

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 10/2014
9 October 2014

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Recent tax developments in South Africa

South Africa

Coming Soon – Changes to tax dispute forms and process

Tax dispute forms and process will be changed in November 2014. All saved or pending income tax dispute forms, Notice of Objection (NOO) or Notice of Appeal (NOA), will be deleted from SARS' e-filing system after 31 October 2014. Taxpayers who haven't submitted previously completed NOO or NOA forms by 31 October 2014 will need to manually transfer the information to the updated NOO or NOA, which will be available in November 2014.

New SARS Commissioner appointed

President Jacob Zuma has appointed Thomas (Tom) Swabihi Moyane as the new Commissioner of the South African Revenue Services (SARS). Moyane's appointment is with effect from 27 September 2014.

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New tax return to be introduced for trusts

SARS will be introducing a new modernised Income Tax Return for Trusts. The new ITR12T will be an interactive return that will allow taxpayers to navigate from different menu items and will be fully customisable based on answers to certain questions presented. When launched, the new ITR12T return will replace the current IT12TR. The new tax return is to come into effect on 3 October 2014 and will require far more detail than the current return.

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Employment Tax Incentive (ETI) refund process

The Employment Tax Incentive Act and the draft amendments to this Act in terms of the Draft Taxation Laws Amendment Bill, 2014, allows for the introduction of a refund process that will refund employers the amount of the allowable ETI that was not used to reduce the Employees' Tax amount payable at the end of each six month reconciliation period (1 March to 31 August and 1 September to 28/29 February). The refund process is expected to be introduced in the last quarter of 2014 and a final pay-out date will be announced soon.

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SARS Draft Language Policy for public comments

SARS has published the South African Revenue Service Draft Language Policy in terms of section 4(2)(h) of the Use of Official Languages Act, 2012 (Act No. 12 of 2012). Members of the public are invited to submit written comments within 30 (thirty) days after the publication of the Notice on 26 September 2014.

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Interpretation Note No. 75 (Issue 2) - Exclusion of certain companies and shares from a “group of companies” as defined in section 41(1)

This Interpretation Note covers the definition of “group of companies” in sections 1(1) and 41(1) of the Income Tax Act, and provides guidance on the application of the proviso to the definition in section 41(1).

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Interpretation Note No. 79 - Produce held by nursery operators

This Interpretation Note covers sections 25, 25c and 26, and paragraphs 2, 3, 4 and 9 of the First schedule and paragraph 40 of the Eighth Schedule to the Income Tax Act. It provides guidance on the valuation of produce held and not disposed of by nursery operators at the beginning and at the end of each year of assessment. It also examines the capital gains tax consequences of the disposal of produce. It replaces Practice Note No. 32 dated 7 October 1994.

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Draft Interpretation Note – Section 12I - Additional investment and training allowances for industrial policy projects

Section 12I of the Income Tax Act provides for the deduction of additional investment and training allowances from the income of a company in respect of a qualifying “industrial policy project”. This draft Interpretation Note provides guidance on the interpretation and application of section 12I. Comments are due for submission by 12 November 2014.

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The Supreme Court of Appeal judgment – Shuttleworth v South African Reserve Bank (864/2013) [2014] ZASCA 157

The Supreme Court of appeal delivered its judgment in the case between Shuttleworth and the South African Reserve Bank (SARB) on the 1 October 2014. The judgment revolves around regulation 10(1)(c) of the exchange control regulations – lawfulness of the imposition of a ten per cent exit levy by the SARB on the value of assets exported upon emigration and whether court can order repayment of the levy.

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High Court Judgment - Customs and Excise Act - Coltrate International CC and SARS

The High Court ruling pertains to section 47(9) (a) of the Act - whether tariff determination on coconut milk, coconut cream and coconut powder was correct to be under TH2106.90.90 or whether TH2008.19 applies.

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Tax Court Judgment - TC-VAT 1015 SG – VAT input tax deduction in respect of accommodation and food in terms of section 17(12)(a)

The judgment relates to an appeal against various VAT assessments raised by SARS in terms of section 31 of the Value-Added Tax Act, Act 89 of 1991. The respondent’s assessments concerned the disallowance of VAT input tax deductions relating to accommodation and meals expenses incurred when executing contracts at various mines.

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Binding Private Ruling (BPR) 180 – Improvements effected on land not owned by taxpayer

This BPR ruling deals with the question as to whether a taxpayer, who is a party to a public private partnership, will qualify for a deduction under any of the provisions referred to in section 12N of the Income Tax Act in respect of improvements effected on land not owned by the taxpayer.

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Recent tax developments in the rest of Africa

Algeria

Treaty between Algeria and United Kingdom initialed

On 4 September 2014, Algeria and the United Kingdom initialed a tax treaty, following a second round of negotiations held in Algiers.

Benin

Treaty between Benin and United Arab Emirates

The United Arab Emirates ratified the tax treaty with Benin signed on 4 March 2013, by way of Decree No. 71/2014. The decree was published in a recent issue of the official gazette.

Botswana

Air transport agreement between Botswana and Qatar

An air transport agreement between Botswana and Qatar (signed on 5 May 2013) has now been approved by Qatar.

Ethiopia

Treaty between Ethiopia and Ireland – Negotiations

Following a meeting between officials from Ethiopia and Ireland held in New York on 24 September 2014, Ethiopia and Ireland have expressed their intentions to negotiate and sign a tax treaty. A next meeting is scheduled to take place in November 2014 in Ethiopia.

Ghana

Treaty between Ghana and Portugal – Negotiations concluded

Negotiations for a tax treaty between Ghana and Portugal have been concluded, following a meeting between officials of both countries in Lisbon on 9 September 2014. The treaty is expected to be signed at the end of this year in Accra.

Kenya

Amended Finance Bill 2014 – Reintroduction of capital gains tax

The Finance Bill 2014 was passed by Parliament on 28 August 2014 and is awaiting presidential assent. The Bill proposes amendments to the Finance Bill tabled in Parliament on 13 June 2014. The major changes introduced by the amendments to the Finance Bill 2014 include:

- Direct taxation - Capital gains tax is reintroduced at the rate of 5% of the gain made from the transfer of property.
- Personal taxation - Meals provided by employers to employees at an office cafeteria or canteen are not taxable on employees provided the value of the meal does not exceed KES 48,000 per year. Previously, the exemption only applied to low income employees. Also, Kenyan vacations for employees that are paid for by their employers are tax-free provided they are for a period not exceeding 7 days.

Lesotho

Treaty between Lesotho and South Africa signed

On 18 September 2014, Lesotho and South Africa signed a tax treaty in Maseru. Once in force and effective, the new treaty will replace the Lesotho - South Africa Income Tax Treaty (1995).

Mauritius

Treaty between Mauritius and Rwanda enters into force

On 4 August 2014, the Mauritius - Rwanda Income Tax Treaty (2013) entered into force. The treaty generally applies from 1 January 2013 for Rwanda and from 1 July 2013 for Mauritius. From these dates, the new treaty replaces the Mauritius - Rwanda Income Tax Treaty (2001). The treaty generally follows the UN Model (2011) and the maximum rates of withholding tax are: 10% on dividends, 10% on interest (subject to exceptions), 10% on royalties and 12% on any management, technical or professional fees.

Treaty between Cape Verde and Mauritius – Negotiations concluded

According to a recent update published by the government of Mauritius, negotiations for a tax treaty between Cape Verde and Mauritius have been concluded.

Treaty between Malta and Mauritius – Negotiations concluded

According to a recent update published by the government of Mauritius, negotiations for a tax treaty between Malta and Mauritius have been concluded.

IPA between Kuwait and Mauritius enters into force

The investment protection agreement (IPA) between Kuwait and Mauritius signed on 18 April 2013, entered into force on 24 July 2014.

Exchange of information agreement between Mauritius and United States enters into force

On 29 August 2014, the Mauritius - United States Exchange of Information Agreement (2013) entered into force. The agreement generally applies from 29 August 2014.

FATCA agreement between Mauritius and United States enters into force

On 29 August 2014, the Mauritius - United States FATCA Agreement (2013) entered into force.

Morocco

Treaty between Estonia and Morocco ratified by Estonia

On 9 September 2014, Estonia ratified the Estonia - Morocco Income Tax Treaty (2013).

Mozambique

Oil and gas – New tax regime and tax incentives enacted

The Law No. 27/2014 (“the Law”), which introduces new rules applicable to the oil and gas sector, has been enacted. The Law replaces the previous legal regime which was provided by Laws 12/2007 and 13/2007 of 27 June 2007. The new provisions will apply as from 1 January 2015.

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Seychelles

Treaty between Saudi Arabia and Seychelles

Following a meeting held in Jeddah on 29 August 2014, negotiations for a tax treaty between Saudi Arabia and Seychelles are underway.

Statutory period to process VAT refund reduced

By means of Value Added Tax (Refunds) (Amendment) Regulations, 2014 published in the Official Gazette on 1 September 2014, the statutory period to process any VAT refund was reduced from 45 to 30 days.

Tunisia

Departure tax applicable as of 1 October 2014

On 19 September 2014, the Ministry of Finance announced that the new departure tax, which was introduced by the Supplementary Finance Law for 2014, will apply as of 1 October 2014 instead of 28 August 2014. The Ministry of Finance clarified that the new tax is levied at the rate of TND30 on all non-resident individuals upon departure from Tunisia except for Tunisian nationals who reside abroad.

Social security agreement between Bulgaria and Tunisia signed

On 24 September 2014, Bulgaria and Tunisia signed a social security agreement, following a meeting of the Joint Commission Tunisian Bulgarian Social Security, held in Tunis from 22 to 24 September 2014.

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Update on key resources and events across Africa

Resources

SARS payment rules – External guide ** South Africa

This guide (dated 30 September 2014) details the payment rules that must be adhered to when paying SARS to ensure accurate payment allocation.

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Case summaries ** South Africa

The attached provide useful summaries of recent case law.

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SARS summary of Double Taxation Agreements (DTAs) & Protocols updated ** South Africa

SARS' summary of DTAs & Protocols currently in force has been updated. A notable development includes Lesotho's renegotiated DTA with South Africa which was signed on 18 September 2014.

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SARS summary of Information Exchange Agreements (IEA) updated ** South Africa

An updated summary of current IEFs can be accessed on the SARS' website. The updated list includes the recent ratification by Liechtenstein of the TIEA on their side.

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SARS summary of VAT Mutual Assistance Agreements (MAA) updated ** South Africa

SARS summary of current VAT MAAs in force has been updated. A notable development includes Lesotho's ratification of the VAT MAA with South Africa on their side.

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SARS interest rates Tables 1, 2 and 3 updated ** South Africa

Interest Rates Tables 1, 2 and 3 have been updated. Table 1 provides the interest rates on outstanding taxes and interest rates payable on certain refunds of tax. Table 2 provides the interest rates payable on credit amounts and Table 3 provides the rates at which interest-free or low interest loans are subject to income tax.

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SARS average exchange rate tables updated ** South Africa

Tables A and B of the average exchange rates have been updated. The next update of these tables can be expected in December 2014.

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OECD release on transfer pricing documentation: the new global standard ** Rest of world

The OECD's final revisions to Chapter V of the transfer pricing guidelines, issued 16 September 2014, materially reduce the documentation burden on businesses contemplated in the January 2014 discussion draft on transfer pricing documentation and country-by-country ("CbC") reporting, and clarify many of the issues that had concerned businesses. The new guidance will provide tax authorities with enhanced transparency regarding the financial results of a company's global transfer pricing policies. Companies are advised to consider how the new documentation guidance will impact their current transfer pricing policies and their processes for implementing, monitoring and defending those policies.

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Events

Tax Accounting for Complex Areas ** South Africa

Deloitte School of Tax is hosting "Tax Accounting for Complex Areas" workshops in the following venues:

- Durban – 15 October 2014
- Cape Town – 20 October 2014
- Johannesburg – 30 October 2014

The Basics of Tax Opinion Writing ** South Africa

Deloitte School of Tax is hosting "The Basics of Tax Opinion Writing" workshops in the following venues:

- Cape Town – 22 October 2014
- Johannesburg – 23 October 2014
- Durban – 24 October 2014
- Port Elizabeth – 4 November 2014

Merger and Acquisitions Fundamentals ** South Africa

Deloitte School of Tax is hosting "Merger and Acquisitions Fundamentals" workshops in the following venues:

- Durban – 13 November 2014
- Cape Town – 19 November 2014
- Johannesburg – 11 November 2014
- Port Elizabeth – 12 November 2014

Corporate Tax Framework ** South Africa

Deloitte School of Tax is hosting "Corporate Tax Framework" workshops in the following venues:

- Durban – 13 November 2014
- Cape Town – 19 November 2014
- Johannesburg – 11 November 2014
- Port Elizabeth – 12 November 2014

Fundamentals for Cross Border Transactions ** South Africa

Deloitte School of Tax is hosting "Fundamentals for Cross Border Transactions" workshops in the following venues:

- Durban – 19 November 2014
- Cape Town – 20 November 2014
- Johannesburg – 19 November 2014

- Port Elizabeth – 18 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:

- 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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