Reviewing the Real Estate Investment Trust tax regime

Author: Jessica Carr.

Finance Minister Tito Mboweni delivered the 2019 Budget Speech (Budget) on 20 February 2019, which contained, amongst the various tax proposals, further clarification as to tax policy and technical and administrative adjustments set out in Annexure C of the Full Budget Review (Annexure C).

The Real Estate Investment Trust (REIT) tax regime in South Africa was addressed for general review in Annexure C. AnnexureC also referred to the implementation of the Financial Sector Regulation Act, No9 of 2017 and the establishment of the Financial Sector Conduct Authority (FSCA) which provide for the regulation of unlisted REITs, as it is proposed that government consider the regulation and tax treatment of unlisted REITs that are widely held or held by institutional investors, in line with the announcement in the 2013 Budget Review.
The inconsistencies in the current REIT tax regime have also been highlighted in Annexure C, particularly with regard to the definition of rental income applied to foreign exchange differences, as well as the interaction between the REIT tax regime and corporate reorganisation rules.

REIT Refresher

A REIT is a company that owns and operates income-producing immovable property. Until recently, the definition of a REIT in the Income Tax Act, No 58 of 1962 (Act) referred to a

company that is a South African tax resident whose shares are listed on the JSE as shares in a REIT, as defined in the JSE Limited Listing Requirements. Pursuant to the promulgation of the Taxation Laws Amendment Act, No 23 of 2018 (TALA), the definition of a REIT was extended to include companies with shares listed on an exchange as shares in a REIT, as defined in the listing requirements of an exchange approved in consultation with the Minister and published by the FSCA, in terms of s11 of the Financial Markets Act, No 19 of 2012 (FMA). Governed by s25BB of the Act, and introduced in South Africa with effect from 1 April 2013, a REIT, and a controlled company as defined, may deduct for income tax purposes the qualifying distributions made to its shareholders. The deduction set out in s25BB aims to provide REIT investors with steady rental income and capital growth in the underlying properties.

It is common for South African REITs to own commercial property ie hospitals, factories, shopping centres, office buildings, hotels, factories, warehouses. Residential property and international property are owned by REITs to a comparatively lesser extent.

For taxation purposes, a REIT is a company as commonly understood or may be deemed to be a company, for example, a portfolio of a collective investment scheme in property that qualifies as a REIT is deemed to be a company. Provided that they comply with JSE Limited Listings Requirements, shares in REITs are listed and publicly traded on the Johannesburg Stock Exchange (JSE). Pursuant to the promulgation of the TALA, the same will apply to the shares of a REIT listed on an exchange approved in consultation with the Minister and published by the FSCA, in terms of s11 of the FMA. The shares of the REIT must be listed as shares in a REIT as defined in the listing requirements of an exchange approved in consultation with the Minister and published by the FSCA in terms of s11 of the FMA, at s1(1) of paragraph (b)(ii) of the definition of REIT, so

that the REIT will qualify as a REIT for income tax and CGT purposes. A REIT and a controlled company must also consider dividends tax (in the case of foreign income), transfer duty, securities transfer tax and VAT.

Tax Neutral

Practically, a REIT is a conduit through which net property income flows to investors. In this way, as a result of this flow through principle, the investors are subject to tax on income received from the REIT, while the REIT itself will be taxed on taxable income retained at the standard corporate tax rate. As a REIT by its nature distributes most of its net income to its investors, the REIT usually pays little or no income tax and the shareholder will instead pay income tax on the distributions received from the REIT. REITs are therefore effectively allowed to operate on a tax neutral basis. Moreover, it must be noted that a REIT is not subject to capital gains tax in respect of properties that it disposed of, and dividends declared by a REIT to South African shareholders are not exempt, but are in fact part of the shareholders taxable income.

Rental income & foreign exchange differences

A distribution by a REIT is only deductible if it falls within the definition of qualifying distribution in s25BB(1) of the Act. Notably, to fall under the definition, at least 75%of the gross income of the REIT (or a controlled company in relation to the REIT) during its first year of assessment must consist of rental income or, in any other case, at least 75% of the gross income of a REIT or a controlled company in the preceding year of assessment must have consisted of rental income.

The term rental income is therefore of utmost importance within the REIT regime and is defined in s25BB(1) of the Act, as any amount received or accrued to a REIT or controlled

company for the use of immovable property (including any penalty or interest charged on the late payment of such amount), or for any dividend, other than a share buy-back, from a company that is a REIT at the time of the distribution of that dividend, or for a qualifying distribution from a company that is a controlled company at the time of that distribution, or for a dividend or foreign dividend from a company that is a property company at the time of that distribution, or for an amount recovered or recouped under s8(4) in respect of an amount of an allowance previously deducted per relevant sections in the Act.

It appears that Annexure C highlights the concern that qualifying distributions may be fettered by the lack of clarity surrounding the definition of rental income insofar as this has been shown to overlap with foreign exchange differences resulting from currency fluctuations. Of particular concern is the impact of s24I of the Act, which governs the income tax treatment of exchange gains or losses made in respect of both realised and unrealised foreign exchange transactions. This provision requires that certain taxpayers include or deduct from their income the exchange differences arising from exchange items (foreign currency, foreign denominated debt [eg bonds], forward exchange contracts [FEC] and foreign currency option contracts [FCOC]) ie exchange gains or losses will be taken into account for tax purposes, whether they have realised or not, and be taxed at the normal rate of tax at which any other income is taxed. Section 24I may become relevant to REITs where foreign currency fluctuations result in unrealised exchange differences after foreign rental income is generated from investing offshore. In such instances, the amount of capital gains tax to be paid will be impacted by the type of investment structure utilised.

Listed vs Unlisted

Initially, the provisions of s25BB of the Act (and other

related provisions) only applied to listed REITs, which required that, interalia, the REIT own property with a value in excess of R300 million, maintain its debt below 60% of its gross asset value, earn 75% of its income from rentals; and distribute 75% of its taxable earnings available for distribution each year. As part of the 2015 Budget, however, the Minister announced that unlisted property-owning companies should qualify for the same tax treatment as listed REITs, provided that they become regulated. At this time, the Minister indicated that the regulations governing unlisted property companies would still have to be developed, with the unlisted property company sector no doubt eager for regulations to be finalised and circulated for public comment. Though it had been contemplated that, if the REIT regime were to mimic the JSE Limited Listing Requirements, reporting requirements, specific debt gearing ratios and minimum distribution limits were to be expected, it appears from Annexure C of the 2018 Budget that the implementation of the Financial Sector Regulation Act, No 9 of 2017 and the establishment of the FSCA (which currently caters for the regulation of unlisted REITs) must be considered in the future regulation of unlisted REITs and the inclusion of unlisted REITs in the Acts regime.

REITs & Restructure

The nature of REITs ties the regime intrinsically to the corporate restructuring rules at s41 to s47 of the Act. The REIT regime has an impact on tax considerations surrounding, for example, asset-for-share transactions, substitutive share-for-share transactions, amalgamation transactions, intra-group transactions, unbundling transactions and transactions relating to liquidation, winding-up and deregistration. Demonstrative of the potential complications that arise is in respect of a transaction in terms of s42 of the Act where roll-over relief is provided for a disposer of assets who acquires a qualifying interest in the company which has

acquired the disposers assets. In the context of a listed entity such as a REIT, a single equity share issued to the disposer could potentially suffice.

A further example of the effect of the restructuring rules on the REIT regime is in circumstances where REITs are party to merger and acquisition transactions, as s46(6A) of the Act specifically excludes a REIT or controlled company from obtaining any tax relief under s46 when unbundling any shares held in another company. Consequently, as an example, any in specie distribution received from a REIT or controlled company is subject to tax. Section 47 of the Act further highlights the manner in which the treatment of REITs must be specifically considered as, whilst a liquidation distribution is exempt from income tax as a consequence of the normal s10(1)(k) dividend exemption, to the extent that it is a REIT or a controlled company which is being liquidated, the dividend exemption in the hands of the recipient will not apply and the liquidation distribution is subject to tax.

As such, in practice, and in order to maintain tax transparency, a REIT or controlled company is required to on distribute any amounts received from other REITs or controlled companies in terms of a liquidation distribution or an unbundling transaction, failing which tax consequences may arise. As previously mentioned, per s25BB of the Act, REITs must distribute 75% of their taxable earnings available for distribution each year. Furthermore, it is likely that in most instances the liquidation distribution or in specie distribution arising from an unbundling transaction would be capital in nature.

Whilst the Minister has said in the Budget that we need to free our entrepreneurs from stifling regulations and complicated taxes, the corporate restructure rules in the Act inevitably affect REITs at various stages and with various consequences, which result in precisely the complicated transactions and tax implications that the Minister would like

to avoid.

Annexure C certainly makes no promises in respect of the tax treatment of REITs for 2019, however, entrepreneurs and investors may take comfort in the specific consideration that the Minister has indicated will be paid to reviewing the REIT provisions.

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SA Budget 2019/20 – Tax Budget Proposals

Author: Dave Honeyball.

In line with expectations Finance Minister Tito Mboweni did not increase tax rates for income tax, Vat and capital gains tax. For the first time in many years, tax rates have remained unchanged from prior years and the only relief available to individual taxpayers has been a very small increase in the primary, secondary and tertiary rebates. The effect of this is that the tax threshold for individual taxpayers has increased from R78 150 to R79 000. Taxpayers who are fortunate enough to receive inflationary remuneration increases will for the first time in many years not benefit from any tax bracket relief and may in fact move into a different tax bracket by virtue of their increases.

Tax proposals identified for the upcoming legislative cycle include the following:

- Aligning provident and provident preservation fund tax exempt annuities such that the exempt part of the annuity is calculated on the same basis as for other funds
- Allowing South African employers to reduce their PAYE contributions for employees who are subject to withholding taxes in their host countries where they work abroad
- Reviewing the non-resident employer registration requirements where non-resident employers employ staff in South Africa
- Correcting anomalies arising from applying value shifting rules
- Refining provisions around interest deductions for debt funded share acquisitions
- Reviewing the special economic zone tax regime in respect of the anti-avoidance legislation prohibiting a company from qualifying for the 15% tax rate in the event that it has related party transactions of more than 20% in the form of deductible expenditure or income.

There will also be an amendment dealing with share buy-backs and dividend stripping transactions. A typical arrangement is one in which the target company distributes a substantial dividend to its current company shareholding and the company subsequently issues shares to a third party. As a result the value of the current company shareholder in the shares of the target company are diluted and these shares are not immediately disposed of. To curb this, new rules governing share buy-backs and dividend stripping will be introduced with immediate effect.

It remains to be seen whether these new proposals and the additional revenue achieved by not granting inflationary

adjustments to tax rates will be sufficient to convince the rating agencies to retain the current ratings. The government faces a year of further sluggish economic growth and state owned enterprises which absorb massive amounts of taxpayers' funds, often to operate inefficiently and unprofitably. We need to fasten our seat belts for another lap around the track.

SA BUDGET 2019 – A Review

Author: Ferdie Schneider , BDO National Head of Tax and Tax Partner.

The Minister of Finance, Mr Tito Mboweni, delivered his National Budget Speech today. An eloquent touch by the Minister was his placing and contextualising of the Faith of the Country, South Africans, and the Economy, on Scripture and opened with a quote form Zechariah 8 verse 12:

For the seed shall be prosperous; the vine shall give her fruit; and the ground shall give her increase, and the heavens shall give their due; and I will cause the remnant of this people to possess all these things.

This must have been one of the most difficult Budgets to deliver in recent South African history (by an experienced Finance Minister or not!). Why would that be? A few dilemmas

that we as South Africans are facing include an inordinately high unemployment rate, an ever-growing Government Wage Bill, low to no growth in GDP, Mismanagement of State-Owned Enterprises (notably Eskom, SAA, SABC, SARS, Denel, and the like), the possibility of a further credit rating downgrading, high direct and indirect tax rates, and the list goes on

However, considering where South Africa finds itself, the Minister did well. The Minister outlined National priorities that will resonate with most South Africans. Personal Income Tax, Corporate Income Tax, and VAT rates were (but for one or two small tweaks) left as is. Good news for most South Africans. Except, of course, that South Africans still need to budget for the impact of inflation, which makes every Rand they earn worth only 96% (after adjusting for inflation rate of 4%). The Minister, very creatively, rapped the National Budget in paper of Growth and the Future, not the current. Minister Mboweni and his Team at Treasury may again (as seems to be the trend in the last number of years) have been overoptimistic when forecasting growth in GDP.

Minister Mboweni carved his budget from six cornerstones, namely:

1. *Increasing higher economic growth*
2. *Increasing tax collections*
3. *Moderating expenditures*
4. *Stabilising and reducing debt*
5. *Reconfiguring State-Owned Enterprises*
6. *Managing the Public Sector Wage Bill*

At the October 2018 Medium Term Budget Policy Statement (MTBPS), the Minister projected tax revenue of R1.3 trillion. Tax revenue has been revised down by R15.4 billion. Approximately of the shortfall increase from October 2018 are attributable to higher than expected VAT refunds to clear some

of the backlog SARS had in this regard. This money is available in the economy and may have a slight accelerator effect.

The Minister reiterated the importance of the role the Nugent Commission played in highlighting some of the corrections needed at SARS, including:

1. *Appointing a new Commissioner for SARS (work in progress)*
2. *Establishing a new Illicit Economy Unit (August 2018) to fight trade ion illicit cigarettes and tobacco*
3. *Re-opening the Large Business Centre (LBC) (long overdue and welcomed!)*
4. *Strengthening the SARS IT Team and System (reminds one of certain Nugent declarations!)*
5. *Information-sharing agreements to curb cross-border tax evasion schemes*

At the time of the MTBPS, spending was projected to be R1.5 trillion, which left a shortfall of R215 billion or 4.3% of GDP. Since the MTBPS in October 2018, baseline expenditure was revised downwards by R50 billion over the medium term. Half of these reductions result from adjusting government compensation spend and R12.8 billion from measures to reduce spending on specific programmes. Allocations have provisionally been made to support Eskom and the Infrastructure fund, which offsets

the baseline reductions. As a result, the expenditure ceiling is increased by R16 billion over the next three years. The Minister quotes Oliver Twist when he said *Please Sir, may I have some more.*

GDP growth was projected to be 0.7% at the 2018 MTBPS and has remained the same. Real GDP growth is expected to increase to 1.5% in 2019 and to strengthen to 2.1% in 2021. Both these estimates seem overly ambitious, especially the 1.5% which is double that attained in 2018 (0.7%), with no material good

news (other than perhaps some activity by the President on attracting FDI).

The Minister very aptly contextualised the expectations for 2019/20. Revenues of R1.58 trillion are expected, whilst expenditure is budgeted to be R1.83 trillion. This leaves a shortfall of R243 billion! This means that South Africa is borrowing R1.2 billion every working day. Expenditure on interest alone will be R209.4 billion, or R1 billion per working day! The Minister is of the view that expenditure and tax adjustments are designed to counteract (largely) the addition R50 billion allocated to Eskom and the additional revenue shortfall. This all results (probably optimistically, even if just a tad!) in gross national debt stabilising at more or less 60% of GDP in 2023/24.

Government intends to reduce the Public Wage Bill (National and Provincial) by R27 billion over the next three years. This will be done by offering older employees early retirement (R20 billion saving over next three years). The shortfall will be complemented by limits on overtime, bonuses, and increases.

National non-interest spending is estimated at R5.87 trillion over the next three years. Governments spending (or investment) priorities include Learning and Culture (R1.2 trillion); Health Services (R717 billion); and Social Development (R900 billion). The President provided the following guiding objectives:

1. *Accelerate inclusive economic growth and create employment, including attracting FDI, relaxing VISA requirements, increasing eligibility for the Employment Tax Incentive Scheme (supporting 1.1 million people), decreasing data costs with assistance of ICASA, allocating R20 billion to industrial business incentives, allocating additional R1.1 billion over next three years to the Jobs Fund, allocating half a billion Rand to the Small Enterprise Development Agnecy, and*

supporting emerging farmers with R1.8 billion.

2. *Improve the education system and develop skills required for the future, including allocating R30 billion for new schools and existing infrastructure, spending R111 billion to assist 2.,8 million poor deserving students to study at universities and TVET colleges.*
3. *Improve living conditions for all especially the poor, including allocating R567 billion to social grants and increases, a R2.8 billion new human resources grant, R1 billion for medical interns, R1 billion to increase wages of community health care workers to R3500 pm, reprioritising R14.7 billion to two new conditional grants for informal settlements upgrading to give them access to basic amenities, increasing SANRALs allocation by R3.5 million over the next three years to improve non-toll roads.*
4. *Fight corruption and crime, including establishing a new Investigating Directorate in the NPA.*
5. *Strengthen the capacity and ability of Government to address the peoples needs, including the existing Financial Management grant, and the Municipal Systems Improvement grant, and strengthening the Auditor Generals role in Municipalities through the Public Audit Excess Fee Bill tabled on Budget Day.*

The Minister concluded with reference to South Africas Macro Challenges and Governments answers to them, namely:

1. *Sustainability Challenge, including climate change, expanding renewable energy, and the introduction of the carbon tax, effective 1 June 2019.*
2. *Rapid Urbanisation Challenge, including building up and not only horizontally.*
3. *Nationalism Challenge, including attracting high skill foreigners.*

All in all, the Minister had a difficult task. He delivered his Budget Address 2019 with his hands tied behind his back,

but still managed to slip his one hand out slightly to point towards the potential of a new South Africa that needs to redirect, focus on growth, fixing our State-Owned Fiascos, increasing SARS efficiency, attracting skilled foreigners, and educating our youth adequately. Not bad!

SA Budget 2019/20 – Compulsory retirement savings: a plan to help us help ourselves

Author:Cindy Frantzeskos , BDO Director of Employee Benefits.

With the annual treasury budget now done, an interesting thought exercise is to consider: What would the dream budget have looked like? In other words, what fundamental policy changes could we make to structurally improve the prospects of all South Africans.

A structural change that might foster a drastic improvement in the lives of South Africans would be to introduce a compulsory retirement fund for all employees.

As the law currently stands, it is entirely optional whether a company will set up a retirement fund for its employees. It is usually the employers of choice that do in fact set up such a fund, but many firms do not.

The upshot is that most employees reach the end of their working lives woefully under-resourced to fund their retirement years. Whatever savings they may have will be quickly used up, and they are then left with the state pension of about R1 650 a month to live off.

This is the bare minimum, and woefully inadequate for most South Africans.

Compulsory retirement planning is law in the United Kingdom, for instance. Here, it might be introduced gradually, with contributions of, say, three percent of salary by the employee, to be matched by the employer. This might be increased over time, or be part of a sliding scale, where higher-paid individuals pay a higher proportion of their salaries to the fund.

Failing such interventions, government social services will ultimately be saddled with people reaching the end of their working lives and being unable to support themselves. We need to take steps now to begin addressing this.

Another component of such a scheme is how it uses working people, one of our countrys most valuable social assets to fund their own retirement.

This raises another core issue the need to use our people and their skills to enrich broader society.

This kind of approach could be applied in so many ways. Retired people could become teaching assistants, sharing their knowledge with learners. Community members and company employees could be enlisted to maintain and upgrade infrastructure at schools and hospitals in their areas, or to

tend food gardens.

Other urgent social needs that can be filled by such a social service programme would be for childcare or looking after the elderly.

The idea is to allow our people our most valuable community assets to work for the country.

This could happen practically, through leveraging the labour and skills of the community, or financially by facilitating a compulsory retirement funding scheme so working professionals can fund their own retirement.

The functionality of such a fund would need to be worked out, but it could be incentivised by giving companies a tax rebate to the value of the funds they contribute to the retirement fund. The scheme could also encompass risk cover, to fund disability benefits for the contributors.

One outcome of compulsory retirement funding would be to build pride in our people by enabling a system where they can fund their own retirement and spend their later years in dignity.

Similarly, each of us has much to contribute to our society whether through skills, labour or our finances. The state should look to ways to unlock this potential.

The ultimate goal should be for our country to build national morale and a spirit of self-respect, while lightening the load on our overwhelmed social safety net. All of this would go a long way to instilling confidence in our nation an urgent requirement as we look to build our country and our economy.

The time for procrastination is over. Its time for people and communities to be part of the solution. Government should consider building programmes that help us roll up our sleeves and get involved.

SA Budget 2019/20 – Foreign employment income exemption

All may not be lost for impacted employers and employees! Many employers and employees are impacted by the change to the foreign employment exemption. Many hoped for a Government rethink but to no avail. The change, effective 1 March 2020, results in only the first R1 million of a qualifying employees foreign earned remuneration being exempt from South African tax. Despite the obvious concerns, it remains to be seen how much additional revenue will be raised by the change. Arguably the change may do more harm than good. Likely, many expatriate employees may not be impacted as they may be considered non-South African tax resident in any event. A common misconception of becoming non-South African tax resident is that a person needs to financially emigrate from South Africa. Although a financial emigrant will lose his or her ordinary tax residence status, a person may be able to achieve non-tax resident status without having to emigrate financially. For example, if a person is deemed to be exclusively tax resident in another country, and that country and South Africa have entered a Double Taxation Agreement (DTA). Many South Africans work in countries such as the UAE and Mauritius, both of which have DTAs with South Africa. The specific facts and circumstances of a person need to be assessed (pardon the pun!) to determine tax residency. The location where the person is performing employment duties may make that person subject to tax in that country. If the same earnings are taxable in South Africa, the person can

claim a credit for the tax paid in that country against his or her net South African tax liability. In certain instances, this may result in no additional South African tax on foreign employment income.

Employers will be burdened by expatriate employees working outside South Africa who do (or not, as the case may be) satisfy the qualifying criteria to claim the R1 million foreign employment earnings exemption. Especially if the same earnings are also subject to tax in another country or countries. For example, if the exemption criteria are not met and tax is also payable in a foreign country, this can place a significant cash flow burden on the employer and/or employee. The taxpayer may potentially apply to SARS for a hardship directive to claim a credit for the foreign tax paid in determining the South African tax payable. However, the specific documentation that SARS will require to issue such a directive remain uncertain. The Minister today acknowledged these concerns and announced its intention to workshop the concerns.

SA Budget 2019/20 – Saving a habit for growthTry this next time Tito

Ricardo Teixeira, CFP , BDO Chief Operating Officer Wealth Adviser.

20 February 2019. South Africa is faced with a stubborn and dangerously low economic growth rate. Our GDP is currently below 1% and after todays National Budget speech its clear that our GDP is not forecast to exceed 2% for at least the next 3 years. Were in a low growth economic and no matter what levers are pulled, there just seems to be no way out of this pit.

Our Minister of Finances approach in this years National Budget was clearly to take a step back and not disrupt the status quo with any fundamental changes to tax policy nor administration. So, what should he be doing to bring back growth to the South African economy?

Ask any economist, and they are likely to ramble off a shopping list of wishes ranging from minimum wage to tax incentives, and everything in between. The truth be told, Im certain that all these ideas could all work, but often with dependencies and provisos.

There is one economic and behavioural variable though that often gets overlooked as a stimulus for growth. Saving. Yes, boring old, savings. Putting away money that you have now for the future. Not spending. Saving.

The magic of savings is that we dont just leave our savings idle, we apply them to get a return. Whether its your personal savings or governments savings. Our savings generate interest on bank deposits, dividend on shares, we get to invest in a business, buy a house or second property, make a capital gain on the sale of that business, fund a start up, get access to more loan finance. All from the simple habit of savings.

Guess what these savings activities lead to? Growth. More wealth. New business opportunities. Employment. And more.

So, what could Tito do differently next time? Seed a culture of savings. Get South Africans to harness the power of savings to bring back growth to our economy. He could very well start with compulsory preservation of retirement savings. A primary source of tax efficient and tax frees savings are our retirement funds. By introducing punitive penalties for withdrawing from retirement funds or better yet, making it compulsory to leave retirement savings untouched when changing jobs until retirement is a powerful catalyst for a savings culture.

Why, Tito could even amend lending criteria to include a factor for ones savings rate and personal savings history. The better you are at saving, the easier it is to get a loan.

And if he was able to be more generous in dishing out benefits, a discount on your personal income tax rate would be a real bonus to tax payers who do save and display the habit of saving.

The point is not to overlook the simple rules of money as we have read about and learnt from The Richest Man in Babylon. Fatten your purse, control your expenditure, make your money multiple and you are on the road to the road of plenty.

The SA Budget 2019 budget

plus ca change; plus ca meme chose.

This was a pragmatic approach to a current fiscal problem and I think the Minister dealt with it in a methodical way, not through Knee jerk tax increases, but rather relying on inflation to increase the tax income, with the rebate sweetener.

The literal translation of the French phrase is The more things change; the more things stay the same and this can be said for the often-forgotten tax saving benefits that are available to all of us mere tax paying mortals.

Like contributions towards Retirement benefits.

To put it simply, we can contribute up to 27.5% of our taxable earnings to retirement benefits that include Pension, Provident and Retirement Annuity.

This incorporates a tax-deductible ceiling of R350 000.

For every Rand that we contribute towards one of these retirement instruments, we enjoy a tax-deductible benefit based on the rate of tax we are paying.

Given that so many of us will not have enough money on which to retire comfortably, this option has a major attraction in that it incorporates a twofold benefit.

1. Tax deduction advantages on the contributions.
2. An increased retirement income once you reach the magic age of retirement.

In addition to this, a Retirement Annuity allows you to

contribute additional lump sums as and when you have the money to do so and which will add to the tax-deductible benefits.

Many of us make a lump sum payment into our retirement annuities just prior to the tax year end, which helps to mitigate and additional tax we may have to pay.

Why not contact your Financial Planner now and ask them to give you some information?

It would be the pragmatic thing to do.

Article:

https://www.bdo.co.za/en-za/insights/2019/tax/the-2019-budget-plus-ca-change-plus-ca-meme-chose

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SA Budget 2019/20 – A further win for the youth

The historically high levels of unemployment among the youth in South Africa has led to the introduction of various tax incentives and benefits aimed at encouraging the employment and training of such persons. Among these is the employment tax incentive (ETI) scheme which was introduced by the Employment Tax Incentive Act, No 26 of 2013 (ETI Act).

The ETI is a temporary tax incentive aimed at encouraging

employers to employ young employees between the ages of 18 and 29, as well as employees of any age in special economic zones and industries indicated by the Minister of Finance. The benefit for employers is that the ETI enables eligible employers to reduce the amount of employees tax due by them by the ETI amount claimed.

The ETI scheme originally came into operation on 1 January 2014 and was legislated to end on 28 February 2019, after which date no further ETI credits would be claimable by any employer. A review of the ETI scheme presented the following positive outcomes:

- The employment growth rate and number of employees increased significantly in firms that claimed the ETI;
- The ETI improved employment growth rates even in firms with deteriorating employment rates, thereby demonstrating the role played by the ETI in halting job losses; and
- The retention rate of the ETI employees after the two-year eligible period has lapsed is substantial as employers are inclined to retain those employees who have gained experience and training.

Given the success of the ETI scheme, it has been proposed that the period for which the scheme applies be extended by 10 years. Employers will therefore be able to claim the ETI for qualifying employees until 28 February 2029.

A further amendment has also been proposed to cater for the effects of inflation. In this regard, it is noteworthy that the ETI is claimable in respect of employees earning income within specified income bands. From 1 March 2019, employers will be entitled to claim the maximum value of R1,000 per month for each employee earning up to R4,500, where previously this amount was R4000. The maximum monthly income earned by employees to qualify for the ETI has also increased from R6,000 to R6,500 per month.

Author: Louise Kotze – Special Edition Budget Speech Alert

2019

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SA Budget 2019/20 – Double taxation relief for South African employees working abroad

South African tax residents are taxed on their worldwide income, meaning that where such a person works abroad and is remunerated, this is caught in the South African tax net. If such a person works for a South African employer, an employees tax withholding obligation exists for the employer regarding the income that resident earns for services rendered while physically abroad.

In the Taxation Laws Amendment Act, No 17 of 2017, amendments to s10(1)(o) will go into effect from 1 March 2020. These amendments limit the exemption available under this section to income up R1 million earned by a South African taxpayer while working abroad.
Prior to the amendment taking effect all remuneration earned by South African taxpayers that qualified for the exemption under s10(1)(o) was exempt from income tax, meaning that in certain cases, no employees tax withholding obligation would arise. However, from 1 March 2020, where an employee earns more than R1 million in a 12-month period, employees tax must be withheld for any further income beyond the R1 million threshold.

However, the country where the employee is deployed may also impose an employees tax withholding obligation on the same income. Meaning that the same income would be subject to two withholding obligations, a classic example of double taxation.

The Budget therefore proposes that a provision be inserted into the IT Act, which would allow employers to reduce their amount withheld monthly for employees tax by the amount of any foreign employees tax withholding that applies to that income. This amendment is subject to a workshopping exercise by National Treasury and will be refined through the 2019 legislative cycle. The first workshop in this regard is scheduled to take place on 6 March 2019.

This amendment will provide vital relief for employees who work abroad, especially from a cash-flow perspective, given the increased tax burden they will face from March 2020. It also ensures that where an employee works in a country which has not concluded a double taxation agreement with South Africa, that they are not subject to double taxation.

Authors: Tsangadzaome Mukumba and Louis Botha – Special Edition Budget Speech Alert 2019.

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SA Budget 2019/20 – Domestic treasury management companies

alignment of tax and excon provisions

In 2013, the South African government introduced the domestic treasury management company (DTMC) regime to enable South African companies, which are registered with the Financial Surveillance Department (FSD) of the South African Reserve Bank (SARB), to expand into the rest of Africa and abroad. The DTMC regime allows South African companies to establish one subsidiary as a holding company to hold African and offshore operations, without being subject to exchange control restrictions.

When the DTMC regime came into effect on 27 February 2013, a DTMC was defined in s1 of the IT Act as a company that:

- is incorporated or deemed to be incorporated in South Africa;
- has its place of effective management in South Africa; and
- is not subject to exchange control restrictions by virtue of being registered with the FSD of the SARB.

A number of tax benefits apply to a DTMC, including the following:

- DTMCs may use their functional currency as a starting point for currency translations for tax purposes, as opposed to rands, providing relief in respect of unrealised foreign currency gains or losses. This dispensation applies to taxable income, monetary items and capital gains items; and
- the local currency of any DTMC in respect of an exchange item, not attributable to a permanent establishment

outside South Africa, will be the functional currency of that DTMC in terms of s24I. Accordingly, no gains or losses should arise in respect of, inter alia, any unit of currency, any amount owing by or to that company in respect of a debt or owing by or to that company in respect of a forward exchange contract denominated in the functional currency of such company

The Budget explains that in 2017, the IT Act was amended to remove the requirement that the company be incorporated in South Africa. However, the SARBs definition in Circular 5/2013 (also dealt with in Circular 7/2013) still includes the requirement that the company must be incorporated in South Africa. As a result, the 2017 changes are not aligned with the SARBs requirements. It is proposed that the definition of domestic treasury management company is changed in s1 of the IT Act to reintroduce the incorporation requirement.

As a result of the above and pursuant to the proposed amendment, in order for a company to qualify as a DTMC, it will once again have to be incorporated in South Africa and be effectively managed from South Africa.

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