



BOWMANS

THE VALUE OF KNOWING

LOSSES AND CLAIMS TAX IMPLICATIONS

Presented by

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TAX COMPLIANCE

Compliance obligations

- These obligations continue: taxpayers still need to submit returns (for example, VAT, PAYE and income tax returns) and make tax payments to SARS
- Possible to request a payment plan for tax due on returns submitted
- Possible to request remission of late payment penalties and interest due to circumstances
- For tax debt owing possible to ask for a compromise of tax debt owing to SARS

Lost records

- An issue where documents were stored on site, and no offsite backup available
- Possible to reconstruct records based on third party information:
 - Bank statements
 - Creditor statements
 - Past history of trading
 - Past returns particularly VAT returns
- Can perform a reasonable estimate for those periods where records have been destroyed
- Preferable to write to SARS ahead of submitting the relevant return setting out the basis for the estimate

UNINSURED LOSSES

Income tax

- Loss of stock through theft or damage effectively becomes a tax deduction for income tax purposes
- If stock still exists but has been damaged, then can write down the stock to its current market value
- Scrapping allowances may be claimed on certain depreciable assets (for example, shelving, tills, hysters, trucks but not buildings) that were lost or destroyed
- Cost of repairs to reinstate or repair (but not improve) damaged assets (including buildings) deductible in full in the year the expenditure is actually incurred
- If a customer is unable to pay the full debt owing, should be able to claim a bad debt deduction if the amount was included in income previously

Capital gains tax (CGT)

- Write off of capital assets (for example, buildings) that were destroyed would qualify as a capital loss
- Capital losses may be set off against capital gains realised in the current tax year and the net capital loss may be carried forward to succeeding years of assessment

INSURED LOSSES

VAT

- **Applicable to insured persons that are registered VAT vendors**
- **Often an unpleasant surprise that VAT is payable on insurance proceeds**
- **Section 8(8) of the VAT Act**
 - **Principle: because short-term insurance is subject to VAT at the standard rate and the insured person may claim the input VAT thereon, the receipt of an indemnity payment from the insurer is subject to output VAT**
 - **However, if the indemnity payment is for the total reinstatement of goods that were stolen or damaged beyond economic repair, and the insured was not able to claim the input tax credit (for example, a motor car) no output VAT would be applied**

INSURED LOSSES

Income tax and CGT

- Tax consequences depends on the nature of the insured risk – whether it “fills a hole” in profit or capital
- Income tax
 - Insurance proceeds to compensate for loss of stock (the cost of the stock would be a deduction)
 - Compensation for loss of profits
 - Insurance proceeds on depreciable assets (for example, shelving, tills, hysters, trucks, buildings) – may give rise to a recoupment of allowances previously claimed
- CGT
 - Scrapping, loss or destruction of an asset is a disposal
 - CGT will arise where insurance proceeds exceed the base cost of capital assets
 - Timing of disposal: on the date the full compensation in respect of the loss or destruction of the asset is received

INSURED LOSSES

Rollover relief

- Possible to defer the income tax and CGT consequences on the compensation received
 - Applied at the election of the taxpayer
 - Requirements:
 - Involuntary disposal of an asset (must not be a deemed disposal and reacquisition of an asset)
 - Taxpayer receives compensation at least equal to the base cost of the asset
- Base cost is as defined in paragraph 20 of the 8th Schedule to the Income Tax Act and includes the acquisition cost of an asset, certain costs incurred in the acquisition or disposal of an asset, cost of improvements, excludes borrowing costs and costs of maintenance, and is reduced by expenditure allowable as a deduction.
- Must satisfy SARS that full proceeds will be reinvested in replacement assets
 - Replacement assets may be movable or immovable, tangible or intangible

INSURED LOSSES

Rollover relief

- **Requirements (continued):**
 - Replacement assets cannot be personal use assets
 - The contract for the acquisition of the asset must be concluded within 12 months of the date of disposal
 - The replacement assets must be brought into use within 3 years of date of disposal
 - SARS can, on application, extend the above time periods by 6 months if all reasonable steps have been taken to conclude contracts/bring assets into use
- **Tax consequences**
 - Apportion the recoupment/CGT to replacement assets based on cost of the particular replacement asset compared to the cost of all the replacement assets
 - Depreciable assets – recognise the recoupment and CGT on depreciable replacement assets acquired proportionately as the wear-and-tear allowances are being claimed – effectively the recoupment and CGT is phased in and taxed as allowances are claimed
 - Non-depreciable capital assets – reduce the base cost of the asset

OTHER CONSIDERATIONS

Cessation of trade

- If a company does not receive or accrue income from trade for a full financial year, assessed losses brought forward would be forfeited
- Important to continue to trade by carrying on active steps – collecting debtors, negotiating with banks, setting up new trading facilities, etc.
- In our view, expenditure incurred during a temporary closure would be fully deductible; if active steps are being taken to continue business, trading activity would be taking place

Redundancy costs and voluntary costs incurred on employees that do not render services

- For costs that are legally payable (for example, severance payment due by law) – can claim a deduction thereon
- Other voluntary redundancy costs can be deducted if the employee contract or employment policies make provision for this
- Where voluntary payments are made to employees while they are temporarily unable to work, made with a view to re-employ these individuals in future, would be deductible
- Note PAYE deductions would be required



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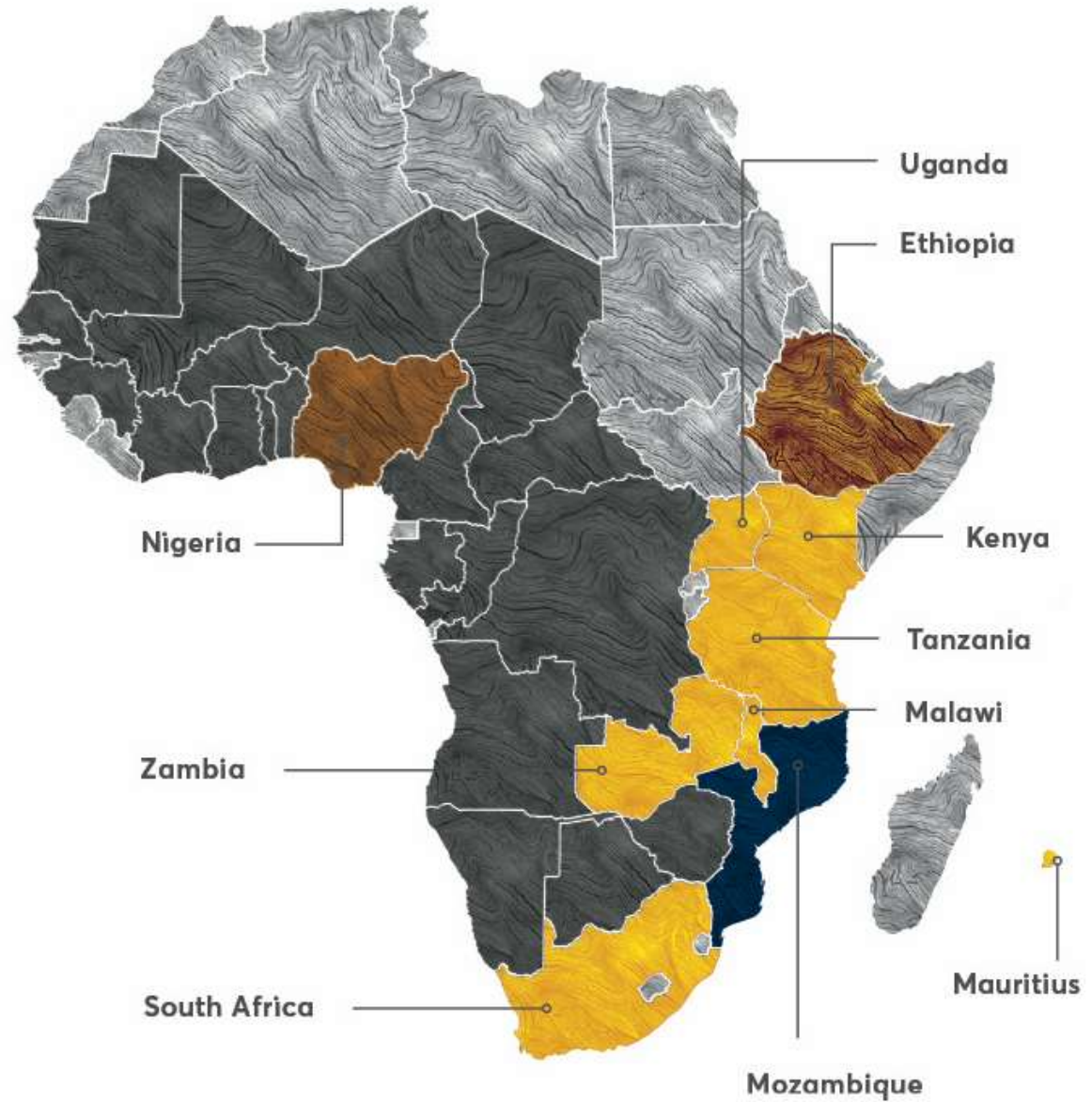
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QUESTIONS?



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-  **Alliance firms**
-  **Best friends**
-  **Significant transaction or advisory experience**



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THANK YOU

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