



Banking update:

The draft Taxation Laws Amendment Bill issued in July 2017, proposes the following amendment

1. Exclusion of impairment adjustments from the determination of taxable income

In February 2012 SARS issued a Directive for the tax treatment of doubtful debts and this was based on the application of IAS 39 by the Banks. With the introduction of IFRS 9, it is proposed that the following allowance (applicable to covered persons as defined in section 24JB of the Income Tax Act) may be claimed as a deduction against taxable income:

- (a) 25% of the IFRS 9 loss allowance relating to impairment based on annual financial statements
- (b) 85% of the amount that is in default as determined by applying the criteria in paragraphs (a)(iii) to (iv) and (b) of the definition of default as defined in Regulation 67 of SARB contained in Government Gazette No. 35950 of 12 December 2012.

Effective date: 1 January 2018 and applies in respect of years of assessment commencing on or after that date.

2. Application of hybrid debt instruments rules in respect of covered persons defined in section 24JB

In order to address the interaction between the anti-avoidance rules in sections 8F and 8FA of the Income Tax Act and the provisions relating to the taxation of covered persons in section 24JB of the Act, it is proposed that the Act be amended to clarify the policy intent that the anti-avoidance rules in sections 8F and 8FA of the Act override the provisions of section 24JB of the Act. As a result, it will be confirmed that a covered person in terms of section 24JB of the Act is not eligible for an interest deduction. The amount received by a counter party of a covered person in this instance is in terms of the application of the anti-avoidance rules in sections 8F and 8FA of the Act deemed to have received a dividend in specie.

Effective date: 1 January 2018 and applies in respect of years of assessment commencing on or after that date.

3. Refinement of the taxation of financial assets and liabilities due to changes in the accounting standard

Given that from 1 January 2018 banks must adopt IFRS 9 the following changes have been proposed to section 24JB:

- (a) All references to IAS 39 be changed to IFRS 9;
- (b) Given that IFRS 9 does not allow for the designation at fair value through profit and loss for a financial asset that is managed and its performance is evaluated on a fair value basis, it is proposed that the exclusions be afforded to a covered person if the relevant financial asset is not classified as trading stock as defined in section 1 of the Income Tax Act;
- (c) credit risk changes in the value of a financial liability reflected in other comprehensive income be subject to section 24JB of the Income Tax Act;
- (d) a financial asset/liability held by/owed by a covered person at the end of the year of assessment preceding 1 January 2018 would have ceased to be or would have become subject to tax in terms of subsection (2) if IFRS 9 had applied on the last day of that immediately preceding year of assessment, that person is deemed to have disposed of that financial asset or redeemed that financial liability and immediately reacquired that financial asset or incurred that financial liability for an amount equal to the market value of that financial asset or financial liability on that day.

Effective date: 1 January 2018 and applies in respect of years of assessment commencing on or after that date.

SARS Rulings

SARS have issued a ruling clarifying the treatment of profit share deals – Applicable sections of the Income Tax Act: section 24JB and section 8F

Essentially the ruling clarifies that profit share elements included in borrowing arrangements has the following implications:

- The profit share is deemed to be a dividend in specie declared and paid by the borrower and thus not deductible in the hands of the borrower;
- The profit share will constitute a dividend for the purposes of section 24JB and thus will be excluded from the ambit of this section;
- The profit share is a deemed dividend in specie in the hands of the lender and exempt from tax in terms of section 10(1)(k)(i) of the Act.

Contacts:

Amith Maharaj

Associate Director

Africa Tax & Legal

+2711 209 6626

amimaharaj@deloitte.co.za

Kerusha Pillay

Manager

Tax

+2711 304 5231

kepillay@deloitte.co.za

Deloitte.

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see www.deloitte.com/about to learn more about our global network of member firms.

Deloitte provides audit, consulting, financial advisory, risk advisory, tax and related services to public and private clients spanning multiple industries. Deloitte serves four out of five Fortune Global 500® companies through a globally connected network of member firms in more than 150 countries and territories bringing world-class capabilities, insights, and high-quality service to address clients' most complex business challenges. To learn more about how Deloitte's approximately 245 000 professionals make an impact that matters, please connect with us on [Facebook](#), [LinkedIn](#), or [Twitter](#).

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the "Deloitte network") is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. No entity in the Deloitte network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.