

South African Government releases 2019 Tax Law Amendment Bills

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On 21 July 2019, South Africa's National Treasury published the [2019 Draft Taxation Laws Amendment Bill \(DTLAB\)](#) and the [2019 Draft Tax Administration Laws Amendment Bill \(DTALAB\)](#) for public comment. Comments are due by the close of business on 23 August 2019.

The amendments proposed are primarily in respect of the more complex tax proposals originally announced in the 2019 Budget Review on 20 February 2019 and refinements of legislative changes introduced in recent years.

The main tax policy proposals contained in the DTLAB are intended to:

- ▶ Address abusive arrangements aimed at avoiding anti-dividend stripping provisions by substantial dividend payments followed by shareholding dilution instead of a share disposal¹
- ▶ Clarify the value-mismatch rules applicable in respect of corporate asset for share exchange transactions by noting that it should not apply if there is no value mismatch and the difference in value between the shares issued and asset acquired is due to temporary differences that result in a deferred tax liability
- ▶ Clarify the interaction between section 40CA (deemed expenditure where assets are acquired in exchange for shares) and section 24BA (value mismatch provisions) by allowing a deemed capital gain under section 24BA to be added to the market value of the issued shares for purposes of determining tax cost of the acquired asset

- ▶ Clarify the requirements to obtain interest deductions in respect of the acquisition of a controlling interest in an operating company or its controlling company and confirmation of interest deductibility upon an unbundling of an operating company by its controlling company
 - ▶ Clarify that corporate rule application will not override section 24J (dealing with the transfer of interest bearing instruments) or section 24I (dealing with foreign exchange movements)
 - ▶ Enable a section 45 deemed de-grouping charge to be imputed to a resident when a Controlled Foreign Company (CFC) ceases being one, by treating the deemed charge to have arisen on the day before that CFC ceased being one
 - ▶ Broaden the list of permissible winding up steps to include a section 116 *Companies Act, 2008* notice pursuant to a statutory merger
 - ▶ Amend Real Estate Investment Trust (REIT) rules to include foreign exchange gains as rental income and also to provide that anti-avoidance 18-month corporate reorganization rules should not give rise to capital gains tax on disposals of immovable property
 - ▶ Relax special economic zone anti-avoidance rules from the current “all or nothing approach” to a “ring fenced trade” approach on amounts that exceed the allowable 20% limits
 - ▶ Limit the allowable deduction for investors in Venture Capital Company (VCC) to R2.5 million per annum per venture capital company shareholder
 - ▶ Update the employment tax incentives to align it with the national minimum wage and with the Special Economic Zone regime
 - ▶ Align the domestic treasury management company regime with the South African Reserve Bank regime
 - ▶ Review CFC rules, by reducing the comparable tax exemption threshold to 67.5%, and extending anti-diversionary rules
 - ▶ Amend the definition of “permanent establishment” (PE) to not refer to the revised Organisation for Economic Co-operation and Development (OECD) Model Tax Convention definition and thereby retain the existing definition
 - ▶ Extend the scope of the transfer pricing rules to include transactions between persons that are not “connected persons,” but that are “associated enterprises” as described in the OECD Model Tax Convention on Income and on Capital
 - ▶ Clarify the interaction between capital gains tax and foreign exchange transaction rules
 - ▶ Amend the foreign donor funded project regime and the value added tax (VAT) treatment thereof
 - ▶ Amend the application of the VAT Act provision that gives the Commissioner the discretion to issue VAT rulings to taxpayers where difficulties, anomalies or incongruities are experienced when applying provisions of the VAT Act
 - ▶ Expand the VAT reorganization rules to fixed property disposed of as part of a sale and lease back transaction
 - ▶ Provide for the zero-rating of sanitary towels (pads) with effect from 1 April 2019
 - ▶ Propose retirement fund reforms to:
 - Align effective dates of tax neutral transfers from pension funds to provident/provident preservation funds to 1 March 2021 (when uniform treatment of retirement funds is expected to come into force)
 - Allow non-deductible contributions to a provident/provident preservation fund as an exemption when determining the taxable portion of annuities received from such funds
 - Allow retirement funds to apply for a South African Revenue Service (SARS) directive disregarding tax rebates for purposes of determining Pay As You Earn (PAYE) amounts to be withheld on retirement fund payments to surviving spouses
- The main tax administration proposals contained in the DTALAB are intended to:
- ▶ Extend the notice period to SARS to institute legal proceedings from one week to 21 business days
 - ▶ Allow SARS to set-off refunds against the outstanding tax debt of the taxpayer including customs and excise debt
 - ▶ Enforce the reporting obligation in terms of Mandatory Disclosure Rules by introducing non-compliance penalties like those of reportable arrangement scheme

Next steps

EY will submit a written response to National Treasury by 23 August 2019 and will participate in further consultations with National Treasury during the public workshops. EY will also hold a Tax update event during September to address the tax law amendments and what this means for business.

Endnote

1. See EY Global Tax Alert, [South Africa: Review of new anti-dividend stripping rules](#), dated 26 July 2019.

For additional information with respect to this Alert, please contact the following:

Ernst & Young Advisory Services (Pty) Ltd., Johannesburg

- ▶ Mohammed Jada mohammed.y.jada@za.ey.com
- ▶ Candice Van Den Berg candice.vandenberg@za.ey.com
- ▶ Shaheed Patel shaheed.patel@za.ey.com
- ▶ Madelein Grobler madelein.grobler@za.ey.com

Ernst & Young LLP (United Kingdom), Pan African Tax Desk, London

- ▶ Rendani Neluvhalani rendani.mabel.neluvhalani@uk.ey.com
- ▶ Byron Thomas bthomas4@uk.ey.com

Ernst & Young LLP (United States), Pan African Tax Desk, New York

- ▶ Brigitte Keirby-Smith brigitte.f.keirby-smith1@ey.com
- ▶ Dele Olagun-Samuel dele.olaogun@ey.com

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