

| BLUE FINANCIAL SERVICES |

# A taxing affair

*Results delayed by complex capital gains question*

**THE COMPLEXITIES OF OPERATING** in 14 different tax jurisdictions were at play as micro-lender Blue Financial Services' annual results for the year ended February 2009 were delayed for more than a week by a technical tax question.

The issue delaying the results last week was different interpretations of the tax laws between Blue and its auditors, KPMG, arising from a capital gain on a sale of shares in Blue's Nigerian subsidiary. After the formation of Blue Intercontinental Micro Finance Bank (BIMFB) in 2008, the SA holding company decided to introduce local shareholders and the American Insurance Group as a strategic shareholder in that business.

The combined 45% stake netted Blue a R93m profit, on which a capital gains tax (CGT) of R14m is due, according to SA law. However, Blue spent the entire profit on the recapitalisation of BIMFB and therefore believed it didn't attract any tax. Shortly before the scheduled release of results in the second week of May, KPMG's technical tax committee advised the profit was taxable and would therefore reduce Blue's net profit by R14m.

"We took the prudent approach in this matter and currently we've provided for CGT

— although we have reason to believe the transaction may be tax exempt," says Blue legal director Wessel Smit. He says Blue is seeking independent tax advice to claim the tax exemption on the grounds that all the money was ploughed back into the business and never left Nigeria.

Like all its other non-SA businesses, the Nigerian company is wholly owned by Blue's Mauritian subsidiary. But that seems to be one of the main complicating factors.

Betsie Strydom of Bowman Gilfillan attorneys says paragraph 64B of the Eighth Schedule (containing the capital gains tax provisions) to the Income Tax Act applies to the disposal of equity in a foreign company. "This provision states that any capital gain from the disposal of an interest in the equity share capital of a foreign company can be disregarded if certain conditions are met," says Strydom. "One of the conditions is that the seller had to hold more than 20% of the shares in the foreign company. However, all the provisions of paragraph 64B have to be met before one can conclude that the capital gain can be disregarded."

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Blue Intercontinental Micro Finance Bank in Nigeria.

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