Taxation Laws Amendment Bill ("TLAB")

In brief

The Taxation Laws Amendment Bill was tabled on 11 November 2021. Notably, the Bill includes the amendments to the limitation on the set-off of the balance of an assessed loss and the interest deduction limitation rules, but these will only come into operation on the date on which the corporate income tax rate is reduced by the Minister of Finance and will apply in respect of years of assessment commencing on or after that date.

In detail

Corporate Income Tax (Business General)

Limitations on interest deductions and the use of assessed losses

On 24 February 2021, the Finance Minister announced in the Budget Speech that there will be a reduction in the corporate income tax rate to 27% for years of assessment commencing on or after 1 April 2022. This would be done alongside a broadening of the corporate income tax base by limiting interest deductions (section 23M) and the use of assessed losses (section 20).

The rate reduction is explicitly linked to limitations on interest deductions and the use of assessed losses to broaden the tax base.

These proposals were already announced in the 2020 Budget, but due to the detrimental impact of Covid-19, they were postponed to 2022.

From the onset it was clear that there was always the possibility that these measures could be postponed further and indeed this is now the case. The draft Response Document of 10 November 2021 confirmed that both the limitation of interest deductions and the use of assessed losses will remain in the TLAB, but will only come into operation on the date on which the rate of tax in respect of the taxable income of a company is first reduced after announcement by the Minister of Finance in the Annual National Budget.

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In both instances Treasury has stated that it has postponed these measures due to difficult economic circumstances in the past 19 months and to provide space for recovery.

It is therefore apparent that the reduction in the corporate tax rate to 27% will be postponed to a later date than that announced in the 2021 Budget Speech.

Insurance tax developments

The Insurance industry has in the recent past made submissions to National Treasury to exclude the policyholder tax funds from the proposed assessed loss limitation.

This has however not been accepted by National Treasury.

The clarification to the expense ratio for life insurers under section 29A, and short term insurance business transfers under section 28 are, however, welcomed.

Contributed Tax Capital (“CTC”)

The proposed amendments to the definition of CTC in section 1 seek to clarify the principle that shareholders within the same class of shares should equally, in relation to their shareholdings, share in the allocation of CTC as a result of a distribution.

Although the amendment provides for a specific exclusion for a general repurchase of listed shares by companies listed on the JSE or other South African exchange, taxpayers will still need to consider the impact of these amendments on corporate actions involving specific share buy-backs and redeemable preference shares.

The amendment comes into operation on 1 January 2022.

Asset for Share transactions

The anti-avoidance rules (section 42(8)) are amended to ensure that the additional consideration accrues to the transferor in relation to any assumed debt immediately before any subsequent disposal of the shares acquired in terms of an asset-for-share transaction.

Consequently, a transferor would, irrespective of whether such a subsequent disposal of the shares is in terms of tax deferred transaction or not, be subject to tax on the additional consideration that is triggered immediately before that subsequent disposal of the shares.

The amendment will severely constrain the ability of companies to reorganise in a tax neutral manner as it will be impossible to undertake back-to-back corporate reorganisation transactions using section 42 as the first step when this involves the transfer of debt.

The amendment comes into operation on 1 January 2022 and applies in respect of disposals of shares on or after that date.

Corporate International Tax (International Tax)

Controlled Foreign Company (“CFC”) diversionary rules

To qualify for the exclusion to the diversionary rules (section 9D(9A)(a)(i)), a “delivery” requirement has been added to sub-sections (aa) and (dd).

As from years of assessment commencing on or after 1 January 2022 the CFC must purchase:

• the goods for delivery in the CFC’s country of residence from a non-connected person; or

• the same or similar goods mainly for delivery in its country of residence from non-connected persons.

Taxpayers with CFC procurement companies should consider the impact of these amendments on their business.

Employees Tax

Employment tax incentive (“ETI”)

Amendments have been introduced to curb certain schemes where taxpayers claim the ETI in respect of individuals who do not actually work for them, but are rather engaged in training programmes with little to no employment characteristics (therefore failing to meet the definition of ‘employee’ as defined in section 1(1) of the ETI Act).

To allow National Treasury time to fine tune the proposed amendments and also to ensure that claims that would have otherwise been legitimate are not deemed unlawful, the effective date of the amendments will be postponed to 1 March 2022 and will apply in respect of years of assessment commencing on or after this date.
Value-Added Tax

VAT treatment of temporary letting of residential immovable property

Property developers generally make taxable supplies when selling their developments and can deduct input tax incurred for this purpose. However, due to the economic conditions, developers temporarily let these developments or part thereof for purposes of residential accommodation. This temporary letting created a VAT liability for developers.

To eliminate the VAT liability, the VAT Act previously contained temporary relief measures for developers which ended on 1 January 2018. National Treasury has now proposed a permanent solution which will come into effect on 1 April 2022.

In terms of the proposal, specific rules will be introduced for a developer who is unable to sell the property and leases the property on a temporary basis until a buyer is found. These will include the following:

- Definition of ‘developer’ and ‘temporary letting’
- Section 18(D) - which deals with the temporary letting adjustment to be made by the developer
- Special time of supply rules contained in section 9(13)
- Special value of supply - section 10(29)
- An input tax deduction to the Developer in section 16(3)(o).

In summary, when a developer applies fixed property temporarily for non-taxable purposes (i.e. rental of a dwelling), the developer must make an output tax adjustment on a value equal to the adjusted cost to the developer. This adjustment must be made when the rental agreement takes effect.

When the developer subsequently sells the property within the temporary letting period, a taxable supply takes place and the developer is allowed to make an input tax adjustment of the amount previously declared to SARS as output tax.

The proposed amendments will come into effect on 1 April 2022.

Carbon Tax

On 11 September 2020, the Department of Forestry, Fisheries and the Environment (“DFFE”) published amendments to the National Greenhouse Gas Emission Reporting Regulations.

In terms of these amendments, Annexure 1 to the Regulations were amended to include changes to activities and/or thresholds, as well as the introduction of new activities now reportable to the DFFE.

The proposed changes were made in the 2021 Draft TLAB to Schedule 2 of the Carbon Tax Act so as to ensure alignment with Annexure 1 of the amended Greenhouse Gas Emission Reporting Regulations and the new activities now reportable to the DFFE.

Concerns were raised that the effective date for the amendments was set at 11 September 2020 so as to align with the amendments to the National Greenhouse Gas Emission Reporting Regulations. However, the effective date, proposed to be set at 11 September 2020, resulted in new activities being included in the tax period 1 January 2020 to 31 December 2020, resulting in a retrospective change in legislation.

The 2021 Draft TLAB was accordingly amended to change the effective date for Schedule 2 amendments to 1 January 2021.