Nene’s budget booted

Authors: Andisiwe Makinana, Setumo Stone and Hlengiwe Nhlabathi (News24).

Government is set to take the drastic step of revising ousted finance minister Nhlanhla Nene’s medium-term expenditure plans, as the economic situation has become a lot more dire since he presented it in October.

This unprecedented move was revealed by ministers after an extraordinary ministers’ meeting on the economy this week.

The medium-term budget policy statement, which forms the framework for the finance minister’s annual budget, has never been revised since South Africa adopted a three-year budgeting cycle 15 years ago.

The behind-the-scenes revision by government is also a big departure from the transparent practice of getting inputs from Parliament and extra parliamentary lobby groups such as civil society, unions, business and other interested parties.

It also comes ahead of a series of important meetings in which the economic crisis will take centre stage.

The ANC’s national executive committee will in the next week convene its beginning-of-the-year lekgotla, which will be followed by the Cabinet lekgotla a few days later.

While preparations for upcoming municipal elections will dominate the ANC lekgotla, it is expected the economy will receive greater attention than it has in the past.

Finance Minister Pravin Gordhan, who was appointed in December following David van Rooyen’s four-day stint in the job, said the revision showed that government was “not sitting back” in the face of the domestic and global economic crises.

“We are working … hard behind the scenes to ensure that we begin to take South Africa in a different direction,” said Gordhan.

While he would not go into detail about the revisions taking place behind the scenes, he said the picture would become clearer when President Jacob Zuma delivered his state of the nation address (Sona) on February 11 and Gordhan presented the 2016/17 budget two weeks later.

“If the numbers need to change, then the numbers will change as we go forward, because we recognise that since the [budget statement], circumstances have changed, both globally and within South Africa itself,”he said.

In his already grim budget in October, Nene warned of low growth, limited employment growth, a weak currency raising inflationary pressures, financial market volatility and rising borrowing costs on international markets. He also highlighted electricity-supply constraints, low confidence levels and an out-of-control public sector wage bill.

Since then, South Africa has received downgrades from two ratings agencies, the World Bank has dropped its 2016 growth forecast for the country, both the US and South African central banks have hiked interest rates, statistics have revealed a significant last-quarter dip in mining production and the drought has played havoc with the agricultural sector.

In addition, the value of the rand declined by 6% since the beginning of January as a result of Chinese-led turmoil among emerging market currencies after the rand was battered in December due to panic about Zuma’s unexpected sacking of Nene.

Gordhan said the revision was unavoidable.

“It’s quite clear we need to take account of the new environment in which we find ourselves and make sure we tailor our expenditure and revenue decisions in line with the circumstances,” said Gordhan.

He added: “They … are very complex. The world is in a terrible place as we speak. There are complex dynamics impacting on emerging markets at this point in time, including on our own challenges, as we have admitted them, very frankly.”

Minister in the Presidency Jeff Radebe said this week that resources had to be shifted from some programmes to address burning issues such as the drought and the tertiary education demands of the #FeesMustFall movement.

“All those engagements that happened in government and with other stakeholders have resulted in us shifting the funds in order to accommodate [#FeesMustFall], because education is the future of South Africa; we cannot just sit down and not do something to address the genuine concerns students raised last year,” said Radebe.

Another headache government is facing is that its R5 billion contingency emergency reserve has been gobbled up by last year’s public sector wage hikes, thus making it impossible to declare the drought a national disaster.

Agriculture Minister Senzeni Zokwana said government had diverted R300 million towards drought relief and added that the country’s reserves would be hit further by the need to spend R20 billion on maize imports.

Gordhan said the country’s economic crisis, which could “create immense difficulties for all at the end of the day” could last for some time.

“I think we need to explain to South Africans that the world finds itself in an extraordinarily difficult environment," he said.

Downplaying talk of a looming recession, Gordhan said a major problem was that "we are not solving the problems of inequality and unemployment and poverty in our country adequately".

Department of trade and industry director-general Lionel October said the most urgent priority was to "give confidence to the markets that we are managing the fiscal and monetary policy very well".

This message would be conveyed through the content of the Sona and the budget, he said. He cautioned that there would be no quick fixes to the current crisis.

"We must think long term. If you are looking for quick solutions, then get into politics, not economics. You have to sow if you want to reap."

He warned against the tendency to panic.

"Every time the rand goes up or down, or the gold price goes this or that way, we get into a state of panic. We must develop a long-term perspective, and that is what the [National Development Plan] was all about."

South Africans also did not have a common understanding of the economic problems.

"The problem is we have a lot of debates about solutions and the blame game is strong. Some claim business is unpatriotic, government is corrupt and the unions are stoking labour unrest. We must have a common analysis of our core problem," he said.

He said South Africa's low growth was linked to inequality, as low wages constrained consumer demand.

“Because of inequality, we are not growing. We must agree our real problem is dependence on mineral commodities and low wages.

“Every country that has developed has got out of that trap. We are stuck in that trap. People are misdiagnosing the problem by blaming mine workers for demanding higher wages.”

Cosatu president Sdumo Dlamini told City Press the labour federation would go to the ANC lekgotla with the message that the governing party’s allies should be respected when formulating solutions.

Speaking shortly after Zuma ignored Cosatu’s protests about a new tax law, Dlamini said “we must as alliance partners approach meetings in an honest way, and ensure that in that engagement we respect each other”.

He slammed those who blamed South Africa’s economic woes on high wage demands and warned that solutions “should not be at the expense of already oppressed workers who are on the lower end of the economy”.

“It is not fair to ask workers how they feel about the economy, which is in a crisis. Workers have been in an economic crisis for as long as I can remember. Wages are too low. We are sitting on 25% unemployment; we are faced with huge inequality and inability to find jobs … Now we have a global economic situation, which people want to blame on workers,” he said.

This article first appeared on news24.com.

Proposed amendments to the Tax Administration Act no. 28 of 2011: keeping up with international standards

Authors: Robert Gad, Anneke Meiring and Jadyne Devnarain

The purpose of the Tax Administration Act No. 28 of 2011 (“**the TAA**”), is to ensure the effective and efficient collection of tax, by aligning the administration of the tax Acts to the extent practically possible, prescribing the rights and obligations of taxpayers and other persons to whom the TAA applies, prescribing the powers and duties of persons engaged in the administration of a tax Act, and generally giving effect to the objects and purposes of tax administration.

The TAA provides that the South African Revenue Service (“**SARS**”) is responsible for the administration of the TAA under the control or direction of the Commissioner of SARS. The administration of a tax Act means, *inter alia*, to give effect to the obligation of the Republic to provide assistance under an international tax agreement, which means, a) an agreement entered into with the government of another country in accordance with a tax Act, or b) any other agreement entered into between the competent authority of the Republic and the competent authority of another country relating to the automatic exchange of information under the aforementioned agreement.

On 22 July 2015, SARS released for public comment, *inter alia*, the Draft Tax Administration Laws Amendment Bill, 2015 ("**Draft TALAB**"), to provide the necessary legislative amendments required to implement most of the tax proposals that were announced in the 2015 Budget on 25 February 2015. In terms of the Draft TALAB, 2015, it is proposed that the administration of the TAA should include giving "*effect to an international tax standard*". It is further proposed in the Draft TALAB, 2015, that a new definition i.e. "*international tax standard*" will be introduced into the TAA and will be defined as "*an international standard as specified by the Commissioner by public notice for the exchange of tax-related information between countries*".

In addition, it is proposed that section 3 of the TAA be amended to include the instance where "*SARS, in accordance with an international tax standard, obtained information of a person*". In this regard, "*SARS may retain and exchange the information as and when required under an international tax agreement as if it were relevant material required for purposes of a tax Act and must treat the information obtained as taxpayer information*."

According to the Draft Memorandum on the Objects of the Tax Administration Laws Amendment Bill, 2015:

"*this amendment is required to implement a scheme under which SARS may require South African financial institutions to collect information under an international tax standard, such as the OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters, which encompasses the Common Reporting Standard (CRS) that was endorsed by G20 Finance Ministers in 2014. In order to implement the standard on a consistent and efficient basis, certain financial institutions must report on all account holders and controlling persons, irrespective of whether South Africa has an international tax agreement with their jurisdiction of residence or whether the jurisdiction is currently a CRS* *participating jurisdiction. This will substantially ease the compliance burden on reporting financial institutions as they would otherwise have to effect system changes and collect historical information each time a jurisdiction is added to the CRS or South Africa concludes a new international tax agreement. The reporting financial institutions will, pursuant to this amendment, be obliged by statute to obtain the information and provide it to SARS and should not contravene any relevant data protection laws*."

The Protection of Personal Information Act No. 14 of 2013 ("**POPI**"), is largely consistent with the European Data Protection Directive (95/46/EC). Only those sections dealing with the setting up of the Information Regulator are in effect as yet. POPI applies to the processing of personal information (a) which is entered into a record by or for a responsible party by making use of automated or non-automated means (provided that in the case of the latter it forms part of a filing system or is intended to form part thereof), and (b) where the responsible party is (i) domiciled in the Republic, or (ii) domiciled outside of the Republic, but makes use of automated or non-automated means in the Republic. POPI will, in the second instance not apply where those means are used only to forward personal information through the Republic. POPI will therefore not apply to the personal information contained in tax related information exchanged between countries, where the responsible party is not domiciled in South Africa and does not make use of automated or non-automated means in the Republic, or only deploy such means for the forwarding of personal information.

In instances where POPI does find application, personal information has to be processed lawfully, and in a reasonable manner that does not infringe the privacy of the data subject. The purpose for which it is processed, has to be adequate, relevant and not excessive. Personal information may only be processed in a number of instances, including where (i) the data subject consents to the processing of his personal information, (ii) processing complies with an obligation imposed by law on the responsible party, or (iii) processing is necessary for the proper performance of a public law duty by a public body. POPI also prescribes specific requirements for the transfer of personal information to a country outside of South Africa. A transfer is allowed in certain instances, including where (i) the third party who is the recipient of the information is subject to a law, binding corporate rules or binding agreement which provide an adequate level of protection that is provided under POPI, or (ii) the data subject consented to such a transfer.

In light of the above, it is clear that the National Treasury aims to amend domestic tax legislation so as to ensure that SARS will be able to adhere to international standards and fulfil certain obligations under the relevant agreements. The goal is to create greater transparency and more efficient automatic exchanges of information between foreign tax authorities. It must be noted that personal information that forms part of tax related information that originates in South Africa and which is subject to POPI, will be subject to the consent and transfer provisions as set out above. Further, the responsible party (or data controller) in the foreign country will have to meet similar data protection requirements under the laws of that country.

South African tax legislation: proposed

amendments in an international tax context

Authors: Lavina Daya and Yani van der Merwe and Liesl Visser

This article sets out a brief summary of some of the proposed amendments introduced by recent South African draft Tax Bills. The article focuses on amendments in the context of international taxation.

The draft Taxation Laws Amendment Bill, 2015 (“**draft TLAB**”) and the draft Tax Administration Laws Amendment Bill, 2015 (“**draft TALAB**”) were released by National Treasury on July 22, 2015.

These draft Bills aim to provide the necessary legislative amendments required to implement most of the tax proposals outlined in the 2015 Budget Review. Specifically, the draft TLAB deals with more substantive changes to tax legislation and the draft TALAB deals with administrative provisions of tax legislation currently administered by the South African Revenue Service (“**SARS**”). We consider proposed amendments in an international tax context below.

Withdrawal of Special Foreign Tax Credit

Section 6quin of the Income Tax Act No. 58 of 1962 (“**Act**”) contains a special foreign tax credit regime, which provides for a tax credit in respect of foreign withholding taxes imposed on service fees from a South African source and which are received by a South African resident in respect of services rendered in South Africa to a non-resident.

One of the main reasons for introducing section 6*quin* was the fact that some treaty countries, although they did not have the right to tax service fees in terms of their tax treaties with South Africa, still imposed withholding tax on services rendered by South African residents to their residents.

The aim of this provision was to provide some relief from potential double taxation on cross-border service fees. However, in terms of the Explanatory Memorandum to the draft TLAB, it effectively encourages treaty partners not to adhere to treaty terms, and consequently erodes South Africa's tax base, as South Africa is obliged to give credit for foreign taxes levied by the other countries. Accordingly, it is submitted that this regime is not aligned with international tax rules and defeats the whole purpose of tax treaties.

It is proposed that section 6*quin* be withdrawn from the Act in its entirety with effect from January 1, 2016 and that tax treaty disputes be resolved by the contracting states through mutual agreement procedures.

Reinstatement of the CFC Diversionary Income Rules

Prior to 2011, the controlled foreign company ("**CFC**") provisions in the Act contained three sets of diversionary income rules, known as:

1. CFC inbound sales, which applied to the sale of goods by a CFC to any connected South African resident;
2. CFC outbound sales, which applied to the sale of goods by a CFC to a foreign resident or to an unconnected South African resident where those goods were initially purchased from connected South African residents; and
3. CFC connected services rules, which applied when a CFC performed services to a connected South African resident.

In 2011, the CFC outbound sales rules were abolished in their entirety and, in addition, the CFC inbound sales rules were narrowed, the rationale being that the transfer pricing rules could be applied as an alternative. The CFC connected services rules were, however, retained.

The draft TLAB proposes that both the CFC outbound and inbound sales rules be reinstated in their pre-2011 form, with effect from January 1, 2016. In terms of the Explanatory Memorandum to the TLAB, the main reason for such proposed reinstatement is that the removal of the CFC outbound sales rules resulted in the CFC rules being less effective in addressing profit shifting by resident companies, since transfer pricing auditing processes often take a long time to be finalized and consequently leave the South African tax base vulnerable to base erosion practices if transfer pricing is to be solely relied on. Furthermore, the narrowing of the CFC inbound sales rules limited the scope of the effective application of these rules.

Withholding Tax on Interest

The withholding tax on interest entered into force on March 1, 2015. It is levied at the rate of 15% on South African sourced interest that is paid by any person to or for the benefit of any foreign person, subject to certain exemptions. The term “interest” is not defined for the purposes of these provisions. To remove current uncertainty as to whether the common law definition of interest or the definition of interest as contained in section 24J(1) of the Act applies, the draft TLAB proposes that the term “interest” be defined in these provisions with reference to the definition of “interest” as contained in section 24J(1). Section 24J of the Act regulates the incurral and accrual of interest. The definition of “interest” in section 24J(1) extends beyond the common law meaning of interest.

The draft TLAB also proposes to insert an additional exemption from the withholding tax on interest. In terms of the proposed amendment, any amount of interest paid to a non-resident in respect of a debt owed by another non-resident must be exempt from the withholding tax on interest unless the other non-resident (1) is a natural person who was physically present in South Africa for a period exceeding 183 days in aggregate during the 12 month period preceding the date on which the interest is paid, or (2) the debt claim in respect of which that interest is paid is effectively connected with a permanent establishment of that other non-resident in South Africa if that other non-resident is registered as a taxpayer in South Africa. These proposed amendments will be deemed to have come into operation retrospectively from March 1, 2015.

Withholding Tax on Service Fees

In terms of the Act, a withholding tax on service fees will apply with effect from January 1, 2016 in respect of South African sourced service fees which are paid or become due and payable on or after January 1, 2016 to or for the benefit of any foreign person, subject to certain exemptions. In light of the 2015 Budget Speech delivered by the Minister of Finance, where it was indicated that these provisions ought to be reviewed to clarify definitions and remove any anomalies, we expected to see amendments to these provisions in the draft TLAB. The draft TLAB, however, only proposes to postpone the effective date from January 1, 2016 to January 1, 2017. We therefore expect that amendments to these provisions will be introduced in future years.

Sale of Immovable Property by Non-residents

The capital gains tax ("**CGT**") provisions are contained in the Eighth Schedule to the Act. In the case of non-residents, the Eighth Schedule applies only to the disposal by a non-resident of any immovable property situated in South Africa or any interest in immovable property situated in South Africa, or assets which are attributable to a permanent establishment of the non-resident in South Africa.

Under tax treaties, the term “immovable property” is generally defined with reference to the meaning it has under the domestic law of the contracting state in which the property is situated. However, the current definition of “immovable property” for CGT purposes is not aligned with the definition thereof as contained in paragraph 2 of article 6 of the OECD’s Model Tax Convention as far as natural resources are concerned.

Since South Africa has an extensive tax treaty network in place, it is important that the definition of “immovable property” contained in the Eighth Schedule be aligned with the definition thereof in the OECD’s Model Tax Convention in order to avoid any anomalies. The draft TLAB proposes that the definition of “immovable property” as contained in the Eighth Schedule be amended with effect from January 1, 2016 to include “rights to variable or fixed payments as consideration for the working of, or the right to work mineral deposits, sources and other natural resources”.

Furthermore, section 35A of the Act imposes a withholding tax on a non-resident seller of immovable property in South Africa, subject to certain exclusions. One of these exclusions provides that the purchaser does not need to withhold tax in respect of any deposit paid “until the agreement for that disposal has been entered into”.

To address the risk of tax being withheld in instances where the sale is subject to suspensive conditions which are subsequently not fulfilled, the draft TLAB proposes that the wording of this exclusion be amended by substituting the phrase “has been entered into” with “has become unconditional”.

Relaxation of CGT Rules Applicable to Cross Issue of Shares

In 2013, paragraph 11(2)(b) of the Eighth Schedule to the Act was amended to provide that the issue of shares by a resident company to any person in exchange for shares in a foreign company, would not be exempt from CGT. This amendment was aimed at the prevention of tax-free corporate migrations, but it has transpired that it is too broad and has led to unintended consequences which, *inter alia*, undermines the expansion of South African multinationals. It is proposed that the 2013 amendment be reversed retrospectively from the date of its introduction. As such the issue of shares by a South African resident company as consideration for the acquisition of shares in a foreign company will no longer be subject to CGT.

Counter-Measures for Tax-Free Corporate Migrations

As a result of the above amendment, other measures have been proposed to address the concerns which led to the 2013 amendment of paragraph 11(2)(b). Paragraph 64B of the Eighth Schedule currently provides for a so called “participation exemption” in terms of which, a capital gain or capital loss arising on the disposal of equity shares in a foreign company must be disregarded provided certain requirements are met, including that the shares be disposed of to a non-resident other than a CFC. It is now proposed that this participation exemption will also not apply should the interest held be disposed of to a connected person. This is aimed at countering the tax-free disposals of the foreign operations of resident companies to their non-resident connected persons. A further measure proposed is the claw-back of participation exemptions enjoyed by a South African resident as set out below.

The Claw-Back of Participation Exemption Benefits on a Change of Tax Residence

In terms of the claw-back of capital gains benefits, it is proposed that upon a change of tax residence as envisaged in section 9H of the Act, any capital gains benefits enjoyed by a South African resident during the three year period before ceasing to be a South African tax resident will be subjected to tax. As such, capital gains previously disregarded in terms of paragraph 64B of the Eighth Schedule that were determined in respect of disposals by a resident of its shares in foreign companies during the abovementioned three-year period will be clawed back. In this regard, the aggregate of such disregarded capital gains will not be allowed to be taken into account in determining the net capital gain or assessed capital loss of the resident, but will be included in the taxable income of the resident at the companies' inclusion rate.

Similarly, the participation exemption on foreign dividends enjoyed by a South African resident during the three-year period before ceasing to be a South African tax resident will be subjected to tax upon exit. As a result, foreign dividends that were previously exempt in terms of section 10B(2)(a) of the Act during the abovementioned three-year period will be subject to tax. Such foreign dividends will be subject to tax, at an effective tax rate of 15 per cent.

If promulgated, these amendments would apply retrospectively from June 5, 2015.

Collateral Arrangements

In terms of current legislation, when an outright transfer of collateral is executed during a securities lending arrangement, equity securities constituting the collateral are subject to CGT and securities transfer tax ("**STT**") on the transfer thereof since it involves a change in the beneficial ownership of the securities.

Accordingly, it is proposed that a similar tax dispensation as applies to securities lending arrangements (i.e. no CGT and STT implications arise upon transfer) be introduced for the outright transfer of listed shares provided as collateral. It is proposed that this dispensation come into operation on January 1, 2016 and apply in respect of collateral arrangements entered into on or after that date.

Automatic Exchange of Information

Section 26 of the Tax Administration Act No. 28 of 2011 (“**Admin Act**”) deals with third party returns. The draft TALAB proposes to insert an additional subsection to this section authorising the Commissioner to require a person to register as a person required to submit a return under section 26, an international agreement or an international standard for exchange of information.

South Africa is an early adopter of the OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters, and reporting on tax years from March 1, 2016 will begin in 2017.

The proposed amendment is aimed at ensuring that the relevant financial institutions comply with international tax standards such as the above and to assist SARS in the administration and enforcement of such standards. In terms of the Explanatory Memorandum to the draft TALAB, it will ease the compliance burden on reporting financial institutions and would enable these institutions to collect information and report to SARS even in respect of taxpayers that are resident in jurisdictions that have not yet adopted this standard or concluded an international tax agreement with South Africa.

Foreign Information Requests

The draft TALAB proposes to amend section 46 of the Admin Act. Section 46 allows SARS to request relevant material from a taxpayer or another person for purposes of the administration of a tax Act in relation to a taxpayer.

One of the proposed amendments is that a senior SARS official could request relevant material held or kept by a connected group company that is located outside of South Africa. Furthermore, failure to provide such information would bar the taxpayer from producing or using the material in any subsequent proceedings unless a competent court would direct otherwise under exceptional circumstances. Such circumstances would not include an assertion that the material was held by a connected person.

In terms of the Explanatory Memorandum to the draft TALAB, this amendment is aimed at ensuring that taxpayers do not assert that they are unable to obtain and provide relevant material, only to provide it at a later stage, for tactical reasons.

New tax changes mean new tax schemes

Consumers and businesses by now have had a few months to assess the impact of tax changes indicated by the Finance Minister in his most recent Budget Speech.

“Be wary though that with these changes also come charlatans who pounce on uninformed business owners and individuals with offers ranging from sophisticated tax avoidance schemes to offers of products or services to ensure compliance,” warns BDO Pretoria Consultant and ex-Managing Partner, Roy Edge. “This is nothing new, we see it all the time where individuals or groups lure unsuspecting people into parting with hard-earned money by investing in new and creative tax schemes.”

Now together with the new proposals put forward by the Davis Committee, these groups may use this as another opportunity to get people to part with their cash. The turmoil in the world markets recently has also resulted in exacerbated panic by some people.
There have been some well publicised schemes, particularly in the UK and USA which have resulted in many taxpayers burning their fingers.

· The Eclipse film partnership scheme was marketed by a prominent accounting firm to dozens of clients who appeared to be uninformed of potential losses.The Court of Appeal ruled on it being a tax avoidance scheme and in some instances investors have been left with bills surmounting their investment.

· A major accounting firm in the US agreed on a settlement of $123m resulting from it advising, marketing and then trying to defend a scheme for wealthy individuals.

· Recently a film scheme set up by a UK Company is being challenged by the authorities in the tax court. The scheme involves amongst others, a number of English international cricketers, who signed up for the scheme as part of planning for their financial future, and who have received demands for up front repayment of tax while the case was being heard.

It does not only happen in the UK and USA. Australian authorities recently ruled against mass marketed tax schemes, and in South Africa last year, Deputy President, Cyril Ramaphosa, issued a strong warning to those funnelling money out of the country where this constituted tax evasion.

Edge gives the following tips to bear in mind when considering these offers:

1. Deal only with a reputable firm or adviser

2. **Try and establish whether the advice/scheme has been around for some time, tested and passed the credibility test.** There are of course many schemes which are legitimate, allowing people to minimise their tax within the framework of the law and tax legislation (there is often a fine line between legitimate tax avoidance and tax evasion and this is why you need a reputable adviser).

3. **Ensure you obtain all the facts relating to it and that you understand it.** Many so-called legitimate schemes are couched in lengthy and technical jargon and unsuspecting clients sign to their ultimate detriment.

ENDS

About BDO South Africa:

BDO South Africa won Best Tax Firm of the Year in the 2015 Finance Monthly Global Awards. Its South African Tax practice plays a leading role in the co-ordination of the Tax practices within the network's sub-Saharan region, supported also by its well-established Africa Desk.

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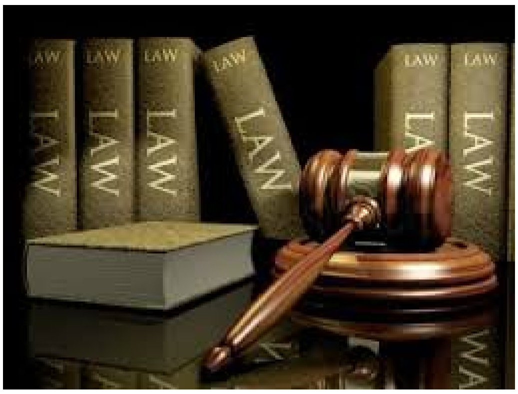
Proposed updates to the existing customs legislation



The major talking point within the South African Customs environment was the recent **promulgation of the Customs Control Act, 2014 and Customs Duty Act, 2014** ("the Acts") by parliament. There remains a **lot of work outstanding before the Acts can be fully implemented and SARS are currently conducting extensive work surrounding the drafting of the Rules to the Acts** and have published several batches for comment.

The **first phase** of **implementation** is expected to "go live" in **2016** and will deal with **Registration and Licensing**. In terms of Section 931 and 933 of the Customs Control Act, **an existing customs license and registration lapses 30 days after the "effective date", unless the holder of that registration before the expiry thereof has submitted an application to the customs authority for a new registration**. If the holder of the customs registration or license applies for a new license before the expiry, then the existing registration and license will continue until dispensed with. The "effective date" for commencement remains to be determined by the President.

In addition, the National Treasury, recently published the **Taxation Laws Amendment Bill and Draft Tax Administration Law Amendment Bill, 2015** ("the Bills") for public comment (by 24 August 2015), which provide for the necessary legislative **amendments required to implement the majority of the tax proposals that were announced in the 2015 Budget Speech** on 25 February 2015. The Bills propose numerous amendments to the relevant Tax and Customs Acts and were brought about by the need to update the current taxation regime to close gaps and loop holes. However, most of the amendments are of an administrative nature and impact mainly on the Income Tax Act, 1949 and Tax Administration Act, 2011.

The following is the **relevant amendment to the Customs and Excise Act**, 1964 as per the **Taxation Laws Amendment Bill**, 2015:

- **Section 20 is amended by the insertion of a new subsection** to harmonize the fuel levy treatment of imported and locally manufactured fuel levy goods. **To this end, where fuel levy goods are imported and not removed to a customs and excise manufacturing warehouse, those goods must, after due entry for warehousing, be**

offloaded into a licensed customs and excise storage warehouse. Where imported fuel levy **goods become mixed** with locally produced fuel levy goods during transport, the **duty paid on those goods is not refundable**, where it otherwise would have been in terms of the Act.

The following are the proposed amendments to the **Customs and Excise Act**, 1964 as per the **Draft Tax Administration Law Amendment Bill**, 2015:

- **Section 4 is amended** to make provision for the use of "*any mechanical, electrical, imaging or electric equipment that can produce an indication that the person may be concealing any specific thing or substance in his or her body, sniffer dogs or other animals trained to use their senses for the detection of any specific thing or substance or any other search aids as may be prescribed by rule".* The officer concerned must be trained in the use of the aid;
- **Section 27 is amended to differentiate between locally and imported goods that are used in an excise manufacturing warehouse**. Locally produced goods, which are dutiable under the Excise Duty Act, 1964, must be entered for home consumption, whereas imported goods must be cleared for home use in terms of the Customs control Act, 2014; and
- **Section 99 is amended to increase the prescription period for the liability of an agent for obligations imposed on a principal**, from 2 (two) years to 3 (three) years in order to align it with the general prescription period, as set out in the Prescription Act, 1969.

As is evident, the South African customs environment is evolving at a rapid pace and companies are urged to keep abreast of developments.

Shepstone & Wylie Attorneys – Quintus van der Merwe and Aaron Larkens

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Are Wealth taxes a likely probability for South Africa?

Pictured from left are: Vuyo Jack, Nirupa Padia, Cecil Morden, Former Finance Minister Pravin Gordhan, Matthew Lester, Judge Dennis Davis, Kosie Louw, Tania Ajam, Nara Monkam, Annet Wanyana Oguttu and Ingrid Woolard. Mr Morden and Mr Louw are ex-officio members of the committee.

The Davis Tax Committee (DTC) consideration that a wealth tax for South Africans is not the universal solution to South Africa’s revenue needs.

This is the view of Rhodes Business School Professor and DTC member Matthew

Lester who was speaking at a BDO South Africa event last week.

Professor Lester dissected the current taxation system within the country commenting on what is working, what isn’t and what changes need to be implemented for the future economic growth of the country.

Estate duty was implemented in South Africa in 1955, but the overall contribution to the fiscus has declined to only R1 billion out of the R1, 1 trillion tax collected per annum. Largely as a result of the correct application of trusts. “When it comes to trusts, taxpayers are allowed to have their cake and eat it too,” says Lester.

Lester acknowledged that the taxation of trusts is a contentious subject that, along with estate duty, is in dire need of modernisation.

“Furthermore, trustees can manipulate the income of the trusts to be taxed in the hands of the donor or the beneficiary using sections 7, 25B and the 8th schedule of the Income Tax act. These provisions are often referred to as the attribution or conduit principles.”

Highlighting the problem of insufficient anti- avoidance measures being put in place in the past the Katz Commission recommended that estate duty be replaced by Capital Transfer Tax (CTT). The DTC has proposed that the estate duty and donations tax systems be retained, subject to amendment.

The DTC suggests further that trust income will in future be taxed within a trust at the flat rate, currently 41% for revenue income and 27.3% for capital income. ‘It is recommended that the conduit principles will be written out of taxation laws.’

Another recommendation is that retirement fund benefits should remain exempt from estate duty, subject to certain limits imposed on contributions. Lester advised that retirement annuities may be a better vehicle for housing wealth than trusts moving forward.

‘It’s therefore not impossible to envisage a future where retirement annuities are the vehicle of choice for managing the inter-generational transfer of family wealth’, continues Lester.

People with insufficient retirement savings pose a financial burden to their families and the government. Ultimately, this has a negative impact on the economy and the country’s competitiveness.

Lester also put the onus back on individuals as he stated, “Active understanding, management and appreciation of the financial environment is now paramount for future retirement planning,” emphasising the importance of individuals to be more involved in their financial planning.

A review of section 6quin

Author: Pieter van der Zwan (NWU)

Pieter van der Zwan revisits the economic reasons for the introduction of section 6quin.

Section 6quin was introduced into the Income Tax Act by the 2011 Taxation Laws Amendment Act as a measure to enable entities to provide services into Africa in a manner that such services were commercially viable. With the section having been in effect for more than 3 years now, it was indicated in the 2015 Budget Review that the concession contained in section 6quin would be withdrawn due to the significant compliance burden that it places on SARS and taxpayers as well as the fact that it is being exploited by some taxpayers.

This article provides a review of the reasons for the introduction of section 6quin, the effect of the proposed withdrawal thereof. It also suggests an alternative that may address the void that would be left if the section is withdrawn due to alleged exploitation thereof.

Reason for introduction of section 6quin

Section 6quat allows South African taxpayers to claim a rebate for foreign tax paid against normal tax payable in South Africa. In order to be entitled to the rebate, the income in respect of which the foreign tax was imposed must however have accrued or been received from a source outside of South Africa. This requirement is premised on the fact that the source country would have the first right to tax profits arising in its state, while the resident country (in the case of foreign sourced income, South Africa) has a secondary right to tax the profit. In addition, section 6quat only allows a rebate where the foreign tax is proved to be payable to the foreign government. As the rebate essentially reduces the South African tax base, this requirement ensures that the relief from double tax is only afforded to residents for valid foreign tax obligations. This means that the foreign tax must be payable in terms of the domestic tax law of the other country after application of the double tax treaty (if any), which may limit the right to impose the tax under the country’s domestic law.

In addition to the rebate, section 6quat also allows for a deduction for foreign taxes. Like the rebate, the deduction is only allowed in respect of taxes that are proved to be payable to foreign governments. The deduction applies where the rebate is not available – normally when the source of the income is not outside of South Africa. The deduction is however much less favourable and effective in reducing the effect of double tax on income as it reduces the taxpayer’s taxable income, as opposed to tax payable on such taxable income.

In principle, double tax should not arise when income is earned from South African sourced services rendered by South African residents to customers abroad as the country of residence of the taxpayer and source of the income are the same. Therefore section 6quat does not have to address such transactions. Most double tax agreements would not allocate a taxing right to the country where the foreign customer is located if the actual source of the income is in South Africa. The tax legislation of many African countries however contain rules that treat or deem the source of the income to be in that country based on the fact that the payer is a tax resident of the country. The income “sourced” in that country due to the deeming provision is then subject to tax there, often to be withheld at the time of payment.

Given the South African taxpayer’s lack of presence in such country, no permanent establishment is likely to exist, which in turn means that the foreign country should in most cases not have the right to tax such income if a treaty has been concluded. Due to the absence of a right to levy tax, this tax cannot be said to be payable to the foreign government. In practice it is however extremely difficult, if not impossible, to recover this tax withheld, based on the deemed source, at the time of payment. As the actual source of the income is in South Africa and the foreign tax cannot be proved to be payable, no section 6quat rebate is available. Similarly, as the tax cannot be proved to be payable, the deduction under section 6quat is also not available. This leaves the South African resident service provider in a position where it has to bear the burden of both the South African as well as the customer’s country tax.

Services that would typically become problematic when trying to apply section 6quat are those where the bulk of the work is done from South Africa while the final product is closely connected to the customers operations abroad. In many instances, the reason for performing the work from South Africa would be that expertise need to be centralised at a location to work on the project for purposes of knowledge sharing or prevention of duplication of functions. South Africa would be that centralised location. In other instances, the reason could just be that it is more cost effective to work from South Africa where the employees normally reside than to pay recurring travel and accomodation costs to perform the same work abroad.

This double tax effect of the African withholding tax together with the normal South African income tax left South African service providers in a position where the commercial viability of providing such services to African customers was threatened due to the high tax burden, which significantly reduced margins earned from the services. The National Treasury indicated in the Explanatory Memorandum that accompanied the 2011 amendments that: “While the South African position is theoretically correct, the practical implication of this position is adverse to South Africa’s objective of becoming a regional financial centre. As long as this theoretically correct position is maintained, the only viable solution for regional operations is to shift their management location to a low-taxed or no taxed location so as to avoid double taxation”. This statement recognises the importance of being able to apply South African based expertise to contribute to, but also to share in the growth of, African economies in the form of fees extracted from these economies.

Effect of section 6quin and implications of the proposed withdrawal

Section 6quin provides a concession that alleviates some of the tax pressure caused by the withholding tax imposed in the country where the customer is situated. The section allows a rebate for foreign tax imposed in respect of South African sourced service income earned for services rendered within South Africa. It is important to note that the nature of services to which the section apply is not limited, even though the Explanatory Memorandum specifically referred to a concession in respect of management fees. The availability of the rebate depends on whether South Africa has concluded a double tax agreement with the other country and the manner in which the tax is paid. This rebate is limited on an income-stream by income-stream basis to South African tax on the profits from such services. Even though this concession cannot provide relief from the fact that withholding taxes are imposed on income on a gross basis without any deduction, the adverse impact of such taxes is reduced by the fact that a further tax burden is not added to it.

An example of services that would typically benefit from the concession in section 6quin are consulting services related to a customer's business or operations abroad that are rendered at least partially on a remote basis from South Africa or where the routine or behind the scenes work is performed in South Africa. These services include engineering services, architectural and design services, system and process development as well as in some instances management and advisory services. As the work is physically being performed in South Africa, the dominant source of the income would be South Africa in terms of case law such as CIR v Epstein. This may still be the case notwithstanding the fact that the services are perhaps only performed in South Africa purely as a matter of convenience rather than anything else (as illustrated in the cases of ITC 134 and CIR v Nell).

Given the wide scope of the section 6quin, it would however arguably also allow rebates for foreign taxes withheld on payments by foreign customers in respect of services that do not necessarily directly relate to operations or business in the country of the customer, such as manufacturing or procurement activities that are outsourced to be performed in South Africa. These type of services may be closely connected to South African operations and infrastructure. It was not indicated in the 2015 Budget Review what the nature of the exploitation of the section is, but it is submitted that the scenario described may be a situation where the section applies to transactions outside its initially intended scope.

Should section 6quin be withdrawn, it is submitted that South African service providers will again be under similar pressure as before its introduction. The tendency by African tax authorities to require significant taxes to be withheld on payments made to foreign services providers has not necessarily changed since 2012. This may force South African service provider in the long-run to set up their operating bases outside of South Africa, either in the customer country itself (and in this manner ensure it is taxed on profits only) or alternatively in a low-tax country as suggested by the National Treasury, in order to be able to continue to do business and share in the growth of African economies. If the base for providing the services is moved, there is no guarantee that the funds generated will necessarily be repatriated into the South African economy. It is submitted that such a shift of activities together with the funds generated from these activities out of South Africa is not ideal and should not be allowed to take place at the expense of the opportunity to collect tax on this income in the short-term while the activities are still conducted from South Africa.

An alternative model to consider

It is submitted that as a starting point, the South African Government and the National Treasury need to identify the types of service activities that are of strategic importance and at risk of being shifted out of the country in the long-run if no assistance is provided. These may be activities where the nexus of the service is not so closely related to

South Africa that it is critical that the service must be performed from South Africa. Put differently, the services are conveniently performed from South Africa but it is not critical to the outcome that South Africa is the base for performing such service. The services are “mobile” in the sense that it can be performed from South Africa or any other different location, whichever is more economically viable. The utilisation of South Africa as a base to render such mobile services from would be strategically important as these type of services attract skilled persons to the country and ensure that the funds generated by the services flow into the South African economy. For purposes of the remainder of this article, these services are referred to as strategically important mobile services. Such mobile services can be contrasted to services that make use of the South African infrastructure, for example, transport or manufacturing, and cannot be performed elsewhere. This exercise of identifying which type of service fees should be protected from double tax may already have been done, at least partially, when the decision was taken to introduce section 6quin into the Income Tax Act.

An alternative model, of which the scope and application may be easier to control, to assist persons that provide strategically important mobile is based on and derived from the current provisions of the South Africa/Botswana double tax treaty relating to technical fees. Article 20(5) of this treaty deems technical fees to arise in the state where the payer is a resident. The term ‘technical fees’ is defined in the treaty to refer to administrative, technical, managerial or consultancy services. Importantly, this concession of the source of income to the payer’s state of residence is limited only the technical services as defined. It is submitted in many instances, the real connection of these types of services to South Africa, other than the fact that the service provider is currently conveniently located in South Africa, is likely to be limited. This deemed source rule in the treaty results in these types of services being performed in South Africa for clients in Botswana to qualify for the rebate in section 6quat as the income now becomes foreign sourced. This reduces or eliminates the burden of double taxation.

It is submitted that by identifying strategically important mobile services, carefully defining the source of these identified services to be outside of South Africa in a manner that is narrow enough to avoid exploitation and thereby ensuring that it is possible to reduce the effect of double taxation using the section 6quat rebate, it may be possible to provide relief similar to that currently provided in section 6quin for these identified services. The advantages of the suggested approach would be that, firstly, the scope of the concession can be well-defined to limit the concession to strategically important mobile services and, secondly, that there will only be a single rebate provision to administer as opposed to the burdensome 60-day FTW01 declaration system followed under section 6quin.

This approach may however not resolve the matter of foreign tax that must be proved to be payable in order to qualify for the section 6quat rebate as many of South Africa's treaties do not make provision for specific type of business income, such as technical fees. As a result, foreign tax imposed in respect of business profits or income where the South African entity does not have a permanent establishment in the customer's country will still be imposed contrary to the treaty provisions. A further exception to define the taxes in respect of such strategically important mobile service fees for which the section 6quat rebate is available is likely to be required.

This article revisited the economic reasons for the introduction of section 6quin into the Income Tax Act. It is submitted that the reasons why section 6quin was introduced in 2012 still exist and may in the long-run force providers of services to relocate certain activities to a different base if the aggregate tax burden between South Africa and the source country becomes, and remains, unbearable. This would be particular threat where the connection of the service to South Africa as a base from which to render the service from is not critical. A suggestion to resolve some of the concerns of alleged exploitation of section 6quin, as advanced as the reason for the proposed withdrawal by the National Treasury in the 2015 Budget Review, is made. This suggestion however also highlights some of the challenges that are likely to arise in drafting such an alternative. In conclusion, the discussion in this article shows the importance of identifying certain strategically important activities for which South Africa needs to be an attractive base to render such services from. As the overall economic benefit, besides collecting tax on the income, of such activities for South Africa should outweigh the tax revenue generated by it in the short-run, a more narrowly defined tax concession could contribute in making it possible for these activities to remain based in South Africa for the benefit of the greater South African economy in the long-run.

This article first appeared on the July/August 2015 edition on Tax Talk.

Withdrawal of foreign tax credits for South African-sourced income

Johannesburg, 23 July 2015 – The 2015 Budget announced by Finance Minister Nene included a number of measures to bolster tax revenues from an international perspective.

According to David Warneke, a Director and Head of Tax Technical with BDO South Africa, these measures include potentially removing tax relief currently afforded to South African companies on service income received from outside South Africa. This could negatively impact foreign direct investment into South Africa.

"This was originally introduced to relief South African companies of withholding taxes (sometimes in contravention of the Double Taxation Treaties) imposed by foreign entities that became unrecoverable," says Warneke.

"The Income Tax Act currently provides for a rebate with respect to foreign taxes withheld by a foreign government on income sourced in South Africa. It is understood that certain companies were abusing the relief measure, which inevitably led to the proposal to remove the provision. However, the removal of this relatively unique provision will result in increased costs for South African companies as they will no longer be able to claim this rebate."

In addition, Warneke advises that the controlled foreign company rules which apply transfer pricing provisions are likely to be extended to include the sale of goods by a controlled foreign company to connected parties that are South African resident. "The rules could be extended to also include companies owned by offshore trusts which have South African resident beneficiaries. The first interim report of the Davis Tax Committee on Estate Duty recommended that it be investigated to make it a criminal offence where South African taxpayers do not disclose direct or indirect interests in foreign trusts. Extending the transfer pricing rules as a mechanism to protect South /Africa’s tax base is welcomed.”

“Furthermore, the interest withholding tax that applies from 1 March 2015 imposes a 15% withholding tax on certain interest paid or due and payable to non-residents. The 15% can be reduced where a double taxation agreement applies” says Warneke. “Interest deductions are limited where the interest is paid to a non-resident who is directly or indirectly in a controlling relationship with the borrower or debtor. The limitation is done through a formula and applies where an interest withholding tax does not apply, for example in case a double taxation agreement or where the interest is not otherwise taxable in South Africa.”

“This does not aid foreign direct investment into South Africa, especially into the manufacturing sector where investment is really needed. Hopefully National Treasury will re-examine the financial consequences to South Africa,” concludes Warneke.

Tax free investments Implications for parents of a minor child

Author: Leonard Willemse (Mazars)

The Minister of Finance, as an incentive to encourage household savings, introduced the concept of a 'tax free investment' with effect from 1 March 2015. A tax free investment is any financial instrument or policy administered by regulated institutions (such as banks) owned by a natural person and authorised as such by the Minister of Finance.

In terms of section 12T of the Income Tax Act No. 58 of 1962 ('the Act') any amount received by or accrued to a natural person in respect of a tax free investment shall be exempt from normal tax. Furthermore, where any capital gains or losses are realised in respect of the disposal of a tax free investment, it should be disregarded in determining the aggregate capital gain or loss of a person.

Section 12T(4) limits the contributions to tax free investments to R30 000 in aggregate during any year of assessment and to an amount of R500 000 in aggregate over the life time of the natural person.

Tax free investments owned by a minor child

According to the South African Revenue Service (SARS), parents can invest on behalf of their minor child who will use their own annual or lifetime limits. In this instance the parent(s) will make contributions to the tax free investment on behalf of the minor child who is the owner of the tax free investment. A minor child is an individual younger than 18 years of age.

Contributions qualifying as donations

The contributions made by the parent(s) will in all probability qualify as a donation for both Donations Tax purposes and for purposes of the attribution rules contained in section 7(3) and paragraph 69 of the Eighth Schedule of the Act. Generally speaking a donation means any gratuitous disposal of property.

Donations tax implications

It is submitted that although the contributions made by parents on behalf of their minor child will in all probability qualify as a donation for donations tax purposes, the fact that annual contributions are limited to R30 000 will effectively mean that no donations tax will be payable on these contributions. This follows from the fact that section 56(2)(b) determines that donations tax shall not be payable in respect of so much of the value of donations made by a natural person during a year of assessment that does not exceed R100 000 (the maximum annual contribution therefore falls considerably below this exemption limit).

The effect of section 7(3) and paragraph 69 on the parent making the donation

Section 7(3) attributes any income resulting from a donation made by a parent to his or her minor child to that parent. Therefore in the absence of section 12T, any income accruing from the tax free investments resulting from the donation (i.e. the contributions) will be attributed to the donor parent and taxable in his or her hands. Section 12T(2) however exempts all amounts received by or accrued to a natural person in respect of a tax free investment from normal tax.

As section 7(3) attributes income (defined as the amount remaining of the gross income of any person after deducting therefrom any amounts exempt from normal tax under Part I of Chapter II of the Act), it follows that only amounts that are not exempt from normal tax resulting from the tax free investment, can be attributed to a parent. If therefore the amounts received by or accrued to a minor child in respect of a tax free investment are exempt, it cannot be income and thus not be attributed to a parent. The exemption contained in section 12T(2) therefore effectively neutralises the effect of section 7(3) as there is no income to attribute in the first place.

The effect of paragraph 69 of the Eighth Schedule is not as clear as is the case with section 7(3). The paragraph attributes any capital gain or loss realised by a minor child which resulted from a donation by a parent, to the parent. The parent will therefore have to include the capital gain or loss in their taxable capital gain calculation.

Section 12T(3) determines that in determining the aggregate capital gain or aggregate capital loss of a person in respect of any year of assessment, any capital gain or capital loss in respect of the disposal of a tax free investment shall be disregarded. This effectively means that where the owner of the tax free investment is a minor child, a capital gain or loss resulting from the disposal of that investment should be disregarded for purposes of determining that child’s taxable capital gain for that year of assessment. The provision has the same effect as paragraph 69 in for the minor child will not include the capital gain or loss in their income tax calculations.

The question that arises is vwhether paragraph 69 will result in the capital gain or loss being taken into account for purposes of the donor parent’s taxable capital gain calculation or whether the workings of section 12T(3) extends to the donor parent. It is unclear whether section 12T(3) enjoys preference over the attribution rules contained in paragraph 69. The intention of the legislature is therefore unclear and requires clarification. If section 12T(3) is only available to the natural person who owns the tax free investment it might well mean that paragraph 69 will still be able to attribute the capital gain or loss to the donor parent irrespective of the fact that 12T(3) infers that any capital gain or loss should be disregarded.

The above could have an adverse effect where a substantial gain is realised and it is then attributed to a donor parent and taxable in his or her hands. This in fact partially nullifies the purpose for which the tax free investment concept was introduced. The fact that section 7(3) attributes income and that section 12T(2) effectively results in no amounts of income in the hands of the minor child, nothing can be attributed to the donor parent as there is no income in the first place to attribute.

A further point to consider is the fact that section 12T(2) refers to 'any amount' which is then made exempt from normal tax. This begs the question whether a capital gain can be seen as an amount for purposes of section 12T(2)? A taxable capital gain is included in a natural person's taxable income and subject to normal tax. 12T(3) exempts amounts subject to normal tax. This would in effect mean that although section 12T(3) refers to capital gains and losses, the effect of 12T(2) will be that any taxable capital gain is exempt from normal tax as it might be considered an amount for purposes of section 12T(2). Any capital gains attributed to a donor parent by paragraph 69 could therefore be exempt from normal tax in terms of section 12T(2) if this was indeed the intention and purpose of that section, notwithstanding the provisions contained in section 12T(3).

Summary

- Contributions made by parents on behalf of their minor children in respect of tax free investments will in all probability qualify as donations for purposes of donations tax and the attribution rules contained in section 7(3) and paragraph 69 of the Eighth Schedule of the Act.

- The fact that the annual contribution to a tax free investment is limited to R30 000, may result in no donations tax being payable (as this falls below the annual exemption limit of R100 000).
- Section 7(3) will have no effect on the donor parent as there is no income to attribute to him or her (section 12T(2) ensures that there is no income in the hands of the owner, i.e. the minor child).
- The interaction between section 12T(3) and paragraph 69 might however prove to be problematic as it is unsure whether section 12T(3) will enjoy preference over paragraph 69 or not. This could potentially result in the donor parent having to include the capital gain in his or her taxable capital gain calculation if paragraph 69 were to enjoy preference.
- It is furthermore unclear whether section 12T(2) might apply to capital gains if it is assumed that capital gains qualify as 'any amount'.
- Clarifications as to the effect of paragraph 69 on a donor parent are therefore required.

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Treasury stands firm over carbon tax

Author: Linda Ensor (BDlive)

The Treasury is sticking to its guns about implementing the carbon tax from next year, dashing the hopes of business that there might be further delays to the unpopular measure it believes will add another burden to an economy already reeling from load shedding and low growth.

Treasury deputy director-general Ismail Momoniat confirmed on Tuesday that the 2016 implementation date was still on track and that it would “hopefully” be releasing a draft bill within the next two months for public comment. This would allow enough time to get the bill promulgated by next year.

“We are on course to stick to the timelimes,” Mr Momoniat said.

The carbon tax could add significantly to revenue at a time of fiscal constraint as the Treasury estimates it could generate between R8bn and R30bn a year depending on final allowances and exemptions.

Treasury chief director of economic tax analysis Cecil Morden said the draft bill incorporated the structure of the carbon tax as presented in a 2013 discussion paper but included public comments gathered thereafter on design issues.

The proposed tax will hit heavy emitters such as Eskom, Arcelor Mittal and Sasol hard.

Mr Momoniat’s comments came as the Davis tax committee led by Judge Dennis Davis announced it would review the carbon tax proposals. This could offer its opponents another opportunity to air their views.

Sasol spokesman Elton Fortuin said the carbon tax as proposed was inappropriate for SA as it would reduce the country's competitiveness and lead to further increases in electricity prices. This would come at a time "when industry has to adjust to the effects of falling commodity prices and rising electricity costs".

What was needed were incentives to invest in new, more energy-efficient processes and projects to reduce emissions.

Judge Davis said the committee had received requests from a number of interested parties to review the scope and design of the proposed tax.

But the Treasury has been engaging with stakeholders on the proposals since 2013, which raises the question whether the Davis committee needs to continue working on it.

South African Institute of Tax Professionals president Keith Engel questioned the need for another platform for public consultation outside of Treasury processes. He also questioned whether the Davis committee recommendations would have "any real meaning" considering that the Treasury was already far advanced with its proposals.

Mr Momoniat said the Treasury and Davis committee processes would run in parallel.

The Davis committee statement noted that although the carbon tax was not specifically listed in its terms of reference, its broader mandate had enough scope for it to review it.

It said the tax could play a role in achieving the transition to a low-carbon economy and in meeting SA's global commitment to reduce greenhouse gas emissions. Account had to be taken of "any possible negative economic and social impacts of the carbon tax over the short term and hence the need for a smooth and gradual transition toward a low carbon economy”.

The committee will receive comments until May 8.

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