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Tax Developments on one page

Proposed tax law amendments: Business

The draft Taxation Laws Amendment Bill was published by the National Treasury on 16 July 2018. It contains a number of proposals that will affect businesses. This article provides a brief overview of some of these proposed amendments. Businesses should keep a close eye on these proposals as they develop into amendments to be contained in the tax law amendment bills.

The South African National Treasury released the draft Taxation Laws Amendment Bill (draft TLAB) for comment on 16 July 2018. This article provides a brief overview of some of the significant proposals made in the draft TLAB that are likely to affect businesses.

Debt compromise rules

During the 2017 legislative cycle, the rules governing the tax implications for borrowers who are relieved of debt obligations were amended significantly. This included the introduction of revised set of rules as to what constituted a debt concession and compromise trigger. These triggers included certain events that resulted in debt compromises arising from unrealised events, for example, when the debt remained outstanding but its terms and conditions were changed. This resulted in events such as subordination of debts potentially causing a recoupment or base cost adjustment in the hands of a borrower.

The practical application of these rules raised a number of concerns for distressed borrowers. The draft TLAB proposes a revised set of debt compromise or concession triggers. These triggers appear to only target realised benefits as a result of having been relieved of an obligation to repay a debt. In brief, the revised proposed triggers are:

- The cancellation, waiver or remittance of a debt
- Extinguishment of a debt by redemption or merger by acquisition of the claim by the person owing the debt or a connected person
- Direct or indirect capitalisation of interest-bearing debt by a company.

The proposal also provides a basis on which the debt benefit, which is the amount that has tax implications, should be determined for each of the above triggers.

The effective date for these proposed changes corresponds with the date on which the 2017 amendments took effect.

Doubtful debt provisions

The Income Tax Act allows taxpayers to deduct an amount in respect of doubtful debts. The basis for the allowance is any debt that the Commissioner considers to be doubtful. In practice, most taxpayers deduct 25% of doubtful debts as the allowance for doubtful debts.

The draft TLAB proposes that the basis for this allowance be stated in the legislation. It is proposed that where a taxpayer applies IFRS for financial reporting purposes, the allowance should be determined as 25% of the loss allowance for impairment of debts, calculated in terms of IFRS 9. If a taxpayer does not prepare financial statements in accordance with IFRS, it is proposed that the allowance be 25% of the amount of debts due to the taxpayer that are 90 days or more in arrears. In both instances, the proposed allowance will not be available to lease receivables.

Refinement of the dividend stripping rules

Anti-dividend stripping rules were introduced with effect from 19 July 2017. One of the concerns with these rules was the lack of interaction between these anti-avoidance rules and the corporate roll-over relief provisions. The draft TLAB contains a proposal that the anti-dividend stripping rules should not apply to deferral transactions, but only subsequently if the shares acquired in terms of such transactions are disposed of.

Concluding thoughts

It should be noted that these proposals may still change. Businesses potentially affected by it should keep a close eye on the final amendment bills that will be published later in the year.

(August 2018)

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