

2010 Taxation Laws Amendments – Final Bills

Finance Minister Pravin Gordhan formally introduced the 2010 Taxation Laws Amendment Bills before Parliament's National Assembly on Tuesday 24 August.

PwC Tax will issue a more detailed Tax Alert on the two Bills in due course. For now, we summarise only some of the main points emerging from these Bills.



EMPLOYMENT

Company Cars: The taxable fringe benefit percentage will increase to 3.5% (of the car's "determined value") from 1 March 2011.

Share schemes: Dividends will be taxable (i.e. not exempt) when received in respect of restricted shares that are not equity shares, e.g. restricted preference shares.

Key man insurance: The rules allowing deductions for employers are to become stricter.

Retrenchment lump sums: These rules will be merged into the separate regime for retirement fund lump sums.

CORPORATE

New "dividend" definition: The effective date is fixed at 1 January 2011.

Corporate rules: The "election" rules as well as the treatment of trading stock will be simplified.

Financial instruments held as trading stock: The prohibition on writing down shares held by companies as

trading stock below cost is extended to cover all persons and all financial instruments.

INTERNATIONAL

Interest payments to non-residents: A 10% withholding tax on non-portfolio interest will be introduced. The targeted implementation date is 1 January 2013.

Definition of "foreign dividend": A new definition is introduced—delinked from the general "dividend" definition.

Foreign dividend (participation) exemption: The exemption is restricted further.

Gateway to Africa: An international headquarter company regime will be introduced from 1 January 2011. For foreign investment funds investing into SA securities, the SA tax exposure of the foreign investors will be limited.

Foreign investment structures (LLPs): Limited liability partnerships and companies will be taxed in SA as look-through partnerships if treated as such in the foreign jurisdiction.

Transfer pricing & Thin Capitalisation: The transfer pricing rules are re-drafted in line with OECD Guidelines. The thin capitalisation rules are also re-drafted, including the specific inclusion of branches. Effective date 1 October 2011.

OTHER IMPORTANT AMENDMENTS

Islamic finance: The tax treatment of specified Islamic Finance products is codified.

Mining Royalty: Certain calculation rules are relaxed.

Voluntary Disclosure Programme: The 12-month "VDP" will be introduced to encourage "defaulting" taxpayers to regulate their tax affairs.

Transfer of primary residence from company or trust: The concessions introduced in 2009 are replaced with broader and more flexible rules.

Exempt entities: The relief rules are extended for sporting bodies that fund amateur activities. The rules around the termination of exempt entities are stricter. Donations to trans-frontier areas will continue to be tax-deductible indefinitely.

Administration - SARS discretion to waive interest: SARS's discretion to waive interest is substantially reduced.

Interest proposals withdrawn: Two separate interest-related proposals that were contained in the draft Bills have been withdrawn completely. Firstly, the proposal to restrict the general interest exemption and, secondly, the proposal to automatically disallow interest deductions where taxpayers also earn dividend income.

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