

Tax Alert

16 March 2011

South Africa 2011/12 Tax Proposals

International Tax

The Minister of Finance presented the annual budget to Parliament on 23 February 2011. We comment on some of the international tax proposals highlighted in the budget.

Dividends tax

The date for the commencement of dividends tax ("DT") is set for 1 April 2012. This withholding tax will replace the current secondary tax on companies. The withholding rate is 10%, unless treaty relief applies.

When DT is introduced, it is proposed that the tax rate applicable to foreign-owned South African branches (33%) be replaced by the standard rate for companies (currently 28%) if the higher rate is discriminatory for treaty purposes.

It is also proposed that the tax rules applicable to inbound foreign dividends be adjusted in line with DT.

Interest withholding tax

The cross border interest withholding tax introduced in 2010 will become effective on 1 January 2013. In the interim, certain tax treaties will be renegotiated and withholding enforcement mechanisms will be introduced.

Headquarter companies

From 1 January 2011, foreign groups can establish headquarter companies in South Africa that will operate without any tax and exchange control barriers. Government has reaffirmed its commitment to the headquarter company regime and will address current



tax rules that could lead to double taxation, e.g. where non-treaty countries are involved.

Company-structured management investment funds

The tax relief for investment fund managers introduced in 2010 does not cater for SPV's. It is therefore proposed that relief is granted to these types



of companies by way of an exclusion from the effective management test, thereby ensuring that the companies remain outside the South African tax net regardless of the location of the fund manager in South Africa.

Tax treaty coordination

It is proposed that a list of all “similar taxes” be introduced into domestic tax law to ensure that treaty relief applies to all “similar taxes”, including DT and interest withholding tax.

Multinational offshore restructuring

Many South African multinational groups have undergone significant restructurings to reduce costs and increase efficiency, as a result of the economic climate. These restructurings can result in immediate tax consequences. Tax relief is to be granted under certain predefined conditions.

Gains and losses on currency transactions indirectly connected to foreign hedges

In certain instances, the current rules defer the taxation of foreign exchange gains or losses until realisation. In terms of the new proposals, once certain

assets are linked to currency gains and losses that are exempt, all instruments linked to the asset should similarly also be exempt, e.g. currency differences on a foreign bank loan that is used to fund an inter-group loan (where the currency differences are deferred) should similarly be deferred.

CFC refinement

Adjustments to the controlled foreign company legislation are proposed to close loopholes and mitigate unintentional negative consequences on normal business conduct.

Legislative process

The proposed tax amendments to legislation are expected to be released for public comment in May 2011, and final promulgation is anticipated for the fourth quarter 2011. We will keep you informed of developments.

For more information, please call any of the contacts below:

New York

Gilles de Vignemont 646-471-1301
gilles.j.de.vignemont@us.pwc.com

Cape Town

David Lerner + 27 21-529-2364
david.lerner@za.pwc.com

Deon de Villiers +27 21-529-2028

deon.de.villiers@za.pwc.com

Johannesburg

Elandre Brandt + 27 11-797-5822
elandre.brandt@za.pwc.com

Modestino Saladino + 27 11- 797 4540

modestino.saladino@za.pwc.com

This Tax Alert is provided by PricewaterhouseCoopers Tax Services (Pty) Ltd for information only, and does not constitute the provision of professional advice of any kind. The information provided herein should not be used as a substitute for consultation with professional advisers. Before making any decision or taking any action, you should consult a professional adviser who has been provided with all the pertinent facts relevant to your particular situation. No responsibility for loss occasioned to any person acting or refraining from acting as a result of using the information in the Tax Alert can be accepted by PricewaterhouseCoopers Tax Services (Pty) Ltd, PricewaterhouseCoopers Inc or any of the directors, partners, employees, sub-contractors or agents of PricewaterhouseCoopers Tax Services (Pty) Ltd, PricewaterhouseCoopers Inc or any other PwC entity.

© 2011 PricewaterhouseCoopers (“PwC”), a South African firm, PwC is part of the PricewaterhouseCoopers International Limited (“PwCIL”) network that consists of separate and independent legal entities that do not act as agents of PwCIL or any other member firm, nor is PwCIL or the separate firms responsible or liable for the acts or omissions of each other in any way. No portion of this document may be reproduced by any process without the written permission of PwC.