

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 11/2014
6 November 2014

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Recent tax developments in South Africa

South Africa

2015 Budget Review - Invitation - technical taxation proposals

National Treasury has invited taxpayers, tax practitioners and members of the public to submit their suggestions for technical taxation proposals for possible inclusion in Annexure C of the 2015 Budget Review. Comments are invited on any unintended anomalies, loopholes and technical matters requiring correction in existing tax legislation. Submissions in connection with major tax proposals need to be submitted separately. The closing date for submissions is 25 November 2014.

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Tax Statistics for 2013/2014 fiscal year

SARS and National Treasury have released the Tax Statistics for 2013/2014. Of the R900bn collected, R310.9bn (34.5%) comprises personal income tax, R179.5bn (19.9%) comprises corporate income tax and R237.7bn (26.4%) comprises VAT.

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2014 Medium Term Budget Policy Statement (MTBPS)

The Minister of Finance presented the 2014 MTBPS, the Adjustments Appropriation Bill and the Division of Revenue Amendment Bill on the 22 October 2014. Key messages include efforts to contain government expenditure and proposed additional revenue from taxation, details of which will emerge in the February 2015 Annual Budget Speech.

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Taxation Bills introduced in the National Assembly

The Taxation Bills introduced in the National Assembly on 22 October 2014 were as follows:

- Rates and Monetary Amounts and Amendment of Revenue Laws Bill, 2014
- Taxation Laws Amendment Bill, 2014 and Explanatory Memorandum

- Tax Administration Laws Amendment Bill, 2014 and Memorandum on the Objects of the Bill

These Bills contain the annual changes to tax rates and monetary amounts, and changes to tax laws. The extensive amendments proposed in the Bills include a delay in the implementation of proposed amendments to retirement funding taxation rules to 1 March 2016 (and possibly later), a delay in the implementation of withholding tax on interest to 1 March 2015 and changes to the rules in section 23M of the Income Tax Act dealing with the limitation on the amount of interest which can be deducted on loans from a person in a 'controlling relationship' with the debtor where the interest is not subject to tax. The Bills still need to be signed into law by presidential assent.

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GG 38109 - Notice 824 – approval of applications as industrial policy projects

Notice 824 has been published by the Department of Trade and Industry in respect of the approval of industrial policy projects under section 12I(19)(d) of the Income Tax Act.

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Merging of all taxes under a single profile

From 1 November 2014, a new merging function is available on SARS' e-Filing system to merge tax types into one single profile.

Withholding tax on royalties return – WTR01

SARS has released a new Withholding Tax on Royalties return (WTR01) in respect of royalty payments made to or for the benefit of non-residents from a source within South Africa. The new WTR01 return is substantially similar to the current IT4 form. Note that the new WTR01 and WTR form are effective from 1 January 2015. Until then the current IT4 return for royalty withholding tax will continue to have to be completed.

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IT3(b), IT3(c), IT3(e) - New source code

SARS have published information on new source code 4238 - Taxable Local Dividends [e.g. Real Estate Investment Trust (REIT)] applicable to tax certificates.

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Excise modernization - Phase 3 roll-out

SARS has provided notification of the roll-out of Phase 3 of the Excise Modernization program. Changes are aimed at providing taxpayers with tools to manage their accounts and returns independently.

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Interpretation Note No. 80 - The income tax treatment of stolen money

This Note provides guidance on the deductibility of expenditure and losses incurred in a taxpayer's trade when money is stolen through embezzlement, fraud or theft, including expenditure incurred on legal and forensic services to investigate such losses, the inclusion in income of amounts recovered or recouped in respect of such expenditure and losses previously allowed as a deduction, and the taxation of stolen money in the hands of the thief and the non-deductibility of such amounts when repaid.

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Supreme Court of Appeal Judgment – Porritt & Another v The NDPP & Others - SCA 987/2013 [2014] ZASCA 168

The judgment relates to a challenge to a prosecutor's title to prosecute and an application for removal on the basis of perceived bias. The appeal was dismissed.

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High Court Judgment - CSARS v Tradex (Pty) Ltd & Two Others - HC 12949/2013 WC

This High Court judgment deals with whether a preservation order is required to secure collection of tax within the meaning of section 163(3) of the Tax Administration Act.

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Tax Court Judgment - TC-VAT 1015 SG – deduction of input tax in respect of accommodation and food

The judgment relates to an appeal against various VAT assessments raised by SARS in terms of section 31 of the Value Added Tax Act. The respondent's assessments concerned the disallowance of input tax deductions relating to accommodation and meal expenses incurred when executing contracts at various mines.

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Binding Private Ruling (BPR) 181 - Withholding tax on interest in relation to a foreign government

This ruling deals with withholding tax on interest arising from loans made by a funding scheme related to a foreign government, to a resident of South Africa. Reference is made to the provisions in the new withholding tax rules in the Income Tax Act and in the double tax treaty entered into between South Africa and Denmark.

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Binding Private Ruling(BPR) 182 – Waiver of debt that funding mining capital expenditure

This ruling deals with the waiver of debt used to fund mining capital expenditure and the tax treatment in respect of the amount that remains to be claimed as a deduction under section 15(a) read with section 36 of the Income Tax Act.

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Binding Private Ruling(BPR) 183 - Employee housing scheme

This ruling considers whether a taxable benefit will arise for employees who will acquire properties from an associated institution of their employer in terms of a proposed employee housing scheme.

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Recent tax developments in the rest of Africa

Algeria

Draft Finance Law 2015 presented to Parliament

On 1 October 2014, the Minister of Finance presented the draft Finance Law 2014 to the parliament. The most important tax measures included in this draft, which will generally apply as of 1 January 2015, have been summarized as attached.

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Angola

New Tax Codes – Laws enacted

On 22 October 2014, Law Nos. 18/14, 19/14, 20/14 and 21/14 were adopted by the National Assembly. The laws approved the Employment Income Code (*Código sobre os Rendimentos de Trabalho*); the Industrial Income Tax Code (*Código do Imposto Industrial*); the Tax Enforcement Code (*Código de Execuções Fiscais*); and the General Tax Code (*Código Geral Tributário*).

New Investment Income Tax Code – Legislative Presidential Decree enacted

On 21 October 2014, Legislative Presidential Decree No. 2/14 was enacted and published in the Official Journal. The decree results from Law No. 14/14 of 30 July 2014, which allowed the government to adopt legislative acts, such as the review and republication of the Investment Income Tax Code (*Código do Imposto sobre a Aplicação de Capitais*).

Stamp Duty Code – Legislative Presidential Decree enacted

On 21 October 2014, Legislative Presidential Decree No. 3/14 was enacted and published in the Official Journal. The decree results from Law No. 13/14 of 30 July 2014, which allowed the government to adopt legislative acts, such as the review and republication of the Stamp Duty Code.

Taxation of collective investment funds and schemes – Presidential Decree enacted

On 13 October 2014, Legislative Presidential Decree No. 1/14, which regulates the taxation of collective investment funds and schemes in Angola, was issued by the President and published in the Official Journal (*Diário da República, I Série, Número 188*). The legislative presidential decree follows Law No. 11/14 of 30 July 2014 (which granted 90 days to the government to adopt legislative acts creating a special and simplified tax regime for the collective investment funds and schemes).

Duty on creation of companies and publication of corporate notarial acts – New rates

On 13 October 2014, the provisions of Law No. 16/14 of 29 September 2014 were made available. The law reduces the amount of duties to be paid on the creation of a company. As from 29 September 2014, the creation of a company is subject to the following fixed rates:

- AOA 10 000 on limited liability companies with single or several shareholders (*sociedades comerciais unipessoais e pluripessoais por quotas*), general partnerships (*sociedades em nome colectivo*) and limited partnerships (*sociedades em comandita simples*); and
- AOA 40,000 on partnerships limited by shares (*sociedades em comandita por acções*) and commercial companies with single or several shareholders (*sociedades comerciais unipessoais e pluripessoais anónimas*).

In addition, under the new provisions, the publication in the Official Journal (*Diário da República*) of corporate notarial acts is subject to the new reduced rate of AOA 1 000.

Botswana

Treaty between Botswana and Ireland approved by Ireland

On 14 October 2014, Ireland approved the Botswana - Ireland Income Tax Treaty (2014), as published in the Irish Official Gazette (*Iris Oifigiúil*) of 21 October 2014.

Congo (Rep.)

Finance Bill 2015 approved by Council of Ministers

On 20 October 2014, the provisions of the Finance Bill 2015, which was approved by the Council of Ministers on 7 October 2014, were made available. The main tax provisions are summarized on the attached.

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Ghana

Online tax portal launched

The Ghana Revenue Authority has launched an online tax (eTax) portal aimed at offering best services in tax collection through an e-governance platform. The portal provides online facilities for: registration; tax management; tax return filing; and payment of taxes.

ECOWAS common external tariffs to be implemented

The Ghana Revenue Authority has announced that it will implement the Economic Community of West African States (ECOWAS) Common External Tariffs (CET) as from 1 January 2015. (Note: 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).

Kenya

Treaty between Belarus and Kenya – Negotiations

Following a recent meeting between officials from Belarus and Kenya, Belarus and Kenya have expressed their intentions to negotiate and sign a tax treaty.

Treaty between Kenya and South Africa ratified by Kenya

Kenya ratified the Kenya - South Africa Income Tax Treaty (2010), by way of Legal Notice No. 141, as published in the Kenyan Official Gazette of 10 October 2014.

Agreement to promote economic relations between European Union and Kenya signed

On 14 October 2014, Kenya and the European Union signed an agreement to promote economic relations (EPA), in Brussels.

East African Community (EAC) multilateral tax treaty ratified by Kenya

Kenya ratified the East African Community Income Tax Treaty (2010), by way of Legal Notice No. 142, as published in the Kenyan Official Gazette of 10 October 2014.

Lesotho

VAT mutual assistance agreement between South Africa and Lesotho ratified by South Africa

On 1 October 2014, South Africa ratified the South Africa-Lesotho value added tax mutual assistance agreement, signed on 6 March 2014.

Malawi

Treaty between Malawi and Zimbabwe – Negotiations

Following a recent meeting between officials from Malawi and Zimbabwe held in Harare, Malawi and Zimbabwe have expressed their intentions to negotiate and sign a tax treaty.

Mozambique

Amending Budget Law 2014 – Enacted

On 14 October 2014, the provisions of Law No. 22/2014 (Amending Budget Law 2014) were made available. The Law was enacted on 2 October 2014 and does not contain any tax amendments.

Namibia

Treaty between Namibia and Seychelles – Negotiations ongoing

According to a press release of 14 October 2014, published by the government of Seychelles, negotiations for a tax treaty between Namibia and Seychelles are currently ongoing. Further details will be reported subsequently.

Uganda

Treaty between Uganda and Vietnam – Negotiations

Following a meeting between officials from Uganda and Vietnam held in Hanoi on 19 September 2014, Vietnam has expressed its intentions to negotiate and sign a tax treaty with Uganda.

Nigeria

Taxation of investment income earned by pioneer companies

The Federal Inland Revenue Services (FIRS) issued a clarification, on 29 September 2014, on the taxation of investment income earned by pioneer companies that enjoy a tax exemption status under the Industrial Development (Income Tax Relief) Act. In its clarification, FIRS stated that all investment income in the nature of dividends, interest, royalties, and rent earned by pioneer companies is subject to withholding tax at the rate of 10%. According to the notice, the pioneer company exemption status only applies to taxation of business profits and not to passive investment income.

Swaziland

VAT mutual assistance agreement between South Africa and Swaziland ratified by South Africa

On 1 October 2014, South Africa ratified the South Africa-Swaziland value added tax mutual assistance agreement, signed on 4 December 2013.

Uganda

Protocol to treaty between Belgium and Uganda

Details have become available of the amending protocol, signed on 25 April 2014 to the Belgium - Uganda Income and Capital Tax Treaty (2007). The protocol includes a new article 27 on exchange of information. The protocol will apply as from the date of entry into force with respect to criminal matters and for all other matters as from 1 January of the year following the year of entry into force.

Zimbabwe

Mid-term fiscal policy review

The 2014 mid- term fiscal policy review statement was presented to Parliament by the Minister of Finance on 11 September 2014. Details of its tax proposals, which unless otherwise indicated will apply retroactively from 1 October 2014.

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Update on key resources and events across Africa

Resources

Quick Guide on Alternative Dispute Resolution(ADR) ** South Africa

This document is a general guide dealing with the ADR in South Africa.

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Guide on Dispute of a Tax Assessment ** South Africa

This document is a general guide dealing with what to do if you dispute your tax assessment.

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SARS Dispute Resolution Guide ** South Africa

This document is a general guide dealing with the resolution of tax disputes in South Africa based on the rules promulgated in terms of section 103 of the Tax Administration Act, 2011.

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Summary of all Interpretation Notes (INs) ** South Africa

This document provides a useful summary of all existing INs.

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Status Overview of all DTAs and Protocols ** South Africa

SARS Status Overview of all DTAs and Protocols has been updated. Developments include the India Protocol and Turkey Protocol ratified in South Africa and Hong Kong DTA which has been signed.

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Status Summary of all Tax Information Exchange Agreements (Bilateral) ** South Africa

SARS Status Summary of bilateral TIEAs has been updated. Developments include the Cook Islands, Barbados, Monaco, Argentina, Liechtenstein, Belize TIEAs; ATAF and SADC Multilateral Agreements and FATCA ratified in South Africa.

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Status Summary of Multilateral Mutual Administrative Assistance Conventions/Agreements ** South Africa

SARS Summary of Multilateral Mutual Administrative Assistance Conventions/Agreements has been updated.

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Status Summary of all VAT Mutual Administrative Assistances (MAAs) ** South Africa

SARS Summary of VAT MAAs has been updated. Notable developments include the Swaziland and Lesotho VAT MAA ratified in South Africa.

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Status Summary of all One-Stop-Border-Posts Agreements (OSBPs) ** South Africa

SARS Summary of all OSBPs has been updated. Important developments include Annexes I, II and III of the Mozambique OSBP ratified in South Africa and Mozambique.

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Events

Corporate Tax Back to Basics ** South Africa

Deloitte School of Tax is hosting “Corporate Tax Back to Basics” workshops in the following venues:

- Port Elizabeth- 18 November 2014
- Johannesburg - 19 November 2014 (session 1)
- Johannesburg - 24 November 2014 (session 2)
- Johannesburg - 25 November 2014 (session 3)
- Johannesburg - 26 November 2014 (session 4)
- Cape Town - 20 November 2014
- Durban - 27 November 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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http://www.linkedin.com/groups/Deloitte-South-Africa-Tax-3909634?trk=myg_ugrp_ovr

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