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## ■ Nexia Josman Seidel enters into formal agreement with Goodsure Employee Benefits (GEB)

Our experience in dealing with matters relating to employee benefits (pension/provident funds, group life and disability benefits) of our own firm and those of clients, has led us to conclude that the establishment and ongoing administration of these funds requires specialised expertise and focussed attention.

To achieve this we have established a relationship with GEB, who are specialist advisors and fund administrators, whose knowledge and service levels are highly regarded in the industry. We realise that the advantages flowing from this relationship can be of benefit to our clients. We have accordingly arranged for GEB to offer their services to our clients, without obligation on either part.

To this end Nexia Josman Seidel will introduce clients to GEB when it is considered appropriate. In addition, any clients wishing to arrange a consultation are welcome to contact their Nexia Josman Seidel partner.

### ■ Footnote:

Nexia Josman Seidel are moving to new offices situated at Century City in August this year. New telephone, fax and address detail will be circulated as soon as these are available.

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## ■ Marriage, the new spouse and TAX considerations

Do you recall the anomalous position that existed prior to 1992, when a "married woman" was not considered a "person" for income tax purposes?

Fortunately, over the years, the tax legislation has been amended to create complete equality in the tax treatment of men and women, and between married and unmarried persons. Each partner in the marriage is considered a separate taxpayer with the result that they must be individually registered and each must submit their own tax return.

A recent amendment in the tax legislation has resulted in further change and in particular, conformity to the requirements of the Constitution. A new definition of a "spouse" has been added to include almost all types of living arrangements. A "spouse" means a person who is the partner:

- (a) in a marriage or customary union recognised in terms of the laws of the Republic;
- (b) in a union recognised as a marriage in accordance with the tenets of any religion; or
- (c) in a same-sex or heterosexual union which the Commissioner is satisfied is intended to be permanent.

However, marriages in terms of (a) and (b) shall be deemed to be out of community marriages, where no proof to the contrary is provided.

The definition of a married woman has, however, also been amended and a woman is not considered to be married if "she lives apart from her husband in circumstances which indicate that a separation is likely to be permanent".

### What are the implications of this new definition?

The various anti-avoidance provisions that are interspersed in the Income Tax Act will be applicable to a person who is not, in strict legal terms or in the traditional sense, a "spouse".

For example, laws preventing a donation from one spouse (who generally earns a higher income and therefore has a greater tax liability) to another spouse to avoid paying too much tax, will apply equally to same-sex relationships or other permanent relationships.

Similarly, where a spouse is employed or runs a business together with his or her spouse, and is paid an "unreasonably" high salary so as to reduce the tax burden of the spouse earning the higher income, no advantage will be achieved. Where it is obvious that, considering the type of business, nature of the work and the participation of the "overpaid" spouse, the salary is higher than a market-related salary, the spouse paying the salary may be taxed on that income.

Be aware of the new capital gains tax laws too. The same anti-avoidance provisions apply to capital gains or losses received in circumstances as described above. The general rule is that where a capital gain can be attributed to a donation, settlement or other disposition or any scheme which is made mainly to avoid tax, the gain or loss is taken into account in the hands of the person making such donation.

On the other hand, any donations between the "new spouses" will be exempt from donations tax, and the same definition in the Estate Duty Act means that there are advantages from an estate duty perspective. The Transfer Duty Act has been similarly amended.

Legislation  
has been  
amended to  
create  
complete  
equality

## ■ Bills of Exchange Amendments Act

A further provision in the Bills of Exchange Amendments Act imposes a duty on any person who is required by law to have their financial statements audited (such as Companies, Close Corporations, Government Departments, Estate Agents and Attorneys) to take care in the custody of their cheque forms and in the reconciliation of their bank accounts.



## ■ Extension of time for N.G.O.'S and non-profit Organisations to re-apply for the Tax Exemption Status

### Media Release No. 10 of 2002

Pretoria, June 04, 2002 - Amendments have been passed to legislation during 2000 regulating the taxation of non-profit organisations. These amendments came into effect on 15 July 2001.

In terms of this legislation, all entities, that were previously exempt from income tax, must re-apply to the Commissioner for the South African Revenue Service, before 15 July 2002 for exemption in terms of the new provisions. From the limited number of applications received thus far, it is clear that more time is required by organisations to re-apply. The Minister of Finance has therefore agreed to recommend to Parliament that the due date for re-applying for exemption be extended to 31 December 2003.

All N.G.O.'s and non-profit organisations whether or not they were exempted from the payment of income tax are required to register for income tax purposes and apply for exemption.

Prior to the introduction of these amendments exemption from taxation was provided for in respect of organisations such as religious, charitable and educational institutions; organisations providing residential care to the aged; housing, medical services, conducting research, nature conservation and cultural activities; amateur sporting associations; organisations providing social and recreational amenities or facilities for members; associations promoting the common interest of persons carrying on a particular business, profession or occupation; trade unions; chambers of commerce or industries; local publicity associations; fidelity or indemnity funds.

To apply for exemption from income tax, donations tax, estate duty, stamp duty, transfer duty and approval for donations to be tax deductible in terms of section 18A of the Income Tax Act, organisations must complete an application form (EI 1). The form may be obtained from local SARS branch offices or from the SARS website (<<http://www.sars.gov.za/>>) in the category "Income Tax", sub-item "Public Benefit Organisations".

The completed form together with a copy of the founding document (constitution, trust deed or memorandum and articles of association) and latest financial statements must be submitted to the SARS Head Office.

#### ■ Issued By:

The Commissioner for the South African  
Revenue Service  
P.O. Box 402  
PRETORIA  
0001

All N.G.O.'s  
& non-profit  
organisations  
are required  
to register  
for income  
tax purposes  
& apply for  
exemption



## ■ Update on Capital Gains Tax

Numerous  
refinements  
to rules  
on CGT  
have  
already  
been  
drafted

While most of us have not yet felt the effects of CGT, there are at least three instances in which CGT may already have had an impact. These are where a capital gains event has taken place during the period 2001-10-01 and 2002-02-28, and particularly in the case of deceased estates, emigrants and companies with a year-end of October, November and December.

### Emigrants and Estates

In terms of the legislation on CGT, when a person ceases to be a resident, he/she is deemed to have disposed of all his /her assets at their market value at the time when he/she ceases to be a resident. This is one of the deemed disposal rules, which triggers a CGT event.

Similarly, a deceased person is treated as having disposed of his/ her assets for proceeds equal to their market value on the date of death. The estate is then treated as having acquired those assets at the same market value, with certain exceptions.

In either case, where the event has taken place after 1 October 2001, the capital gain or loss must be accounted for in the 2002 tax return.

### Companies with a year-end of October, November and December.

Similarly, where companies with these year-ends have transacted and a CGT gain or loss is realised, the current company tax return will not make full provision for the CGT. The interim CGT return must therefore be completed and accompany the annual tax return.

Of more significance, however, is the very comprehensive questionnaire which must be submitted with the interim return. Some of these questions are as follows:

- **Primary residence:**

Did you dispose of your residence between 1 October 2001 and the end of the year of assessment?

Did you let the residence for any period between 1 October 2001 and the date of disposal? If, so give details of the period of letting and the reasons for letting.

- **Connected persons:**

Did you dispose of an asset that was acquired during period 23 February 2000 to 30 September 2001 from a connected person at a non- arms length price?

Did you dispose of an asset to a connected person at a price other than the market value?

Keep in mind that non- disclosure may ultimately result in a criminal offence, and hefty penalties. We would therefore strongly advise that professional assistance be sought when completing the return.

It is not surprising that numerous refinements to rules on capital gains tax have already been drafted. The Second Revenue Laws Amendment Bill, 2001 (the Act's promulgation date being 12 December 2001), contains over 25 pages of amendments to the original legislation incorporating the new tax into the Income Tax Act. Some of these amendments are of a technical nature, while others are of a more substantive nature.

### IMPORTANT NOTE

The information contained in this Newsletter is of a general nature, and may in certain circumstances be subject to misinterpretation. Consequently, we recommend that our advice be sought when acting upon the information contained herein.

While every care has been taken in the compilation of this Newsletter, no responsibility of any nature whatsoever shall be accepted for any inaccuracies, errors or omissions.

