

Tax Alert To the point...



Latest tax developments in South Africa and beyond

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

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Issue 8/2014
13 August 2014

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Recent tax developments in South Africa

South Africa

Interpretation Note No. 78 – section 24C allowance for future expenditure on contracts

This Interpretation Note, now issued by SARS in final form, provides guidance on the interpretation and application of section 24C of the Income Tax Act when income is received in advance while expenditure under the contract will only be incurred in a subsequent year of assessment.

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Customs Control Act 2014 and Customs & Excise Amendment Act 2014

The Acts were published in the Government Gazette (GG) on 23 July 2014 as follows:

- Customs Control Act, 2014 (Act No. 31 of 2014) published in GG 37862
- Customs & Excise Amendment Act, 2014 (Act No. 32 of 2014) published in GG 37863

These Acts will come into operation on a date(s) to be proclaimed.

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Second batch of draft customs control rules under Customs Control Act 2014

The second batch of draft customs control rules has been published, comprising the draft rules proposed under Chapters 11 to 20 and Chapter 24 of the Customs Control Act, 2014 (Act No. 31 of 2014). Comments on the draft rules are to be submitted by no later than 26 September 2014.

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Draft Taxation Laws Amendment Bill 2014 – proposed transfer pricing and interest deduction rules

In our previous edition of Tax Alert (see Issue 7/2014), we indicated that the draft Taxation Laws Amendment Bill 2014 (TLAB) and draft Tax Administration Laws Amendment Bill 2014 (TALAB) had been released for public comment. A number of important changes are proposed in these two Bills. Two important proposed changes comprise the following:

- **Transfer pricing secondary adjustments**

It is proposed that the present transfer pricing secondary adjustment rule will be changed. The secondary adjustment is currently deemed to be a loan. This constitutes an "affected transaction" on which taxpayers have to calculate and account for interest at an arm's length rate. In a proposal contained in the draft TLAB, it is proposed that the secondary adjustment will be deemed to be a dividend in specie paid. The proposed change will enter into force on 1 January 2015.

- **Limitation of interest tax deductions for debts owed to non-residents**

In 2013, rules were introduced to curb excessive interest tax deductions. As part of the TLAB, changes to these rules have been proposed. The proposed changes include the amendment of adjusted taxable income to exclude the previous years' assessed losses from the current year's adjusted taxable income. The changes also include aligning the interest deduction limitation closely to the cost of debt financing in the market. The limitation (expressed as EBITDA) will adjust upwards and downwards based on the repo rate. The formula will be amended to link deductible interest expenditure to the average repo rate for the year instead of the current adjustment, if the repo rate exceeds 10%. However, a cap on the interest deduction limitation of 60% is proposed. The proposed change will come into operation on 1 January 2015 and will apply in respect of interest incurred on or after that date.

Binding Private Ruling (BPR) 174 - receipts of an incentive trust and vesting of shares in qualifying employees

The ruling deals with the income tax and capital gains tax consequences arising from cash contributions received by a share incentive trust and the vesting of shares, acquired by it, for the benefit of qualifying employees.

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Binding Private Ruling (BPR) 175 - debt purchase transactions

This ruling deals with the purchase by the Applicant of debtors' books from businesses across various industry sectors.

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Binding Private Ruling (BPR) 176 - financial instruments held by foreign investment entity

This ruling deals with financial instruments not issued by a "listed company" as defined and the application of the words "for investment purposes" in the definition of "foreign investment entity" in section 1(1) of the Income Tax Act.

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Binding Private Ruling (BPR) 177 - improvements on land by sub-lessee under a sub-lease

This ruling deals with the income tax consequences for the lessor, lessee and sub-lessee of land, arising from an obligation on the sub-lessee to effect improvements on the land under a sub-lease while no such express obligation for improvements to be effected is placed on the lessee by the main lease.

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Interpretation Note No. 33 (Issue 4) – company assessed loss (trade and income from trade requirements)

This Interpretation 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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Interpretation Note No. 51 (Issue 3) - pre-trade expenditure and losses

This Interpretation Note provides guidance on the deduction of pre-trade expenses (start-up costs) under section 11A of the Income Tax Act.

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Recent tax developments in the rest of Africa

Angola

Collective investment scheme – special tax regime to be introduced

On 30 July 2014, Law No. 11/14, which allows the government to adopt legislative acts creating a special and simplified tax regime for collective investment schemes, was enacted and published in the Official Journal. The special tax regime is to be introduced in light of Presidential Decree No. 7/13 of 11 October 2013, which first regulated the collective investment scheme in Angola.

"Pacote Tributário" Law – entry into force

On 6 August 2014, the Angolan Tax Authority confirmed that the "Pacote Tributário" Law will enter into force on 1 January 2015. The Law was approved by the National Assembly but the publication is still pending.

Investment Income Tax Code – forthcoming changes

On 30 July 2014, Law No.14/14, which allows the government to adopt legislative acts on additional review and republication of the Investment Income Tax Code (*Código do Imposto sobre a Aplicação de Capitais*), was enacted and published in the Official Journal. The government is required by the Law to do the following: respect the constitutional principles of taxation; rephrase entirely the regime of the tax on investment income; streamline and stimulate the functioning of the capital market in Angola; and clarify the taxation of profits repatriated by permanent establishments of non-resident entities. This legislative authorization is granted to the government for a period of 90 days as from the entry into force of the Law on 30 July 2014. Any new provision will amend the Presidential Decree No. 5/11 of 30 December 2011, which contains the Investment Income Tax Code currently in force.

Ethiopia

Treaty between Ethiopia and Portugal approved by Portuguese Council of Ministers

On 31 July 2014, the Portuguese Council of Ministers approved the tax treaty between Ethiopia and Portugal, signed on 25 May 2013.

Ivory Coast

Protocol to IPA between Ivory Coast and Morocco signed

On 25 February 2014, the Ivory Coast and Morocco signed an amending protocol in Abidjan to the investment protection agreement (IPA), signed on 19 March 2013.

Kenya

Value Added Tax Regulations 2014

Value Added Tax Regulations 2014 were recently gazetted by the Cabinet Secretary for the National Treasury. Details of the regulations are provided below.

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Nigeria

Pension Reform Act 2014

President Goodluck Jonathan signed the new Pension Reform Act 2014 into law on 1 July 2014. The new Act repealed the Pension Reform Act of 2004, and makes provisions for the continued administration of a uniform Contributory Pension Scheme for both public and private sectors in Nigeria. The objectives of the new Act include the establishment of a uniform set of rules, regulations and standards for the administration and payments of retirement benefits in public and private sectors. The new Act also seeks to ensure that every employee receives his or her retirement benefits and that savings are made for improvident individuals for life at old age.

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Reunion

Tax credits for investment in French DOMs postponed

On 30 July 2014, the French tax administration announced that the entry into force of new tax credits for investment in France's Overseas Departments (DOMs - French Guiana, Guadeloupe, Martinique and Réunion) is postponed. The European Commission continues to review the compatibility of the credits with EU law. The Finance Bill for 2014 introduced the following two tax credits to encourage investment in France's DOMs, with effect from 1 July 2014: a tax credit on productive investments (*investissement productifs*); and a tax credit for investment in social housing (*logement social*).

Senegal

Treaty between Portugal and Senegal approved by Portuguese Council of Ministers

On 31 July 2014, the Portuguese Council of Ministers approved the tax treaty between Portugal and Senegal, signed on 13 June 2014.

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Update on key resources and events across Africa

Resources

SARS manual on the Promotion of Access to Information Act, 2000 (Issue 4) ** [South Africa](#)

This manual describes the procedures for making a request for any of SARS's records of information and the procedures for lodging an internal appeal in terms of the Act.

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SARS summary of all interpretation notes ** [South Africa](#)

The document provides a summary of all interpretation notes issued by SARS, updated with the latest changes.

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SARS guidelines on what to do if you have made an application for VDP ** [South Africa](#)

The guidelines on what to do if you have made an application under the Voluntary Disclosure Programme (VDP) have been updated.

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VAT Interpretation Note 30 (Issue 3) replaced ** [South Africa](#)

SARS Interpretation Note 30 (Issue 3) of 5 May 2014 has been replaced. The replacement is only for purposes of correcting paragraph numbering and to add a reference for clarity purposes. IN 30 deals with the supply of movable goods as contemplated in section 11(1)(a)(i) read with paragraph (a) of the definition of "exported" in section 1 of the VAT Act and the corresponding documentary proof.

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Events

Transfer Pricing ** [South Africa](#)

Deloitte is hosting a Transfer Pricing event in Stellenbosch on 21 August 2014. In this interactive session, Deloitte transfer pricing expert, Karen Miller, will share insight into developments and thoughts around mitigating transfer pricing risks for your organisation. For further details contact [Dawn Manuel](#).

Capital Gains Tax ** [South Africa](#)

Deloitte School of Tax is hosting "Capital Gains Tax" workshops in the following venues:

- Cape Town – 2 September 2014
- Johannesburg – 8 September 2014
- Port Elizabeth – 9 September 2014

Tax Accounting for Complex Transactions ** [South Africa](#)

Deloitte School of Tax is hosting "Tax Accounting for Complex Transactions" workshops in the following venues:

- Johannesburg – 16 September 2014
- Cape Town – 17 September 2014
- Durban – 18 September 2014
- Port Elizabeth – 19 September 2014

VAT Back to Basics ** South Africa

Deloitte School of Tax is hosting "VAT Back to Basics" workshops in the following venues:

- Johannesburg – 30 September 2014
- Cape Town – 29 September 2014
- Durban – 16 September 2014
- Port Elizabeth – 17 September 2014

Certificate in VAT ** South Africa

The University of the Western Cape, in collaboration with Deloitte, is introducing a specialised interactive course in VAT commencing in July 2014.

- Where – University of Western Cape
- When – Fortnightly at 16h00
- Admission requirements – Any staff with practical experience in tax or related areas, or with an undergraduate degree
- Course fee – R22 000 with corporate discounts offered to groups of two or more students from the same company
- For further details or to enroll, contact Ms Candice Jacobs – Williams at: accountancy@uwc.ac.za

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.schooloftax.co.za/>

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To engage in conversation around any of the topics, click on the following:

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. Should you wish to share your stories, please send your submissions to [za tax publications](#).

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