Change to tax law may sink NPOs such as Nonceba

SHARE PROPOSAL

Ann Crotty

NOCAWE Mankayi is telling me a story about the six-year-old girl with a colostomy whom she was counselling; she is talking in a disturbingly matter-of-fact tone of voice.

"It was a friend of the family who abused her." I'm trying to camouflage my lack of comprehension not just at what Mankayi and her colleagues at the Nonceba Centre in Khayelitsha witness every day, but at their ability and their willingness to try and repair some of the incalculable damage suffered by the most vulnerable members of the community.

Earlier, the failure to understand had been on the other foot, as it were. Asked to explain why I had ventured so far out of my comfort zone, I launched into a detailed account of the implications of the proposed changes to section 8E of the Income Tax Act; specifically, the implications for the provision of sustainable funding for Ditikeni's broad-based black empowerment shareholders such as the Nonceba Centre.

It might have been the second or perhaps it was the third time that I made reference to what was effectively a retrospective penalty on preference shares issued by Ditikeni that could result in a doubling or trebling of tax charges, that I noticed I had lost my audience.

Not for the first time I thought what a charmed life I have; the luxury of being able to understand some of the details of income tax legislation and the arcane world of financial engineering combined with the luxury of not having to understand the harsh world of rape and violence that Mankayi and her colleagues deal with daily.

The Nonceba Centre is one of Ditikeni's 19 shareholders. All of Ditikeni's 19 shareholders are non-profit organisations (NPOs). Ditikeni is the unique creation of some outstanding minds. Twelve years ago a group of individuals with extensive experience of the NPO world and some understanding of the principled intentions of broad-based black economic empowerment (BEE) reckoned that there was scope to use BEE policies to support the survival of NPOs. Funding for NPOs had suffered a knock after 1994 when international backers cut back, assuming citizens of a democratic country didn't need as much outside support. While the new government may have had the inclination, it didn't have the capacity to deliver the services that the NPOs were delivering. Along came BEE. What a win for the NPOs; what a win for the government; and what a great opportunity for the private sector to show it cares.

Ditikeni is invested in 22 companies. It refers to these not just as its investments, but as its "investment partners". The name isn't an attempt to curry favour by presuming a certain familiarity, it is an accurate description of the reality of life as a broad-based black empowerment company with extremely limited resources. It also reflects the fact that Ditikeni's investments expect to be involved in Ditikeni's life.

This is no high-flying private equity investor with billions to pour into companies that take its fancy. Each of its investment partners has helped Ditikeni raise the funds necessary to acquire an investment in them. And in most cases, this involved the use of a special purpose vehicle that issued preference shares to its "investment partner". The attraction of preference shares in this situation is that the dividends are tax free. That tax status is now under threat from the SA Revenue Service.

Ditikeni's shareholders live in the centre of reality for the majority of citizens. This means that they also exist on the fringes of the established corporate world, which means they live from hand to mouth or from one donation to the next. This is part of what makes NPOs effective deliverers of services. Because funds are tight, the NPOs have to account for every cent.

Zi Moyo, the head of administration at the Nonceba Centre, tells me its annual budget is R1.4 million, which is R117 000 a month. The electricity bill is around R3 000 a month; the bill for 16, mainly skilled, permanent employees and three casuals, is just

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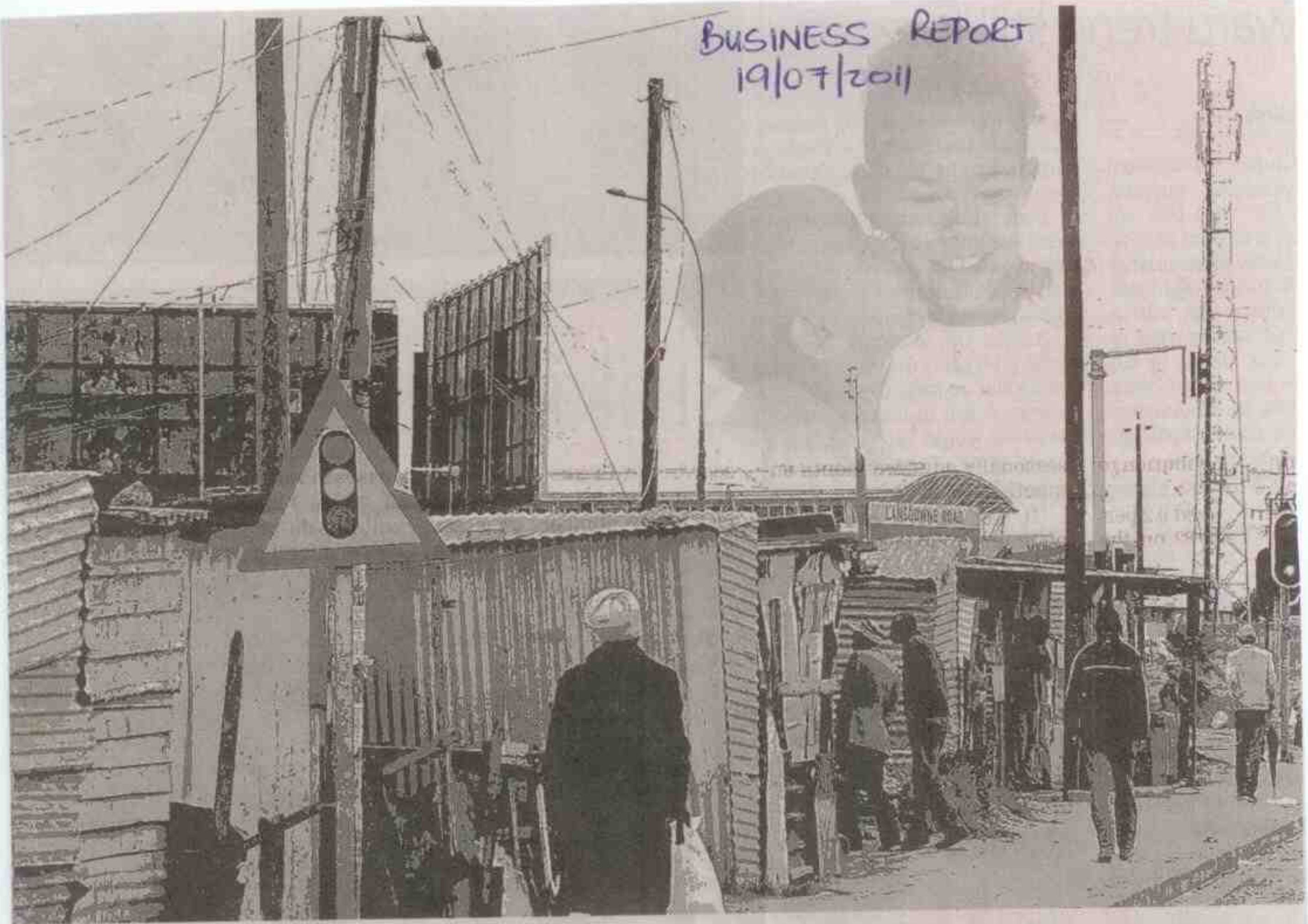

over R100 000 and the food bill is R8 000.

Here's what you get for your money – a facility that is open 24/7, 365 days a year, which provides a secure home and counselling for up to 12 children and nine mothers at a time, and a wide variety of community-based services.

> The Department of Social Development and Treasury are attacking the ability of an NGO to perform the government's functions.

They include court preparation and support for victims of abuse, victim support groups, advice on issues relating to grant applications and maintenance, explaining and clarifying court interdicts and emergency relief services including food parcels, clothing and comfort boxes for rape victims. It also provides a secure place for vulnerable children to play between finishing school and their parents arriving home from work. The food budget is stretched to ensure that the children are provided with some nutrition.

Since Mankayi relocated the centre from rented rooms to its current standalone facility in 2008, thousands of children have been taken care of. Many of the victims have been referred to the centre by the Department of Social Development. The implicit acknowledgment that it is providing a service that, in terms of the constitution, should be the responsibility of the government partly explains why Nonceba receives a monthly grant of R58 000 from that department. Or at least it is supposed to. For reasons unknown, the grant has not been paid for two months.

"We've filled out all the necessary documents, we've written letters… but we get no response… and no grant," says Moyo. Nonceba has had to liquidate some investments to meet its payment obligations. Moyo explains that it is difficult to make up the grant shortfall from ad hoc donors, who already provide R400 000 a year.

These investments, such as its Ditikeni shares, are vital for sustainability. The Ditikeni dividends make a useful and reliable contribution to its budget. As Ditikeni gets access to a greater deal flow, this contribution will increase. The proposed amendment will curtail Ditikeni's ability to participate in BEE deals as it will remove the tax advantage enjoyed by preference shares and thereby make it virtually impossible for an entity without access to sufficient funds to take up BEE shares.

The bitter irony in all of this is that the Department of Social Development and the Treasury are independently attacking the ability of an NGO to perform functions that the government should be performing, but it isn't because of a lack of capacity.

Remarkably, Mankayi and her colleagues are not overwhelmed by the challenges. As Ditikeni chairwoman Sahra Ryklief remarks, for NPOs "crisis is part of organisational life".

Ryklief says after nearly 20 years of outcome-orientated project funding, most NPOs have no reserves. "We (the shareholders) have designed a uniquely South African social innovation.

Ditikeni provides its NPO shareholders with 'something to lean on', and gives the promise of sustainable services to their beneficiaries."

The proposed amendment will significantly damage Ditikeni's ability to create value. This may be acceptable to those who believe there is no role for NPOs in a democracy, but the grim reality is that for millions of our citizens the government is far from having the capacity to deliver on even the very basic constitutional rights.

Until they develop that capacity, it falls to the sort of heroines and heroes who make up Ditikeni's shareholder base to fill the chasm.

The least the government could do, for now, is ditch the proposed tax change.

Non-profits threatened by loss of tax advantage

INSIDE BUSINESS

Ann Crotty

THE OFFICE of the Overberg Development & Empowerment Centre (Odec) is in a neat unassuming house in Theewaterskloof Municipality on the outskirts of Caledon, some 150km from Cape Town.

The modesty of the premises belies its ambitious vision: "To develop and empower the people living in the Overberg region so that they can become socially and economically sustainable."

From August to January, more than 50 percent of the working population of Caledon are forced to survive on government grants as the surrounding farms offer limited work opportunities in this time.

This is why Odec director Dawid Kroukamp is keen to develop the "income-generating" arms of Odec's activities. Although there seems to be an infinite supply of land, there is none available on the heavily subsidised terms that his plans require. This means that his farming projects are restricted to micro-enterprises such as piggeries and poultry farms.

Kroukamp has a proposal to acquire a farm with 125ha of land at nearby Riviersonderend. He has drawn up a feasibility document, approached the National Lottery Board for funding and is in the process of identifying a board of directors.

Odec provides access to training for the pig and poultry farmers as well as access to the tiny pieces of land and the market.

The farming project is just one of Odec's seven sectors of activity. The "income-generating sector" has a catering project, a leather-making project and a pottery-making project. The other five sectors are: human rights, HIV/Aids programme and home-based care, youth development, women empowerment, and arts, culture and sport. During 2010 alone, 1 960 people received advice on human rights issues and 90 percent of the cases that came to Odec were successfully resolved.

Odec is one of the organisations supported by the Social Change Assistance Trust (Scat), which is one of Ditikeni's 19 shareholders. Ditikeni is an ingenious attempt to link the imperative to promote broad-based black economic empowerment (BEE) with the critical funding needs of non-profit organisations (NPOs). A crucial aspect of this link is the availability of tax advantages on the preference shares used to fund BEE transactions undertaken by Ditikeni. These tax advantages are under threat from proposed amendments.

As with all of Ditikeni's shareholders Scat is almost obsessive about accountability as well as the active involvement of members of the local community in its projects. This is why Kroukamp spends much of his time keeping records and preparing detailed proposals for his programmes. Every cent received by his office, which has four full-time staff and a monthly budget of R30 000, has to be accounted for. As I am leaving he hands me a 50-page document entitled "Funding proposal for 2010/2011". After studying it, I think that I might not have seen the like of it since I used to peruse Bidvest's early work.

Kroukamp understands that it is not just about being able to account to the providers of the funds; the very act of keeping detailed accounts creates the sort of skills that not only empowers individuals but also contributes to Odec's vision.

The few days that I spent visiting some of Ditikeni's NPO shareholders remind me of the wonderful energy and commitment that pervades outside the well-resourced formal structures of this country. Given this energy and commitment as well as the remarkable efficiency and effectiveness of structures such as Odec, their survival should surely be encouraged by the tax authorities rather than threatened.