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Global Tax Alert

South Africa's Finance Minister delivers 2019 Budget Review

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On 20 February 2019, South Africa's Minister of Finance, Tito Mboweni, delivered his 2019/2020 Budget Review.

The key proposals include:

- Implementation of Carbon tax (at a proposed rate of R120 (approximately US$10) per ton of carbon dioxide equivalent) from 1 June 2019.
- Levy of carbon tax on fuel (in addition to the current levies imposed on fuel) at a rate of 9 cents per liter for petrol and 10 cents per liter for diesel, effective 5 June 2019. The current fuel levies (general fuel levy and Road Accident Fund levy) are increased by 20 cents per liter (effective 3 April 2019). This takes the overall increase in levies/taxes on petrol to 29 cents per liter and diesel to 30 cents per liter.
- Increases of between 7.4 and 9 per cent on excise duties on tobacco and certain alcoholic products, effective 20 February 2019.
- An increase in the Health Promotion Levy (HPL) to a rate of 2.21 cents per gram (previously 2.1 cents per gram) of the sugar content that exceeds 4 grams per 100ml.

The corporate income tax rate remains unchanged at 28%, while the trust income tax rate is also unchanged at 45%.

The personal income tax brackets (with a maximum marginal rate of 45%) have not been adjusted for inflation and remain unchanged. The primary, secondary and tertiary rebates have, however, been increased by 1.1% to provide minimal inflationary relief.

Additional proposed tax amendments include:

- From 1 March 2020, South African residents who spend more than 183 days in employment outside the country, will be subject to South African taxation on any foreign employment income that exceeds R1 million. To prevent a monthly withholding of income tax both in South Africa and the host country, it is proposed that South African employers will be allowed to reduce the monthly employees' tax withholding by the amount of foreign taxes withheld on the same employment income.
- Section 7B is an anti-avoidance provision that defers the deduction to employers of variable remuneration to when the amounts are actually paid. It therefore aims to match the timing between the accrual and payment dates of certain forms of variable cash remuneration. It is proposed that the scope of section 7B be extended to include certain qualifying payments.
- Share buy-backs and dividend stripping arrangements that involve the target company distributing a substantial dividend to its current company shareholder (thus diluting its value) and subsequently issuing shares to a third party, will be amended to address "abusive arrangements." Important to note is that the proposed effective date for these changes is 20 February 2019.
- Various proposed amendments to the corporate reorganization rules to address anomalies and clarify the inter-play between these provisions.
- Proposed amendments to the special interest deduction relating to debt-financed acquisitions of controlling shares in an operating company.
- Additional robust measures to be introduced in the controlled foreign company rules to address the circumvention of the anti-diversionary rules.
- A review of the "affected transaction" definition as set out in the transfer pricing rules and which currently applies to transactions between "connected persons" as defined. This differs from the Organisation for Economic Co-operation and Development Model Tax Convention, where transfer pricing rules apply to transactions between "associated enterprises."
- The anti-avoidance measures relating to transactions between a company and its connected persons under the Special Economic Zone tax regime will be reviewed to address the unintended consequences to legitimate business transactions.
- The energy-efficiency savings tax incentive which, if certain requirements are met, provides companies with an additional tax deduction for energy-efficient investments will be extended to 31 December 2022.
- The current tax exemption for income generated from the sale of certified emission-reduction credits will be repealed with the introduction of carbon tax on 1 June 2019. From 1 June 2019, emission-reduction credits can be used to reduce carbon tax liabilities.
- Review of inter-group relief for Value-Added Tax on E-services that will be effective on 1 April 2019.
- Government intends publishing draft legislation during 2019 in respect of a gambling tax (in the form of a 1% levy).
- It is proposed that South Africa will review its oil and gas tax regime in 2019.
- Government intends taxing electronic cigarettes and tobacco heating products.
- Government will review the goods on which the fuel levy is currently levied to potentially include fossil fuels such as mineral ethanol, illuminating paraffin, aviation kerosene, liquefied petroleum gas, compressed natural gas – as well as biofuels such as bioethanol and biogas
- National Treasury will publish a draft Environmental Fiscal Reform Policy Paper in 2019 which will outline options to reform existing environmental taxes to broaden their coverage and strengthen price signals. Government also intends investigating a tax on "single-use" plastics (straws, caps, beverage cups and lids, and containers) and reviewing the biodiversity tax incentive.

In addition, the Budget documentation states that "South Africa requires its tax administration to be efficient, effective and impartial." In this regard, the Government has started implementing certain "urgent recommendations" put forward by the Nugent Commission including, *inter alia*:

- Appointment of a new SARS Commissioner
- Re-establishment of a division that will focus on large businesses (to be launched in April 2019)
- Launch of a new Illicit Economy Unit in August 2018 to investigate syndicated tax evasion schemes in high-risk sectors, including the tobacco trade
- Action by SARS to strengthen the management of its information technology systems, rebuild its technical prowess and harness opportunities arising from information-sharing agreements between national tax authorities

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