

# Tax Alert

6 April 2010

## South Africa: International Tax Measures Budget 2010

On February 17, 2010, the Minister of Finance presented the 2010/2011 Budget to Parliament.



### Promoting South Africa as the gateway into Africa

The Minister affirmed Government's intention to promote South Africa as an attractive platform for business to expand into Africa. Please refer to our News Alerts dated 29 March 2010 for further information on two key initiatives, namely:

- Exchange control and tax relief for headquarter companies located in South Africa; and
- Tax protection for offshore funds and their non-SA resident investors that use a SA based fund manager.

### Investments into South Africa

Proposals included in the 2010/2011 Budget which relate mainly to investments into South Africa include:

- The exemption for interest payments to offshore persons on certain types of instruments may be restricted to exclude certain foreign investors in tax havens.
- The thin capitalisation rules will be amended so as to also apply to non-residents with SA branch operations.

- It is proposed to provide a uniform set of transfer pricing rules to deal with artificial pricing or the misallocation of prices within the various components of a transaction.

### Closure of sophisticated tax loopholes

The South African tax system, like its counterparts around the world, is under pressure to lower marginal tax rates, especially the headline corporate tax rate, for international competitiveness. Whilst Government has achieved lower rates over the past decade by broadening the tax base, one area of concern is the use of sophisticated tax avoidance schemes. The scale of these schemes often presents a substantial loss to the fiscus, even when considered in isolation.

Proposals which aim to combat sophisticated tax avoidance that relate mainly to investments from South Africa include:

- The tax treatment of 'unacceptable schemes' associated with tax treaties and foreign tax credits, which cause cross-border mismatches, will be clarified. An example of such schemes is the borrowing of funds to acquire financial instruments that generate income, but are subject to a zero rate of tax by virtue of tax treaties, or effectively not subject to South African tax by virtue of the 'inappropriate' use of foreign tax credits.
- The use of so-called 'protected cell' companies to bypass CFC legislation will be scrutinised.
- It is proposed to deny the deduction of insurance payments in certain 'problematic' cases of cross-border insurance schemes which represent capital investments as opposed to risk-related insurance.
- The taking of funds offshore through deductible payments (e.g. interest) and returning those funds tax-free through exempt foreign dividends is to be further reviewed and restricted.

### For further information, please contact:

#### Cape Town

David Lerner - Global Tax Services Leader: Corporate International Tax

021 529 2364

david.lerner@za.pwc.com

Deon de Villiers

021 529 2028

deon.de.villiers@za.pwc.com

#### Johannesburg

Kyle Mandy - Leader: National Tax Technical

011 797 4977

kyle.mandy@za.pwc.com

Elandre Brandt

011 797 5822

elandre.brandt@za.pwc.com

The Tax Alert is designed to keep you abreast of developments and is not intended to be a comprehensive statement of the law. It should not be relied upon as a substitute for specific advice in considering the tax effects of particular transactions. No liability is accepted for errors or opinions contained herein.