

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 2/2015
17 February 2015

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Recent tax developments in South Africa

South Africa

Interpretation Note 11 (Issue 3) - Trading stock - Assets not used as trading stock

This updated Interpretation Note provides guidance on the application and interpretation of paragraph (jA) of the definition of “gross income”, and its interaction with other provisions of the Income Tax Act.

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Interpretation Note 20 (Issue 5) - Additional deduction for learnership allowance

This updated Interpretation Note provides clarity on the interpretation and application of section 12H of the Income Tax Act which provides for a tax deduction in respect of registered learnership agreements.

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Draft Interpretation Note 63 (Issue 2) - Rules for translation of amounts measured in foreign currencies

This draft Interpretation Note provides guidance on the application of the foreign currency translation rules contained in the Income Tax Act, excluding section 24I and the Eighth Schedule to the Income Tax Act. Comments are due by no later than 31 May 2015.

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Draft Interpretation Note - Headquarter companies (HQC)

This draft Interpretation Note provides guidance and clarity on the interpretation and application of section 9I which deals with HQCs. The Note briefly discusses provisions of the Income Tax Act that provide special tax relief for headquarter companies, as well as specific anti-avoidance rules that are designed to prevent misuse or abuse of those provisions. Comments are due by no later than 31 May 2015.

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Draft Interpretation Note - Whether certain quarrying operations constitute mining operations

This draft Interpretation Note provides guidance on whether the extraction of the following deposits from the earth constitute “mining operations” and “mining” for income tax purposes: clay, granite, gravel, limestone, rock, sand, slate and stone.

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Tariff Amendments 2015

The Tariff Amendments are made in terms of the Customs and Excise Act, 1964 by Notice in the Gazette. Three Tariff Amendment Notices amending Part 1 of Schedule No. 1 (effective from 6 February 2015) have been issued.

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Fourth Batch of Customs Control Rules and Chapter 37 Amendments – Date for comments extended

The due date for comments on the Fourth Batch of Customs Control Rules and Chapter 37 Amendments (circulated on 18 and 19 December 2014 respectively) has been extended to 20 February 2015.

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High Court Judgment - Van der Merwe, LDR N.O & 5 Others v UTI South Africa (Pty) Ltd & Others

The judgment relates to the retention and release of bonded goods on which duties and VAT had not been paid, together with preference or the ranking order of claims.

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High Court Judgment - CSARS v Africa Cash & Carry (Pty) Ltd & 18 Others

The judgment relates to dispute resolution, more specifically, a section 163 preservation order, and application for postponement or extension of the return day of a provisional preservation order.

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Binding Private Ruling 186 - Asset-for-share transaction between a resident private company and a collective investment scheme (CIS) in securities

This ruling deals with the tax treatment of the conversion of an existing portfolio of assets into participatory interests in a collective investment scheme in securities (CIS) under section 42 of the Income Tax Act and disposal of the participatory interests.

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Draft Binding General Ruling (BGR) - Termination of STC credits - Dividends declared before 1 April 2015 but paid on or after that date

SARS has issued a draft BGR on dividends tax. This BGR clarifies that STC credits are not available when a dividend is declared before 1 April 2015 but is paid on or after that date. Comments are invited by no later than 20 February 2015.

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

This 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. Section 46 provides parties to an unbundling transaction with relief from various taxes that would otherwise become payable.

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Protocol to treaty between India and South Africa enters into force

The amending protocol, signed on 26 July 2013, to the India - South Africa Income Tax Treaty (1996), has entered into force (Government Notice No. 60 dated 3 February 2015). The protocol generally applies from 26 November 2014.

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Recent tax developments in the rest of Africa

Benin

Finance Law for 2015

Finance Law for 2015, issued on 23 December 2014, has been published on the Ministry of Finance's website. The Law contains measures that affect corporate income tax, individual income tax, VAT and taxes on importation.

Botswana

Budget for 2015/16 presented to parliament

The Budget for 2015/16 was presented to the National Assembly by the Minister of Finance and Development Planning on 2 February 2015. There were no new tax changes proposed.

Value Added Tax (Amendment) Act 2015

The Value Added Tax (Amendment) Act 2015 (the Act) was published on 23 January 2015 as Supplement A in the Botswana Government Gazette. The Act amends the Value Added Tax Act as follows:

- The following supplies are now zero-rated: brown bread; fresh vegetables (in natural state); fresh fruits (in natural state); rice (husked, milled, polished, glazed, parboiled or broken), samp (not further prepared/processed); milk (cattle, sheep or goat milk not concentrated, condensed, evaporated, sweetened, flavoured or cultured) and bread flour (white, brown or whole wheat).
- The threshold for registration for VAT purposes has been revised/increased from BWP500 000 to BWP1 million. Businesses with a turnover that falls below BWP1 million should arrange with the Botswana Unified Revenue Service for necessary deregistration.

The amendments took effect on 23 January 2015.

Gambia

Gambia loses AGOA status

On 23 December 2014, the President of the United States issued a proclamation that terminated the designation of The Gambia as a beneficiary sub-Saharan African country for purposes of the African Growth and Opportunity Act (AGOA). The United States introduced the AGOA in 2000 in order to support the economies of sub-Saharan African countries. Under the AGOA, eligible sub-Saharan African countries are allowed to export a wide variety of products to the United States market duty free, including apparel, footwear, and some agricultural and processed food products. The President is empowered to determine on an annual basis which sub-Saharan African countries are, or remain, eligible for AGOA. The termination took effect on 1 January 2015.

Kenya

Draft medium-term budget policy statement 2015

In January 2015, the National Treasury published a draft medium-term budget policy statement. Some of the proposed tax and revenue reforms detailed include: submission of the Excise Duty Bill and the Tax Procedure Bill in 2015 for debate and enactment by the National Assembly; review of the Income Tax Act to be completed by the end of 2015; digitization of revenue collections, enhanced taxpayer recruitment and education programme, strategic tax audit and risk profiling and a simplified tax regime for the informal sector; submission for enactment of two bills on the reorganisation of the Kenya Revenue Authority into semi-autonomous but interdependent agencies – the Inland Revenue Agency and the Customs and Border Protection Agency; simplification and modernisation of business regulatory regimes, rationalisation of all regulatory fees and other charges and the establishment of an institutional and legal framework for management of regulatory charges; and modernisation of tax laws to rationalise/review the existing tax incentives regime and expand the income tax base.

Mauritius

Treaty between Egypt and Mauritius enters into force

The Egypt - Mauritius Income Tax Treaty (2012) has entered into force, and generally applies from 1 January 2015 for Egypt and from 1 July 2015 for Mauritius.

Nigeria

Approved rates of penalty and interest for unpaid tax

On 2 February 2015, the Federal Inland Revenue Service (FIRS) published the approved rates of penalty and interest to be applied for the year 2015 on taxes not paid within the prescribed periods. The rate of interest thus determined is 15% while the rate of penalty remains at 10%. These amounts (penalty and interest) imposed under section 32(1) of the FIRS (Establishment) Act, 2007 (the Act) are not deemed to be part of tax paid for the purpose of claiming relief under any of the provisions of the Act.

Non-resident companies to file tax returns on "actual profits" basis – Public notice issued

On 28 January 2015, the FIRS issued a public notice requiring all resident and non-resident companies to henceforth file their tax returns on an "actual profits" basis in accordance with section 55 of the Companies Income Tax Act (CITA). This follows a directive issued in July 2014 to that effect. Hitherto, some companies have been filing their tax returns on a "deemed profits/turnover" basis (a practice that has long subsisted based on section 30 of the CITA). According to the FIRS, the requirement to file tax returns in accordance with section 55 of the CITA does not prevent it from exercising its discretion to assess and charge tax based on a company's turnover, where necessary, in accordance with section 30 of the CITA. Accordingly, all non-resident companies that have not been filing their tax returns in accordance with section 55 are required to do so as from the assessment year commencing 1 January 2015 (this departs from the directive of July 2014, which was intended to apply to tax returns from the 2014 year of assessment going forward).

Tax Appeal Tribunal (TAT) decides on basis for petroleum profits tax

The TAT has issued decisions in two separate cases involving international oil companies and the Federal Inland Revenue Service (FIRS), that the "realisable price" (RP) should be used to determine the basis for petroleum profits tax (PPT) purposes. In both cases, the FIRS issued additional assessments using the "official selling price" (OSP) to determine the basis for PPT purposes. OSP is normally determined by the Nigerian National Petroleum Corporation to value crude oil sales, while the RP is the amount earned by oil companies from sales of crude oil. Generally, the FIRS uses the higher of the two. The TAT held that the RP should be used (and not the OSP).

South Sudan

South Sudan loses AGOA status

In December 2014, the President of the United States issued a proclamation that terminated the designation of South Sudan as a beneficiary sub-Saharan African country for purposes of the African Growth and Opportunity Act (AGOA). The termination took effect on 1 January 2015.

Tunisia

Social security agreement between Belgium and Tunisia approved by Belgium

On 30 January 2015, the Belgian Council of Ministers approved a social security agreement between Belgium and Tunisia, signed on 28 March 2013. Once in force and effective, the new agreement will generally replace the Belgium - Tunisia Social Security Treaty (1975).

Social security agreement between Romania and Tunisia - Negotiations

Romania has expressed its intentions to negotiate a social security agreement with Tunisia.

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Update on key resources and events across Africa

Resources

Updated SARS summary of interpretation notes ** South Africa

SARS' summary of all interpretation notes has been updated.

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Updated status overview of all DTAs and protocols ** South Africa

SARS' summary of all treaties and protocols for the avoidance of double taxation (DTAs) has been updated as at 3 February 2015.

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Updated status summary of MMAA Conventions/Agreements ** South Africa

SARS' summary of Multilateral Mutual Administrative Assistance (MMAA) Conventions/Agreements has been updated as at 3 February 2015. These are agreements between the governments (tax administrations) of two or more countries to enable them to exchange tax information on request or spontaneously, as well as to provide assistance in the collection of taxes.

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Events

Cross-border Transactions Back to Basics ** South Africa

Deloitte School of Tax is hosting "Cross-border Transactions Back to Basics" workshops in the following venues:

- Johannesburg - 19 March
- Durban - 12 March
- Cape Town - 18 March
- Pretoria - 20 March

Payroll Back to Basics** South Africa

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

- Cape Town - 9 March
- Johannesburg - 12 March
- Port Elizabeth - 16 March
- Durban - 24 March
- Pretoria - 25 March

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

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