



## 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.

\*\* Special insert on East Africa Budget 2014/15.

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Issue 6/2014  
18 June 2014

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## Recent tax developments in South Africa

### South Africa

#### 2014 Rates and Monetary Amounts and Amendment of Revenue Laws Bill and first batch of the draft Taxation Laws Amendment Bill

National Treasury has published the 2014 Rates and Monetary Amounts and Amendment of Revenue Laws Bill ("Rates Bill"), first batch of the 2014 draft Taxation Laws Amendment Bill and Regulations ("TLAB"). The Rates Bill gives effect to the rates and monetary threshold changes announced in the 2014 Budget, and will be tabled in Parliament shortly. The first batch of the 2014 TLAB is not the full bill, but is intended to solicit comments on two specific amendments to inform the full draft TLAB to be published in July. Draft regulations on one of the specific amendments dealing with defined benefit funds are also published for comment, and provide taxpayers with an early indication of some of the proposed reporting requirements. Written comments on the first batch of the 2014 draft TLAB and Regulations should be submitted by close of business on 23 June 2014.

For further information and the complete set of documents [click here](#).

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#### New payment advice notice introduced

SARS has introduced a new remittance advice, or payment advice notice (PAN), as of 24 May 2014. The new PAN will display the 19 digit SARS payment reference number which will facilitate the allocation of the payment to the correct

client/taxpayer account, thus reducing the risk of possible errors being made by either clients or banking staff when making payments and will apply to income tax, VAT, PAYE, penalties for income tax, VAT and PAYE, dividends tax and provisional tax. Clients, who use e-filing, may continue to pay via e-filing and no PAN is required as the payment will inherit the correct reference.

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#### **Government Gazette 37690 Notice 415 - cheque payments amount limited to R50 000**

The Notice prescribes the method of payment of tax in terms of section 162(2) of the Tax Administration Act, 2011. It replaces Notice 764 published in Government Gazette 36921 of 21 October 2013.

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#### **Draft regulations for registration as VAT vendors**

This draft provides details pertaining to voluntary registration under section 23(3)(b) and section 23(3)(d) of the VAT Act, following the Budget 2013 announcement that VAT registration would be streamlined to ease the compliance burden while guarding against fraud. It includes a briefing note.

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#### **Carbon offsets paper - request for public comments**

National Treasury has published the Carbon Offsets Paper for public comment. This paper outlines proposals for a carbon offset scheme that will enable businesses to lower their carbon tax liability and make investments that will reduce greenhouse gas (GHG) emissions. The carbon offsets scheme is meant to complement the carbon tax that South Africa plans to introduce from 2016.

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#### **Review of the taxation of alcoholic beverages - request for public comments**

National Treasury has published for public comment a discussion paper, "A Review of the Taxation of Alcoholic Beverages in South Africa". The discussion paper covers the following areas: the experience of the current excise duty structure for alcoholic beverages since 2002, recent developments in excise policy formulation both locally and internationally; alcohol excise tax anomalies, the scope for utilising the excise duty system to effectively internalise the social external costs arising from alcohol abuse and policy reform options.

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#### **IT 13356 CTN - Interpretation of Supreme Court of Appeal (SCA) judgment - s.11(bA)**

The issue for determination in this appeal was the interpretation of a judgment handed down by the SCA and whether it meant that the respondent (the Commissioner) could disallow a deduction described as "further costs" claimed by the Appellant under s.11 (bA).

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#### **SCA Judgment - SARS v Terraplas South Africa (Pty) Ltd – Customs & Excise**

The judgment pertains to import duty, approach to tariff classification, prior decisions revisited and applied, plastic interlocking tiles for protection of turf surfaces in stadia not being a floor covering contemplated in a specific tariff heading and the novelty of an article not being a consideration in interpretation exercise.

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#### **SCA Judgment – CSARS v Pretoria East Motors (Pty) Ltd**

The judgment relates to an assessment to additional income tax and value added tax and includes a consideration of the sufficiency of evidence to discharge the onus of proof.

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#### **Binding Private Ruling (BPR) 170 - definition of unrestricted equity instrument**

This ruling deals with the question whether the condition imposed on an employee to sell back shares over a period of time to his employer (at market value on termination of employment) will result in the shares being regarded as "restricted equity instrument[s]" as contemplated under section 8C(7) of the Income Tax Act.

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#### **Binding Private Ruling (BPR) 171 – amalgamation transaction**

This ruling deals with the income tax and securities transfer tax consequences for the parties concerned in a proposed amalgamation transaction intended to extinguish a layer of companies considered unnecessary in a holding structure.

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#### **FATCA agreement between South Africa and United States signed**

South Africa and the United States have signed an intergovernmental agreement to improve international tax compliance and to implement the Foreign Account Tax Compliance Act (FATCA). This agreement promotes transparency between the two nations on tax matters and furthermore underscores growing international cooperation in the endeavor to end tax evasion worldwide. FATCA calls for foreign financial institutions to provide the U.S. Internal Revenue Service (IRS) with information about U.S. account holders annually.

#### **Exchange of information agreement between South Africa and St. Kitts and Nevis**

The Federal Cabinet of St. Kitts and Nevis has authorised the signing of an exchange of information agreement relating to tax matters between South Africa and St. Kitts and Nevis.

#### **Exchange of information agreement between Belize and South Africa signed**

Belize and South Africa have signed an exchange of information agreement relating to tax matters.

#### **Treaty between Kyrgyzstan and South Africa – negotiations underway**

Following a meeting between officials of Kyrgyzstan and South Africa in Bishkek in May 2014, negotiations for a tax treaty between Kyrgyzstan and South Africa are underway.

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# Recent tax developments in the rest of Africa

## Algeria

### **New mining law published**

The new Mining Law (Law 14-05), published in the Official Gazette No. 18, is intended to replace the old Mining Law 01-10 of 3 July 2001. The new law has created two new national agencies. The most important tax features of the new law, which are applicable as of 1 January 2015, are attached.

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## Angola

### **Business income tax final settlement – deadline extended**

Order No. 1267/14, issued by the Ministry of Finance, has been published in the Official Journal. The Order extends the business income tax final settlement to 30 July 2014 for the taxpayers of Group A which are covered by the Luanda offices of the tax administration. The extension only applies in Luanda.

### **Stamp tax, tax on capital and consumption tax codes**

National Assembly has approved a bill which empowers the President to review the stamp tax, the tax on capital, and the consumption tax codes. The main purpose is to clarify some taxable events which are provided in these codes, and to better adapt some tax regimes to the national economy. With respect to consumption tax, the aim is to review the taxation of non-oil products in order to encourage their production. In addition, the oil sector should benefit from allowances for VAT purposes when the oil company operates under research and development tax concession arrangements. With respect to the tax on capital (*Código de Imposto sobre Aplicação de Capitais*), editorial changes are expected, together with measures to encourage tax neutrality of business restructuring in general. The procedure of payment of the tax should also be simplified.

### **Foreseen change in branch repatriation taxation**

A foreseen change in the tax framework on branch repatriation will mean a withholding of 10% on the remittance of profits from a branch. The law has not yet been published but is worth noting for companies that have branches in Angola.

### **Treaty between Angola and Cape Verde – negotiations underway**

Following a recent meeting between officials of Angola and Cape Verde in Luanda, negotiations for a tax treaty between Angola and Cape Verde are underway.

## Botswana

### **Treaty between Botswana and Ireland signed**

On 10 June 2014, Botswana and Ireland signed an income tax treaty in Gaborone.

### **Treaty between Botswana and Saudi Arabia – negotiations underway**

Negotiations for a tax treaty between Botswana and Saudi Arabia are underway.

## Burundi

### **Upcoming transfer tax changes**

A bill which introduces amendments to article 1 of Law No. 1/16 was recently presented to the Council of Ministers. The bill provides for a lower and unique fixed rate on the transfer of ownership and is part of a broader project aimed at improving the business environment in the country, including entrepreneurship. According to the General Secretary and government spokesman, the Council of Ministers wants to know what the applicable rates are in the other EAC (East African Community) member states before deciding. For this reason, the adoption of the bill was postponed.

## East African Community

### **East Africa Budget 2014/15 – Kenya, Tanzania, Uganda and Rwanda**

Kenya, Rwanda, Tanzania and Uganda delivered their Budget speeches for 2014/15 on Thursday 12 June 2014. Burundi, the other member of the East African Community, delivered theirs earlier in the year. The East Africa Budget 2014 Insight (attached) provides a detailed commentary of the four speeches delivered on 12 June 2014, including key economic highlights and tax measures for each of the aforementioned countries.

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## Ivory Coast

### **Treaty between Ivory Coast and Vietnam**

Following a meeting held in May 2014, Ivory Coast has expressed its intention to negotiate and sign a tax treaty with Vietnam.

## Gambia

### **Treaty between Gambia and Qatar – authorization for signature by Qatar**

The cabinet of Qatar has authorised the signing of a tax treaty between Gambia and Qatar.

## Ghana

### **Treaty between Ghana and Mauritius**

Following a recent meeting between the officials of Ghana and Mauritius, Ghana has expressed its intentions to negotiate and sign a tax treaty with Mauritius.

### **Treaty between Ghana and Seychelles signed**

Ghana and Seychelles have signed an income and capital gains tax treaty.

## Kenya

### **Budget for 2014/15**

As mentioned above, the Budget for 2014/15 was presented on 12 June 2014. The most important features of the Kenya Budget, which generally apply from 1 July 2014, are as follows: a proposal to amend the definition of permanent establishment to deter transfer pricing, a proposal to amend the law to require both residents and non-residents to provide up-to-date information on the changes in business and corporate structure in order to enhance transparency and tax compliance, a proposal to introduce a tax procedures bill that will contain uniform administration procedures across value added tax, excise duty and income tax, and a proposal to repeal the Customs and Excise Act and introduce a stand-alone excise bill as customs duty is now administered under the East African Community Customs Management Act. Please refer to the detailed commentary attached under the heading *East African Community* above.

### **National Social Security Fund Act 2013 effective**

The National Social Security Fund Act 2013 came into effect on 31 May 2014. This was after its effective date was postponed from 10 January 2014 to enable the government to put in place transition measures from the old fund to the

new one. For purposes of calculating the monthly contributions, the gazetted upper earnings limit for 2014 is KES18 000 and the lower earnings limit is KES6 000.

#### **Treaty between Kenya and Mauritius**

Kenya ratified the Kenya - Mauritius Income Tax Treaty (2012), by way of Legal Notice No. 59, as published in the Kenyan Official Gazette of 23 May 2014.

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#### **Treaty between Belgium and Kenya – first round of negotiations**

A first round of negotiations for a tax treaty between Belgium and Kenya is scheduled to take place in October 2014.

#### **VAT Amendment Act 2014 enacted**

On 8 May 2014, the President assented to the VAT Amendment Act 2014. The Act applies from 29 May 2014. Amendments include, amongst others, the following: persons who fraudulently make claims for a tax refund will be liable to a penalty of five times the amount of the claim, and items to be exempt from VAT include: mosquito nets; milk and cream; animal feed; retail packs of insecticides, rodenticides, fungicides, herbicides and similar products; ambulances and hearses; crisp bread; credit reference bureau services; sanitary and pest control services provided to households; postal services; supply of electricity to households below 200 kilowatt hours; supply of water drilling services; and supply to the Rural Electrification Authority.

#### **Madagascar**

##### **New Finance Act 2014 - transfer pricing provisions**

The new Finance Act for the year 2014 includes legislation on transfer pricing under articles 01.01.13 and following of the General Tax Code in Madagascar. A committee has been established within the "Directorate of General Tax" in Madagascar to improve the provisions on transfer pricing.

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#### **Mauritius**

##### **Treaty between Cape Verde and Mauritius – first round of negotiations**

The first round of negotiations for an income tax treaty between Cape Verde and Mauritius is scheduled to take place from 16 to 19 June 2014.

#### **Morocco**

##### **Treaty between Guinea and Morocco and Qatar and Morocco**

On 23 May 2014, the parliament of Guinea approved the Guinea - Morocco Income Tax Treaty (2014). Similarly, on 24 April 2014, the Moroccan Council of Government approved the Morocco - Qatar Income Tax Treaty (2013). Once in force and effective, the new agreement will replace the Morocco - Qatar Income Tax Treaty (2006).

##### **Treaty between Guinea and Morocco – details**

Details of the Guinea - Morocco Income Tax Treaty have become available. The treaty generally follows the UN Model (2001). The maximum rates of withholding tax are: 10% on dividends, reduced to 5% if the beneficial owner is a company which directly owns at least 30% of the capital of the company paying the dividends; 10% on interest (an exemption applies to interest arising in a contracting state and paid to the government or the central bank of the other contracting state); and 10% on royalties. The treaty provides for the credit method to avoid double taxation. In addition, both states grant a tax sparing credit with respect to tax reduced or exempted for a fixed period of time in accordance with domestic tax incentives legislation in the other contracting state. The treaty applies for a minimum period of five years.

##### **Social security agreement between Belgium and Morocco approved by Morocco**

The Moroccan Council of Government has approved the Belgium - Morocco Social Security Agreement (2014). Once in force and effective, the new agreement will replace the Belgium - Morocco Social Security Agreement (1968).

##### **Treaty between Congo (Rep.) and Morocco initialed**

The Congo (Rep.) and Morocco have initialed an income tax treaty after the successful conclusion of the second round of negotiations held in Brazzaville in May 2014.

##### **Treaty between Mali and Morocco approved by Morocco**

The Moroccan Council of Government has approved the Mali - Morocco Income Tax Treaty (2014).

#### **Nigeria**

##### **FIPA between Canada and Nigeria signed**

Canada and Nigeria have signed a foreign investment protection and promotion agreement (FIPA).

##### **Personal income tax (PIT) for public office holders**

One of the key principles of the National Tax Policy (NTP) is to institute a culture of voluntary tax compliance by citizens. Prior to the Personal Income Tax (Amendment) Act 2011 (PITAM), the official emoluments of the President, Governor, Vice President and Deputy Governor were exempted from income tax but this has now been changed by PITAM.

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##### **Oil & Gas industry - preferential tax regime**

The oil and gas sector is currently the mainstay of Nigeria's economy and enjoys preferential tax treatment. An overview of the relevant rules is contained in the attached document.

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##### **Taxation of partnerships**

Partners are viewed in their personal capacity for tax purposes and as such fall under the regime of Personal Income Tax Act CAP P8 LFN 2004, as amended (PITA). An overview of the relevant rules is contained in the attached document.

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#### **Rwanda**

##### **East Africa Budget 2014/15 – Rwanda**

Kenya, Rwanda, Tanzania and Uganda delivered their Budget speeches for 2014/15 on Thursday 12 June 2014. Please refer to the detailed commentary attached under the heading *East African Community* above.

#### **Seychelles**

##### **Exchange of information agreement between Seychelles and Switzerland signed**

The Seychelles - Switzerland Exchange of Information Agreement (2014) has been signed.

##### **Seychelles treated as having FATCA agreement in effect**

Seychelles 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 28 May 2014, Seychelles is treated as having an IGA in effect.

## Senegal

### Treaty between Portugal and Senegal signed

On 13 June 2014, Portugal and Senegal signed a tax treaty, following meetings held in Lisbon.

## Tanzania

### East Africa Budget 2014/15 – Tanzania

Kenya, Rwanda, Tanzania and Uganda delivered their Budget speeches for 2014/15 on Thursday 12 June 2014. Please refer to the detailed commentary attached under the heading *East African Community* above.

## Uganda

### East Africa Budget 2014/15 – Uganda

Kenya, Rwanda, Tanzania and Uganda delivered their Budget speeches for 2014/15 on Thursday 12 June 2014. Please refer to the detailed commentary attached under the heading *East African Community* above.

### Protocol to treaty between Belgium and Uganda signed

On 25 April 2014, Belgium and Uganda signed an amending protocol to the not yet in force Belgium - Uganda Income and Capital Tax Treaty (2007).

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# Update on key resources and events across Africa

## Resources

### Average exchange rates tables updated \*\* [South Africa](#)

Tables A and B of the average exchange rates have been updated. Table A provides the list of the average exchange rates of selected currencies for a year of assessment as from December 2003. Table B provides the 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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### Updated Summaries of Taxation Agreements \*\* [South Africa](#)

SARS summaries of the Tax Information Exchange Agreements (Bilateral), Multilateral Mutual Administrative Assistance Conventions/Agreements and Air and Sea Agreements have been updated. [Click here.](#)

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### Updated EMP201 \*\* [South Africa](#)

The EMP201 has been updated to include the Employment Tax Incentive (ETI) section.

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### Update on the processing of VDP cases \*\* [South Africa](#)

This document provides an update on the processing of Voluntary Disclosure Process (VDP) cases and includes some questions and answers to assist with VDP queries.

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### Nigeria's Tax Incentive Framework \*\* [Rest of Africa](#)

This article revisits the tax incentive framework in Nigeria, explains the drivers for the incentive framework, examines the structure for the incentives, and explores significant questions for businesses.

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### East Africa Budget 2014/15 – Economic Outlook \*\* [Rest of Africa](#)

The updated commentary provides an economic review for 2014 of the four EAC countries (namely; Kenya, Tanzania, Uganda and Rwanda) which delivered their 2014/15 Budget speeches on 12 June 2014.

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## Events

### VAT Update \*\* [South Africa](#)

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

- Cape Town – 17 July 2014
- Johannesburg – 14 July 2014
- Port Elizabeth – 16 July 2014
- Durban – 15 July 2014

### Corporate Rules Catch Up \*\* [South Africa](#)

Deloitte School of Tax is hosting "Corporate Rules Catch Up" workshops in the following venues:

- Johannesburg – 22 July 2014
- Cape Town – 23 July 2014
- Port Elizabeth – 18 July 2014
- Durban – 24 July 2014

### Municipal VAT \*\* [South Africa](#)

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

- Pretoria – 23 & 24 July 2014
- Durban – 29 & 30 July 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](mailto: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.deloitte.com/za/schooloftax>.

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Should you require further information regarding this newsletter, kindly contact Moray Wilson on +27 (021) 427 5515 or [morwilson@deloitte.co.za](mailto:morwilson@deloitte.co.za). Should you wish to share your stories, please send your submissions to [za tax publications](#).

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