

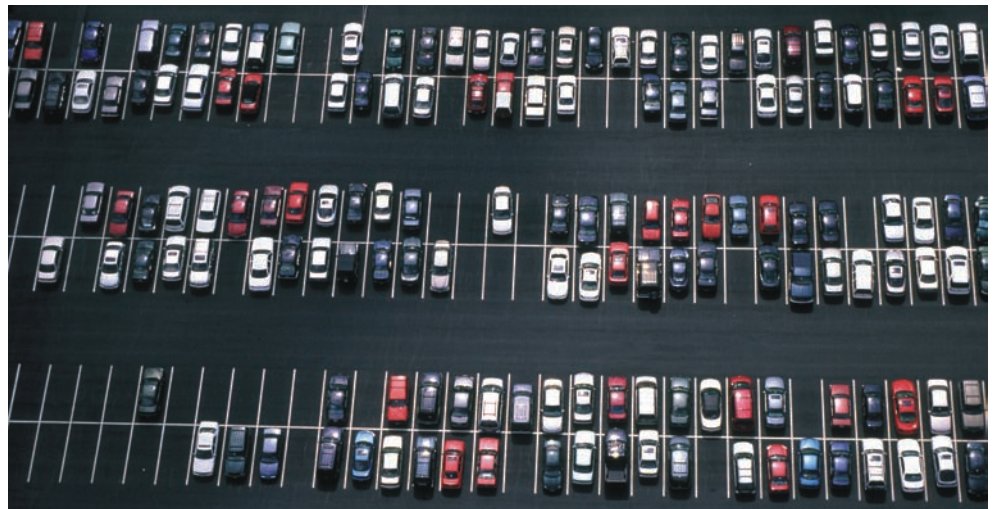
Tax Alert

20 March 2008

Taxation Laws Amendments

On 19 March 2008 two Taxation Laws Amendment Bills were tabled in Parliament. Although they will only become law once promulgated as 'Acts', there are many provisions that are subject to pre-determined effective dates.

The Taxation Laws Amendments typically enact adjustments to tax rates, exemption thresholds, and so forth –and this year is no different. However, this year there are also several substantive changes in these Amendment Bills. In addition to the routine adjustments* the following matters are some of the more significant amendments proposed for the ITA (Income Tax Act).



Restricted 'group' definition

Effective date brought forward

S41(1) ITA previously introduced a new restricted definition of 'group of companies' intended, inter alia, to restrict access to group re-organisation relief in certain cases. Whereas the 2007 Revenue Laws Amendments legislated that this restricted 'group' definition would take effect on 1 January 2009 in respect of the so-called corporate re-organisation rules, this effective date has now been brought forward to 21 February 2008. The original rationale for the delayed effective date was to give groups time to address potential automatic de-grouping that would be caused by the change-of-definition, but since the risk of automatic degrouping is now removed (as explained further below) the delay in effective date is considered unwarranted. However, this may disqualify some transactions that were already in progress, e.g. situations where the intention was to first undertake the asset-transfer followed by a subsequent restructuring of the group before 2009. (The effective date applicable to dividends and the STC rules, remains unaltered at 1 October 2007.)

Foreign-incorporated, but SA-resident, companies now included

The 2007 amendments excluded all foreign-incorporated companies from the restricted definition of "group of companies". The latest amendment now allows foreign-incorporated companies to be included into the 'group' as long

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as they are effectively managed in SA. (This amendment is effective from the same start-dates referred to above.)

Intra-group transactions

Broader de-grouping rule for intra-group transactions

As an anti-avoidance measure, the concept of de-grouping in s45 ITA has been substantially widened. S45 offers rollover relief for asset-transfers between group companies. The so-called de-grouping charge aims to tax the rolled-over gains in the event that (within 6 years) the transferor and transferee are no longer part of the same group. Previously the charge would only apply if the transferee and transferor separated from each other. The new rule (effective 21 February 2008) attacks any separation from the ultimate controlling parent. So even if the transferor and transferee are sold off together as an intact sub-group (within the 6-year window), the de-grouping charge would still apply. Whilst this position may seem harsh, most tax practitioners agree that it is substantially less punitive than the anti-avoidance measures that were originally proposed by SARS and the National Treasury.

No automatic de-grouping on 21 February 2008

The new restricted 'group' definition (in s41(1)) created the risk that many groups that have availed of group relief would automatically be deemed to have broken up on 21 February, purely because of the new definition. However, the new s45(4A) exempts

the de-grouping charge in such cases.

Expatriate accommodation

Main exemption period extended to two years

New provisions introduced in January 2008, allowed expatriate employees to enjoy tax-free employer-provided accommodation was originally for 12 months. The exemption period is now to be extended to 2 years.

Furthermore, the 'grace' period for previous pre-employment visits is now set at 90 days (instead of 30 days). This means that an employee would only be disqualified from claiming the 2-year exemption if he/she spent more than 90 days in SA in the year before employment. However, the exemption is now subject to a monetary limit of R25,000 per month.

Additional exemption for short visits

As an alternative to the 2-year exemption referred to above, expatriate employees may be able to claim a 90-day exemption for employer-provided accommodation. This exemption appears to be available irrespective of the number of years (e.g. even if the employee returns to SA for more than 2 years in succession), as long as the total stay in any tax year is less than 90 days, i.e. 89 days or less.

Penalties for late employees' tax reconciliations

A new 10% penalty is introduced for employers who do not submit their annual employees' tax reconciliations within 60 days of the year-end.

Furthermore, employers are prohibited from issuing IRP5s to employees unless and until the annual reconciliations have been submitted to SARS. This means that employees would have to wait for the employer to fulfil the compliance obligation before they (the employees) are able to file a return of income and apply their employees' tax deductions against their normal tax liability.

Retirement benefits

The rules on the taxation of retirement benefits (e.g. pension fund lump sums) have been further restructured.

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