



Tax Alert



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Let's talk

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2023 Draft tax legislation

In brief

On 31 July 2023, National Treasury (NT) and the South African Revenue Service (SARS) published the 2023 Draft Tax Bills and Draft Regulations for comment (due by 31 August 2023).

In detail

General

On 31 July 2023, NT and SARS published the following 2023 draft tax legislation for comment (due by 31 August 2023):

- the 2023 draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill (2023 draft Rates Bill)
- the 2023 draft Taxation Laws Amendment Bill (2023 draft TLAB)
- the 2023 draft Tax Administration Laws Amendment Bill (2023 draft TALAB)
- the Draft Regulations in terms of paragraphs (d) and (e) of the definition of "Research and Development" in section 11D(1) of the Income Tax Act, 1962 (R&D draft Regulations)

- the Draft amendments to the Regulations on Domestic Reverse Charge relating to valuable metal in terms of section 74(2) of the VAT Act, 1991 (Draft VAT domestic reverse charge); and
- the draft Carbon Offset Regulations.

The abovementioned documents give effect to the 2023 Budget proposals (as outlined in Annexure C and Chapter 4 of the 2023 Budget Review).

NT also published the draft Explanatory Memoranda on the 2023 draft TLAB and Regulations and the Draft Memorandum on the Objects on the TALAB.

2023 Draft Rates Bill

This Bill contains the changes to the rates and monetary thresholds and excise duties. The main tax proposals include the following:

- changes to the personal income tax tables;
- changes to transfer duty monetary thresholds; and
- increases to the excise duties on alcohol and tobacco.

2023 Draft TLAB

This Bill contains the following main tax amendment proposals:

- Rooftop solar tax incentive;
- Renewable energy tax incentive;
- Research and Development tax incentive;
- Urban Development Zone tax incentive;
- Adjusting the minimum royalty rate for oil and gas companies;
- Reviewing principles contained in Practice Note 31 of 1994;
- Clarifying anti-avoidance rules dealing with third-party backed shares;
- Refining the provisions applicable to unbundling transactions;
- Tax treatment of deposit insurance scheme;
- Clarifying the foreign business establishment exemption for controlled foreign companies;
- Refining the participation exemption for the sale of shares in foreign companies;
- Reviewing the VAT treatment of specific supplies in the short-term insurance industry; and
- Clarifying the VAT treatment of prepaid vouchers in the telecommunications industry.

2023 Draft TALAB

The main tax administration amendments are as follows:

- Advance Pricing Agreement Programme;
- Employees' tax registration requirement for non-resident employers;
- Variation of employees' tax withholding in respect of remuneration;
- Expanding the general disclosure provisions for section 18A approved organisations;
- Single window for advance passenger information and passenger name record data;
- Enabling SARS' new online traveller management system;
- Expanding the time period to submit a return where taxpayers disagree with an auto assessment; and
- Alignment with anti-money laundering and combatting terrorism developments.

R&D draft Regulations – section 11D ('Research and Development' definition)

The draft Regulations contain the consequential technical amendments aimed at aligning the wording of the Regulations with the proposed changes on the Research and Development tax incentive in respect of:

- paragraph (d) - additional criteria for multisource pharmaceutical products; and
- paragraph (e) - criteria for clinical trials in respect of deduction for research and development.

Draft VAT domestic reverse charge - valuable metal

The draft Regulations contain the following main proposals:

- Clarifying the definition of "residue";
- Clarifying the definition of "valuable metal";
- Clarifying the exclusions from the definition of "valuable metal";
- Introducing a de minimis rule in the definition of "valuable metal";
- Aligning the definition of "valuable metal" with the Precious Metals Act, 2005;
- Clarifying the transitional measures; and
- Clarifying the responsibilities of the recipient of valuable metal.



Draft Carbon Offset Regulations

The draft Regulations seek to align the utilisation period in the Carbon Offset Regulations with the extension of the first phase of the carbon tax, i.e. from 1 January 2023 to 31 December 2025.

Legislative process

The draft tax legislative amendments are contained in two separate bills, i.e. a money bill, dealing with money bill issues (in terms of section 77 of the Constitution) and an ordinary bill, dealing with issues relating to tax administration (in terms of section 75 of the Constitution).

The legislative process is generally as follows:

- Once the written comments have been received, NT and SARS will engage with stakeholders to discuss the draft proposals and public comments received, prior to the draft legislation being formally introduced in Parliament.
- NT and SARS will prepare and present a response document on the public comments received to the parliamentary committees.
- NT and SARS will subsequently amend the draft bills (to the extent required – with reference to the public comments and recommendations made during committee hearings).
- Finally, the amended bills are then formally introduced in Parliament for its consideration.

NT and SARS indicated that they will also engage with stakeholders through public workshops to discuss their comments on the draft regulations. Subsequently, the notices will be published in the Government Gazette (after NT and SARS have taken the public comments into account).

Takeaway

Taxpayers (and other interested parties) should review the draft legislation and regulations and provide their written comments on the contents of these documents to NT and SARS by 31 August 2023.



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