

## Tax Alert

### To the point ...

#### Latest tax developments in South Africa and beyond

Issue 4/2014  
11 April 2014



Welcome to our Tax Alert newsletter which highlights some of the latest tax developments in Africa.

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## Recent tax developments in South Africa

### South Africa

#### Minister of Finance officially launches Tax Ombud's office

The Minister of Finance officially launched the South African Tax Ombud on 7 April 2014. The Ombud is intended to be a simple and affordable remedy to taxpayers who have legitimate complaints that relate to administrative matters, poor service or the failure by SARS to observe taxpayer rights. The Ombud may not review legislation or tax policy, SARS policy or practice generally prevailing (other than to the extent that it relates to a service matter or a procedural or administrative matter arising from the application of the provisions of a tax Act by SARS), a matter subject to objection and appeal under a Tax Act (except for an administrative matter relating to such objection and appeal) or a decision of, proceeding in or matter before the Tax Court.

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### **FATCA agreement between South Africa and United States initialed**

South Africa and the United States recently initialed an intergovernmental agreement (IGA) to improve international tax compliance with respect to the US Foreign Account Tax Compliance Act (FATCA). The wording of the IGA has now been agreed upon and will be signed at the governmental level as soon as possible. When signed, the US Treasury will view South African financial institutions as being generally compliant with FATCA. Once the IGA has taken effect, the relevant financial institutions in South Africa will report the required information under the legal framework provided by the double tax agreement between South African and United States. Financial institutions in South Africa will, in addition, be required to obtain information on US citizens in accordance with the IGA, from July 1 and report the information to SARS. The first reporting period is 1 July 2014 to 28 February 2015, and the required information will have to be submitted to SARS by June 2015. Information will thereafter be submitted annually for every tax year ending February.

### **Draft Public Notice on list of Reportable Arrangements in terms of section 35(2) of the Tax Administration Act**

This Draft Notice proposes a list of additional reportable arrangements that have certain characteristics that may lead to an undue tax benefit. Comments are invited to be submitted to SARS by no later than 10 April 2014.

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### **Final electronic services regulations**

On 28 March 2014, final regulations that give effect to VAT amendments on the taxation of certain imported electronic services were published. The regulations prescribe those services that are electronic services for the purpose of the definition of electronic services in the VAT Act. The implementation of an e-transactions tax is 1 June 2014.

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### **Draft Interpretation Note (VAT) - VAT treatment of bets**

This Draft Interpretation Note provides clarity on what constitutes a bet and the concomitant VAT treatment of bets.

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### **Draft Interpretation Note (VAT) – rules with respect to a “body of persons”**

This Draft Interpretation Note explains the “body of persons” that fall within the ambit of section 51(1) of the VAT Act for separate registration.

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### **Draft Interpretation Note No. 1 (Issue 2) – provisional tax estimates**

This Draft Interpretation Note provides guidance on provisional tax and considers who is a provisional taxpayer, the calculation of provisional tax (including how estimates of taxable income must be made), the consequences of an incorrect or late submission of estimates, and the consequences of a late payment of provisional tax.

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### **Binding General Ruling (BGR) 22 - subsistence allowance - amounts deemed to be expended for business purposes**

The purpose of this ruling is to formalise through a BGR an established practice contained in paragraph 5.3.3 of Interpretation Note No. 14 (Issue 3) dated 20 March 2013 “Allowances, Advances and Reimbursements”, under the heading “Deemed method”. In terms of the ruling, the cost of breakfast may be regarded as part of the cost of accommodation if an accommodation service provider charges a single rate for “bed and breakfast”. The gazetted amount determined by the Commissioner for the relevant year of assessment does not need to be reduced to make provision for the cost of breakfast.

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### **Binding General Ruling (BGR) 23 - travel allowance - fuel cost to an employee who receives a petrol or garage card**

The purpose of this ruling is to formalise through a BGR an established practice contained in the second bullet of paragraph 5.4.4 of Interpretation Note 14 (Issue 3) dated 20 March 2013 “Allowances, Advances and Reimbursements”, under the heading “Expenditure per kilometer – deemed rate per kilometer”. In terms of the ruling, recipients who are provided with principal-owned petrol or garage cards are regarded as having “borne the full cost of

the fuel” if the full amount expended on that card during the year of assessment is included in the recipient’s travel allowance and is taxed as remuneration. In these circumstances, a recipient will be entitled to claim the “fuel cost” element as a deduction against the travel allowance.

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#### **Binding Private Ruling (BPR) 165 - letting of accommodation where the provision of meals is outsourced**

This ruling deals with the letting of accommodation to students on the basis that the owner of the building outsources the provision of meals in a on-site cafeteria to a third party caterer and whether this trade falls within the definition of “hotel keeper” as defined in section 1(1) of the Act.

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#### **Binding General Ruling (BPR) 166 - change of place of incorporation of a Controlled Foreign Company**

This ruling deals with a change of domicile of a controlled foreign company (CFC) and whether this change will be regarded as a “disposal” as defined in paragraph 1 and envisaged in paragraph 11 of the Eighth Schedule to the Income Tax Act.

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#### **Binding Private Ruling (BPR) 167 - debentures tracking the value of a reference asset**

This ruling deals with the income tax consequences for a company that issues debentures to investors, the value of which tracks the price of specified quantities of a precious metal as reference assets.

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#### **Supreme Court of Appeal (SCA) judgment - Roshcon (Pty) Ltd v Anchor Auto Body Builders CC**

The judgment concerns the ‘substance over form’ doctrine in our law. The judgment of Wallis JA contains an interesting discussion of this doctrine in the light of the 2011 SCA decision in SARS v NWK Limited. It has been a matter of considerable debate whether the NWK Limited-case has broadened the application of the ‘substance over form doctrine’ such to strike down any transaction or scheme which has a tax avoidance purpose. Wallace JA held that NWK Limited is entirely consistent with the ‘substance over the form’ doctrine as it has developed in our law and essentially involves a test of genuineness when considering whether a particular transaction or scheme is a simulation.

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#### **Tax Court Judgment - IT 12466**

The judgment delivered on 12 March 2014 relates to Capital Gains Tax (CGT), specifically the realisation of capital gain on disposal of shares or capital loss.

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## Recent tax developments in the rest of Africa

### Algeria

#### **Finance Law 2014**

Finance Law 2014 was published in the Official Gazette No. 68 of 31 December 2013. Unless indicated otherwise, the changes with respect to direct taxation, indirect taxation, tax incentives, anti-avoidance and tax management and other taxes apply from 1 January 2014.

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## **Treaty between Algeria and Hungary – authorization for negotiations by Hungary**

On 20 March 2014, the Prime Minister of Hungary issued a Decree authorizing the Ministry of Foreign Affairs and the Ministry for National Economy to start negotiations for a tax treaty between Algeria and Hungary.

## **Angola**

### **Large taxpayers list extended**

On 24 March 2014, Order No. 599/14, issued by the Ministry of Finance, was published in the Official Journal and became effective as from the same date. The Order extends the list of large taxpayers and includes 'by nature' the following institutions: large public companies, financial institutions, oil companies, diamond companies and telecommunication companies. As a consequence, according to the new provisions, these institutions are considered to be large taxpayers even when they are not expressly mentioned in the list. In addition to this extension of large taxpayers 'by nature', the Order increased the number of listed large taxpayers from 352 to 486.

## **Cameroon**

### **Finance Law for 2014**

As part of an initiative to revitalize the economy through the development of rules aimed to eradicate tax fraud, establish tax incentive measures for investments and improve business environment, the legislator in Cameroon has adopted the new financial law for the fiscal year 2014 which addresses the following areas: enlargement of the tax base, securing tax revenue, and the fight against tax erosion, profit shifting and fiscal fraud. [Contact.](#)

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## **Guinea Conakry**

### **Finance Law for 2014**

The Finance Law for 2014 ("LF") was promulgated by the President of the Republic as Law No L/2013/067/CNT of 31 December 2013. Some innovations of the law include a limitation of the deductibility of interest in case of thin capitalization, strengthening of the rules on indirect transfer of profits and new rules in Guinea for documentation in connection with transfer pricing.

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## **Ivory Coast**

### **Treaty between Ivory Coast and Cape Verde**

Following a meeting held in March 2014 in Cape Verde, the Ministers of Foreign Affairs of Cape Verde and the Ivory Coast have agreed to negotiate and sign a tax treaty.

## **Kenya**

### **Treaty between Kenya and Seychelles Signed**

On 17 March 2014, Kenya and the Seychelles signed a tax treaty, in Nairobi.

### **Treaty between Kenya and Ethiopia**

Following a meeting held in Ethiopia in March 2014, Kenya and Ethiopia have expressed their intentions to speed up the negotiations for signing a tax treaty.

## **Mozambique**

### **Budget Law 2014 enacted**

The official text of Law No.1/2014 (Budget Law 2014), which was enacted on 24 January 2014, has been distributed. The Law applies as from 1 January 2014 but does not provide any tax changes.

## **Nigeria**

### **Pioneer Status Incentive Regulations**

The Pioneer Status Incentive Regulations 2014 were passed into law on 31 January 2014. In terms of the regulations,

companies applying for 'pioneer status' must have incurred capital expenditure of at least NGN10 million. In addition, companies applying for pioneer status are now required to pay a service charge of 2% of the estimated tax savings. Where the company records losses, the service charge is the higher of: 0.5% of the net assets or 0.25% of its turnover. The pioneer status may be revoked under the following conditions: where the pioneer company fails to meet one of the requirements set out in the pioneer status certificate, the information provided by the company in the application is misleading or false, the company is engaged in tax evasion under the guise of pioneer status incentive, the company reneges on its commitment on the utilisation of the tax savings accruing from the incentive without justifiable cause, the financial records of the company are compromised with a view of short-changing the 2% service charge on tax savings, and there is established abuse of the incentive.

## Seychelles

### Exchange of Information Agreement between Seychelles and Sweden enters into force

On 1 November 2013, the Seychelles - Sweden Exchange of Information Agreement (2011) entered into force.

### Exchange of Information Agreement between Cayman Islands and Seychelles initialed

It has been reported that the Cayman Islands and Seychelles have initialed an Exchange of Information Agreement relating to tax matters.

## Tanzania

### Excise Tariff Amendments

The Excise (Management and Tariff) (Amendment) Act 2013, was signed into law on 30 December 2013. Changes under the Act include an increase in the excise duty on electronic communication from 14.5% to 17% and the excise duty on telecommunication SIM cards has been repealed.

## Tunisia

### IMF recommends to implement tax reform

On 24 March 2014, the IMF published a press release after the conclusion of a review mission of Tunisia's economic and reform programme. Amongst other recommendations, the press release calls on the Tunisian government to realise tax reform in order to foster transparency and equity, achieve a better monitoring of the performance of public enterprises and gradually replace energy subsidies by a better-targeted social safety system. According to the IMF, these steps will help create the necessary fiscal context to foster economic growth. It is noted that the Tunisian government is currently working on a major tax reform project covering the direct and indirect tax legislation, tax incentives and the organizational aspects of tax administration.

## Zambia

### Revision to treaty between Zambia and Ireland

Negotiations for a revision to update the Ireland - Zambia Income Tax Treaty (1971) took place in Zambia in March 2014.

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## Resources

### Tax Guide for Small Businesses \*\* [South Africa](#)

This document is a general guide dealing with the taxation of small businesses.

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### Transfer Pricing documentation and country-by-country reporting \*\* [Global](#)

On 2 April 2014, the OECD announced via a BEPS update webcast that tentative decisions have been taken to streamline the initial proposals for country-by-country information and transfer pricing master file documentation. This

follows responses received to the Discussion Draft issued on 30 January. The OECD cautioned that the Committee on Fiscal Affairs has yet to review the template, which may still be subject to change, and that further work is needed, in particular on the important issue of the mechanism for filing and sharing information.

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## Events

### **Audit of Tax Balances \*\* South Africa**

Deloitte School of Tax is hosting “Audit of Tax Balances” workshops in the following venues:

- Cape Town – 20 & 21 May 2014
- Johannesburg – 14 & 15 May 2014
- Port Elizabeth – 26 & 27 May 2014
- Durban – 12 & 13 May 2014

### **Dividends Tax \*\* South Africa**

Deloitte School of Tax is hosting “Dividends Tax” workshops in the following venues:

- Johannesburg – 20 May 2014
- Cape Town – 23 May 2014
- Port Elizabeth – 21 May 2014
- Durban – 22 May 2014

For further details and dates regarding events/training, please refer to the Deloitte School of Tax (DSOT) calendar which can be accessed at: <http://www.deloitte.com/za/schooloftax>.

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[http://www.linkedin.com/groups/Deloitte-South-Africa-Tax-3909634?trk=myg\\_ugrp\\_ovr](http://www.linkedin.com/groups/Deloitte-South-Africa-Tax-3909634?trk=myg_ugrp_ovr)



Should you require further information regarding this newsletter, kindly contact Moray Wilson on +27 (021) 427 5515 or [morwilson@deloitte.co.za](mailto:morwilson@deloitte.co.za). Should you wish to share your stories, please send your submissions to [za tax publications](#).

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