Draft tax legislation for 2017 released

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Tax Alert

Following the 2017 Budget presented before Parliament on 22 February 2017, the draft tax legislation for the specific tax proposals was released on 19 July 2017 for comment. Comments should be made by 18 August 2017.

Some of the more notable amendments are as follows.

Interest free loans to trusts

The contentious provisions relating to the taxation of interest free loans advanced to trusts where the lender is a connected person in relation to the trust, have been extended. If any connected person acquires a claim owing by a trust in circumstances where there is no or low interest payable, that person is deemed to have stepped into the shoes of the original lender. Importantly, the amendments are retrospective to the date on which section 7C became effective.

Further amendments are proposed to disregard the common law concept that the amount of interest that should be charged should not exceed the capital amount.

Repeal of exemption on foreign employment income

With effect from 1 March 2019, the exemption from South African tax on employment income earned off-shore is to be repealed. Any person earning foreign employment income will only be entitled to a reduction in tax from any foreign taxes paid.

Share schemes

Further amendments are made in relation to excluding share schemes from the anti-avoidance provisions for interest free loans to trusts if certain requirements are satisfied. In addition, it is proposed that amendments be made to clarify the taxation of employee share schemes and capital gains tax.

Share buybacks

Specific counter measures have now been introduced where share buybacks are used to avoid normal tax or capital gains tax. This will have implications on the current use of such structures and the legislation is effective from 19 July 2017.

New contributed tax capital rules within group companies

New anti-avoidance measures are proposed relating to the issue of shares within the group context and the quantum of any contributed tax capital.

Amendments to the definition of controlled foreign company

The definition of a controlled foreign company is to be substituted and amended such that the definition is expanded to include circumstances where residents hold an interest in a trust or a foreign foundation, which in turn holds more than 50% of the participation rights in a foreign company.

This amendment will come into effect from 1 January 2018 and is important in that it seeks to address the avoidance of creating a controlled foreign company where there is a foreign trust interposed. Foreign structures that have been established in the past using this loophole will have to be reviewed.

Change in withholding tax rates and donations tax rate

A far reaching provision has been proposed where the Minister of Finance may announce a change in withholding tax rates in the annual Budget Speech with effect from a date mentioned in that announcement.

Waiver of debt within group companies

Revised provisions relating to the waiver of debt between group companies are included in circumstances where a company is dormant.

Additional legislative changes are also included relating to debt forgiveness in the context of a mining company. The reason for such changes is to address the treatment of capital expenditure by mining companies.

A noteworthy amendment relates the exclusion of the debt forgiveness provisions where there is a conversion of debt to equity within a group of companies. There are anti-avoidance provisions for utilising this relief, most notably, that there companies must remain as group companies for a period of five years.

Tax implication on the assumption of contingent debt

It is proposed that the assumption of future contingent liabilities will be considered as an acceptable consideration under the corporate reorganisation rules.

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