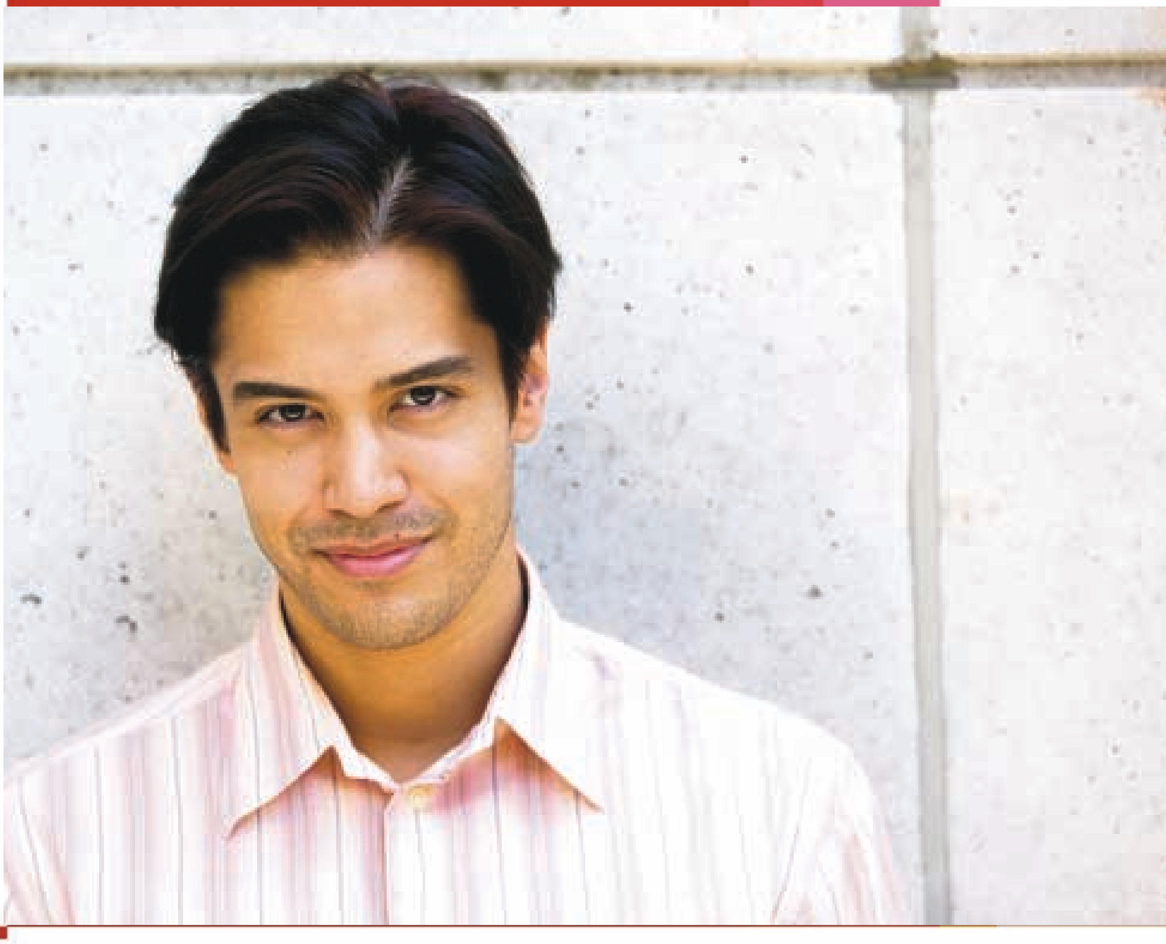
HR Quarterly

April 2012

A quarterly journal published by PwC South Africa providing informed commentary on current developments in the Reward arena both locally and internationally.



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Direction for 2012 and beyond

Peter Drucker famously stated that "management is doing things right; leadership is doing the right things." Great leaders possess dazzling social intelligence, a zest for change, and above all, vision that allows them to set their sights on the "things" that truly merit attention.

In the Human Resources and Reward profession, leadership qualities form an integral part of how and what we do on a daily basis. We are continuously challenged to ensure that our human resources strategy supports the general approach to the strategic management of resources which is concerned with longer term people issues including macro concerns about structure, quality, culture, values and matching our resource needs to future organisational needs.

We constantly advocate that our people are our greatest asset. If this is indeed true, our human resources strategy should set the general direction which our organisations follow to secure and develop our human resources. This will inevitably ensure that we can deliver sustainable and successful organisations.

We trust that your 2012 will be filled with a zest for change and that your sights will be set on the Human Resources and Reward practices that truly merit attention.

The PwC Reward Team

15th Annual PwC Global CEO Survey

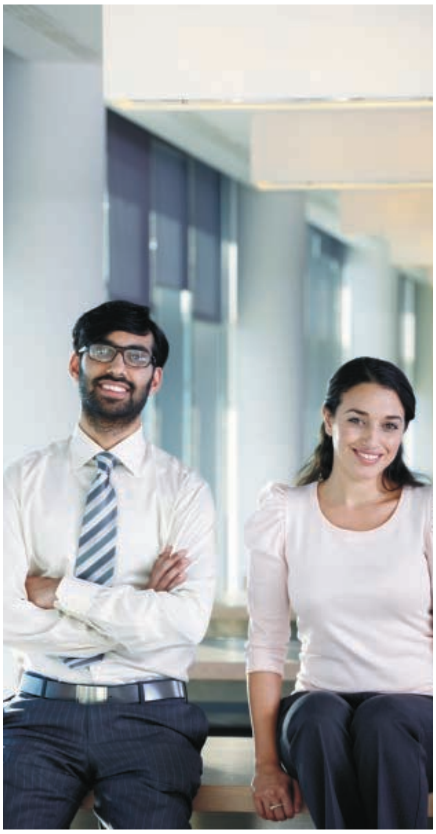
The year 2012 unfolds with wide disparities in potential outcomes in many economies, and little prospect of a coordinated turnaround.

Just 15% of CEO's believe that the global economy will improve this year. Incremental improvements in business optimism seen in the *PwC 15th Annual Global CEO Survey* over the past two years are reversing. In a sign of converging economic fortunes, confidence declined in parallel among CEOs across all regions, except for the Middle East and Africa. Yet businesses are not on the defensive. CEOs are taking deliberate steps to improve their businesses' resilience against further disruptions and to grow in the markets they believe are most important for their future. As a result, 40% are 'very confident' in prospects for revenue growth in their own companies in the next 12 months.

In the survey we found that issues around talent are once again top of mind. CEOs are recognising that their current strategies for managing talent no longer fit - 78% of CEOs say they will make a change. Businesses also fear that they won't have the right talent to compete as they strive for growth in a volatile market. Only 30% of CEOs are 'very confident' that they will have access to the talent they need over the next three years and report challenges in hiring across most industries. Even industries such as banking that have retrenched workers in large numbers are still struggling to get the right people. More CEOs expect to hire than to fire.

Talent shortages and mismatches are impacting profitability now. A quarter of CEOs said they were unable to pursue a market opportunity or have had to cancel or delay a strategic initiative because of talent challenges. One in three is concerned that skills shortages will impact their company's ability to innovate effectively.

To obtain a copy of the *15th Annual Global CEO Survey*, please contact René Richter at rene.richter@za.pwc.com.



Well known HR professional rejoins PwC

Martin Hopkins rejoined PwC on 1 March 2012 to lead the Reward Consulting team. Martin originally joined PwC in 1997 and initially worked in Corporate Finance before working with Gerald Seegers to establish the PwC Reward Practice. He moved over to Vodacom in 2010 as head of Reward and Benefits for the Group. After an energising time at Vodacom, getting a feel for what clients really need when managing Reward for a large company, Martin rejoined PwC last month.

"I am really excited to rejoin PwC, particularly with the recent addition of the formidable research and benchmarking capability of REMchannel® to the existing creative and analytical capacities. I believe that this team can contribute significantly to the effective administration and governance of Reward and Benefits in SA, as well as adding some exciting new conceptual and technological offerings to the market."

PwC Remchannel Surveys

Welcome aboard new REMchannel® participants

PwC continues to strive to provide our clients with the highest quality of information which forms a crucial element in the reward decision-making process. We would like to extend a warm welcome to the following companies who have joined our list of discerning Southern Africa survey participants since January 2012.

African Rainbow Minerals Group

Aveng Manufacturing Infraset

BASF Holdings SA (Pty) Ltd

BT Communication Services

Ekurhuleni Metropolitan Municipality

Elgin Brown & Hamer Namibia

FNB Swaziland

FPT Group (Pty) Ltd

Government Institutions Pension Fund Namibia

GVM Metals Administration

Meridian Holdings (Pty) Ltd

MiX Telematics Africa

Mvelaserve Management Services (Pty) Ltd

Multichoice Namibia (Pty) Ltd

Namibia Diamond Trading Company (Pty) Ltd

Nedbank Swaziland

Pan African Resources, Plc

Saint-Gobain Construction Products SA

SARS

Standard Bank Swaziland

State Information Technology Agency (SITA)

Swaziland Building Society

Swaziland Development & Savings Bank (Swazibank)

The House of Busby

The South African Post Office - Postbank

TNT Express Worldwide SA (Pty) Ltd

Tutuka Software (Pty) Ltd

UCS Solutions

If you would like to obtain an updated client and Key Account Manager list please contact Margie Manners at 0861 SALARY or +27 11 468 2639. You can also extract the participant list from the PwC Remchannel system if you subscribe to the on line survey.

REMchannel® Survey Publication Process Changes

At the end of 2011 we indicated that we were in the process of upgrading REMchannel® and REMeasure® which will ultimately provide our clients with an integrated common platform for current and new products.

As part of this process we firstly had to address our REMchannel® publication process to ensure minimal manual influence on data accepted into the system. After many months of testing and identifying areas of improvement we rolled out the new publication process in February 2012. During the roll out we identified additional areas to optimise the process which will ensure that we continue to provide accurate, valid information to assist in the remuneration decision making process.

In line with our philosophy of providing quality information we have provided you with an overview of how the publication process deals with data and matching anomalies below.

Job based exclusions

Job based exclusions in the publication process are based on the following:

- flow between different jobs, i.e. ensuring that a job at a lower level is not reflected in the survey as being paid higher than the next level of the same job, e.g. Programmer 1, Programmer 2;
- bad matching to specific jobs;
- company domination in a specific job to ensure that the market data is not influenced by a single company;
- range spread within a particular job and therefore applying some level of confidence limits.

It should be noted that job based exclusions are not carried through to the grade exclusions with the exception of bad matching as the sample size is significantly higher in grade based reports. The basis for

this is to ensure that where premiums are paid for specific jobs or where an industry pays particularly low or high, the data would accurately reflect these trends.

Grade based exclusions

Grade based exclusions in the publication process are based on the following:

- range spread within a particular grade and therefore applying some level of confidence limits;
- flow between two different grades, ensuring that a lower grade is not paid more than a higher grade.

The methodology in itself has been challenging, specifically where organisations have no grading or utilise a broad banded approach. In the past we only did these exclusions in our National All Industries circle and the exclusions were automatically carried through to the circles. Our new month end process does however provide us with the ability to review data in the specific circles and check for further anomalies. It also allows us to accurately reflect trends in the different industries.

Results

The results of a changed month end publication methodology where we concentrate to a large extent on potential bad matching has resulted in less sampling and therefore influenced the data. All the other factors mentioned above are still taken into account, but not to the extent where we influence the data unnecessarily.

In REMchannel® we have the functionality to extract a grade report based on a specific sub discipline and potentially only certain jobs in this sub discipline. This enables clients to view differentials between for example support and technical staff at the same grade level. As an explanatory note, an engineer at the same grade level as an administrative officer is paid very differently based on factors such as the scarcity of skill.

To ensure that data is accurately reflected in grade reporting functionality we are developing an enhancement which will utilise job exclusions when selecting sub disciplines. This will ensure that premiums paid in certain positions will accurately be reflected in the reporting functionality.

If you have any queries about changes in data please contact Louna Robbertse at louna.robbertse@za.pwc.com or René Richter at rene.richter@za.pwc.com.

REMeasure® certification becomes compulsory

Since launching REMeasure® it has become evident that the certification course is crucial to ensure that job evaluation is applied consistently throughout the subscribing organisations. The course covers job evaluation principles and the specific application in REMeasure®.

All licence holders are required to attend the course and need to obtain 75% in the exam to become certified. Certification is provided free of charge as part of the subscription fee and is valid for a period of two years.

In addition we are certifying all the reward consultants and REMchannel® key account managers to ensure that they can add maximum value during the job matching process as part of the collection methodology.

We would like to congratulate the following clients and staff members on the completion and passing of the certification course, we know that it will form a solid basis for all job evaluation in the future:

Alice Reddy
Betty Mphuthi
Brenda Talazo
Christa Mey
Danica Slaney
Dhiren Singh
Elmarie Viljoen
Elria van der Merwe
Estelle Nel
Ezra Mahlangu
Farai Maringazuva
Gary Seath
Gene Cilliers
Gizelle Erwee
Glency Mutandwa
Gugu Mncube
Hayley Galloway
Heather Joynt
Helio Mandlate
Jayshree Govender
Johlene van der Linde
Jolene Hattingh
Jose Miguel Schwalbach
JP van Wyk
Julia Fourie
Kay Paris
Kim Perfect
Kudakwashe Nyashanu
Laurent Evrard
Leonie Louw
Letizia Thompson
Linda Naidoo
Lize Jansen van Vuuren
Maggie Ngoatje
Marcel Buys
Margaret Makanje
Martha Galeboe
Matchwell Lizazi
Merenchia Louw
Mthandeni Nhlapo
Nelisha Chitungo
Norma Mayimela
Paul Shaw
Rasigay Jordaan
Ramona Kruger
Ramona Pillay
Ria Nel
Riette Duvenhage
Rolanda Lyners
Roman Malinowski
Rudi Mey
Rynette Germishuizen
Shirley Thomas
Simon Calvert
Stacey Hanekom
Suzelle du-Preez
Sylvia Naris

If you would like to see REMeasure® in action or attend the monthly scheduled certification courses, please contact Anita Wing at anita.wing@za.pwc.com or Minda Botha at minda.botha@za.pwc.com. Please note that terms and conditions apply.

Reward workshops

PwC Remchannel, in association with Dianne Auld from Auld Compensation Consulting, offers skills transfer workshops providing newer practitioners and seasoned reward practitioners with the necessary know-how to excel in the reward arena. In the past these courses were limited to the Gauteng area but they have been expanded to South Africa and some of the neighbouring Southern Africa countries.

To ensure that your staff are skilled to manage your organisation's remuneration, the following workshops are offered on a continuous basis:

- Advanced Excel Skills for Remuneration Practitioners (new one day course);
- Excel Workshop for Remuneration Practitioners;
- Incentive Design Workshop for Remuneration Practitioners;
- Job Profiling and Job Evaluation Workshop;
- Pay Structuring Workshop for Remuneration Practitioners ;
- Reward Management Workshop for Line Managers;
- Sales Compensation (1 day).

The new one day advanced Excel skills for remuneration practitioners course is going to prove especially valuable. The course material includes the Compensation and Benefits Formulas handbook published by the WorldatWork and contains Dianne Auld's Excel tips. This handbook is seen to be an essential resource for Total Rewards professionals globally and will prove to be invaluable in the day to day calculation of reward scenarios.

To book your place please visit the website at www.remchannel.co.za/training-and-workshops and download the workshop registration form.

Benchmarking for Success

March 2012 – Salary and Wage Movement Survey

The South African Gross Domestic Product (GDP) increased during the 4th quarter of 2011 showing signs that the economy has expanded despite adverse global growth. The improved quarterly growth was a result of improvement in the primary and secondary sectors which outweighed the softer growth in the tertiary sector. The agricultural sector contracted for a fourth consecutive quarter whilst the overall growth can be attributed to a much better mining sector performance. In addition the factory sector posted a substantial recovery. The growth is however being threatened by the increase in the Consumer Price Index (CPI) which has been steadily rising over the past 12 months. The January 2012 rose to 6.3% year on year with the food index posting a 10.3% change and fuel a 21.7% change over the past 12 months. As economic factors continue to impact cost of living increases, the anticipated salary and wage increases reported in the March 2012 Salary and Wage Movement survey may be reviewed in the coming months.

In this research comprising of 60 South African companies across various industry sectors, it is interesting to note that Mining/Quarrying and the Parastatal sectors granted the highest increases over the past 12 months. Similarly as can be seen from the table below, these industries are also anticipating the highest annual adjustments for 2012.

The research also measures the differential between the labour turnover in specific industries versus the overall norm. Although the overall labour turnover for the period 1 January 2011 to 31 December 2011 was reported as 13.6%, the highest labour turnover figures were reported in the Construction/Engineering/Petrochemical and Financial Services industry sector. In 38% of cases resignation remains the highest factor for termination grounds followed by non renewal of contracts at 20%. Dismissal for operational requirements only represented 4.8% of the termination grounds in this research publication. This emphasises the issues in retaining key and critical talent that reward professionals need to deal with on a continuous basis.

The research also covers, starting rates of pay for graduates, anticipated increases by employee category for 2012 and negotiated rates of pay.

Should you wish to obtain a copy of the survey, please contact Louna Robbertse at louna.rob bertse@za.pwc.com. Please note that terms and conditions apply and that the survey will only be made available to non-participants on the proviso that you participate in the September 2012 survey.

Employee Category	Construction / Engineering / Petrochemical	Fast Moving Consumer Goods / Manufacturing	Financial Services	Mining / Quarrying	Other	Parastatal	Tertiary Education
Executives	5.9%	6.3%	6.7%	8.3%	6.1%	7.8%	6.7%
Management	6.6%	6.3%	6.7%	8.1%	6.2%	8.3%	6.7%
Key specialists	6.8%	5.7%	6.6%	7.9%	6.3%	8.3%	7.1%
General staff	6.7%	6.5%	6.8%	8.4%	6.3%	8.3%	6.5%
Unionised staff	7.2%	6.9%	7.3%	8.3%	7.3%	9.0%	7.2%
Total average lift to payroll	**6.5%**	**6.5%**	**6.7%**	**8.4%**	**6.2%**	**8.1%**	**6.7%**

Review

Why Millennials Matter

"My career will be one of choice, not one chosen out of desperation. It will align who I am with what I do"
male graduate employee, USA

The millennial generation, born between 1980 and 2000 now entering employment in vast numbers, will shape the world of work for years to come. Attracting the best of these millennial workers is critical to the future of your business. Their career aspirations, attitudes about work, and knowledge of new technologies will define the culture of the 21st century workplace.

25% of the US workforce

Millennials matter because they are not only different from those that have gone before, they are also more numerous than any since the soon-to-retire Baby Boomer generation – millennials already form 25% of the workforce in the US and account for over half of the population in India. By 2020, millennials will form 50% of the global workforce. But although they will soon outnumber their Generation X predecessors, they remain in short supply, particularly in parts of the world where birth rates have been lower. They will also be more valuable – this generation will work to support a significantly larger older generation as life expectancy increases. CEO's tell us that attracting and keeping younger workers is one of their biggest talent challenges.

It's clear that millennials will be a powerful generation of workers and that those with the right skills will be in high demand. They may be able to command not only creative reward packages by today's standards, but also influence the way they work and where and how they operate in the workplace. They may also represent one of the biggest challenges that many organisations will face. Are millennials really any different to past generations? It's true to say that some of the behaviour and attributes of millennials can be explained by

their age and relative lack of responsibilities. Our behaviour and priorities change and adapt as we age, but to dismiss the issues entirely on that basis would be a mistake. Millennials' use of technology clearly sets them apart.

Digital world

One of the defining characteristics of the millennial generation is their affinity with the digital world. They have grown up with broadband, Smartphone's, laptops and social media being the norm and expect instant access to information. This is the first generation to enter the workplace with a better grasp of a key business tool than more senior workers. It's more than just the way millennials use technology that makes today's youth different – they behave differently too. Their behaviour is coloured by their experience of the global economic crisis and this generation place much more emphasis on their personal needs than on those of the organisation. And employers should be wary – nearly three-quarters of millenials in our survey said they had compromised to get into work – something we believe will be set right as soon as economic conditions improve.

To obtain a copy of this insightful thought leadership publication please contact René Richter at 082 460 4348 or rene.richter@za.pwc.com

Rapid progression

Millennials tend to be uncomfortable with rigid corporate structures and turned off by information silos. They expect rapid progression, a varied and interesting career and constant feedback. In other words, millennials want a management style and corporate culture that is markedly different from anything that has gone before – one that meets their needs. The particular characteristics of millennials – such as their ambition and desire to keep learning and move quickly upwards through an organisation, as well as their willingness to move on quickly if their expectations are not being met – requires a focused response from employers. Millennials want a flexible approach to work, but very regular feedback and encouragement. They want to feel their work is worthwhile and that their efforts are being recognised. And they value similar things in an employer brand as they do in a consumer brand. These are all characteristics that employers can actively address. The companies that have already been the most successful in attracting talented millennials – Google and Apple among them – are naturally innovative employers who are never restrained by 'how things used to be done'. These companies are not specifically targeting millennials, but their culture, management style and approach to recruitment and retention naturally appeal to the millennial generation. And because of that, they are able to take their pick of the best younger talent around. Irrespective of the long-term aims and ambitions of an individual company, the ability to attract and retain millennial talent will be a vital step to achieving it.

The effectiveness of incentives

Challenging the existing executive remuneration model by looking at the psychology of incentives

There is no doubt remuneration and incentive-based packages attract and retain the best talent and underpin a company's performance. However, in light of the global financial crisis, underlying incentive models are somewhat ineffective in driving the desired behaviours.

The underlying model aims to drive shareholder value through greater alignment of managers' behaviour with the interests and expectations of the shareholder and relies heavily on the use of incentives. The model is based on the principle that a conflict exists between managers and shareholders and that the role of the incentive is to create a long-term view among managers and shape decision-making behaviour.

However, if we look at these reward mixes where there is a fixed salary and a variable portion, you would find the variable portion relates to a company's and employees' performance and is based on complex models. As changes in accounting policies and increased transparency requirements from shareholders influence remuneration models, current structures and models, which are difficult to understand and complex, detract from the common-sense perspective.

King III advocates transparency and simplicity, but current models operate counter intuitively to these guidelines. The model must change to allow fairness and achieve a balance between employees and shareholders.

Alternative models

As a solution, there are a number of alternative models, one of which includes a significant increase in the employee's salary with a requirement to use the increase to purchase shares rather than receiving options. This long-term incentive is aligned to the

objectives of shareholders and the employee. If equity markets suffer losses and impact shares, when economies recover and bulls enter the markets again, the employee's performance will be rewarded by the value of shares over a number of years.

A number of companies in the mining sector have adopted another model where a bonus is paid in shares and cash. The shares are vested for three years and the cash is received at the end of the financial year.

A third option is a bonus bank, where employees defer their bonus over a number of years into a bank, from which they can subsequently claw back a bonus. If a company's strong financial performance over a number of years is followed by one year of losses, employees have the opportunity of ensuring they still receive a bonus from the years where the company performed well. However, the criticism here is that the longer people wait to get their bonus, the more it gets diluted. Even though the principles of King III advocate transparency and simplicity, it's not a one-size-fits-all approach. Remuneration committees need to be practical and offer models that make sense in their industry. The key is to understand that complexity and ambiguity destroy value.

For more information on the psychology of incentives please contact Martin Hopkins at martin.e.hopkins@za.pwc.com or Paul Shaw at paul.shaw@za.pwc.com.

Capital gains tax consequences of redemption of redeemable shares

The decision of the Johannesburg Tax Court in A (Pty) Ltd v Commissioner for the South African Revenue Service, handed down on 13 February 2012 (Case No. 12644; not yet reported), addresses for the first time by a South African court hitherto unexplored aspects of key concepts in the capital gains tax regime laid down in the Eighth Schedule to the Income Tax Act 58 of 1962, in particular, the fundamental nature of a disposal and the essential nature of a redemption of redeemable shares.

Was the capital loss in question a clogged loss?

In this case, SARS had disallowed a capital loss claimed by the taxpayer company which had been incurred as a result of the redemption of redeemable preference shares held by it in a second company in the same group on the basis that the loss was a "clogged loss", as envisaged in para 39(1) of the Eighth Schedule to the Income Tax Act 58 of 1962. The first issue was the proper interpretation of para 39(1) and, in particular, whether that provision applied to the redemption of redeemable preference shares, thereby rendering the taxpayer's capital loss a "clogged loss" because of the connection between the taxpayer and the company which had issued those shares, for it was common cause that they were part of the same group of companies and were under common control. A *clogged loss* is a loss which, in terms of the Eighth Schedule, must be disregarded in the determination of the disposer's aggregate capital gain or aggregate capital loss; such a loss is ring-fenced and is deductible only from a capital gain arising from the disposal of assets to that same "connected person".

Does the redemption of redeemable shares give rise to a recovery of their acquisition cost?

The second issue before the court related to the quantum of the appellant's capital loss. This turned on the meaning of the word recovery in para 20(3) of the Eighth Schedule; the pivotal question was whether the taxpayer had recovered part of the expenditure incurred in purchasing the preference shares when those shares were redeemed by the issuing company.

Was the redemption of the shares a "disposal to any person"?

If para 39(1) of the Eighth Schedule were applicable, it was clear that the taxpayer's capital loss would be a clogged loss, since it was common cause that the taxpayer and the issuing company were "connected persons". The question was whether this paragraph was indeed applicable. In this regard, the language in which this provision of the Eighth Schedule is expressed was of critical importance. The spotlight fell on that part of the paragraph which states that a person must disregard - *any capital loss … in respect of the disposal of an asset to any person (a) who was a connected person in relation to that person immediately before that disposal; or (b) which is immediately after the disposal (i) a member of the same group of companies as that person.* The term disposal is defined in para 11(1) of the Eighth Schedule, and expressly includes a redemption. SARS argued that para 39(1) of the Eighth Schedule was applicable and that the redemption of the preference shares constituted a disposal *to the company*. The taxpayer company argued that this paragraph was not applicable because the redemption was not a disposal "to" any other person.

The nature of a disposal to another person as distinct from a mere extinction of rights

The taxpayer company argued that the kinds of disposal envisaged in para 39(1) are those in which an asset, or rights in an asset, are transferred from the disposing party to another person; furthermore, that even though para 11(1) explicitly defines *disposal* as including *redemption*, the language of this provision - and in particular the word "*to*" in the phrase "*disposal of an asset to any person*"- had the effect of confining the application of para 39(1) to those akin to the ones mentioned in para 11(a), such as sales, where there was a transfer of the asset itself, or of rights in the asset, to another person. The taxpayer company argued that where shares are redeemed, there is no transfer of the shares themselves, or of any of the rights represented by the shares, from the shareholder to the redeeming company, and that the shares or the rights are simply extinguished, and cease to exist. SARS's counter-argument was that the redemption of shares is, in essence, a kind of "buy-back" of the shares and consequently constitutes a disposal to the redeeming company.

The court applied the principles of statutory interpretation

Faced with these arguments and counter arguments as to the proper interpretation of the word disposal in the context of para 39(1), read with para 11(1), the court looked to the legal principles regarding the interpretation of fiscal legislation - with the spotlight falling on the significance of the word "*to*" in the phrase "*the disposal of an asset to any person*" and the question whether that word could simply be ignored. In this regard the court (at para [10]) cited the decision in *Commissioner for Taxes v Ferreira* 1976 (2) SA 653

(RAD), 38 SATC 66 for the proposition that - *in interpreting anti-avoidance provisions, such as para 39(1), a wider interpretation is required so as to suppress the mischief at which the provision is aimed and to advance the remedy. The court said (at para [17]) that - The mischief at which paragraph 39(1 is aimed is clearly to prevent the taxpayer from avoiding or reducing its tax liability by creating a capital loss through the disposal of an asset to a person (including a company) that it is connected to. To allow such losses would provide fertile ground for the creation of fictitious losses. Tax liability would be reduced while the asset, or the benefit thereof, would still be retained by the disposer, albeit through the connected person.* The court said (at para [18]) that the wording of para 39(1) clearly covers transactions such as sales or the transfer of assets (including shares) from the disposer to a connected person or company. The difficulty, said the court, arises where there is no transfer of the asset or rights in the asset from the disposer to the connected person. The court said that, according to established canons of construction, the preposition *to* in the phrase *the disposal of an asset to any person* could not be ignored unless its inclusion would result in an absurdity so glaring that it could never have been contemplated by the legislature. The inclusion of this preposition, said the court - *implies a disposal of a kind in which the asset (or the rights represented therein, in the case of shares) must be transferred to the connected person.* As to the nature of the redemption of shares, the court held (at para [26]) that - *The redemption of shares results in the extinction and not in a transfer of the rights embodied in the shares to the company redeeming them, or to any other person.* The court consequently held that para 39(1) of the Eighth Schedule did not apply to the redemption of shares in the present case and that the loss incurred by the taxpayer was therefore not a clogged loss as envisaged in that paragraph.

The quantum of the taxpayer's loss

The court began its analysis of the quantum of the taxpayer's loss on the redemption of the shares in question with the fundamental proposition that a capital gain is the excess of the proceeds of an asset on its disposal (or, in the case of a deemed disposal, its market value) over its base cost. In the present case, the cardinal dispute between the taxpayer company and SARS was whether, in determining the base cost of the shares, the original purchase price of the shares in question fell to be reduced by the aggregate preferential dividend and the redemption premium that was payable in terms of the articles of association of the company which had issued and was now redeeming the shares.

SARS argued (see para [28] of the judgment) that the dividend and the redemption premium constituted a recovery as envisaged in para 20(3) of the Eighth Schedule. It is noteworthy that this argument is in direct contradiction to the guidance given by SARS in its *Comprehensive Guide to Capital Gains Tax (Issue 4)* at 8.18, which states that a post-acquisition dividend is not a recovery in the context of para 20(3). It is indeed surprising that SARS should contradict itself in contesting an appeal and begs the question whether it considers itself bound by its published guidance. It is submitted that SARS should adopt a more principled approach in these situations and concede its publicly disseminated interpretations where taxpayers fall within the scope of such guidance. The taxpayer company (see para [30]) argued the contrary, namely that, in the context of the present case, a recovery as envisaged in para 20, would occur only where it had - *got back into its possession the expenditure (or part of the expenditure) incurred in respect of the acquisition of the preference shares.* The taxpayer company argued that to treat a dividend or redemption premium as a recovery of the purchase price of the shares would lead to an absurd result and would be tantamount to treating rental received by a property owner as a recovery of the purchase price of the property. The company argued further that it had never got back any of the purchase price which it had paid to the bank from which it had purchased the shares. The redemption premium was received on account of the redemption of the shares and was not a repayment of part of the purchase price. It was further argued that para 20(3) referred to an amount that had been recovered and not to the wider concept of any benefit linked to the acquisition of the asset. The court held (at para [38]) that - *There is merit in the contention that the fruit derived from an asset will, generally, not constitute a recovery envisaged in paragraph 20(3). On a proper construction of that paragraph, in order for the amount to be a recovery, the taxpayer must have got back the cost (or part) expended in acquiring the asset. The fruits of the asset, such as rent, in the case of the assets being a rental property, or dividends earned in respect of the shares, are, generally, not amounts that have been recovered as contemplated in paragraph 20, but constitute income earned from the particular asset.*

The court held (at para [43]) that, when calculating the taxpayer company's capital loss, SARS had erred in treating the dividend portion and the redemption premium portion of the redemption payments as recoveries of the cost of acquiring the preference shares.

For more information on the tax treatment of share disposal please contact Martin Hopkins at martin.e.hopkins@za.pwc.com.

Forthcoming attractions

The following thought leadership and survey publications will be released during 2012. Should you wish to obtain more information about these publications, please contact Martin Hopkins, René Richter or Gerald Seegers.

- Psychology of Incentives
- Human Capital Effectiveness report
- Salary and Wage Movement Survey (September 2012)
- Executive Director Remuneration
- Short and Long Term Incentive Surveys (second quarter 2012)

These are just some of the publications planned for 2012 and we will publish additional reward and human resources thought leadership publications on our website on a continuous basis.

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