Taxation Laws Amendment Bill released for comment

Authors: Bernard du Plessis and Peter Dachs (ENSafrica).

The Taxation Laws Amendment Bill 2016 has been released for public comment. It introduces various interesting amendments to South Africa’s tax law, which include the following:

Use of trusts

In circumstances where an interest-free loan has been advanced to a trust by a connected person (which includes a beneficiary or a relative of a beneficiary), it is proposed that a market-related rate of interest (currently 8%) is deemed to be paid on that loan. This deemed interest will not be tax deductible in the hands of the trust but will be taxable in the hands of the lender and will not qualify for an interest exemption.

To the extent that the tax payable by the lender in respect of this inclusion is not recovered from the trust within three years, this will be treated as a donation to the trust and donations tax will be imposed thereon at the rate of 20%.

Hybrid debt instruments

The interest paid on various debt instruments with certain specified equity features is currently treated as a dividend for tax purposes. This means that no deduction is granted in respect of such interest for the borrower and, conversely, the lender receives a tax-exempt dividend.

These provisions are being amended. Firstly, where such debt instruments are issued by a non-resident entity, the hybrid debt rules will only apply if such non-resident entity issues the debt instrument from a South African permanent establishment or if the non-resident entity is a controlled foreign company of South African residents.

The rules are also being amended to state that where such hybrid debt instruments are subject to, for example, put and call arrangements in terms of which the holder has the right to transfer such debt instrument to another party, the hybrid debt provisions will not apply. This brings the hybrid debt rules in line with the rules relating to preference shares.

International tax amendments

The proposed withholding tax on service fees has been withdrawn. This means that the proposed 15% withholding tax that was to be imposed on technical, management and consulting services will no longer be introduced.

South Africa, therefore, imposes withholding taxes on royalties, interest and dividends at a rate of 15%.

Share incentive schemes

In respect of various share incentive arrangements, individuals are taxed on the difference between the market value of the shares on date of vesting and any amounts paid for such shares.

This meant that certain dividends paid on these shares prior to vesting were exempt from income tax in the hands of such individuals.

It is now proposed that such dividends declared prior to vesting of the shares will be subject to income tax in the hands of the holder.

Special Voluntary Disclosure Programme

The South African Reserve Bank has also issued a long-awaited media statement which sets out the detailed proposals regarding the joint tax and exchange control Special Voluntary Disclosure Programme (“**SVDP**”). This provides much needed certainty around the process to apply for the SVDP.

Bernard du Plessis

tax | executive
bduplessis@ENSafrica.com
+27 83 458 2161

add to Outlook contacts

print

Peter Dachs

tax | director
pdachs@ENSafrica.com
+27 83 450 7039

add to Outlook contacts

print