

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 12/2014

11 December 2014

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Recent tax developments in South Africa

South Africa

Taxation Laws Amendment Bill 2014 – Minor amendments proposed

Minor amendments have been proposed to the Taxation Laws Amendment Bill, 2014 by the Standing Committee on Finance (SCoF) in the National Assembly:

- Amendments as proposed by the SCoF
- Amended Taxation Laws Amendment Bill, 2014.

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Update to income tax return for companies (ITR14)

Minor changes have been introduced to the ITR14 for the 2014 year of assessment due to legislative changes. Provision has been made on the return for the following:

- Identification of Real Estate Investment Trust (REIT) Companies and disclosure of dividends received by a REIT in the Income Statement section.
- Disclosure of foreign tax credits that have been refunded / discharged by a foreign country in terms of the provisions of s6quin of the Income Tax Act (the section of the return disclosing foreign tax credits has also been updated for verification that the company has adhered to the requirements of s6quin).
- Disclosure of energy efficiency savings deduction in terms of section 12L of the Income Tax Act.
- Disclosure of clogged losses (capital losses in respect of connected persons) as defined in paragraph 39 of the Eighth Schedule to the Income Tax Act.
- Disclosure in relation to the limitation of interest deduction in terms of section 23N of the Income Tax Act.

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Draft Notice and Regulations on tax-free savings

On 14 November 2014, National Treasury published a draft Notice and Regulations required to allow the introduction of tax-free savings accounts from 1 March 2015. The draft Notice and Regulations are as contemplated by the Taxation Laws Amendment Bill, 2014 (the Bill). Section 28 of the Bill proposes an amendment to the Income Tax Act, 1962 by introducing a new section (12T – exemption of amounts received or accrued in respect of tax-free investments), under which the draft regulations are made. The draft regulations list the service providers that may offer tax-free savings and investments to the public and administer those accounts on their behalf. These include licensed banks, long-term insurance companies, managers of registered collective investment schemes, authorized users, linked investment service providers and the government.

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Outcome of the 2014 Tax Season

SARS has released filing statistics with regard to tax returns filed in the 2014 filing season ending 21 November 2014.

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Customs & Excise Act – draft rules proposed under section 21A in relation to Special Economic Zones (SEZs)

The draft rules include substitution in the rules of SEZs in place of Industrial Development Zones (IDZ).

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Draft guide to tax exemption for income from films

This Guide provides general guidance on the exemption from normal tax for the receipts and accruals of income derived from the exploitation rights of a film. Comments are due by no later than 27 February 2015.

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Guide on the determination of medical tax credits and allowances (Issue 5)

This Guide (an updated edition) provides guidelines on the medical scheme fees tax credit system, and the deductibility of medical and physical impairment or disability expenses for income tax purposes.

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SARS Guide to building allowances

This guide provides general guidance on building allowances available to owners and lessees of buildings.

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Latest version of E@syFile

The latest version of the “E@syFile Employer” filing system is now available via SARS’ website.

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Interpretation Note No.45 (Issue 2) - Deduction of security expenditure

This Interpretation Note (an updated edition) provides guidance on whether security expenditure incurred by a taxpayer is deductible for income tax purposes.

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Interpretation Note No.15 (Issue 4) - Exercise of discretion in case of late objection or appeal

This Interpretation Note (an updated edition) provides guidance on the factors that a senior SARS official will take into account when deciding whether to extend the period for lodging an objection under section 104(4) or an appeal under section 107(2) of the Income Tax Act.

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Draft Binding General Ruling (BGR) - Unbundling transactions - meaning of “as at the end of the day after that distribution”

Section 46 of the Income Tax Act provides parties to an unbundling transaction with relief from various taxes that would otherwise become payable. This draft BGR addresses the interpretation of the words “at the end of the day after that distribution”, as used in section 46(3)(a)(v) of the Income Tax Act, for purposes of the allocation that needs to be made by a shareholder who acquires unbundled shares.

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Binding General Ruling (BGR) No. 25 – Foreign pension exemption

This important BGR provides clarity on the interpretation and application of the words “from a source outside the Republic” in section 10(1)(gC)(ii) of the Income Tax Act in relation to pension payments that are received by or accrue to a resident.

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Binding Private Ruling (BPR) 185 - Corporate rules - Disposal of assets and liabilities as part of a restructure

This BPR deals with the disposal of assets (including equity shares held in various subsidiaries) and liabilities (including contingent liabilities) from one company to another company under section 42 of the Income Tax Act.

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Binding Private Ruling (BPR) 184 - Asset-for-share transaction

This BPR deals with the disposal by a trust of its shareholding in a company to another company, also wholly owned by the trust, in exchange for an additional equity share to be issued by the transferee company.

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Supreme Court of Appeal (SCA) Judgment - CSARS v Bosch

The SCA judgment deals with share option schemes under section 8A of the Income Tax Act, including issues relating to an employees' option to purchase shares within a period of time, the date of exercise of an option, the conditionality of contracts and simulated transactions.

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Tax Court (TC) Judgment - VAT 1132

This is a VAT case and dealt with the question of whether the appellant was liable for 200% additional tax where the appellant under-declared its output tax.

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Tax Court (TC) Judgment - IT 13472

This income tax case dealt with the question of whether the appellant had proved that the proceeds it received from the disposal of shares should be reduced as per paragraph 35 of the Eighth Schedule to the Income Tax Act, and whether understatement penalties and interest was payable.

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Exchange of Information Agreement between Argentina and South Africa

South Africa has entered into an agreement with Argentina for the exchange of information relating to tax matters. The date of entry into force is 28 November 2014.

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Protocol to treaty between Luxembourg and South Africa initialed

Luxembourg and South Africa have initialed an amending protocol to the Luxembourg - South Africa Income and Capital Tax Treaty (1998).

Protocol to treaty between Netherlands and South Africa initialed

The Netherlands and South Africa have initialed an amending protocol to update the Netherlands - South Africa Income and Capital Tax Treaty (2005), as amended by a 2008 protocol.

Treaty between South Africa and Zimbabwe initialed

South Africa and Zimbabwe have initialed a tax treaty.

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Recent tax developments in the rest of Africa

Angola

New Industrial Income Tax Code

The official version of Law 19/14 of 22 October 2014 (the Law), which introduces a new Industrial Income Tax Code (IITC) in Angola, has been made available to the public. The main changes with respect to the general regime of industrial income taxation are summarized in the attachment below.

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New Employment Income Tax Code

The official version of Law No. 18/14 of 22 October 2014, which introduces a new Employment Income Tax Code (EITC) in Angola, has been made available to the public. The Law repeals Law No. 10/99 of 29 October 1999 and Presidential Decree No. 80/09 of 7 August 2009. Under the new provisions, the Law replaces any other legal provision regarding the tax regime applicable to employment income. The main changes, which are effective as from 1 January 2015, are summarised (as attached).

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FATCA agreement between Angola and United States

Angola has reached an Agreement in substance with the United States on the terms of a Model 1 Intergovernmental Agreement (IGA) to implement the Foreign Account Tax Compliance Act (FATCA), and has consented to be listed on the website of the US Treasury Department as a jurisdiction that is treated as having an IGA in effect. As from 30 November 2014, Angola is treated as having a Model 1 IGA in effect.

Burundi

Commercial Code – Bill presented to National Assembly

On 13 November 2014, a new version of the Commercial Code was presented to the National Assembly. The Bill reviews Law No. 1/07 of 26 April 2010, which introduced the previous Commercial Code in the legal system.

Cameroon

Treaty between Cameroon and Morocco approved by National Assembly of Cameroon

On 2 December 2014, the National Assembly of Cameroon approved the Cameroon - Morocco Income Tax Treaty (2012). Ratification of the treaty is subject to final approval by the President.

Tax agreement between Barbados and Cameroon

Barbados and Cameroon have expressed their interest in negotiating a tax agreement. The exact scope of the tax agreement is still under discussion.

Chad

Budget Bill 2015 adopted by Council of Ministers

On 30 October 2014, the Council of Ministers adopted the Budget Bill 2015. The Bill is currently under discussion by the National Assembly.

Comoros

Finance Bill 2015 presented to National Assembly

On 1 November 2014, the provisions of Finance Bill 2015 were made available. The Bill was presented to the National Assembly on 8 October 2014 and provided several amendments to the General Tax Code. The main changes are as follows: capital gains are subject to tax at the rate of 20%, a minimum income tax is levied at the rate of 1% of the annual turnover for taxpayers deriving business income (i.e. income from agricultural, commercial, non-commercial, artisanal or industrial activities), investment income is subject to income tax at the rate of 20%, non-commercial benefits are subject to income tax at the rate of 20% of a net amount, and a new consumption tax reduced rate of 1% applies on the provision of food to private schools. In addition, the Bill introduces new mandatory filing formalities and provides new rates of tax penalties.

Ethiopia

Treaty between Ethiopia and Portugal ratified by Portugal

Portugal has ratified the Ethiopia - Portugal Income Tax Treaty 2013 by way of by way of Presidential Decree No.104/2014, as published in the Official Gazette of 13 November 2014.

Gabon

IMF recommends Gabon reduces tax exemptions

In November 2014, the International Monetary Fund (IMF) published a press release after the conclusion of the review mission of Gabon's economic situation under Article IV of the IMF Articles of Agreement. The main recommendation of the mission is to expand non-oil revenue tax base by reducing tax exemptions. The press release highlighted specifically the exemption granted to some industries under the Emerging Gabon Strategic Plan.

Gambia

Treaty between Qatar and Gambia

Details of the Gambia - Qatar Income Tax Treaty 2014, signed on 18 November 2014, have become available. The Treaty generally follows the OECD Model 2010. The maximum rates of withholding tax are as follows: 0% on dividends, 0% on interest and 5% on royalties. Both states generally provide for the credit method to avoid double taxation. There is also a tax sparing provision.

Ghana

Special Petroleum Tax Bill enacted

Parliament has passed into law the Special Petroleum Tax Bill 2014, which was presented under a certificate of urgency by the Minister of Finance. The Bill introduces a 17.5% special Petroleum Tax based on the pump price of selected petroleum products, including petrol, diesel, liquefied petroleum gas, natural gas and kerosene. The measure is intended to increase revenue generation from these petroleum products.

Protocol to treaty between Ghana and Switzerland approved by Swiss Federal Council

The Swiss Federal Council has approved the amending protocol, signed on 22 May 2014, to the Ghana - Switzerland Income and Capital Tax Treaty 2008. The protocol will be submitted to parliament for further approval.

Kenya

Kenya to join Convention on Mutual Administrative Assistance in Tax Matters

Kenya has expressed its willingness to join the Multilateral Convention on Mutual Administrative Assistance in Tax Matters 1988 and the amending protocol 2010.

Guidelines for operating Free Trade Zones (FTZs) in Kenya

The Commissioner for Customs Services published a Gazette Notice containing guidelines for the operation of FTZs in Kenya. The guidelines contained in the Notice, published are summarised (as attached).

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Tax agreement between Barbados and Kenya

Barbados and Kenya have expressed their interest in negotiating a tax agreement. The exact scope of the tax agreement is still under discussion.

Mauritius

FATCA agreement between Mauritius and United States

In November 2014, the Mauritius Revenue Authority published a guideline on the implementation of the Intergovernmental Agreement signed with the United States for the enforcement of the Foreign Account Tax Compliance Act (FATCA). The guideline is intended to provide practical assistance to financial institutions, businesses, advisors and officials dealing with the application of FATCA. The Mauritius government announced in September 2014 its commitment to implement the common reporting standards for Automatic Exchange of Financial Account Information in Tax Matters as approved by the G20. The common reporting standards are largely built on the US Foreign Accounts Tax Compliance Act.

Morocco

Treaty between Estonia and Morocco ratified by Estonia

On 15 October 2014, Estonia ratified the Estonia - Morocco Income Tax Treaty 2013.

Nigeria

Tax agreement between Barbados and Nigeria

Barbados and Nigeria have expressed their interest in negotiating a tax agreement. The exact scope of the tax agreement is still under discussion.

Senegal

Draft Finance Law for 2015 – Ongoing discussions

The National Assembly has launched discussions of the draft finance law for 2015. The approval of the draft law is expected in the second week of December 2014.

Treaty between Portugal and Senegal ratified by Portugal

Portugal has ratified the Portugal - Senegal Income Tax Treaty 2014 by way of Presidential Decree No.102/2014, as published in the Official Gazette of 12 November 2014.

Sierra Leone

Budget presented for 2015/16

The Budget for 2015/16 was presented to Parliament by the Minister of Finance and Economic Development on 14 November 2014. The most important features are as follows: the Budget proposes to streamline and rationalise tax and duty exemptions, the Budget further proposes that land and buildings in urban centres be mapped to determine the base of property taxes in the country, and a new Administration Bill is to be tabled in Parliament.

Tanzania

Value Added Tax Bill 2014 tabled in parliament

The VAT Bill 2014 has been tabled in the parliament. The 2014 Bill gives clarity on various aspects and completely overhauls the current VAT regime, notably provisions dealing with exemptions.

Tunisia

FATCA agreement between Tunisia and United States

According to an update of 1 December 2014, published by the US Treasury Department, Tunisia has reached an agreement in substance with the United States on the terms of a Model 1 intergovernmental agreement (IGA) to implement the Foreign Account Tax Compliance Act (FATCA), and has consented to be listed on the website of the US Treasury Department as a jurisdiction that is treated as having an IGA in effect. As from 30 November 2014, Tunisia is treated as having a Model 1 IGA in effect.

Uganda

Tax Procedures Code Act 2014 published

The Tax Procedures Code Act 2014 has been published in Gazette No. 61 Volume CVII. The Act is intended to regulate the procedures for the administration of specified tax laws; harmonise and consolidate the tax procedures under existing tax laws, and to provide for related matters. The Act has been assented to but has not yet entered into force.

Zimbabwe

Budget 2015

The Budget for 2015 was presented to Parliament by the Minister of Finance on 27 November 2014. Details of its tax proposals, which unless otherwise indicated, will apply from 1 January 2015, are summarized (as attached).

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Update on key resources and events across Africa

Resources

SARS Tables A and B (Average Exchange Rates) updated ** South Africa

Tables A and B of the Average Exchange Rates have been updated. Table A provides a list of the average exchange rates of selected currencies for a year of assessment as from December 2003. Table B provides a list of the monthly average exchange rates to assist a person whose year of assessment is shorter or longer than 12 months.

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Index of SARS Interpretation Notes (INs) updated ** South Africa

SARS' index (summary) of INs has been updated.

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Summary of Tax Information Exchange Agreements (TIEAs) updated ** South Africa

SARS' summary of TIEAs has been updated and now includes the Barbados TIEA ratified in Barbados.

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Events

Annual Tax Update** South Africa

Deloitte School of Tax is hosting "Annual Tax Updates" workshops in the following venues:

- Durban - 21 January 2015
- Cape Town - 22 January 2015
- Port Elizabeth - 23 January 2015
- Johannesburg - 26 January 2015
- Pretoria - 28 January 2015

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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