Draft tax legislation proposals

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Tax Newsletter

New draft tax legislation was released by National Treasury on 16 July 2018 for comment. A number of amendments have been proposed and it is expected that comments will be made in respect of the more notable changes set out below.

Debt forgiveness

The debt forgiveness provisions contained in the Income Tax Act have been revised again with the insertion of amended definitions to include what constitutes a "concession or compromise", a "debt benefit" and the "market value". It should be noted that this proposed amendment is intended to be retrospective in its application and will be applicable from 1 January 2018. Taxpayers will therefore have to test whether any proposed changes in any debt fall foul of these new definitions.

Dividend stripping

New provisions are proposed to address the use of corporate rollover relief provisions to avoid the application of the provisions precluding the payment of extraordinary dividends without attracting tax consequences. It appears that taxpayers have sought to avoid the tax consequences of the dividend stripping rules by interposing a transaction where corporate rollover relief is claimed. This will have a number of implications for taxpayers in that it will be necessary to consider if any dividends declared prior to entering into the transaction constitute extraordinary dividends.

Trust attribution rules

In the draft tax legislative changes for 2017, it was proposed that the controlled foreign company definition be amended to include non-resident trusts holding shares in a foreign company where the beneficiaries were South African tax residents. The change was not implemented, however, there are now amendments proposed to address some of the loopholes relating to the interposition of a non-resident trust in order to break the controlled foreign company link. It is now proposed that there will be various attributions made to the South African founder/beneficiaries of the non-resident trust to discourage the use of trusts to defer tax or recharacterize the nature of income.

Venture capital companies

While the venture capital company regime has a time horizon of 30 June 2021, the South African Revenue Service (SARS) has recently released a draft guide on the interpretation of section 12J with comments due in August. In the latest draft legislative provisions, further amendments to section 12J are proposed which relate to the timing of various qualifying criteria as specified in section 12J. The amendments will come into force in January 2019 and it will be interesting to note if the proposals will facilitate the uptake in the use of section 12J.

Doubtful debts

Amendments were previously introduced where criteria for claiming a doubtful debt deduction were to be published in a public notice. No such notice has been published and it is now proposed that the relevant criteria be included in the Income Tax Act to provide certainty as to how taxable income is determined in relation to any doubtful debts.

VAT

Following the VAT increase from 14% to 15%, SARS are currently reviewing the items that qualify for zero-rating.

Following the media release issued by SARS on the tax treatment of cryptocurrencies, it is now proposed that for VAT purposes a cryptocurrency will be treated as an exempt financial service. The implication of this is that no VAT will be levied on the issue, acquisition, collection, buying, selling or transfer of ownership of any cryptocurrency.

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