

South African Government releases draft 2020 Tax Law Amendment Bills

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On 31 July 2020, South Africa's National Treasury published the 2020 Draft Taxation Laws Amendment Bill (DTLAB) and the 2020 Draft Tax Administration Laws Amendment Bill (DTALAB) for public comment. Comments are due by 31 August 2020.

Key highlights of the DTLAB and DTALAB include:

- ▶ Amending the exemption in respect of *bona fide* bursaries or scholarships granted by employers to employees or relatives of qualifying employees
- ▶ Not allowing non-tax compliant employers to roll forward unclaimed Employment Tax Incentive (ETI) amounts beyond the Pay As You Earn PAYE reconciliation periods (i.e., August and February)
- ▶ Introducing measures to prevent circumvention of trust related anti-avoidance rules, through subscription for preference shares in a company owned by a trust
- ▶ Addressing anomalies on the acquisition of assets in exchange for debt issued
- ▶ Refining the interaction between the anti-avoidance measures for intra-group transactions namely:
 - The de-grouping charge rule applicable to the group of companies that entered into intra-group sale
 - The zero-base cost rule applicable to transfer of assets and assumption of related debt

- ▶ Clarifying the rollover relief for unbundling transactions relating to nonresidents and exempt persons
- ▶ Formalizing the requirement for specific Public Benefit Organizations to obtain, retain and submit (upon request) an audit certificate
- ▶ Clarifying the meaning of “market value” for the taxation of long-term insurers
- ▶ Reviewing the interaction between rules for the taxation of benefits received by short-term insurance policyholders and the tax treatment of related expenses
- ▶ Clarifying the doubtful debt allowance in respect of:
 - Debts which are secured and the taxpayer has not applied International Financial Reporting Standards (IFRS) 9
 - Certain impairments for banking regulated taxpayers
 - Taxpayers conducting leasing business and applying IFRS 9
- ▶ Curbing potential tax avoidance caused by dividend deductions
- ▶ Clarifying the meaning of a share in the definition of Real Estate Investment Trust (REIT)
- ▶ Amending the taxation of foreign dividends and foreign gains received by REITs
- ▶ Addressing tax avoidance involving lending and collateral arrangement provisions
- ▶ Reviewing the sunset clause dates of the Special Economic Zone tax incentive regime and other tax incentives
- ▶ Clarifying that certain anti-avoidance measures within the venture capital companies tax incentive regime will not apply if specific administrative provisions are adhered to
- ▶ Changing the discretion to lift the ring-fencing of capital expenditure per mine currently afforded to the Minister of Finance to the South African Revenue Service (SARS)
- ▶ Addressing the tax treatment of allowable mining capital expenditure (CAPEX) precluding contract miners to claim such a CAPEX deduction
- ▶ Introducing an anti-avoidance provision regarding change of South African (SA) tax resident company residence, followed by share disposal by a SA tax resident
- ▶ Introducing an anti-avoidance provision regarding taxation of foreign dividends received by residents
- ▶ Refining the scope of the transfer pricing rules applying to Controlled Foreign Companies
- ▶ Limiting the application of dividend and capital gain exemptions in loop structures
- ▶ Taxing the transfer of listed securities to an offshore exchange
- ▶ Reviewing the value-added tax (VAT) accounting basis option available for an intermediary
- ▶ Broadening the VAT relief under corporate reorganization rules by allowing the vendors to elect which provision to use
- ▶ Clarifying the VAT treatment of irrecoverable debts
- ▶ Reviewing the section 72 decision with regards to the VAT treatment of:
 - Telecommunication services
 - Cross-border leases of foreign-owned ships, aircraft and other equipment for use in RSA
 - Management of superannuation schemes
- ▶ Introducing export taxes on scrap metals
- ▶ Aligning the carbon fuel levy adjustment with the *Carbon Tax Act*
- ▶ Allowing a carbon tax “pass through” for the regulated liquid fuels sector

We note that EY will be submitting a written response to National Treasury and will be actively participating in further consultations with National Treasury during the public workshops.

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