

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 9/2014

10 September 2014

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Recent tax developments in South Africa

South Africa

Government Gazette No. 37940 (Notice 644) - Rules for electronic communication

The Notice prescribes the rules for electronic communication, including delivery and receipt of electronic communication, electronic filing of returns, electronic signatures and electronic record retention, as provided for under section 255(1) of the Tax Administration Act, 2011..

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Commentary on the draft Taxation Laws Amendment Bill 2014 and draft Tax Administration Laws Amendment Bill 2014 – period closed

The period for submission of public comments on the draft bills and regulations closed on 17 August 2014. Promulgation of the updated bills by National Treasury is now awaited.

High Court judgment - Capstone 556 (Pty) Ltd - HC A49/2014 WC

The judgment in this case relates to an appeal by the taxpayer against the tax treatment by SARS of profits derived on the sale of shares and the deductibility of expenditure incurred in respect of an equity kicker and indemnity payment.

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High Court judgment - Klüh Investments (Pty) Ltd - HC A48/2014 WC

The judgment relates to whether the appellant was conducting farming operations, particularly whether income received by the appellant was sufficiently closely connected to farming operations.

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High Court judgment - Huang & Others (including Mpsi Trading 74 (Pty) Ltd)

The judgment relates to an application for reconsideration of a search and seizure warrant, after an *ex parte* application was brought by SARS for the issue of a warrant in terms of section 59 and 60 of the Tax Administration Act, 2011.

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Tax Court ruling - IT 12984

This Tax Court ruling relates to the Seventh Schedule of the Income Tax Act, specifically the determination of the amount that accrues to employees who elected to receive the benefit of a company motor vehicle.

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Tax Court ruling – TC/VAT 1069

The Tax Court VAT ruling is with respect to an appeal against the imposition of 200% additional tax under the now repealed section 60(1)(a) of the VAT Act.

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Tax Court ruling - IT 13410

The Tax Court ruling pertains to the trading stock provisions in section 23F(2) of the Income Tax Act, read with section 11(a) and section 24M of the Act, as applied in the context of mining operations. It also deals with the imposition of penalties under (now repealed) section 76(2) of the Act.

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Binding Private Ruling (BPR) 178 – international corporate restructuring

The BPR deals with a corporate restructuring of a multi-national group of companies, specifically, sections 1(1) definition of “company”, “equity share”, “foreign company”, “group of companies” and “share”, and section 42 and section 45 of the Income Tax Act.

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Binding Private Ruling (BPR) 179 - Single premium life insurance policy issued by an off-shore insurer

The BPR deals with an investment by a resident in a single premium unit linked life insurance policy with an insurer registered in Liechtenstein.

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Binding General Ruling (BGR) 24 – Deductions for environmental conservation and maintenance

The BGR provides certainty on the application of the deeming provisions in section 37C (3) and (5) of the Income Tax Act, as far as it relates to a deduction claimed under section 18A of the Act. Section 37C(1) of the Act incentivizes the conservation of ecologically-viable areas by enabling taxpayers to claim various tax deductions for these endeavors.

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Replacement of Binding Class Ruling (BCR) 025 - Share option plan / share appreciation rights plan

A replacement of BCR 025 has been issued in response to a request, and clarifies how SARS will interpret and apply provisions of the law. The replacement ruling provides for textual changes and changes references in certain formulae. The ruling deals with the income tax implications for employees/senior executives within a group of companies in relation to their participation in a share option plan/share appreciation rights plan created by a holding company, and the appropriate apportionment formula that must be used to determine the amount to be included in the income of the employees/senior executives.

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Recent tax developments in the rest of Africa

Algeria

Treaty between Algeria and Saudi Arabia approved by Saudi Arabia

On 18 August 2014, the Saudi Arabian cabinet approved the income and capital tax treaty between Algeria and Saudi Arabia, which was signed in December 2013.

Angola

Technical Group of Negotiation and Implementation of the Protocol on Trade of SADC created in Angola

On 1 August 2014, Presidential Decree No. 148/14 was published in the Angolan Official Journal. The decree creates the Technical Group of Negotiation and Implementation of the Protocol on Trade of Southern African Development Community (SADC) (*Grupo Técnico de Negociação e Implementação do Protocolo sobre Trocas Comerciais da SADC – GTNIP*). The mission of the technical group is to prepare, together with the Angolan Minister of Commerce, the negotiation and the management of the implementation of the Protocol on Trade.

(Note: The member states of the SADC are Angola, Botswana, Congo (Dem. Rep.), Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe).

Burundi

Amending Budget Law 2014 enacted

On 2 August 2014, Law No. 1/23 (Amending Budget Law 2014 – *Loi Portant Fixation du Budget Général révisé de la République du Burundi pour l'exercice 2014*) was enacted by the parliament and published in the Official Journal. The main changes relate to consumption taxes and excise duties.

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Congo (Rep.)

Treaty between Congo (Rep.) and Mauritius ratified

On 1 August 2014, Congo (Rep.) ratified the Congo (Rep.) - Mauritius Income Tax Treaty (2010), by way of Decree No. 2014-436, as published in the Official Journal No. 32 of 7 August 2014.

Treaty between Congo (Rep.) and Italy enters into force

On 26 June 2014, the Congo (Rep.) - Italy Income Tax Treaty (2003) entered into force. The treaty generally applies from 1 January 2015.

Ethiopia

Protocol to treaty between Ethiopia and Netherlands signed

On 18 August 2014, Ethiopia and the Netherlands signed an amending protocol to the not yet in force Ethiopia - Netherlands Income Tax Treaty (2012), in Addis Ababa.

Ghana

Protocol to treaty between Switzerland and Ghana – details

Details of the amending protocol to the Ghana - Switzerland Income and Capital Tax Agreement (2008), signed on 22 May 2014, have become available. The protocol provides for an exchange of information provision which is in line with article 26 of the OECD Model.

Kenya

Details of Tax Procedures Bill, 2014

As referenced in Kenya's 2014 budget speech, the Kenyan treasury has published the Tax Procedures Bill. The Tax Procedures Bill, 2014 proposes to provide uniform procedures for administering the tax laws. Details of the bill are attached.

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Malawi

Budget for 2014/15

On 2 September 2014, the Budget for 2014/15 was presented to the parliament by the Minister of Finance. Unless otherwise indicated the proposed changes apply from 1 October 2014.

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Treaty between Malawi and United Arab Emirates

Negotiations for a tax treaty between Malawi and the United Arab Emirates are ongoing.

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). 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.

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Negotiations for treaties ongoing

According to an update in August 2014, published by the tax authorities of Mauritius, negotiations for tax treaties between Mauritius and Algeria, Canada, Czech Republic, Hong Kong, Iran, Lesotho, Malawi, Montenegro, Portugal, Saudi Arabia, Tanzania, Vietnam and Yemen respectively, are ongoing.

Rwanda

Treaty between Rwanda and Singapore signed

On 26 August 2014, the Rwanda - Singapore Income Tax Treaty (2014) was signed, in Singapore.

Seychelles

Seychelles joins pilot scheme for automatic exchange of information (EOI)

On 28 August 2014, the HM Treasury published a joint statement of the Finance Ministers of France, Germany, Italy, Spain and the United Kingdom announcing that the Seychelles has become the 46th country to join the pilot scheme on multilateral automatic EOI.

Exchange of information agreement between Seychelles and Switzerland approved

On 20 August 2014, the Swiss Federal Council approved the Seychelles - Switzerland Exchange of Information Agreement (2014). The agreement will be submitted to parliament for approval.

Tunisia

List of tax haven jurisdictions to be published

A draft decree has been submitted to the Council of Ministers fixing the list of jurisdictions considered to be tax havens under the Income Tax Code. Article 44 of Finance Law 2014 introduced an anti-tax haven rule whereby the withholding tax rate on certain outbound payments is increased to 25% when the non-resident recipient is based in specific jurisdictions to be fixed by decree. The withholding tax rate is increased for specific types of income as follows: from 20% to 25% for income from movable capital, except interest derived from deposits or securities issued in foreign currency or convertible Tunisian dinars; from 5% to 25% for interest paid to non-resident banks; from 15% to 25% for capital gains on immovable properties and other types of remunerations including royalties and commissions; and from 5% to 25% for dividends as of 1 January 2015.

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Update on key resources and events across Africa

Resources

Guide to the Urban Development Zone (UDZ) tax incentive (Issue 4) ** South Africa

This guide is a general guide for investors about the urban development zone (UDZ) tax incentive provided for in section 13quat of the Income Tax Act.

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Double Tax Arrangements (DTAs) in Nigeria ** Rest of Africa

The National Tax Policy (NTP) in Nigeria has identified double taxation as one of the major hindrances to the growth of the Nigerian economy. Presently, Nigeria has double tax agreements (DTAs) with twelve countries.

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Events

Tax Dispute Resolution & Controversy Management in Africa ** South Africa

Deloitte School of Tax is hosting a "Tax Dispute Resolution & Controversy Management" seminar in the following venue:

- Johannesburg – 11 September 2014
- Time - 13:00pm – 17:00pm
- Cost - R 1 000 (exclusive of VAT)

This seminar will look at tax dispute resolution in Africa with a specific focus on transfer pricing and customs (the most common disputes), and taxpayer rights, exploring real life examples that are likely to impact taxpayers doing business or entering into business in African jurisdictions.

Fundamentals for Cross Border Transactions ** South Africa

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

- Durban – 15 October 2014
- Cape Town – 20 October 2014
- Johannesburg – 30 October 2014
- Port Elizabeth – 17 October 2014

Tax Opinion Writing ** South Africa

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

- Johannesburg – 23 October 2014
- Cape Town – 22 October 2014
- Durban – 13 October 2014
- Port Elizabeth – 4 November 2014

Customs Back to Basics ** South Africa

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

- Johannesburg – 21 October 2014
- Cape Town – 16 October 2014
- Durban – 23 October 2014
- Port Elizabeth – 15 October 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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