Pieter van der Zwan
& Associates
Technical Advisory Services
Tax · IFRS

Important 2014 amendments

The Taxation Laws Amendment Bill, as well as the Tax Administration Laws Amendment Bill, both of which are expected to be promulgated as amendments acts later in the year, were released by the National Treasury on 22 October 2014. Compared to previous years, these bills perhaps contain less new provisions and the focus appears to be on refinements and changes to existing sections of the relevant legislation. These changes could nevertheless have a significant impact for taxpayers affected by it. This newsletter highlights some important amendments contained in these bills that I have identified as potentially being relevant to the companies and firms that I regularly work with.

Small business funding entities

A regime for entities aimed at providing assistance and funding to small businesses (micro businesses and small business corporations) is introduced from 1 March 2015. Such an entity would be able to receive amounts for purposes of funding or assisting small businesses without being subject to tax on such amounts. In addition, funding provided to the small businesses by such an entity would not be subject to tax in their hands (similar to grants from the state). The regime mirrors the public benefit organization tax regime in many respects. The establishment of such entities may provide companies or groups of companies with a vehicle to make funds available to small business, which may have advantages in other areas, such as BEE scorecards.

Tax free savings accounts

From 1 March 2015, a tax free savings account regime is introduced in South Africa in the form of section 12T. In short, natural persons would be able to contribute R30 000 per annum, with a life time limit of R500 000, into approved savings instruments. Returns (including gains on the disposal of instruments) are tax free. This savings regime would have the benefit of compounded, and therefore growing returns, on the amounts saved being tax-free compared to the current exemption in section 10(1)*(i)* where the benefit is capped at R23 800 for taxpayers under the age of 65 years.

Basis for fringe benefit tax on the right to use a vehicle

Currently fringe benefit tax is based on the cost of a vehicle to an employer of which the right of use is given to an employee. From 1 March 2015, the basis for this fringe benefit will change to a retail market value of the vehicle as determined by the Minister of Finance. This value will however still only be determined at the time that the use of the vehicle is first given to the employee, making the right to use a vehicle which decreases in value over a long period of time an extremely expensive and ineffective fringe benefit given that the tax value does not take the decreasing value into account.

Employment tax incentive scheme

Benefits in terms of the Employment Tax Incentive (ETI) scheme are available to employers who employ employees between the ages of 18 and 30 and, amongst others, pay these employees no more than R6 000 per month. This currently includes persons not employed on a full-time basis (for example, only a few hours per month). This may result in a person earning a relatively higher grossed up remuneration than R6 000 per month if he or she had worked a full day every day of the month, yet they would still entitle the employer to an ETI benefit. From 1 March 2015, an apportionment of the ETI benefit would be required where an employee does not work 160 hours per month.

CFC amendments

The administrative burden of completing CFC returns may be relieved to some extent for entities with foreign subsidiaries carrying on business through foreign business establishments outside of South Africa. Section 9D currently requires an entity to calculate what South African tax liability of such a CFC would have been in order to make use of the so-called high tax exemption. A potentially retrospective amendment is made for years of assessment ending on or after 31 December 2014 to also deem the net income of a CFC to be nil if that CFC only receives amounts that are attributable to a foreign business establishment as contemplated in section 9D(9)*(b)* and where the diversionary rules in section 9D(9A) do not apply.

If you require technical tax or IFRS assistance or an inhouse seminar please feel free to contact Pieter van der Zwan at **083 417 5904** or **pieter@pvdz.co.za** or to visit **www.pvdz.co.za** and submit a request on the relevant page.

Pieter van der Zwan
& Associates
Technical Advisory Services
Tax · IFRS

Important 2014 amendments

Cross-border interest payments

During the 2013 amendments section 23M was introduced in the Income Tax Act. Without specifically limiting its application to interest paid to non-resident lenders, the scope of the section is however such that it will most often apply where interest is paid to a connected foreign lender in whose hands such interest will not be taxed. Certain refinement have been made in the 2014 amendments before the section will become effective from 1 January 2015. These include the scope being narrowed by increasing the threshold for a controlling relationship, which is a prerequisite for the section to apply, to a 50% shareholding or voting right and clarification of the interaction between this section and section 23N where the debt subject to section 23M also funds an acquisition or re-organisation transaction. An aspect that remains unclear is the interaction between section 23M and the transfer pricing provisions of section 31.

Amendments still in the pipeline for 2016

One of the most relevant aspects to note from the bills may be proposals that have not yet realized or amendments made in previous years of which the effective dates have been postponed. The first item on this list, is the retirement contribution regime, which is aimed at aligning the tax treatment of contributions to all types of retirement funds. The implementation of this regime. which would have come into effect from 1 March 2015, has been postponed for at a year. Another proposal made earlier in the year was that the reduced tax rates applicable to small business corporations under section 12E could be replaced by a rebate for compliance. This proposal has however been referred back for further consultation with the industry. Lastly, the proposed deletion of section 11(1)*(g)* of the VAT Act, the immediate effect of which is perhaps limited to a few specific industries, has also been put on hold for a period of at least 12 months pending further consultation.

Concluding thoughts

Despite the amendments perhaps not being as technical as in previous years, the refinements and changes made could still have a big impact in the areas affected. The newsletter highlights a few amendments that are likely to affect a large number of taxpayers.

If require inputs or assistance in determining the impact of the 2014 amendments on the tax affairs of your company or those of a client, you are welcome to contact me for assistance in this regard.