

Draft 2010 Amendment Bills



The two draft Taxation Laws Amendment Bills were released for public comment on 10 May 2010. The expected dates for public representations before Parliament's Select Committee on Finance are 1 and 2 June, and the deadline for *written* submissions to National Treasury is currently set at 11 June 2010.

The main proposals are summarised below. Note that the majority of these proposals are intended to take effect in 2011.

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INTEREST

Restriction of interest exemptions

From 1 March 2011, interest on certain private loans (e.g. private company shareholder loans, trust loans, etc.) will no longer be tax-exempt in the hands of SA-resident individuals and non-residents. This is a limitation on the annual exemption for natural persons (currently R22,300 for under-65s) as well as on the general exemption for non-residents. Instead (it is proposed), only specified categories of interest will enjoy exemption, e.g. from banks, government bonds, unit trusts, listed instruments, etc.

Unproductive interest presumption

From 2011, the deduction of interest expenditure will be automatically disallowed to the extent that the taxpayer earns exempt income from financial instruments (e.g. SA dividends). Alternatively, taxpayers will have the option of providing specific "tracing" evidence to show which sources of finance are used to fund the earning of exempt income.

GATEWAY TO AFRICA

An international headquarter company regime will be introduced from 1 January 2011 to encourage the use of SA as a regional holding company location. Proposals include exemption from the CFC, STC (& Dividends Tax), and thin capitalisation rules, subject to strict requirements as regards the shareholding structure, investment holdings, and the receipts of the HQ company.

For foreign investment funds investing into SA securities, measures are also proposed to limit the SA tax exposure of foreign investors —typically shielding foreign limited partners from the SA activities of the general partner or SA fund manager.

COMPANIES

Corporate rules

Amendments are proposed to ensure that transfers of trading stock (and similar items) are not automatically caught as s45 intra-group transactions, and also to ensure that the 18-month ring-fencing rules do not apply to trading stock. The "tracing" rules in respect of share-for-share transactions (i.e. comparing the nature of transferred shares in the hands of the transferor and the transferee) are also relaxed.

Dividends

The new “*dividend*” definition will come into effect with the new Companies Act, as opposed to being delayed until the STC – Dividends Tax changeover.

Foreign dividends will be defined with reference to the local tax and corporate law where the foreign company is resident.

EMPLOYMENT

PAYE on re-determined Fringe Benefits

From 1 March 2010, SARS will be able to collect additional PAYE on re-valued fringe benefits directly from the employer —as opposed to being limited to collecting the additional tax only from individual employees upon assessment.

Retrenchment lump sums

From 1 March 2011, the tax treatment of retrenchment (etc) lump sums received from the *employer* will be merged into the new rules (introduced in 2009) for retrenchment withdrawals received from retirement funds.

Key man insurance

From January 2011, anti-avoidance rules will be tightened to address insurance policies that may be disguised deferred compensation (i.e. policies that in substance benefit the employee rather than the employer and/or creditors).

Company car fringe benefit

From 1 March 2011, the standard monthly taxable value will be increased to 4% (up from 2.5%) of the vehicle’s “*determined value*”, i.e. an annual taxable value of 48% — although for monthly PAYE purposes, only 3.2% will be taken into account.

Others

Some other important (2011) proposals involve revisions to taxation of employee share benefits, exemptions for employers’ contributions to professional bodies, and the discontinuation of SITE

OTHER IMPORTANT PROPOSALS

Voluntary disclosure for defaulters

A 12-month voluntary disclosure programme (“VDP”) will be instituted from 1 November 2010 to 31 October 2011. This is aimed at encouraging “defaulting” taxpayers to regulate their tax affairs. The full amount tax will still be due, but interest and penalties will be waived.

Islamic finance

In respect of the three specific Islamic Finance products that are arguably more common at present (Mudarabah,

Murabaha, and diminishing Musharaka), clarity is introduced in respect of the Income Tax, VAT and Transfer Duty treatment of these transactions.

Exempt and partially exempt entities

There is a proposal to extend the relief measures for professional sports bodies that fund amateur sport.

An exit tax is also proposed for the “unapproved” termination of certain exempt associations (like trade unions and chambers of commerce, etc.), together with a streamlining of the exit charges applicable to clubs and public benefit organisations.

The deduction for donations to trans-frontier conservation areas is proposed to be made permanent (i.e. removal of the 31 March 2010 sunset).

Transfer of primary residence from company or trust

The limited-offer relief for the tax-free transfer of private homes (from a company or trust to the individual shareholders or beneficiaries) is re-written. The rules introduced in 2009 will be terminated on 30 September 2010, and a replacement set will come into effect on 1 October 2010. This is an attempt to accommodate a broader range of circumstances and practical complexities. The deadline is also to be extended by one year, i.e. to 31 December 2012.

Turnover Tax

Several “remedial” amendments are proposed to the Turnover Tax rules to address unanticipated problems experienced since its implementation on 1 March 2009.

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