and submitting your company's payroll information to SARS is becoming more and more complex and the penalties for non-compliance are increasingly punitive.

This means that employers need to develop and enhance their payroll and remuneration operations in order to ensure continued compliance with increasingly stringent regulations. And with SARS recently employing 1 000 new auditors to focus on company and private tax audits, SARS is now in a position to enforce compliance. And non-compliance can be very expensive: fines of up to double the outstanding monies can be levied and a review of all past submissions might be sparked.

Employers need to take special note of SARS' proposed and actual regulations for 2010 and beyond:

- the annual tax reconciliation will be replaced with a bi-annual reconciliation and the figures submitted will need to be corroborated with electronic data from your payroll software. This will apply to PAYE, SDL, UIF and IOD (Injury on Duty) declarations.
- employee salaries need to be structured correctly to avoid non-compliance particularly with regard to medical aid and pension contributions as well as new guidelines for travel allowances
- employers will have to submit detailed employee data to the Labour Department on a monthly basis in an attempt to combat corruption
- And as from 2010, an extensive list of information will be mandatory for all PAYE reconciliations. Employers

will no longer be able to submit PAYE reconciliations electronically if all the mandatory information is not supplied. A list of this information is available upon request.

Given the above, employers are urged to get their systems in order and ensure that they are ready for the changes that are pending. Should you require a risk assessment and needs analysis of your payroll structure, please contact Ulrich Gericke at [ulrich.gericke@mazars.co.za](mailto:ulrich.gericke@mazars.co.za) or on (021) 405 4000.

**Ulrich Gericke**

Dear Readers,

This issue of Compass is filled with information pertaining to proposed and real amendments to legislation that may affect the running and management of your business. These include proposed changes to PAYE and payroll submissions (page 2), draft regulations that propose changes to the Preferential Procurement Policy Framework affecting the awarding of contracts based on B-BBEE status (page 3) as well as Business Rescue principles brought about by the new Companies Act (page 4).

On a more positive note, the new (and long-awaited) IFRS for SMEs has been released and Kevin Frohbus gives us an update (page 5).

We are very excited about Mazars' expansion into Africa and we talk to Madhu Menon, the Managing Partner of Mazars Botswana, to get his input on business in Africa.

Enjoy your read

**Noleen**

*If you have any comments or feedback, please feel free to contact [noleen.hepburn@mazars.co.za](mailto:noleen.hepburn@mazars.co.za)*

# Preferential procurement regulations to change

**A** lack of specificity in legislation governing the awarding of contracts on the basis of preferential procurement has resulted in tender boards focusing on the ownership aspect of BEE and not the broad-based criteria of the B-BBEE scorecards. This has now been rectified with the release of the draft Preferential Procurement Regulations. Published on 14 August, the Regulations are open for comment until 14 September.

Unfortunately, however, the new regulations could make compliance with criteria more, not less, difficult for tenderers who have achieved a high B-BBEE status. They also provide no guidance on how to score a contract on the basis of functionality. Under section 2 of the Preferential

Procurement Policy Framework Act of 2000, when evaluating contracts below R1 million, 80 points are to be allocated to price, and 20 points to the achievement of specific goals,

including historical disadvantage. For contracts above R1 million, the figures are 90 points for price and 10 points for specific goals.

The Framework Act failed, however, to provide an explicit basis for scoring points on the basis of historical disadvantage. This resulted in tender boards evaluating tenderers primarily on the basis of black ownership.

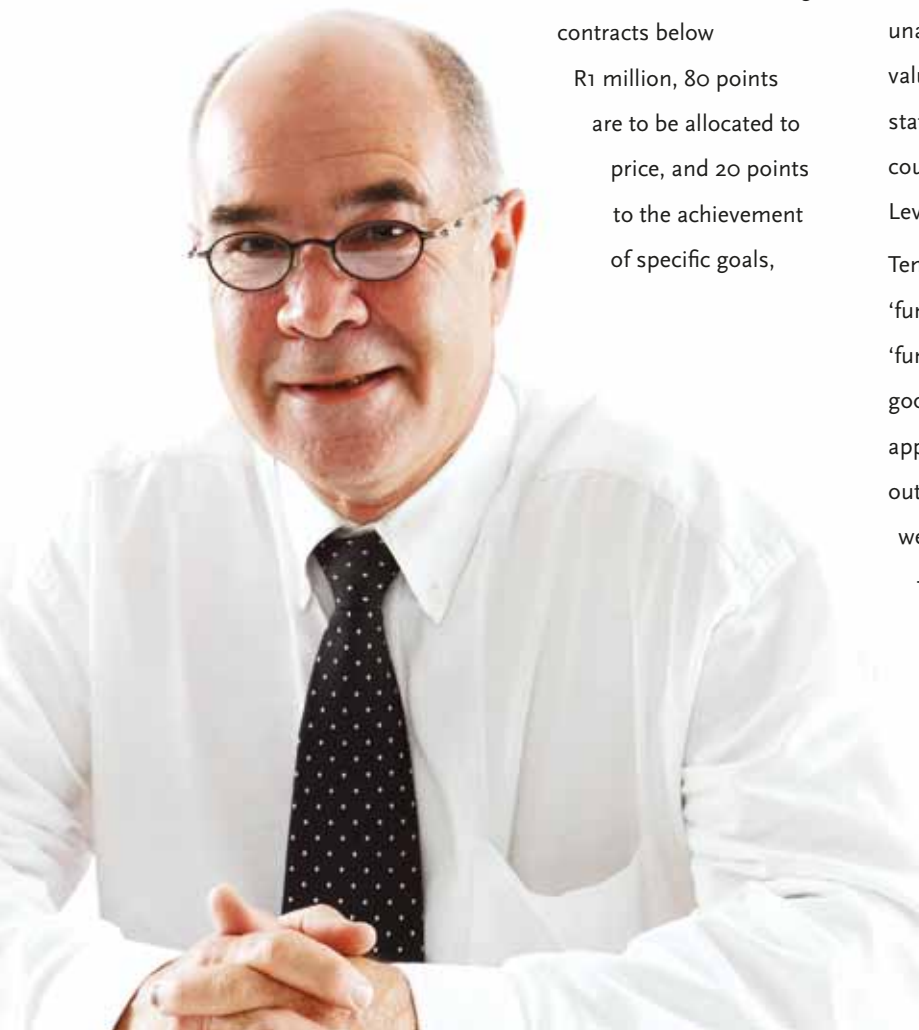
The new regulations, for the first time, oblige tender boards to apply a common and uniform approach when evaluating tenders on the basis of compliance with criteria relating to 'historical disadvantage'.

The most contentious provision is likely to be a stipulation that a tenderer is not to be awarded points for its B-BBEE status level if it intends sub-contracting more than 25% of the value of the contract to a third party who doesn't qualify for at least the points that the tenderer qualifies for. While this provision is clearly directed at 'fronting', it will also perversely penalise tenderers with a 'high' B-BBEE status. A tenderer with a Level 1 status, for example, would be unable to award subcontracts for more than 25% of the value of the contract to subcontractors having a B-BBEE status below Level 1, while a tenderer with a Level 4 status could freely allocate subcontracts to subcontractors with a Level 4 status or above.

Tender boards are expressly authorised to take into account 'functionality' as an additional tender criterion, with 'functionality' covering the utility, quality and reliability of the goods or services to be provided. If functionality is to be applied as a tender criterion, the bid documents must set out criteria for the measurement of functionality, and the weight (points) to be allocated to each of these criteria.

The draft regulations are silent as to the total number of points that may be allocated to functionality. Tender boards will accordingly have considerable discretion in relation to the role to be played by 'functionality', and related issues such as delivery capacity, in evaluating tenders.

**Wouter Scholtz**



# The new companies act and business rescue

## *What is business rescue?*

One of the new features introduced in the Companies Act of 2008 is called Business Rescue and Compromise with Creditors. The objective of the formal process in the Act is to provide a financially distressed business, that reasonably believes it can turn things around, with breathing space to try to do just that.

The relevant provisions of the Act will come into force in mid-2010. The prescribed process provides, on a temporary basis, for supervision of the management of the company and, with certain exceptions, a moratorium on creditors' rights to claim against it.

However, this has to be coupled with the development and implementation of a plan by the appointed business rescue practitioner to rescue the company.

The plan proposed needs to maximise the potential for the company to continue on a solvent basis, or if it has to be liquidated, to ensure that its creditors and/or shareholders obtain a potentially better return than if the company were to be liquidated immediately.

## *Who initiates business rescue proceedings?*

A company itself or an affected person may initiate a business rescue process. An affected person is defined as being a shareholder or creditor, any registered trade union representing company employees or any other employee(s) not represented by a trade union.

## **Financing the company during business rescue proceedings**

One of the critical issues during a business rescue process is the on-going financing of the company, since without this there is probably little reasonable prospect of the business being rescued. Clearly, one of the key discussions that will therefore need to take place, probably even before a

company embarks on the formal business rescue route, is whether ongoing financing will be able to be secured, whether in terms of an injection of additional equity or other financing arrangements and the basis of such arrangements.

## **The business plan**

Assuming there is a prospect of turning the business around, the practitioner, after the necessary consultation processes, must prepare a business rescue plan to be submitted to a meeting of creditors and other relevant persons, for formal adoption. The involvement of creditors

will be key as the adoption of a business rescue plan has obvious implications for creditors.

## **Going forward**

Whilst it is unclear how a number of provisions concerning business rescue in the new

Companies Act – and the regulations yet to be promulgated – will be interpreted, there is no doubt that the idea of a formally structured business rescue process, is sound. This is especially so in the current economic climate in South Africa where government's commitment to minimising job losses should provide an enabling environment for the turnaround of businesses, wherever possible. However, from their extensive experience in the field in the UK during the last 20 years, colleagues suggest, that without new finance, new management, new product (or new marketing) – or a combination of these – business rescue proceedings may ultimately not be successful.

At an early stage, a strategic high-level review by external experts should be able to give decision-makers in a company some idea of whether such a process might have a reasonable prospect of success.

**Gillian Bolton**

Contact Gillian Bolton on 021 405 4000 or at [gillian.bolton@mazars.co.za](mailto:gillian.bolton@mazars.co.za) for further information.

“The relevant provisions of the Act will come into force in mid-2010”

# LONG AWAITED IFRS FOR SMEs

On 9 July 2009, the six-year project to produce the world's first set of accounting requirements for Small and Medium Entities (SMEs) was concluded. The issuing of an IFRS for SME brings to an end a lengthy wait to achieve a less complex, cost-effective alternative to the International Financial Reporting Standards (IFRS).

**I**n South Africa, a *Statement of GAAP for SME* has existed since 2007, but that standard was based on a draft version ("exposure draft") of the *IFRS for SME*. There has been substantial change to this version since the exposure draft.

The South African Institute of Chartered Accountants (SAICA) was quick to indicate that the *IFRS for SME* will replace the *Statement of GAAP for SME* and this was confirmed at a meeting on 13 August 2009 when the standard was adopted for use in South Africa without change. It is expected that SAICA will also issue further guidance on how to apply the new standard in South Africa. The *Statement of GAAP for SME* is not to be confused with the draft *Reporting Framework for Non-Public Entities* that is currently being developed in South Africa.

The *IFRS for SME* is a stand-alone document that eliminates cross references back to IFRS, except for one that is not mandatory. This is an important

change from the 23 cross references that were found in the exposure draft. Furthermore, the *IFRS for SME* will be amended only every three years, which represents a significant departure from the gruelling annual changes that are made to IFRS.

The standard is issued together with a Basis for Conclusions, Illustrative Financial Statements, and a Presentation and Disclosure Checklist<sup>1</sup>.

Some of the major areas of relief that the new standard provides compared to IFRS include:

- an annual review of the residual values, useful lives and the depreciation method applied to property, plant and equipment and intangible assets is no longer required
- the complexity of categorising financial instruments has been eliminated
- favouring the use of cost or amortised cost when measuring financial instruments
- straight-lining for operating leases is no longer required if increases in lease payments are structured in line with expected general inflation
- allowing amortisation of all indefinite-life intangibles, including goodwill
- the accounting for share-based payments has been simplified, including allowing for directors' valuations
- the onerous IFRS disclosure requirements have been significantly reduced

The *IFRS for SME* is suitable for all entities that prepare general-purpose financial statements, except those whose securities are publicly traded, or will be publicly traded, or who hold assets in a fiduciary capacity for a broad group of outsiders as one of its primary businesses. Local law, such as the Companies Act, will also place additional criteria as to which entities may or may not be able to use the standard, but a vast number of private companies are expected to qualify.

**Kevin Frohbus**

<sup>1</sup> The *IFRS for SME* and related documents can be downloaded from [www.iasb.org](http://www.iasb.org).



# Transfer pricing – responses under fire

**S**ection 31 of the Income Tax Act gives SARS the discretion to adjust prices charged for goods and services involving South African resident enterprises and foreign connected parties, such as a foreign subsidiary company. This enables the Receiver to counter opportunities for profit shifting between related enterprises.

Transfer pricing rules are a common feature of developed tax systems. While South Africa isn't a member of the Organisation for Economic Co-operation and Development (OECD), SARS has, in Practice Note No 7, largely adopted the OECD Transfer Pricing Guidelines.

Section 31 calls for an adjustment to be made by SARS where the price charged for goods or services in international related party transactions doesn't accord with an arm's length price. In practice, SARS will only intervene if the effect of the pricing is to reduce the profits subject to tax in South Africa. This could happen either because the South African enterprise sells its goods or services to a foreign connected party at an artificially reduced price, or because it pays excessive prices for imported goods or services.

In determining whether a price accords with arm's length standards, SARS will mainly look to 'comparable uncontrolled prices', being the prices charged for comparable goods or services between unrelated parties. If the actual prices charged deviate from comparable uncontrolled prices, SARS will ordinarily give the enterprise in question an opportunity to make submissions as to why an adverse transfer pricing determination should not be made.

If you're facing a transfer pricing enquiry, it's best to know at the outset how you might respond under fire from SARS.

In particular, it's important to appreciate that an apparent deviation from arm's length prices is only the beginning, and not the end, of the analysis.

Both the Guidelines and Practice Note 7 make it clear that in the event of an apparent departure from arm's length prices there is to be a second or supplementary enquiry. This supplementary enquiry is to determine whether the apparently abnormal pricing is attributable to purely commercial considerations, such as might have been taken into account even by unrelated parties.

The commercial considerations that might legitimately be put forward are summarised in the Guidelines, and reiterated in Practice Note 7.

The key considerations fall under the following headings:

- the terms of the contract between its parties
- the economic circumstances surrounding the transaction
- the business strategy of the enterprise or enterprises in question

As regards economic circumstances, current economic conditions and reduced demand for goods and services may well justify lower than normal prices and reduced margins.

As regards business strategies, both the Guidelines and Practice Note No 7 acknowledge that 'market penetration' – the penetration of new overseas markets – may justify a temporary reduction in the price of goods or services supplied to an overseas affiliate while it seeks to establish a foothold in the market.

As always, the onus is on the taxpayer to come forward with commercial justifications for the departure.

There is a distinct risk that if commercial justifications are first advanced while under fire from SARS, these justifications will be met with a sceptical response. Your responses are more likely to be credible if you can point to evidence of deliberations around the time when the price was set, and before you attracted critical scrutiny. If you have board minutes or correspondence between buyer and seller which reflect the commercial considerations that justified a departure from normal pricing policy, this documentation would be more credible than subsequent justifications.

**Wouter Scholtz**

# M



# MAZARS

GETTING TO KNOW OUR PEOPLE

## PARTNER PROFILE: MADHU MENON

**M**oores Rowland Botswana recently joined the Mazars family and under the leadership of Managing Partner Madhu Menon, has six offices located in Gaborone, Ghanzi, Lobatse, Maun, Palapye and Selebi-Phikwe - and over 100 staff members. Compass spoke to him about Botswana's business environment.

### How is Botswana weathering the global recession?

Surprisingly well, particularly given our dependence on minerals such as diamonds, copper and nickel, which together, account for approximately 40% of GDP and more than 70% of exports. While the negative impact of lower commodity prices can't be ignored, other sectors of the economy are holding their own, particularly our strong farming sector as well as tourism.

### What are business conditions like?

We're poised for a strong period of growth, largely because of new legislation that requires all companies to be audited, not just listed companies. With 19 domestic companies and four foreign companies listed on the main board of the Botswana Stock Exchange and one domestic company and seven foreign companies listed on the venture capital board, the opportunities for audits of listed companies are somewhat constrained. Now, however, the new Companies Act requires companies with an annual turnover of 10 million Pula (R11.5million) or an asset base of 5 million Pula (R5.76 million) to be audited.

### What sets Mazars apart from competitors in your view?

It has to be our personalised service. I know it sounds like a cliché, but it's a reality.

### What are your future plans for Mazars Botswana?

To provide our clients with a more comprehensive service offering, we are planning to move into new areas such as Corporate Finance and Forensic Services, which will complement our current areas of expertise of taxation, company secretarial and accounting services.

### Can you tell our readers a bit about yourself?

Well, I've been with the firm for more than 18 years. I qualified in India then came to Botswana in the early 1990s – a time when India was not the economic giant it has transformed itself into today. I'm married, with one daughter and when I get time I enjoy playing club cricket, watching cricket and, of course, spending time with my family.



Madhu Menon



level: hard



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