

Potential amendments affecting foreign trusts holding shares in foreign companies



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National Treasury has held a few workshops this year to engage with stakeholders on proposed amendments before the draft amendment bills are circulated for comment. At one of these workshops attended by the Webber Wentzel Tax Team, National Treasury indicated that there could be amendments in the draft bills which would affect resident beneficiaries and donors to foreign trusts, where these foreign trusts hold shares in foreign companies.

Currently, the Income Tax Act 58 of 1962 contains attribution rules which are anti-avoidance rules designed to ensure that any income (e.g. foreign dividends) or capital gain (i.e. from sale of foreign shares) would continue to be taxed in the resident donor where the donation, settlement or disposition made to the foreign trust was used to acquire foreign shares.

Currently, foreign dividends received by a resident who holds more than 10% in the foreign company would be exempt from South African income tax. When a resident holding more than

10% in a foreign company disposes of any of these shares, any capital gains arising from the disposal is also disregarded for South African capital gains tax purposes.

The first potential amendment proposes to exclude the above exemptions from the attribution rules. In effect, any foreign dividends received and any capital gains arising from the disposal of the foreign shares by the foreign trust would continue to be taxed in the resident donor regardless of the percentage of shares that the trust holds.

The second potential amendment proposes to exclude the above exemptions even when the attribution rules do not apply. Foreign dividends distributed to resident beneficiaries of foreign trusts would be subject to South African income tax at 20%, regardless of year of distribution by the trustees. Capital gains arising from the disposal of foreign shares held by foreign trusts would also no longer be disregarded for South African capital gains tax purposes in the hands of the resident beneficiaries.

The above are indicative of the proposed amendments which could be in the draft bills to be circulated towards end of July 2018. The Webber Wentzel Tax Team will be making submissions to the National Treasury on the proposed amendments in the draft bills.