

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 7/2014
18 July 2014

Content:

- Recent tax developments in South Africa
- Recent tax developments in the rest of Africa
- Update on key resources and events across Africa

Recent tax developments in South Africa

South Africa

Draft Taxation Laws Amendment Bill (TLAB) 2014 and Tax Administration Laws Amendment Bill (TALAB) 2014

On 17 July 2014, National Treasury department released the draft 2014 TLAB and TALAB (together with draft regulations relating to amendments proposed in the TLAB on contributions to defined benefit funds, research and development provisions and Special Economic Zones) for public comment. Comments on the draft bills and regulations are due for submission by 17 August 2014.

The 2014 draft TLAB gives effect to the following key proposals announced in the 2014 Budget Review:

- the introduction of tax free saving accounts;
- amendments to the taxation of contributions to defined benefit funds;
- changes to the taxation of Small Business Corporations;
- adjustments to the tax treatment of the risk business of long term insurers;
- refinements to the employment tax incentive; and
- the repeal of the VAT zero rating in respect of goods for agricultural, pastoral or other farming purposes.

A copy the draft Bills, draft Explanatory Memoranda and a media statement that provides a summary of the main issues in the two Bills is attached below. A copy of the draft regulations can be accessed on [SARS'](#) website.

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Promulgation of Customs Duty Act 2014

The Customs Duty Act No. 30 of 2014 was promulgated on 10 July 2014 in Government Gazette No. 37821. The Act has not yet come into operation.

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Tax filing season for individuals 2014

The tax filing season for individuals to file their ITR12 returns opened on 1 July 2014. The filing season runs until 21 November 2014 for e-filing (26 September for submission of manual returns) and until 30 January 2015 for provisional taxpayers using e-filing.

Public Notice No. 550 prescribing the rules under s.103 of the Tax Administration Act for objection and appeal

The Notice brings into effect the rules promulgated under section 103, prescribing the procedures to be followed in lodging an objection and appeal against an assessment or a decision subject to objection and appeal referred to in section 104(2), procedures for alternative dispute resolution (ADR), the conduct and hearing of appeals, application on notice before a Tax Court and transitional rules. These rules replace those that previously applied under section 107A of the Income Tax Act.

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Government Gazette Notice No. 506 - Notice to furnish returns for the 2014 year of assessment

In terms of section 66(1) of the Income Tax Act, read together with section 25 of the Tax Administration Act, notice was given on 25 June 2014 for returns to be furnished for the 2014 year of assessment.

Included in this Notice at paragraph 2(b)(iii) is a new requirement that every company, trust or other juristic person, which is not a resident and which derived "service income" from a source in the Republic, must furnish a South African income tax return for its 2014 year of assessment. The term "service income" is not currently defined either in the Income Tax Act or the Tax Administration Act and while current double tax treaties setting out which jurisdiction retains the taxing rights to certain income are not overridden, the insertion of paragraph 2(b)(iii) in the Notice places an administrative and compliance burden on non-South African residents who derive such income from a source within South Africa and are now required to furnish an income tax return to SARS in this regard. Deloitte has noted our concerns with SARS in an attempt to clarify the intention of paragraph 2(b)(iii) of the Notice and to obtain further insight regarding what constitutes "service income". However, as it stands now, every company, trust or other juristic person, which is not a resident and which derived "service income" from a source in the Republic, must furnish a South African income tax return for purposes of its 2014 year of assessment.

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Public Notices No. 508 and No. 509 - returns to be submitted by third parties for FATCA

These Notices prescribe the returns to be submitted by third parties for purposes of the US Foreign Account Tax Compliance Act (FATCA) in terms of sections 26, 29 and 30 of the Tax Administration Act, the dates therefore, the duty to keep the records, books of account or documents and the form in which those should be kept.

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Proposed regulations for over-the-counter (OTC) derivatives

The National Treasury, Reserve Bank and Financial Services Board have published for public comment proposed regulations for unlisted OTC derivatives. These proposed regulations will ensure that South Africa can meet its G20 obligations in terms of the regulation of the OTC derivatives market.

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Life company tax reforms

In the 2013 and 2014 Budget Review, National Treasury announced its intention to separate the taxation of risk business from investment business and tax risk business on a profits basis in the corporate fund (CF). The Draft Taxation Laws Amendment Bill, 2014 (First Batch Release) published on 10 June 2014 (see Tax Alert Issue 6/2014) was National's Treasury first attempt to draft legislation to give effect to this proposal. An overview of the relevant proposals contained in TLAB 2014 in this regard is attached.

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Binding Private Ruling (BPR) 172 – plant used in the production of renewable energy

This ruling deals with the deduction allowed in respect of the cost of machinery, plant, implements, utensils or articles owned and used in the generation of electricity from solar energy.

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Binding Private Ruling (BPR) 173 - Repayment of shareholder loan from proceeds of new issue of ordinary shares

This ruling deals with the income tax consequences arising from the repayment of shareholder loan from the proceeds of a new issue of ordinary shares in a company.

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Exchange of information agreement between Belize and South Africa approved

On 13 June 2014, the House of Representatives of Belize (Lower House) approved the exchange of information agreement relating to tax matters between Belize and South Africa, signed on 6 May 2014.

[Back to the top](#)

Recent tax developments in the rest of Africa

Angola

New tax codes ("Pacote Tributário" Bill) approved and adopted by National Assembly

On 26 June 2014, the National Assembly approved the "Pacote Tributário" Bill, presented by Government. The different codes of the "Pacote Tributário" under discussion include: the General Tax Code ("Código Geral Tributário"), the Tax Procedure Code ("Código do Processo Tributário"), the Enforcement Tax Code ("Código de Execuções Fiscais"), the Industrial Income Tax Code ("Código do Imposto Industrial"), and the Employment Income Code ("Código sobre os Rendimentos de Trabalho"). Only the Employment Income Code was approved unanimously. Final versions of the codes are not yet available publicly.

"Pacote Tributário" Law – decrease of industrial income tax rate and other changes

The Minister of Finance declared that the forthcoming changes to be implemented with the "Pacote Tributário" offer better opportunities to raise funds and investments in the country. Commenting on some of the relevant provisions, the minister mentioned the decrease of the industrial income tax standard rate from 35% to 30%. In addition, the minister announced a relevant change regarding the determination of the taxable base for industrial income tax purposes. Usually, the taxable base is determined by Groups of taxpayers (each Group (A, B or C) is subject to specific rules). As from the entry into force of the new provisions, Group C, which comprises small individual traders, is repealed. Under the new regime, small individual traders who derive business and commercial income are subject to employment income

tax. Further, the minister confirmed that, under the new provisions, taxpayers are exempt from tax debts which were due, at the latest, on 31 January 2012.

Benin

FIPA between Benin and Canada enters into force

The foreign investment protection agreement (FIPA) between Benin and Canada has entered into force.

Cameroon

Convention and protocol on Mutual Administrative Assistance in Tax Matters – Cameroon signs convention and protocol

According to an update of 25 June 2014, published by the OECD, Cameroon has joined the multilateral Council of Europe - OECD Mutual Assistance Treaty (1988), as amended by the 2010 protocol.

Egypt

Major tax changes published in the Official Gazette

On 30 June 2014, Decree-Law No. 53 for 2014 was published in the Official Gazette. The new decree-law, which applies as of 1 July 2014 unless otherwise indicated, introduced a major tax reform to the Egyptian tax system and confirmed the developments on corporate taxation, individual taxation and general anti-avoidance rules (GAAR). The main change in the published text in comparison to the draft version is the amount of dividends that are exempt from individual income tax. This amount is fixed at EGP10 000 in the published decree-law instead of EGP15 000 in the draft legislation. The decree-law also included some changes to the tax management and tax penalties regimes and abolished the stamp duty levied on transactions carried on through the Egyptian Stock Exchange.

Treaty between Egypt and Mauritius – details

Details of the Egypt - Mauritius Income and Capital Tax Treaty (2012), signed on 19 December 2012, have become available. The treaty generally follows the UN Model (2001). The maximum rates of withholding tax are: 10% on dividends in general and 5% if the beneficial owner is a company holding directly at least 25% of the capital of the company paying the dividends; 10% on interest, subject to exceptions; and 12% on royalties.

Ethiopia

Treaty between Ethiopia and Netherlands ratified by Netherlands

On 14 June 2014, the Netherlands ratified the Ethiopia - Netherlands Income Tax Treaty (2012), as published in the Official Gazette (Tractatenblad) No. 257 of 9 July 2014.

Ghana

Details and implementation of VAT Act

On 9 July 2014, the Commissioner General of the Revenue Authority announced the following changes to the VAT regime due to the enactment of the VAT Act 2013 (Act 870) which was published in the Gazette on 31 December 2013.

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Revenue authorities release list of taxable financial services

The Ghana Revenue Authority (GRA) has issued the list of financial services that will be subject to the 17.5% value added tax (VAT) and National Health Insurance Levy (NHIL). The list, containing 32 fee-based services, will apply as from 1 July 2014.

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Government reassesses VAT imposition on pharmaceuticals

The Government is considering a reassessment of the imposition of 17.5% VAT on locally-produced drugs as a result of a written appeal by the Pharmaceutical Manufacturers Association of Ghana (PMAG), to the Ministry of Finance and Economic Planning, and a subsequent meeting with the President to discuss the impact of the revised VAT law. Pharmaceutical manufacturers are seeking VAT exemption for 66 of approximately 200 different materials used for manufacturing drugs locally. The PMAG has tabled proposals to the Government for total VAT exemption on selected raw materials imported for pharmaceuticals production.

Excise Bill 2013 – passed by Parliament

On 7 July 2014, Parliament passed into law Excise Bill 2013 (the Bill) to exert punitive measures on persons who manufacture excisable goods in the country without registering with the GRA. The object of the Bill is to revise and consolidate existing provisions for the imposition and collection of excise duties on selected imported and locally manufactured goods and for related matters. The Bill imposes an obligation on manufacturers of commodities such as, among others, local gin (Akpateshie), polythene bags, wine, beer, sachet and bottled water and malt drink to register with the GRA and pay their excise duties accordingly. The Bill enjoins manufacturers to file their excise duty returns for each calendar month not later than the 21st day of the following month, whether or not an excise duty is payable for the month to which the return relates. According to the new law, excise duty payable in relation to excisable goods imported into the country shall be paid to the Commissioner General at the time the goods are entered for home use. The Bill exempts certain goods purchased from a manufacturer, among others, goods for use by the president of Ghana, the government of Ghana contracts where the contract is duly approved by Parliament and goods purchased for official use of any Commonwealth or foreign embassy, mission or consulate. Clause 26 of the Bill states that a person who carries on the business of manufacturing excisable goods without registering commits an offence and is liable on summary convictions which include a fine or even imprisonment. The Commissioner General may authorize forfeiture of goods, raw materials, apparatus, utensils and other raw materials which in the opinion of the Commissioner General can be used in the manufacturing of the excisable goods. The Bill also imposes punitive measures on the manufacturing and storage of excisable goods in unapproved warehouses. A manufacturer who commits such an offence shall pay an administrative penalty equal to two times the amount of duty payable in relation to the excisable goods to the Commissioner General. Such a person shall also be liable on summary conviction to a fine of not more than three times the amount of excise duty payable in relation to those excisable goods or to a term of imprisonment of not more than 1 year or both.

ECOWAS Council of Ministers – 72nd ordinary session

On 19 and 20 June 2014, the 72nd ordinary session of the ECOWAS Council of Ministers was held in Accra, Ghana. Among other things, the Council considered economic development and regional integration issues. The member states of the Economic Community of West African States (ECOWAS) are Benin, Burkina Faso, Cape Verde, Gambia, Ghana, Guinea, Guinea-Bissau, Ivory Coast, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.

Treaty between Ghana and Singapore – negotiations

Negotiations for a tax treaty between Ghana and Singapore are ongoing.

Kenya

Finance Bill 2014 – details

The Finance Bill 2014 was presented to the National Assembly on 13 June 2014. Details of the Finance Bill are summarized below.

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Treaty between Kenya and Mauritius – details

Details of the Kenya - Mauritius Income Tax Treaty, signed on 7 May 2012, have become available. The treaty generally follows the UN Model (2001). The maximum rates of withholding tax are: 10% on dividends in general and 5% if the beneficial owner is a company holding directly, at least, 10% of the capital of the company paying the dividends; 10% on interest, subject to exceptions; and 10% on royalties.

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Treaty between Kenya and Korea (Rep.) signed

On 8 July 2014, Kenya and Korea (Rep.) signed a tax treaty, in Nairobi.

IPA between Kenya and Korea (Rep.) signed

On 8 July 2014, Kenya and Korea (Rep.) signed an investment protection agreement (IPA), in Nairobi.

Treaty between Kenya and Russia – negotiations

Following a meeting between officials from Kenya and Russia held in Nairobi on 25 June 2014, Kenya has expressed its intentions to negotiate and sign a tax treaty with Russia.

Treaty between Iran and Kenya ratified by Kenya

Kenya ratified the Iran - Kenya Income and Capital Tax Treaty (2012), by way of Legal Notice No. 60, as published in the Kenyan Official Gazette of 23 May 2014.

Treaty between Israel and Kenya – negotiations underway

Negotiations for a tax treaty between Israel and Kenya are currently underway.

Madagascar

Madagascar regains and Swaziland loses AGOA status

On 26 June 2014, the President of the United States issued a proclamation which removed Swaziland from the list of country beneficiaries of the African Growth and Opportunity Act (AGOA). The same proclamation reinstated the status of Madagascar as an AGOA beneficiary country after being suspended since 2009. The United States introduced the AGOA in 2000 in order to support economies of African sub-Saharan countries. The President is allowed to determine on an annual basis which sub-Saharan African countries are eligible for AGOA.

Mauritius

Treaty between Guernsey and Mauritius ratified by Guernsey

On 25 June 2014, Guernsey ratified the Guernsey - Mauritius Income Tax Treaty (2013), by way of Income Tax (Guernsey) (Approval of Agreements with Costa Rica, Mauritius, the Seychelles, the United States of America and the United Kingdom) Ordinance, 2014.

Air transport agreement between Mauritius and Netherlands signed

On 28 May 2014, the Mauritius - Netherlands Transport Agreement (2014) was signed.

Morocco

Treaty between Morocco and Slovenia – authorization for signature by Slovenia

On 12 June 2014, the Slovenian government authorized the signing of an already initialled income and capital tax treaty between Morocco and Slovenia.

Rwanda

Treaty between Rwanda and Singapore initialled

On 28 March 2014, Rwanda and Singapore initialled an income tax treaty, in Singapore.

Seychelles

E-payment of taxes

The Seychelles Revenue Commission issued a notice indicating that as from 2 June 2014 taxpayers may opt to e-pay their taxes. Initially, the e-payment service will be provided by Barclays Bank, and other commercial banks will also provide this service in the future.

Treaty between Seychelles and Singapore signed

On 9 July 2014, the Seychelles - Singapore Income Tax Treaty (2014) was signed, in New York.

Treaty between Guernsey and Seychelles ratified by Guernsey

On 25 June 2014, Guernsey ratified the Guernsey - Seychelles Income Tax Treaty (2014), by way of Income Tax (Guernsey) (Approval of Agreements with Costa Rica, Mauritius, the Seychelles, the United States of America and the United Kingdom) Ordinance, 2014.

Tanzania

Air transport agreement between Netherlands and Tanzania signed

On 3 June 2014, the Netherlands - Tanzania Transport Agreement (2014) was signed, in Dar es Salaam.

[Back to the top](#)

Update on key resources and events across Africa

Resources

Multiplicity of taxes in Nigeria: addressing the impediments ** Rest of Africa

The attached article provides insight into the issue of multiplicity of taxes in Nigeria and addressing the impediments for business.

[MORE ▶](#)

Tax challenges of e-commerce in Nigeria ** Rest of Africa

The strides in Information and Communications Technology (ICT) make e-commerce a critical and inexorable feature of the global economy. The use of point of sales (POS) devices, internet banking, mobile banking and associated related product options are routine experience for not only the upwardly mobile Nigerian but also the rural-urban migrant. The National Tax Policy (NTP) sets as one of its main objectives, the elimination of bottlenecks and leakages in Nigeria's tax system. Thus, it imposes a duty on all tax authorities to identify all such avenues for leakages in the Nigerian tax system and to minimize or eradicate these leakages.

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Events

Transfer Pricing ** South Africa

Deloitte is hosting a Transfer Pricing event in Stellenbosch on 21 August 2014. For further details contact [Dawn Manuel](#).

Customs Trade Compliance ** South Africa

Deloitte School of Tax is hosting "Customs Trade Compliance" workshops in the following venues:

- Cape Town – 13 August 2014
- Johannesburg – 12 August 2014
- Port Elizabeth – 14 August 2014
- Durban – 15 August 2014

Capital Gains Tax ** South Africa

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

- Johannesburg – 20 August 2014
- Cape Town – 27 August 2014
- Port Elizabeth – 13 August 2014
- Durban – 29 August 2014

Accounting for Fringe Benefits** South Africa

Deloitte School of Tax is hosting "Accounting for Fringe Benefits" workshops in the following venues:

- Port Elizabeth – 13 August 2014

Municipal VAT ** South Africa

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

- Port Elizabeth – 5 & 6 August 2014
- Cape Town – 12 & 13 August 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/>

[Back to the top](#)

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