Hogan Lovells

Budget 2019

20 February 2019

The 2019 Budget was presented by Minister Tito Titus Mboweni before parliament on 20 February 2019.

The 2019 tax proposals are projected to raise ZAR15 billion. The key changes announced are:

- A below inflation increase in the personal income tax rebates.
- Personal income tax brackets remain unchanged and will not be adjusted for inflation.
- The ad-valorem excise duty is expanded to include computer and gaming categories.
- A 15 cents per litre for the general fuel levy and a 5 cents per litre increase in the Road Accident Fund Levy with effect from 3 April 2019. In addition, a carbon fuel levy will be introduced with effect from 5 June 2019 at 9 cents per litre of petrol and 10 cents per litre of diesel.
- Increases in the alcohol and tobacco excise duties of between 7.4% and 9%.
- Increase in the sugar tax to 2.21 cents per gram in excess of 4 grams of sugar per 100 ml from 1 April 2019.
- Government intends to publish draft legislation to introduce a gambling tax which was originally proposed in the 2012 Budget.
- Government intends to start taxing electronic cigarettes and tobacco heating products.

There have been no increases in the corporate tax rate (28%) or in the personal income tax rate brackets.

The capital gains tax rates, value-added tax and transfer duty rates remain unchanged.

In addition, there are a number of other proposed tax amendments which will be implemented. We have highlighted some of the more pertinent proposals.

Business

Addressing the abuse of disguised sale of shares using share buybacks

Taxpayers have been identified as abusing the newly introduced amendments in 2018. These arrangements involve the target company distributing a substantial dividend to its current company shareholder and subsequently issuing shares to a third party. As a result, the value of the current company shareholder's holding in the shares of the target company is diluted and these shares are not immediately disposed of. These amendments will take effect on 20 February 2019.

Controlled foreign companies

It is proposed that –

- the exemption threshold be reduced from the current percentage, taking into account the sustainability of the tax base;
- additional measures be introduced to prevent schemes where controlled foreign companies (that are part of a group) are interposed in the supply chain between South African connected parties and independent non-resident customers or suppliers.

Debt-funded share acquisitions

Legislative amendments will be introduced to address shareholders claiming special interest deductions for newly established companies.

Reorganisation transactions

It is proposed that –

- the Income Tax Act be amended to clarify that any difference in value due to the deferred tax liability should not be subject to the relevant provisions in the context of asset-for-share transactions;
- the legislation clarify that the transfer of exchange items and interest bearing assets and assets is excluded from the rules;
- changes be made to the de-grouping charges to harmonise the provisions across the corporate reorganisation and controlled foreign company rules;
- the rules be amended to include deregistration by operation of law.

Venture capital company

Following the changes in 2018, it has come to government's attention that some taxpayers are attempting to undermine other aspects of the regime to benefit from excessive tax deductions. It is proposed that these rules be reviewed to prevent this abuse.

International tax considerations

Foreign employment

From 1 March 2020, South African residents who spend more than 183 days in employment outside the country will be subject to South African taxation on any foreign employment income that exceeds ZAR1 million. It is proposed that South African employers be allowed to reduce their monthly PAYE withholding by the amount of foreign taxes withheld on the employment income.

Base erosion profit shifting

It is intended to expand the work already under way to combat base erosion and profit shifting.

Permanent establishment definition

It is proposed that the permanent establishment definition in the Income Tax Act be reviewed.

Transfer pricing

Government proposes to review the scope of the transfer pricing rules to determine whether the definition in the Income Tax Act should be changed in line with the OECD definition.

VAT

Zero-rating

From 1 April 2019, the list of zero-rated items will be expanded to include white bread flour, cake flour and sanitary pads.

Regulations prescribing electronic services

From 1 April 2019, regulations prescribing electronic services will expand the scope of electronic services required to pay VAT in South Africa in the context of "group of companies".

Refining the VAT corporate reorganisation rules

The VAT Act provides relief for companies in the same group by treating the supplier and the recipient of goods or services as the same person during corporate reorganisation transactions. If these transactions take place in terms of sections 42 or 45 of the Income Tax Act, VAT relief is only permitted if the transfer relates to a going concern. However, transfers of fixed property under these sections may not always involve a going concern, especially in sale and lease-back situations. It is proposed that the VAT Act be amended to clarify treatment in these instances.

Environmental taxes

The National Treasury will publish a draft Environmental Fiscal Reform Policy Paper in 2019 in an effort to reform existing environmental taxes and broaden their coverage. Government will also investigate a tax on “single-use” plastics including straws, caps, beverage cups and lids, and containers to curb their use and encourage recycling.

Energy efficiency savings

To encourage additional investment in energy efficiency, government proposes to extend the incentive to 31 December 2022. During 2019, government will review the design and administration of the incentive to improve its ease of use, effectiveness and economic impact.

Carbon tax

The carbon tax will be implemented on 1 June 2019. It will be reviewed after three years. SARS and the Department of Environmental Affairs will jointly administer the tax. Draft rules will be published for consultation by March 2019.

Certified emissions reduction

After the introduction of the carbon tax, emission-reduction credits could be used to reduce carbon tax

liabilities. To avoid a double-benefit scenario, the tax exemption will be repealed from 1 June 2019.

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