

Tax Alert

To the point ...

Latest tax developments in South Africa and beyond

Issue 3/2014
14 March 2014



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

Content:

- [Recent tax developments in South Africa](#)
- [Recent tax developments in the rest of Africa](#)
- [Update on key resources and events across Africa](#)

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[Archive](#)

Recent tax developments in South Africa

South Africa

Interest Paid on Hybrid Debt Instruments

The Taxation Laws Amendment Act No. 31 of 2013 revised the provisions of section 8F (hybrid debt instrument characterisation rules) and *inter alia* provides that any amount of interest that is incurred/accrued in respect of a “hybrid debt instrument” is deemed to be a dividend in specie declared by the company and not deductible. Hybrid debt instruments essentially involve instruments with the label of debt but with substantive features being more indicative of shares (equity). A loan could *inter alia* be regarded as a hybrid debt instrument where – the loan is not repayable within a period of 30 years (excluding where it is repayable on demand); the loan is convertible to shares; or the obligation to pay an amount in respect of the debt is conditional upon solvency of the company (i.e. conditional upon the market value of the assets not being less than the market value of the liabilities of the company).

The above amendment will come into effect on 1 April 2014. Companies should therefore consider the terms of its current loan agreements before this date to ensure that the provisions of section 8F do not apply.

Introduction of Foreign Member Funds

In addition to the details already reported, the Budget 2014/15 presented in February 2014 proposes to introduce foreign member funds. Unlike all institutional funds, these funds will not be subject to a macro-prudential limit. These funds are collective investment schemes and alternative investments funds (including private equity, venture capital and hedge funds), which may source funding from non-residents; domestic institutional funds (subject to their macro-prudential limit); and individuals (subject to their annual investment limit). (Note: Foreign member funds must be domiciled managed and tax compliant in South Africa and are subject to registration with the South African Financial Services Board and the South African Reserve Bank.)

Gateway to Africa

Similarly, in addition to the details already reported, the 2014/15 Budget proposes to extend the cash management regime dedicated to African and offshore operations to unlisted companies. The regime was introduced in 2013 but was only restricted to Johannesburg Stock Exchange (JSE) listed entities. The regime is aimed at simplifying the rules and reducing the costs of doing business in Africa and offshore. It allows for the establishment of one subsidiary (known as "HoldCo") which will not be subject to exchange control restrictions and can freely use foreign functional currency for tax accounting purposes without attracting tax on foreign currency gains and losses. The unlisted HoldCo may operate under the same restrictions as the listed HoldCo, except that the size of transfers to the HoldCo is limited to ZAR 1 billion per annum and subject to HoldCo having the similar transparent and public reporting and disclosure requirements as the listed HoldCo.

OECD; South Africa; Council Of Europe - Convention And Protocol On Mutual Administrative Assistance In Tax Matters Enters Into Force In Respect Of South Africa

On 1 March 2014, the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended by the 2010 protocol, entered into force in respect of South Africa. The Convention and the amending Protocol generally apply from 1 January 2015 (South Africa deposited its instrument of ratification on 21 November 2013).

Exchange of information agreements with Uruguay, Andorra, Belize, British Virgin Islands, Brunei, Isle of Man, Jamaica, Marshall Islands, St. Kitts and Nevis, St. Maarten, Turks and Caicos Islands and Macau

Negotiations for exchange of information agreements relating to tax matters between South Africa and Uruguay, Andorra, Belize, British Virgin Islands, Brunei, Isle of Man, Jamaica, Marshall Islands, St. Kitts and Nevis, St. Maarten, Turks and Caicos Islands and Macau respectively are currently ongoing.

Interpretation Note 77 - Taxable Benefit: Use Of Employer-Provided Telephone Or Computer Equipment Or Employer-Funded Telecommunication Services

This Note provides clarity regarding the determination of the value of the taxable benefit arising from the private or domestic use by an employee of employer-provided or employer-owned telephone or computer equipment (including cellular telephones, laptops, tablets, modems, removable storage devices, printers and software) or telecommunication services; and the taxability of any allowance or reimbursement granted by the employer to the employee for the employee's privately-owned equipment or service contract which is used by the employee for purposes of the employer's business.

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Interpretation Note 76 - Tax Treatment of Tips for Recipients, Employers and Patrons

This Note discusses and clarifies the potential income tax, SDL and UIF implications for a recipient on the receipt of tips encountered in (but not limited to) the service industry. The Note focusses on a "tripartite" tipping relationship between three parties; namely, the patron, recipient and owner, and considers an employee's potential obligation to include the receipt of tips in gross income and that employee's related provisional tax and UIF responsibilities. It also considers the owner and a patron's possible obligations to withhold employees' tax on such tips and to account for SDL and UIF.

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Interpretation Note 43 (Issue 5) - Circumstances In Which Certain Amounts Received or Accrued From the Disposal of Shares are Deemed To Be of a Capital Nature

This Note provides clarity on the interpretation and application of section 9C, which deems the amount derived from the disposal of certain shares held for a continuous period of at least three years to be of a capital nature.

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Interpretation Note 33 (Issue 3) - Assessed Losses: Companies: The “Trade” And “Income From Trade” Requirements

This Note clarifies when a company may forfeit its right to carry forward its assessed loss from the preceding year of assessment as a result of it not carrying on a trade during the current year of assessment, or having carried on a trade during the current year of assessment, but not deriving any income from trade during that year of assessment.

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Draft Guide to the Employment Tax Incentive (ETI)

The ETI was introduced by the Employment Tax Incentive Act 26 of 2013 which was promulgated on 18 December 2013 and took effect on 1 January 2014. This draft guide provides general guidance on the incentive. Comments on the guide may be sent to policycomments@sars.gov.za by no later than 15 April 2014.

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Draft Interpretation Note on Tax Deduction for Amounts Refunded to Employees

This draft Interpretation Note provides guidance and clarity on the tax implications of amounts that were included in a person's taxable income and subsequently refunded or repaid. Comments are due by no later than 30 April 2014.

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Tax Guide for Share Owners (Issue 4)

This Guide provides general guidance on the taxation of share owners. The Guide examines the tax consequences of holding shares as trading stock compared to holding them as capital assets; how to distinguish between profits of a capital and revenue nature using common law principles and statutory rules; the determination of a taxpayer's liability for capital gains tax; how dividends are taxed; and various corporate actions that can impact on the determination of a person's liability for tax. It is based on legislation as at 16 January 2014 and primarily focuses on the 2014 year of assessment although much of the commentary also applies to earlier years of assessment.

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Binding General Ruling (BGR)19 (Issue 2) - Approval to End a Tax Period on a Day Other Than the End of the Month

This BGR relates to the approval to end tax periods on a day other than the last day of the month.

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Binding Private Ruling (BPR) 162 - Sale of an Oil and Gas Right

This ruling deals with the consequences on the sale of an oil and gas right and the timing of when value-added tax (VAT) will be payable in respect of the consideration accruing on the disposal of the exploration right (ER).

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Van der Merwe, GW and 21 Others – High Court Judgment 13048 WC - Tax Administration Act, 2011

High Court Judgment rules in favour of SARS - Section 163; provisional preservation order confirmed.

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[Back to the top](#)

Recent tax developments in the rest of Africa

Algeria

Treaty between Algeria and United Kingdom

Negotiations for a tax treaty between Algeria and the United Kingdom have recently started, in Algiers.

Angola

Large Taxpayers List

On 28 February 2014, the Ministry of Finance issued Order No. 472/14, which provides the list of "large taxpayers". According to the Order, the following entities may be considered as a large taxpayer: large public companies; financial institutions; oil companies; diamond companies and telecommunication companies.

The Order confirms the large taxpayers' rights and obligations provided by Presidential Decree, including the mandatory delivery of the transfer pricing documentation and the possibility to benefit from group taxation, as well as to simplify the "special" rules applicable to large taxpayers and insure the neutrality of the tax regime for large taxpayers.

Burundi

Budget Law 2014

On 31 December 2013, Law 1/32 (Budget Law for 2014) was enacted by Parliament and published in the Official Journal. The original version of the text of the Law was made available recently. The main provisions apply as from 1 January 2014.

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Lesotho

Budget 2014/15

The Budget for 2014/15 was presented to Parliament by the Minister of Finance on 20 February 2014. The main tax amendments proposed by the Budget include changes to the VAT rates and upper and lower personal income tax rates, as well as a new tax regime for the mining sector.

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Morocco

Treaty Between Guinea and Morocco Signed

On 3 March 2014, the Guinea - Morocco Income Tax Treaty (2014) was signed, in Conakry (Guinea).

Namibia

Budget 2014/15

The Namibian Minister of Finance confirmed the following tax changes during the 2014/2015 Budget speech on 20 February 2014:

- The corporate tax rate for non-mining and non-manufacturing enterprises will be reduced from 33% to 32%. The effective date still needs to be confirmed.
- Export levies will be introduced on the exportation of minerals, fish and the like. The rate for a particular item will depend on the extent of local value-addition for the item and the effective date still needs to be confirmed.
- Environmental levies will be introduced on carbon emissions, incandescent light bulbs and motor vehicle tyres. The Minister did not elaborate on the applicable rates and when these levies will be applicable.
- The VAT registration threshold which is currently N\$200 000 will be increased to N\$500 000. The effective date is not known yet.

Other tax proposals and developments include:

- The Ministry is investigating the introduction of and capital gains tax and a presumptive tax system for small businesses.
- The Namibian Revenue Authority will also change to a semi-autonomous Revenue Agency with a transition that will likely take up to 18 months.

Sin Taxes

The South African Minister of Finance, Mr Pravin Gordhan, announced in the 2014/15 Budget Speech delivered on 26 February 2014 that the specific excise duties known as sin taxes will increase. In line with the SACU Agreement, these increases are also applicable in Namibia.

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Swaziland

Budget 2014/15

The Budget for 2014/15 was presented to the parliament by the Minister of Finance on 21 February 2014. The Budget does not contain changes in tax laws. Concerning revenue performance, it states that in 2013/14 domestic revenues have performed above target. Despite tax cuts, the total domestic revenue is expected to be 12% higher than in the last fiscal year. Higher than expected VAT refunds have been compensated for by increased collections in corporate tax, personal income tax and fuel tax. Regarding revenue measures, the Budget states that for fiscal year 2014/15 much of the growth in revenue will come from improvements in the tax administration at the Swaziland Revenue Authority (SRA). In particular, SRA will commence implementing a direct VAT refund system, which is expected to eliminate the delays traders experience in clearing imported goods. The new arrangement is expected to improve trade records and enhance revenue collections. In addition, the Budget announces that the government intends to undertake a study to review the tax incentives offered to investors in the country aimed at making Swaziland an ideal investment destination. The incentives will target both local and foreign investors.

[Back to the top](#)

Update on key resources and events across Africa

Resources

Budget 2014/15 ** South Africa

The Budget for 2014/15 was presented to Parliament by the Minister of Finance on 26 February 2014. Generally, the Budget seeks to: provide personal income tax relief, which is expected to cost the SARS tax revenues of R9.3 billion; to encourage small enterprise development; design and adjust the proposed carbon tax, and align it with desired emission-reduced outcomes to be identified; to reform the tax treatment of the risk business of long-term insurers; and to amend the rules for VAT input tax to combat gold smuggling. Unless otherwise indicated the proposed changes to direct and indirect taxes announced in this year's Budget apply from 1 March 2014.

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External Guide to SARS Payment Rules ** South Africa

This document details the payment rules that must be adhered to when paying the South African Revenue Service (SARS), to ensure accurate payment allocation.

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Tables 1, 2 and 3 of the Tables of Interest Rates ** South Africa

Tables 1, 2 and 3 of the Tables of Interest Rates have been updated Table 1 provides the interest rates on outstanding taxes and interest rates payable on certain refunds of tax. Table 2 provides the interest rates payable on credit amounts and Table 3, the rates at which interest-free or low interest loans are subject to income tax.

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Other International Agreements/Instruments ** South Africa

The agreements on SARS site include other tax cooperation agreements between tax and customs administrations, as well as other international instruments, such as the Generalized Systems of Preferences (GSPs), not fitting into the categories Double Taxation Agreements & Protocols, MAAs on VAT and Customs, Air & Sea Agreements and Exchange of Information Agreements etc. The agreements, as well as a summary/overview document of all these agreements, whether in the process of negotiation or finalised, signed but not ratified, ratified in South Africa only or those in force, can be accessed on the site.

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Events

PAYE Update ** South Africa

Deloitte School of Tax is hosting "PAYE Update" workshops in the following venues:

- Cape Town – 11 April 2014
- Johannesburg – 17 April 2014
- Port Elizabeth – 14 April 2014
- Durban – 13 March 2014

VAT at Universities Workshops ** South Africa

Deloitte School of Tax is hosting "VAT at Universities" workshops in the following venues:

- Johannesburg – 2014
- Cape Town – 2014
- Port Elizabeth – 2014
- Durban – 2014

The Rights and Obligations of the Public Officer Workshops ** South Africa

Deloitte School of Tax is hosting "The Rights and Obligations of the Public Officer" workshops in the following venues:

- Johannesburg – 9 April 2014
- Cape Town – 8 April 2014
- Port Elizabeth – 15 April 2014
- Durban – 10 April 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>.

[Back to the top](#)

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http://www.linkedin.com/groups/Deloitte-South-Africa-Tax-3909634?trk=myg_ugrp_ovr



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