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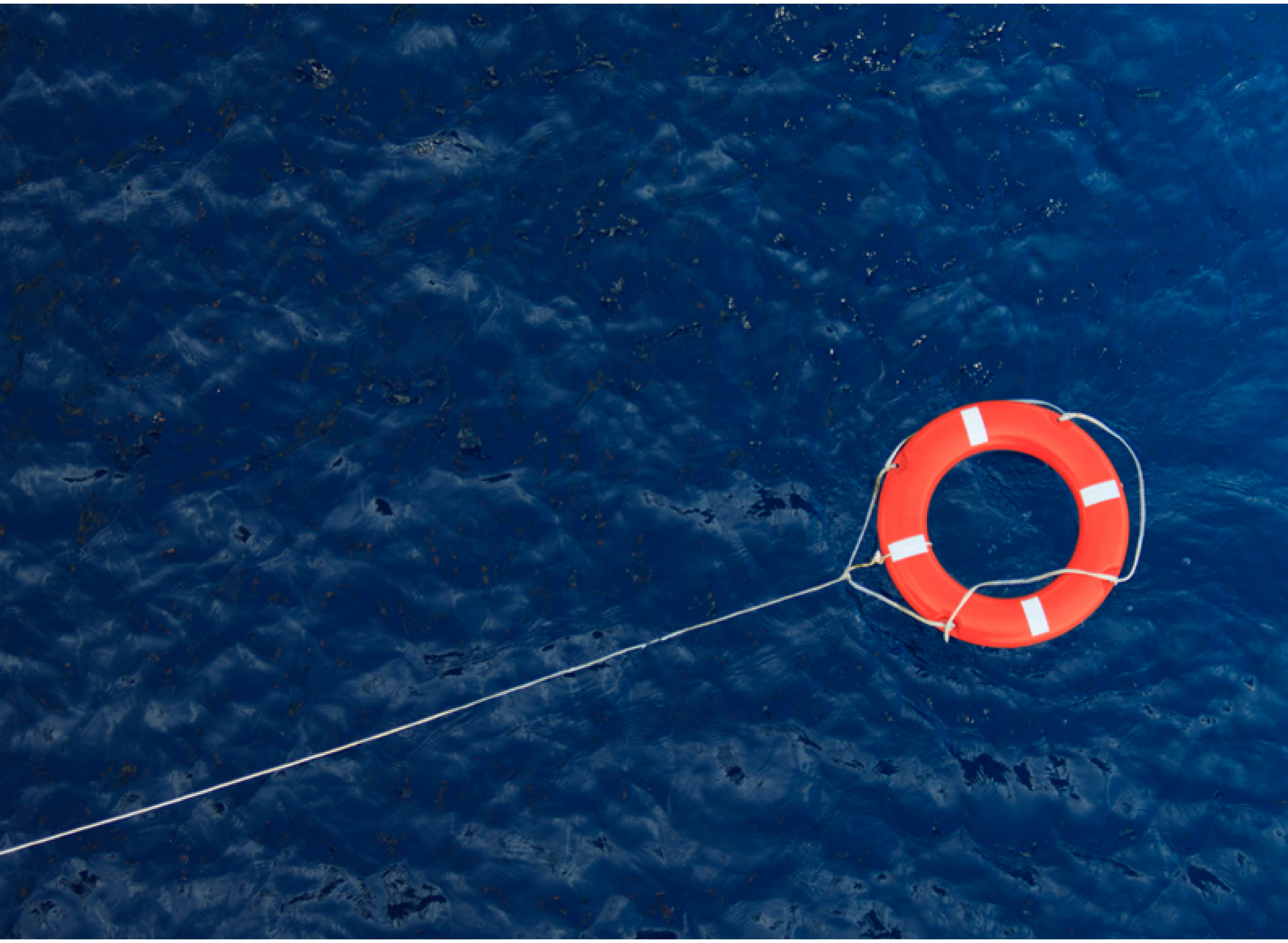

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RESTRICTION ON THE USE
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TAX ADMINISTRATION
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Editorial Panel:
Mr KG Karro (Chairman), Mr MA Khan, Prof KI Mitchell, Prof JJ Roeleveld, Prof PG Surtees, Mr Z Mabhoza, Ms MC Foster

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ACQUISITION OF ASSETS IN EXCHANGE FOR DEBT

Paragraph 38 of the Eighth Schedule to the Income Tax Act, 1962 (the Act), indicates that transactions between connected persons are deemed to take place at arm's length. In other words, assets are disposed of at market value by the seller and deemed to have been acquired at market value by the purchaser.

However, this deeming provision does not apply to any asset in respect of which section 40CA of the Act applies. Section 40CA indicates that, if a company acquires an asset from a person in exchange for debt issued by the company, the company is deemed to have actually incurred an amount of expenditure in respect of the acquisition of that asset which is equal to the amount of the debt. The so-called market value rule therefore does not apply. It is important to appreciate that the deeming provision only deals with the acquisition of the asset by the acquirer and does not deal with the accrual in the hands of the seller.

A number of taxpayers have made use of this deeming provision so as to avoid the potential negative consequences of having been deemed to have disposed of an asset at market value. In other words, to the extent that shares are not issued in return for the acquisition of an asset, but the purchaser is a company which becomes indebted to the seller, the consequence of section 40CA would have been that the asset is deemed to have been acquired for an amount equal to the debt.

To the extent that an asset for share transaction is implemented in terms of section 42, the consequences are that:

- The seller is deemed to have disposed of the asset at original base cost;
- The purchaser company is deemed to have acquired the asset at original base cost; and
- The seller is deemed to have acquired the relevant shares issued by the purchaser company at base cost.

The deemed acquisition at base cost and the issue of shares at base cost do not necessarily apply to the extent that a debt is created pursuant to the transfer of an asset.

In terms of section 45, an intra-group transaction can be entered into pursuant to which an asset is transferred to another group company in return for the issue of debt. Such debt would then not be subject to tax in the hands of the seller. The argument is thus that, if one reads section 45 together with section 40CA, one can transfer an asset without paying tax whereas the purchaser company is deemed to have acquired the asset for an amount equal to the debt.

Transactions could thus have been entered into on the basis that:

- The seller of the asset transfers the asset to a new company (Newco) in return for the issue of debt by the purchaser company. In other words, the asset is then transferred to Newco at a cost equal to the debt that is created.
  The shares in Newco can thereafter be disposed of at market value without triggering the deemed market value provisions as one is disposing of the share in Newco as opposed to the asset that has been acquired by Newco.

The Minister has thus proposed that relevant amendments to the legislation be introduced to address these concerns.

Editorial comment: It must be noted that under section 41(2) the provisions of Part III (that contains sections 42 and 45) apply, notwithstanding any provision to the contrary contained in the Act.

Cliffe Dekker Hofmeyr

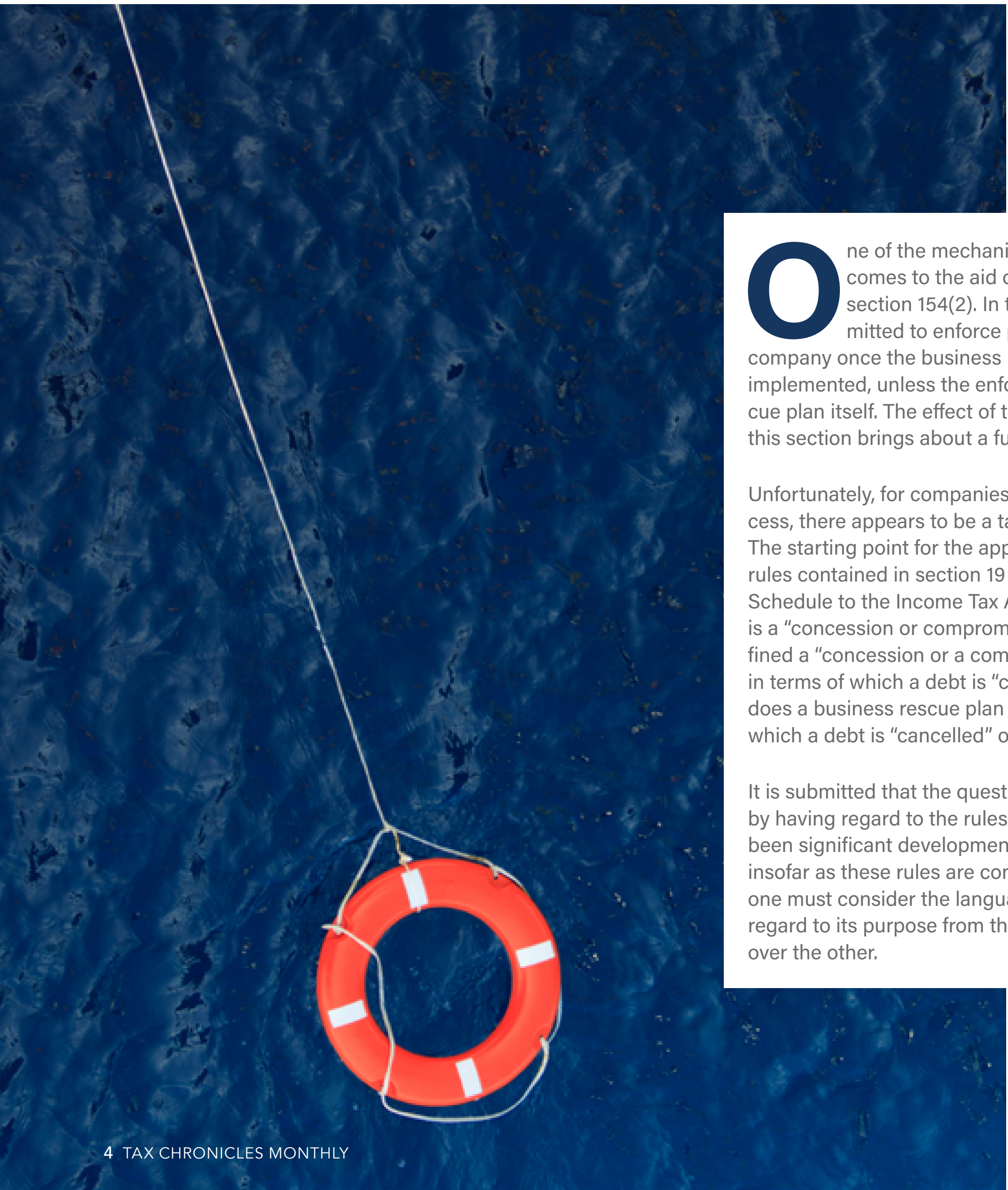
Act Sections

- Income Tax Act 1962 (Act): sections 40CA, 42 & 45; Paragraph 38 of the Eight Schedule

Tags: connected persons; at arm's length; deeming provision; intra-group transaction.

DEBT BENEFIT RULES AND BUSINESS RESCUE

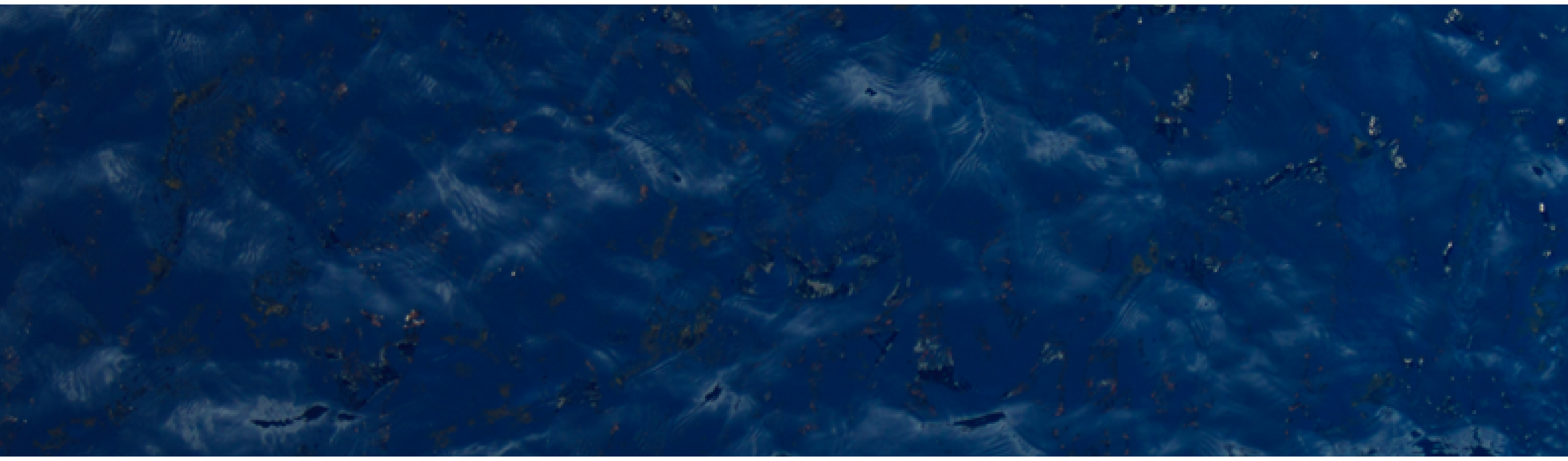
The Companies and Intellectual Property Commission reported that between 2011 and 2018, a total of 2 867 South African companies initiated business rescue proceedings in terms of chapter 6 of the Companies Act, 2008 (the Companies Act), with South African Airways SOC Limited (SAA) being the latest addition to this list. The purpose of these proceedings is to provide distressed companies with a fresh start by creating the potential for them to be rescued, to avoid insolvency and to ultimately be wound up. The importance of this to the fiscus and economy can hardly be overstated.



One of the mechanisms in the Companies Act which comes to the aid of these companies is contained in section 154(2). In terms of this section, no creditor is permitted to enforce pre-business rescue debts against the company once the business rescue plan has been approved and implemented, unless the enforcement stems from the business rescue plan itself. The effect of this, according to commentators, is that this section brings about a full discharge of the debt in question.

Unfortunately, for companies who initiate the business rescue process, there appears to be a tax fly in the business rescue ointment. The starting point for the application of the so-called debt benefit rules contained in section 19 and paragraph 12A of the Eighth Schedule to the Income Tax Act, 1962 (the Act), is whether there is a "concession or compromise" of a debt. The legislature has defined a "concession or a compromise" of a debt as an arrangement in terms of which a debt is "cancelled" or "waived". The question is – does a business rescue plan constitute an arrangement in terms of which a debt is "cancelled" or "waived"?

It is submitted that the questions posed above must be resolved by having regard to the rules of statutory interpretation. There have been significant developments in the South African jurisprudence insofar as these rules are concerned, and it is now settled law that one must consider the language of the legislation in context, having regard to its purpose from the outset, with neither predominating over the other.



If these provisions apply to debts that are expunged in terms of the business rescue process, it may create adverse tax consequences for companies that are already in a financial predicament, thereby stultifying the broader aim of the business rescue regime. Moreover, this conundrum has been acknowledged by the National Treasury, who pronounced in 2014 that the Act would be amended to provide relief.

Having regard to the rules of interpretation, it may be argued that the debt benefit rules are intended to apply only in cases where there is a bilateral agreement between a debtor and a creditor that a debt will no longer be due and owing. If this interpretation is accepted, the further question that arises is whether a vote by a creditor in favour of the business rescue plan constitutes such a bilateral agreement between the parties. This will of course require a detailed analysis of the business rescue plan.

Although it may not be uncommon for failing companies to have accumulated tax losses that may be offset against a tax liability arising under the debt benefit rules (if it is accepted that it applies in the current circumstances), the preservation of such losses may be vital to facilitate any post-business rescue restructuring.

With the South African economy in the doldrums, there may be a number of companies opting for the same ointment as SAA. This being so, the legislature should consider amending the debt benefit rules to make it explicit that they do not apply to debts discharged in terms of the business rescue process. However, until such time as the Act has been amended, business rescue practitioners should seek professional tax advice to navigate the tax implications attendant upon the business rescue process.

Editorial comment: The implementation date has been deferred by one year to be effective for years of assessment commencing on or after 1 January 2022.

"However, until such time as the Act has been amended, business rescue practitioners should seek professional tax advice to navigate the tax implications attendant upon the business rescue process."

ENSafrica

Act sections:

- Companies Act 71 of 2008: section 154(2); Chapter 6;
- Income Tax Act 58 of 1962: section 19 & paragraph 12A of the Eighth Schedule.

Tags: business rescue process; debt benefit rules.

RESTRICTION ON THE USE OF ASSESSED LOSSES

Given the current economic climate, often the only light at the end of the financially crippling tunnel, is the knowledge that the losses incurred in this year of assessment (YOA) can (hopefully) be set off against taxable income in the following YOA. However, the light appears to be dimming as the Minister proposes restricting the extent to which an assessed loss may be used to offset future taxable income.

When the tax-deductible expenses of a company exceed the income derived by it in a YOA, an assessed loss is realised. Such an assessed loss may be carried forward to the next YOA and may be used to decrease the taxable income of the company in that next YOA.

To the extent provided for in section 20 of the Income Tax Act, 1962, the full amount of that assessed loss may be used to reduce the taxable income generated by a company in a subsequent YOA. Furthermore, if the assessed loss is greater than the taxable income in that subsequent year, the balance of the assessed loss not utilised may be carried forward to the next year of assessment.

It has been proposed in the 2020 Budget that the offset of assessed losses that have been carried forward, be restricted to 80% of current year taxable income from years of assessment, commencing on or after 1 January 2021. As such, if a company is in a taxable position before taking into account an assessed loss that is carried forward, that company will be liable to pay tax on at least 20% of its taxable income, regardless of whether the assessed loss carried forward exceeds the taxable income.

The proposed limitation is said to be in line with global trends and has been introduced in order to broaden the corporate income tax base.

It is possible that this proposed amendment will receive opposition from corporate entities as they will incur some measure of tax liability as soon as taxable income is derived, regardless of the extent of the assessed losses that may have been carried forward. This may be particularly problematic for entities with substantial start-up costs as the tax benefits in respect of losses incurred in the first years of operation will likely be limited during later YOAs.

Cliffe Dekker Hofmeyr

Act sections:

- Income Tax Act 58 of 1962: section 20.

Tags: taxable income; tax-deductible expenses; start-up costs.

ESTATE PLANNING AFTER LEAVING SOUTH AFRICA

With amendments to tax laws targeting the foreign earnings of South Africans that came into effect on 1 March 2020, the number of South African residents seeking to cease their South African tax residency and formalise their resident status for exchange control purposes has increased significantly. Leaving South Africa could have significant implications for estate planning, however; here is what you need to know.

AMENDMENT FROM MARCH 2020

South Africans working abroad for more than 183 days during any 12-month period, which includes a continuous period exceeding 60 full days during that 12-month period, have up to now not been taxed in South Africa on their foreign employment income. Section 10(1)*(o)*(ii) of the Income Tax Act, 1962, provided a specific exemption for this income. [*Editorial comment*: See also Interpretation Note 16: *Exemption from income tax: Foreign employment income* in this regard.]

However, this changed with effect from 1 March 2020. Treasury is of the view that the exemption created opportunities for double non-taxation in cases where the foreign host country either does not impose income tax on employment income, or taxes such income at a significantly lower rate. With effect from 1 March 2020, section 10(1)*(o)*(ii) was amended to allow the first R1.25 million of foreign remuneration to be exempt from tax in South Africa.

As a result of this amendment, from March 2020, South African tax residents who fall within the ambit of section 10(1)*(o)*(ii) have been subject to tax in South Africa on all foreign employment income earned in excess of R1.25 million. However, if tax has been paid on these earnings in the foreign host country, they will be able to claim this as a credit in South Africa, limited to the amount of local tax payable on the foreign earnings.

CESSATION OF SOUTH AFRICAN TAX RESIDENCY

With the cut-off date at the beginning of March 2020, many South Africans who have already left the country have been rushing to "officially" cease their South African tax residency to avoid unnecessary complications as a result of the amendment. However, there are several potential stumbling blocks to consider before taking this step.

It is important to realise that ceasing tax residency is not the same thing as formal emigration. If you have ceased your South African tax residency and have paid the necessary taxes, you will be seen as a non-resident taxpayer. Formal emigration, involves a South African Reserve Bank (SARB) process resulting in a change of your residency status for exchange control purposes. This process is known as "formalising" your emigration.

IMPACT ON ESTATE PLANNING

If you have not formally emigrated, but have ceased your South African tax residency, how will it impact your estate plan, especially the intergenerational transfer of wealth? What do you need to think about?

Many South Africans are either trustees or beneficiaries of a South African trust. If you are a trustee, complications may arise if you wish to relocate. You may in fact need to resign as trustee. The Master of the High Court may require that you furnish security, unless there are grounds for exemption. If no security can be provided, the Master may request that you be removed as a foreign trustee.

What if you do not know that you are the beneficiary of a trust? In cases where a trust has been set up by parents or grandparents for the purposes of intergenerational planning and preservation of wealth, beneficiaries may not even be aware of their status as such. We cannot emphasise enough the importance of honest and open communication between generations – the financial impact can be significant if decisions are made without the full knowledge of relevant family members about wealth transfer plans.

There are also implications if beneficiaries living abroad are in need of financial assistance, and the trustees authorise trust distributions to these beneficiaries. When a capital gain is distributed to a non-South African resident trust beneficiary, the conduit principle (shifting the tax burden to the beneficiary) will not apply and the trust itself will pay the taxes at an effective rate of 36%.

If you as a beneficiary are still a South African resident for exchange control purposes, you cannot receive the funds freely – exchange control regulations will need to be taken into account. You will have to use your discretionary allowance (R1 million per calendar year) or your foreign investment allowance (FIA) (R10 million per calendar year) to receive the funds offshore. If you make use of your FIA, you will first need to obtain certification of tax status from SARS – which means your South African tax affairs have to be up to date.

PUNITIVE TAXES

Punitive taxes imposed by some other jurisdictions present a further potential challenge. If you as a beneficiary are living in the US, the UK or Australia and receive distributions from foreign trusts, including South African trusts, then those countries may hit you with punitive taxes. If a South African or an offshore trust has beneficiaries in these jurisdictions, it is crucial to obtain expert advice before any distributions are considered.

In broad terms:

- When an Australian resident beneficiary receives a capital distribution consisting of current or historic capital gains from a South African trust, the capital distribution has to be included in assessable income in Australia.
- In the case of a US tax-resident beneficiary (typically a US citizen or green card holder) the entire distribution could become payable to the US Internal Revenue Service (the IRS) as tax.
- In the UK, the rules pertaining to the nature and composition of distributions are extremely complex. This may result in additional taxes arising in the hands of UK beneficiaries if the trustees have not kept a careful record of historical income and gains, and kept income and gains separate.

To complicate matters further, the US Foreign Accounts Tax Compliance Act (FATCA), 2010, requires trustees or the relevant financial institution managing the trust assets to report to SARS that a US resident or green card holder is a beneficiary of a trust, and SARS will report the same to the IRS. Similarly, resident beneficiaries may be subject to certain Foreign Bank Account Report (FBAR) requirements directing them to declare to the IRS if they have funds available outside the US.

In terms of the Common Reporting Standards (CRS), the details of settlors and beneficiaries of trusts must be recorded, and this information is available to all CRS-member countries, including South Africa, Mauritius, the Channel Islands, Australia and the UK.

"Besides setting up a trust, another option for transferring wealth to the next generation is simply to bequeath assets directly by way of a last will and testament."

Besides setting up a trust, another option for transferring wealth to the next generation is simply to bequeath assets directly by way of a last will and testament. Again, it is important to understand all the implications of this option if it is chosen. If your children have not placed their emigration on record with the SARB, they will only be allowed to transfer their inheritance offshore by making use of their discretionary allowance and/or FIA, provided that their South African tax affairs are up to date.

EXPERT ADVICE

It should be clear that ceasing your tax residency does not mean an end to all problems. It is critical to consider the impact on your estate plan (whether it is your own or an intergenerational plan) when you leave South Africa. There is no one-size-fits-all solution. Everyone's personal circumstances, and therefore estate plan, is unique and it is crucial to seek professional advice – whether it is you who is relocating, or your grandchild.

Sanlam

Act sections:

- Income Tax Act 58 of 1962: Section 10(1)*(o)*(ii).

Other documents:

- Interpretation Note 16 (Issue 3): *Exemption from income tax: Foreign employment income.*
- US Foreign Accounts Tax Compliance Act, 2010.

Tags: South African tax residency; foreign employment income; foreign investment allowance.

MODERNISATION OF SOUTH AFRICA'S EXCHANGE CONTROL REGIME

For a long time, South Africa's exchange control (Excon) regime has been viewed as cumbersome, onerous and greatly complicating the transfer of funds abroad. This sentiment is captured in the following statement in the 2020 Budget:

> "Since 1933, South Africa has operated a 'negative list' system. By default, foreign-currency transactions are prohibited, except for those listed in the Currency and Exchanges Manual. As a result, even small individual transactions – such as for travel – require onerous approval processes. This regime constrains trade and cross-border flows, particularly in relation to fast-growing African economies."

National Treasury proposes modernising the foreign exchange system, that is, the Excon regime. Over the next 12 months, a new capital flow management system will be put in place. All foreign-currency transactions will be allowed, except for a risk-based list of capital flow measures. This change will increase transparency, reduce burdensome and unnecessary administrative approvals, and promote certainty. The risk-based list of capital flow measures includes the following:

- South African corporates will not be allowed to shift their primary domicile, except under exceptional circumstances approved by the Minister of Finance (the Minister).
- Approval conditions granted by the Minister for corporates with a primary listing offshore, including dual-listed structures, will be aligned to the current foreign direct investment criteria and/or conditions to level the playing field.
- Cross-border foreign exchange activities will continue to be conducted through dealers authorised and regulated by the SARB.

"Furthermore, under the new system, natural person emigrants and natural person residents will be treated identically."

- Prudential limits on South African banks and institutional investors will remain, but the limits will be reviewed regularly.
- Banks' unhedged foreign currency exposures will remain limited to 10% of liabilities (known as the net open foreign exchange position) and will remain regulated by the Prudential Authority of the SARB.
- The domestic treasury management company policy, which allows South African companies to establish one subsidiary as a holding company for African and offshore operations without being subject to exchange control restrictions, will remain in place, as will the international headquarter company regime.
- The export of intellectual property for fair value to non-related parties will not be subject to approval.
- The current policy of certain loop structures, which relates to the acquisition by private individuals of equity and/or voting rights in a foreign company, will remain until tax amendments are implemented to address the risks.

There are also proposed changes regarding the Excon rules applicable to individuals. Following reforms to the income tax treatment of South African tax residents who receive remuneration abroad, government proposes to remove the rules regarding the Excon treatment for individuals. Rather, it aims to strengthen the rules regarding tax treatment. The intention is to allow individuals who work abroad more flexibility, provided funds are legitimately sourced and the individual is in good standing with SARS. Individuals who transfer more than R10 million offshore, which is what is currently allowed under the foreign investment allowance, will be subjected to a more stringent verification process. Such transfers will also trigger a risk management test that will include certification of tax status and the source of funds, and assurance that the individual complies with anti-money laundering and counter-terrorist financing requirements prescribed in the Financial Intelligence Centre Act, 2001. This will be phased in by 1 March 2021.

Furthermore, under the new system, natural person emigrants and natural person residents will be treated identically. Additional restrictions on emigrants, such as the restrictions on emigrants being allowed to invest, and the requirement to only operate blocked accounts are being repealed. The concept of emigration as recognised by the SARB will be phased out and replaced by a verification process. Tax residency for individuals will continue to be determined by the ordinarily resident and physically presence tests as set out in the Income Tax Act.

The proposed modernisation will likely be welcomed by South Africans living both locally and abroad as well as by the South African business community. It is likely that the SARB will issue further circulars and provide further information dealing with the various changes.

Cliffe Dekker Hofmeyer

Act sections:

- Income Tax Act 58 of 1962: section 10(1)*(o)*;
- Financial Intelligence Centre Act 38 of 2001.

Tags: exchange control; holding company; intellectual property.

FOREIGN REMUNERATION

Much has been written in the media of late on the new "expat tax" – from 1 March 2020, South Africans employed abroad have been subject to income tax on their foreign earnings above R1.25 million. There is still considerable confusion and uncertainty over the impact of the new laws. Here are the top five concerns that have been raised.

1. HOW WILL THE EXISTING TAX LAWS BE AMENDED?

With effect from 1 March 2020, section 10(1)*(o)*(ii) of the Income Tax Act, 1962 (the Act), has been amended to allow only the first R1.25 million of foreign remuneration to be exempt from tax in South Africa. This effectively means that all South African tax residents working abroad are now subject to tax in South Africa on any foreign employment income above the R1.25 million threshold. If tax has been paid on these earnings in the foreign host country, South Africa will allow a tax credit, limited to the amount of local tax payable on the foreign earnings.

2. WHO WILL BE AFFECTED BY THE NEW LAWS?

There has been much media hype around the tax law amendments, with headlines often referring to "SA expats working abroad". It is important to note that the change in legislation will not necessarily impact *all* South Africans working abroad. In broad terms, it will only be applicable if you are still a South African *tax resident*, and:

- receive remuneration for employment services rendered outside South Africa, including salary, share options, leave pay and wage overtime pay; [*Editorial comment*: "including fringe benefits".]
- are outside South Africa for more than 183 days in aggregate during a 12-month period, and for a continuous period exceeding 60 full days during that 12-month period; and
- are employed by a resident or non-resident employer.

"There is a misperception that if you cease to be a tax resident, the exit charge will apply only to your South African assets and not to those held abroad."

If this applies to you, it may be beneficial to consider the cessation of your South African tax residency, or rely on an available double tax treaty. [*Editorial note*: See also article 192 "Estate planning after leaving South Africa" above in this regard.]

It is crucial to consult a fiduciary and tax expert, however, as your current circumstances might result in your falling outside the scope of the new section 10(1)*(o)*(ii), for example, if you are:

- an officer or a crew member of a ship (not an independent contractor or self-employed person), engaged in the transportation of goods and services for reward during a year of assessment; *and*
- outside South Africa for a period or periods exceeding 183 days in aggregate during a year of assessment.

3. IF I CEASE MY TAX RESIDENCY, WILL THE EXIT CHARGE APPLY ONLY TO MY SOUTH AFRICAN ASSETS?

There is a misperception that if you cease to be a tax resident, the exit charge will apply only to your South African assets and not to those held abroad. This cannot be further from the truth. As a local tax resident you are subject to tax on a worldwide basis. When you cease to be a South African tax resident, you will trigger an exit charge on your worldwide assets, and not only your local assets.

The Act includes a provision under section 9H that should a person cease their residency, they must be treated as having disposed of all their worldwide assets on the day immediately before cessation. A note of caution: the provision states that the market value to be used is therefore *not* the value on the day you cease your residency, but the value on the preceding day.

4. ARE THERE ANY ASSETS EXCLUDED FROM THE EXIT CHARGE WHEN I CEASE TO BE A TAX RESIDENT?

The exit charge will be applicable on your worldwide assets – excluding any fixed property you own in South Africa. However, as a non-tax resident, you would still be liable for capital gains tax when you sell the property.

5. WILL I BE TAXED AT THE 45% MARGINAL TAX RATE?

If your foreign employment income is equal to or greater than R1 577 301 for the tax year, it does not necessarily mean you would be taxed at 45%. It is important to remember that you are taxed on a worldwide basis and not only on your foreign employment income. Once you have included all your income in your tax return (including foreign employment income and interest) the South African Revenue Service (SARS) will first apply the relevant exemptions. It will then subtract any qualifying deductions and add any taxable capital gains to determine your taxable income.

For example, on an income of R1 577 301 that is derived solely from foreign employment, after the R1.25 million exemption – and assuming you have no deductions and taxable capital gains – only R327 301 will be taxable income. If your employer deducted the relevant employees' tax in the foreign jurisdiction, any taxes levied on the R327 301 portion may be used as a credit to ensure you are not double taxed. Also, as a tax resident, you are still entitled to a primary rebate.

The idea that you would be taxed at the marginal rate of 45% on your total foreign employment income is therefore incorrect. You will have to take into account the relevant exemptions as well as deductions, not forgetting your rebates and credits for taxes already paid abroad.

Sanlam

Act sections:

- Income Tax Act 58 of 1962: sectios 9H & 10(1)*(o)*(ii).

Tags: foreign employment income; South African tax resident.

SARS INTEREST RATES

TAX AND VAT – INTEREST RATE DECREASES

The SARS interest rates have been sharply decreased as detailed below.

It is important to remember that interest and penalties paid to SARS are not deductible expenses for income tax purposes. On the other hand, interest received from SARS is fully taxable (after deducting the current initial exemption of R23 800 per annum (R34 500 if you are 65 or older) for all local interest income earned by natural persons).

- **Income tax, provisional tax, dividends tax, etc**

  Payable to SARS on short payments of all such taxes (other than VAT): 9.75% per annum from 1 May 2020 (was 10% per annum with effect from 1 November 2019).

  Payable by SARS on refunds of tax (where interest is applicable): 5.75% per annum from 1 May 2020 (was 6% per annum with effect from 1 November 2019).

  If the refund is made after a successful tax appeal or where the appeal is conceded by SARS, the interest rate is 9.75% per annum from 1 May 2020 (was 10% per annum from 1 November 2019).

- **VAT**

  Payable to SARS on late payments: 9.75% per annum from 1 May 2020 (was 10% per annum from 1 November 2019).

  Payable by SARS on VAT refunds after prescribed period: 9.75% per annum from 1 May 2020 (was 10% per annum from 1 November 2019).

- **Fringe benefits**

  Official interest rate for loans to employees below which a deemed fringe benefit arises: 4.75% per annum from 1 June 2020. See below for details of historical changes.

- **Dividends tax**
  Official interest rate for loans (designated in rands) to shareholders below which the interest on such loans can be deemed to be dividends on which dividends tax is payable: 4.75% per annum from 1 June 2020. See below for details of historical changes.

- **Donations tax**

  Loans to trusts by natural connected persons with interest charged at rates below the official rate create a donation subject to donations tax at 20% on the interest forgone each year.

- **Penalties**

  The amount of penalties for late payments (where applicable) are substantial (at least 10%) and are in addition to interest charged.

FRINGE BENEFITS, LOANS, DONATIONS TAX AND DIVIDENDS TAX - INTEREST RATES

- If inadequate interest is charged to an employee (including working directors) on loans (other than for the purpose of furthering their own studies) in excess of R3 000 from their employer (or associated institution), tax on the fringe benefit may be payable.

  Unless interest is charged at the "official" rate or greater, the employee is deemed to have received a taxable fringe benefit calculated as being the difference between the interest actually charged and interest calculated at the "official" rate.

  For employees' tax purposes, the tax deduction must be made whenever interest is payable; if not regularly, then on a monthly basis for monthly paid employees, weekly for weekly paid employees, etc.

- Subject to a number of exceptions, distributions of income and capital gains from a company / close corporation are normally subject to dividends tax at the flat rate of 20%. Loans or advances to or for the benefit of a shareholder / member will be deemed to be dividends but only to the extent that interest at less than the "official" rate (or market-related rate in the case of foreign-currency loans) is payable on the loan, or fringe benefits tax is payable on an interest-free (or subsidised-interest) loan to an employee.

"With effect from 1 March 2011, the official rate has been defined as the rate of interest equal to the South African 'repo rate' plus 1%."

  It is not the amount of the loan but the interest reduction which is deemed to be a dividend. Low-interest loans are accordingly subject to dividends tax payable by the company and only in respect of the interest benefit.

- Loans to trusts by natural connected persons with interest charged below the official rate create a donation subject to donations tax at 20% on the interest forgone each year.

- With effect from 1 March 2011, the official rate has been defined as the rate of interest equal to the South African "repo rate" plus 1%. For foreign-currency loans, the rate is the equivalent of the foreign "repo rate" plus 1%. The South African repo rate is currently 3.75% per annum.

The "official" rate of interest over the past five years

With effect from		*Rate per annum*
1 February 2016	–	7.75%
1 April 2016	–	8.00%
1 August 2017	–	7.75%
1 April 2018	–	7.50%
1 December 2018	–	7.75%
1 August 2019	–	7.50%
1 February 2020	–	7.25%
1 April 2020	–	6.25%
1 May 2020	–	5.25%
1 June 2020	–	4.75%

Kent Karro

Editorial note: Further interest rate reductions will be published in future editions.

Tags: deductible expenses; natural connected persons; donations tax; taxable fringe benefit; low-interest loans; repo rate.

TAX FILING TIMETABLE FOR TAX YEAR 2020

PHASE 1:

15 April 2020 to 31 May 2020: Employer and third party filing

- EMP501 reconciliations must be lodged by employers during this period.
- Compliance by employers in respect of payroll taxes (PAYE) is very important with a renewed focus to ensure that all employers are fully compliant in terms of their filing and payment obligations.
- SARS will be reviewing all third-party data by the end of May 2020. Third-party data comes from banks, financial service companies, pension schemes, medical savings and insurance schemes, etc.
- In addition, SARS will interface with the National Population Register, the Companies Register and the Deeds Office.

PHASE 2:

1 June 2020 to 31 August 2020: Tax file updates

- During this period taxpayers are requested to engage with SARS to ensure that their tax files are up to date, in terms of general hygiene checks, banking details, address changes, etc. SARS online facilities are available to do most of this. These checks will now be done mainly online before Filing Season.
- All outstanding third-party information will also be followed up during this period to ensure the highest level of data integrity.
- Third-party data providers, including employers, who remain wilfully non-compliant will be charged criminally during this period.
- During this phase a significant number of individual taxpayers will receive auto-assessments and be given an opportunity to confirm their acceptance of the assessment outcome.
- Taxpayers who do not accept the outcome of an auto-assessment must file a return during phase 3.
- During phase 2, individual taxpayers who are required to file but have not been auto-assessed may file early via online facilities if their employers and other third-party data providers are fully compliant (which includes no PAYE debt without a proper and secure deferment arrangement).
- Individuals who are not required to file will be informed.
- Individuals who are required to file during phase 3 will be informed.

PHASE 3:

1 September 2020 to 31 January 2021: Employee filing

- Individuals who are required to file will be reminded.
- Individuals who are non-provisional taxpayers or have not accepted the outcome of an auto-assessment are required to file as from 1 September through to 16 November 2020 and encouraged to file using on-line channels to minimise visits to SARS.
- Individuals who are non-provisional taxpayers, who make use of the SARS branch facility have until the 22 October 2020 to file.
- Provisional taxpayers who have not accepted the outcome of an auto-assessment are required to file by no later than 31 January 2021.

SUMMARY

Phase 1: Ran from **15 April 2020 to 31 May 2020**

This applies to employers only and remains the same as in previous years. EMP501 reconciliations and IRP5s had to be lodged within this timeframe.

Phase 2: Runs from **1 June 2020 to 31 August 2020**

SARS may criminally charge employers who do not comply with phase 1. During this phase certain taxpayers may be auto-assessed. Auto-assessment will only apply to taxpayers with a single IRP5 from a single employer, who have no investment income (eg, rental, interest income) and who have no deductions to claim (eg, medical aid, RA contributions).

Phase 3: Runs from **1 September 2020 to 31 January 2021**

- Non provisional taxpayers may file by e-filing until 16 November 2020.
- Provisional taxpayers must file their returns by 31 January 2021 at the latest.

Please note:

- SARS may impose penalties for any late lodgement of your tax returns.
- SARS will charge interest on any taxes due and unpaid.

Kent Karro

Tags: payroll taxes; auto-assessment; non-provisional taxpayers; provisional taxpayers; late lodgement.

FUNDRAISING – BINDING PRIVATE RULING

In the current economic climate, entities in the non-profit sector are looking for new and innovative ways to fund their operations. To the extent that an entity in the non-profit sector is an approved public benefit organisation (PBO) in terms of section 30 of the Income Tax Act, 1962 (the Act), such an entity must at all times comply with the provisions of section 30 to retain its PBO status.

On 17 January 2019, the South African Revenue Service (SARS) issued Binding Private Ruling 338 (the Ruling), which deals with the tax treatments of payments made to the applicant, a PBO approved in terms of section 30 (the Applicant), at a fundraising event.

FACTS

- The Applicant will host a fundraising event as a means of encouraging donations towards its public benefit activities.
- The fundraising event will be managed by an external events management company
- During the fundraising event attendees will make payments to participate in activities as well as make donations of money.
- The events management company will develop and manage an electronic system that will enable attendees to make the requisite payments during the fundraising event.
- This will be done by way of roaming electronic touch screen devices.
- The system will distinguish the various payments as either payments to participate in activities or to make donations of money, and it will also tally the various amounts at the end of the fundraising evening.
- Each attendee will settle the total amount due in respect of his transactions at the end of the evening by a single credit card payment.
- The Applicant will use the reports generated by the system to determine which attendees are eligible to receive a section 18A receipt, that is, a receipt which entitles the donor to claim a donation as a deduction in terms of section 18A of the Act.
- The Applicant will also use the reports generated to determine the amount to be indicated on the receipt.
- Only the donations made by each attendee will be reflected on the section 18A receipt.

RULING

Before setting out its decision, SARS indicated that the Ruling is subject to the additional condition and assumption that the payment-tracking system to be used at the fundraising event must as nearly as practicable conform to the one proposed. The payment-tracking system must be easy to verify in respect of its intended function of accounting for donations of money separately from other payments.

Pursuant to setting out this condition and assumption, SARS ruled as follows:

- The donations made to the Applicant which have been identified as such by the Applicant's proposed payment-tracking system at its fundraising event will constitute *bona fide* donations made to a PBO under section 18A.
- The Applicant may issue the donors with section 18A receipts in respect of those *bona fide* donations.
- Nothing in this ruling precludes the Commissioner from exercising the powers under section 30(5), or any amendment or substitution of that provision.

"Approved PBOs carrying on fundraising activities must also ensure that they carry on the activities in a manner that is consistent with section 30, so as not to risk their PBO status."

COMMENT

In terms of section 18A(1), where a taxpayer makes a *bona fide* donation to a PBO approved in terms of section 30 that carries on public benefit activities listed in Part II of the Ninth Schedule to the Act and which is approved for purposes of section 18A, the taxpayer may deduct the amount actually paid or transferred from its taxable income. The deduction can also be claimed where the donation is made to a PBO that is approved in terms of section 30 and which donates funds to other approved PBOs that carry on public benefit activities in Part II of the Ninth Schedule to the Act and which are approved for purposes of section 18A. Taxpayers should note that the deduction that can be claimed in a particular year of assessment is limited and the full amount of the donation cannot necessarily be deducted from taxable income in that year.

The Ruling illustrates that only *bona fide* donations may qualify for deduction. In other words, the deduction must be a donation in the true sense, which would not be the case if there is any *quid pro quo* in exchange for the donation being made. Section 55 of the Act defines a donation as any gratuitous disposal of property including any gratuitous waiver or renunciation of a right. Furthermore, in *Welch's Estate v C:SARS*, [2005], it was held that the common law requirement for a donation still applies, which is that it must be motivated by pure liberality or disinterested benevolence and not by self-interest or the expectation of a *quid pro quo*.

It is possible that in the context of the Ruling, an amount paid to participate in an activity during the fundraising event may not be a *bona fide* donation, as the person would be receiving something in return for the payment made.

Lastly, the reference to section 30(5) is also interesting. This provision states that SARS can revoke an entity's PBO status, if SARS believes that there has been, among other things, material non-compliance with section 30. In other words, SARS may still revoke the Applicant's PBO status in future if it does not continue to comply with section 30.

Approved PBOs should take note of the Ruling and ensure that they only issue section 18A receipts where they are permitted to do so.

The issuing of a section 18A receipt that does not comply with section 18A may result in the PBO suffering adverse tax consequences. Approved PBOs carrying on fundraising activities must also ensure that they carry on the activities in a manner that is consistent with section 30, so as not to risk their PBO status.

Editorial comment: Published SARS rulings are necessarily redacted summaries of the facts and circumstances. Consequently, they and articles discussing them should be treated with care and not simply relied on as they appear. Furthermore, a *binding private ruling* has a binding effect *between SARS and the applicant only*, and is published for general information. It does not constitute a practice generally prevailing. A third party may not rely upon a binding private ruling under any circumstances. In addition, published binding private rulings may not be cited in any dispute with SARS, other than a dispute involving the applicant or any co-applicant(s) identified therein.

Cliffe Dekker Hofmeyr

Act sections:

- Income Tax Act 58 of 1962: Sections 18A, 30 and 55; Part II of the Ninth Schedule.

Other documents:

- Binding Private Ruling 338.

Cases:

- *Welch's Estate v Commissioner, South African Revenue Service* [2005] (4) SA 173 (SCA).

Tags: public benefit organisation; public benefit activities.

TAXPAYER'S RIGHTS IN THE COURSE OF A SARS AUDIT

In Commissioner, South African Revenue Service v Pretoria East Motors (Pty) Ltd*, [2014], it was held, amongst other things, that in conducting an audit, which process precedes the raising of an assessment, the South African Revenue Service (SARS) must "engage the taxpayer in an administratively fair manner, as it is obliged to do".*

Recently, the unreported judgment of *Brits and Others v The Commissioner for the South African Revenue Service*, [2017], was published by SARS on its website; this judgment also deals with the important issue of administrative fairness in the context of a tax audit. The application was heard by the High Court, specifically the Gauteng Local Division, Johannesburg. We discuss the judgment in this article.

FACTS

The four applicants (the Applicants) launched an urgent application for the following two orders:

1. Firstly, compelling SARS to provide certain documentation on which SARS' audit findings are based; and

2. Secondly, interdicting SARS from issuing any additional, estimated or other assessments pursuant to its letters of audit findings relating to each Applicant until 30 days after SARS has provided the aforementioned documentation to each Applicant.

The Applicants are VAT vendors who buy jewellery containing gold from the general public and sell it to entities such as micro refineries.

Two of the entities which rendered administrative services to the Applicants (the service providers), were in possession of all of the documents relating to their tax affairs, such as bank statements, proof of payments and other documents under the Value-Added Tax, 1991.

During November 2015, the offices of the service providers were raided by SARS, pursuant to which SARS seized any and all documents found at the premises, including the VAT-related documents of the Applicants, which related to the 2012 to 2015 tax years.

SARS subsequently audited the Applicants for the 2012 to 2017 tax years and during the auditing process required further documents from the Applicants, which they provided, but that meant that the Applicants ended up with no documents of their own.

During October 2017, SARS had completed its VAT audits of the Applicants and issued "letters of audit finding" (sic) which concluded that all the transactions were fictitious and that all input VAT claimed by the Applicants over the 2012 to 2017 period, should be written back.

As this had far-reaching implications for the Applicants, they applied to SARS to be furnished with documents or copies of the documents on which the audits were based.

JUDGMENT

The application was based on section 42 of the Tax Administration Act, 2011 (the TAA), which the High Court had to consider. It stated the following at the time:

"(1) A SARS official involved in or responsible for an audit under this Chapter must, in the form and in the manner as may be prescribed by the Commissioner by public notice, provide the taxpayer with a report indicating the stage of completion of the audit.

(2) Upon conclusion of the audit or criminal investigation, and where –

(a) the audit or investigation was inconclusive, SARS must inform the taxpayer accordingly within 21 business days; or

(b) the audit identified potential adjustments of a material nature, SARS must within 21 business days, or the further period that may be required based on the complexities of the audit, provide the taxpayer with a document containing the outcome of the audit, including the grounds for the proposed assessment or decision referred to in section 104(2).

(3) Upon receipt of the document described in subsection (2)*(b)*, the taxpayer must within 21 business days of delivery of the document, or the further period requested by the taxpayer that may be allowed by SARS based on the complexities of the audit, respond in writing to the facts and conclusions set out in the document.

"The High Court also concluded that the application was indeed urgent on the basis that if they are entitled to the documents, they must receive them as soon as possible as it would serve no purpose for them to receive the documents after the assessments have been issued."

(4) The taxpayer may waive the right to receive the document.

(5) Subsections (1) and (2)*(b)* do not apply if a senior SARS official has a reasonable belief that compliance with those subsections would impede or prejudice the purpose, progress or outcome of the audit.

(6) SARS may under the circumstances described in subsection (5) issue the assessment or make the decision referred to in section 104(2) resulting from the audit and the grounds of the assessment or decision must be provided to the taxpayer within 21 business days of the assessment or the decision, or the further period that may be required based on the complexities of the audit or the decision."

With reference to the *Pretoria East Motors* judgment, the High Court indicated that a taxpayer is afforded an opportunity to respond to a tax audit in terms of section 42(3) of the TAA, so as to enable the taxpayer to persuade SARS that it was incorrect in its audit, which could avoid an assessment being raised.

It further stated that in order for the Applicants to respond meaningfully to SARS' letters of audit findings, the Applicants must have sight of the documents on which the audits are based. However, in the current matter, SARS was in possession of all the documents which it had seized in a search and seizure operation. As a result, the Applicants had no choice but to request SARS to furnish them with the requisite documents, which they did on 31 October 2017, but which request SARS refused.

This meant that after the expiry of the 21-day period in section 42(3) of the TAA, SARS would become entitled to issue an assessment, which would result in the Applicants becoming liable to SARS for substantial amounts of additional tax, without having had an opportunity to make representations to SARS.

Therefore, the High Court granted the application and held that the Applicants had a legal right to the documents, if one considers the provisions of section 42 of the TAA. The High Court also concluded that the application was indeed urgent on the basis that if they are entitled to the documents, they must receive them as soon as possible as it would serve no purpose for them to receive the documents after the assessments have been issued.

In finding in favour of the Applicants, the High Court rejected SARS' arguments that the application should not be granted. Essentially, SARS argued that the application should not be granted as it had invited the Applicants to a meeting to discuss the audit findings and as there are alternative remedies available to the Applicants, such as their right to object to the assessments once issued. These arguments were rejected as, once the assessments had been raised, SARS could insist on payment of the assessed amount(s).

COMMENT

The *Brits* judgment shows how a taxpayer who is faced with a SARS audit process that is not conducted in a manner consistent with the TAA can enforce its rights under the TAA. Taxpayers should note that after the *Brits* judgment had been handed down, section 42(1) of the TAA was amended by the Tax Administration Laws Amendment Act, 2018 (the TALA), to state that SARS must "… provide the taxpayer with a notice of commencement of an audit and, thereafter, a report indicating the stage of completion of the audit" (underlined words inserted by the TALA).

What is particularly encouraging is the High Court's rejection of SARS' arguments that the invitation to a meeting to discuss the audit findings and the availability of the dispute resolution process in the TAA, do not justify the application being rejected.

However, taxpayers should also note that where SARS issues an assessment pursuant to a flawed audit process, it would be possible to successfully dispute such assessment on the basis that the issue of the assessment was preceded by a flawed audit process, which was conducted in a manner inconsistent with section 42 of the TAA. This was the result in the matter of *Mr A v The Commissioner for the South African Revenue Service*, [2018].

"What is particularly encouraging is the High Court's rejection of SARS' arguments that the invitation to a meeting to discuss the audit findings and the availability of the dispute resolution process in the TAA, do not justify the application being rejected."

Cliffe Dekker Hofmeyr

Act sections:

- Value-Added Tax Act 89 of 1991;
- Tax Administration Act 28 of 2011: sections 42 & 104(2);
- Tax Administration Laws Amendment Act 22 of 2018.

Cases:

- *Commissioner, South African Revenue Service v Pretoria East Motors (Pty) Ltd* (291/12) [2014] ZASCA 91; [2014] (5) SA 231 (SCA);
- *Brits and Others v The Commissioner for the South African Revenue Service,* (Case No 2017/44380) ZAGPJHC;
- *Mr A v The Commissioner for the South African Revenue Service*, (Case No IT13726) [2018] ZATC 8.

Tags: unreported judgment; tax audit.

UNILATERAL EXTENSION OF PRESCRIPTION

We have seen that the South African Revenue Service (SARS), in conducting audits in respect of taxpayers' affairs, places reliance on section 99(4) of the Tax Administration Act, 2011 (the TAA), to unilaterally extend the time period within which an assessment prescribes.

Section 99(1) of the TAA deals with the period of limitation in respect of the issuance of assessments. It provides that an assessment may not be made three years after the date of assessment of an original assessment by SARS. Exceptions to this general rule apply, for example, where SARS did not assess the full amount of tax as a result of the taxpayer's non-disclosure of material facts, or if the parties agree to an extension.

Section 99(4), introduced in 2015, provides that the Commissioner may, by prior notice of at least 60 days to the taxpayer, extend a period as contemplated in section 99(1), before expiry thereof, by three years in the case of an assessment by SARS (or two years in the case of self-assessment), where an audit or investigation under Chapter 5 relates to the application of the doctrine of substance over form, Part IIA of Chapter III of the Income Tax Act, 1962 (which contains the general anti-tax-avoidance provisions), or the taxation of hybrid entities.

"In our view, it is therefore important for a taxpayer to be aware of their rights in this regard and, despite the Commissioner not requesting submissions, to make full and proper submissions as to why the taxpayer is of the view that the Commissioner is not permitted to extend prescription on this basis."

The Commissioner's decision in this regard is not expressly subject to objection or appeal. However, a decision by the Commissioner in terms of section 99(4) should constitute an administrative action in the context of the Promotion of Administrative Justice Act, 2000 (PAJA), which must be lawful, reasonable and procedurally fair. In this context, it is important that a taxpayer ensure that all the relevant facts and circumstances are before the Commissioner to enable it to exercise its power in such a manner. Should the taxpayer not agree with a decision in this regard, its remedy is to take such decision on review in terms of PAJA.

In notifying the taxpayer of its intention to extend the prescription period in terms of section 99(4), we generally do not see the Commissioner inviting the taxpayer to make representations in respect of the extension of the prescription periods as contained in section 99. In this regard, it is noted that the Memorandum on the Objects of Tax Administration Laws Amendment Bill, 2015, states as follows in paragraph 2.51 in respect of section 99(4):

> "Furthermore, the Commissioner may also, by prior notice of at least 60 days to the taxpayer, extend prescription by three years in the case of an assessment by SARS . . . where the audit . . . relates to:
>
> - the application of the doctrine of substance over form;
> - the application of the GAAR (Part IIA of Chapter III of the Income Tax Act, 1962…..
>
> The extension must take place *before the existing prescription period* has come to an end. *The requirement of prior notice before extension of prescription is to allow the taxpayer to make representations why it should not be extended*. The grounds for the extension will be included to demonstrate that the jurisdictional requirements for the extension have been met." (*own emphasis added*)

While a Memorandum on the Objects of a Bill does not constitute binding law, in our view, the requirement in section 99(4) of providing a taxpayer with a prior notice appears to acknowledge that a taxpayer must be given the opportunity to make representations to the Commissioner, which it must consider, in order for its decision in this regard to be procedurally fair.

In our view, it is therefore important for a taxpayer to be aware of their rights in this regard and, despite the Commissioner not requesting submissions, to make full and proper submissions as to why the taxpayer is of the view that the Commissioner is not permitted to extend prescription on this basis.

ENSafrica

Act sections:

- Tax Administration Act 28 of 2011: section 99; Chapter 5;
- Income Tax Act 58 of 1962; Part IIA of Chapter III;
- Promotion of Administrative Justice Act 3 of 2000.

Other documents:

- Memorandum on the Objects of Tax Administration Laws Amendment Bill 30 of 2015 (paragraph 2.51).

Tags: anti-tax-avoidance provisions; prescription period.

2020 BUDGET DEVELOPMENTS

Despite much speculation regarding another increase in the VAT rate, it was announced in the 2020 Budget that the VAT rate would remain unchanged. This is on the basis that a further increase in the VAT rate would not be possible without significant relief measures, either in the form of further zero-rated supplies or increased social grants to poor households at the same time as any increase. No further significant VAT amendments were announced.

VAT ON ELECTRONIC SERVICES: TELECOMMUNICATION SERVICES

Revised regulations to prescribe and clarify the electronic services (e-services) supplied by foreign suppliers to South African consumers which are subject to VAT were proposed in 2018; this significantly broadened the scope of "e-services". The Minister, in the 2019 Budget Review, then announced that further amendments would be made to the e-services regulations to address certain oversights. The revised regulations came into effect on 1 April 2019.

The revised regulations define "telecommunication services" with reference to the Electronic Communications and Transactions Act, 2002 (the ECTA). The term "telecommunication services" is, however, not explicitly defined in the ECTA.

It is proposed that further changes will be made to the e-services regulations to address this issue.

REVIEWING OF VAT ACCOUNTING BASIS FOR INTERMEDIARIES OF E-SERVICE PROVIDERS

Foreign e-service providers are entitled to account for VAT on the payments basis. In certain instances, certain supplies made by e-service providers are deemed to be made by an intermediary, who is then required to levy and account for VAT on these supplies.

It is proposed that amendments be made to the Value-Added Tax Act, 1991 (the VAT Act), allowing an intermediary to also account for VAT on the payments basis in these instances.

CHANGING THE VAT TREATMENT OF TRANSACTIONS UNDER THE CORPORATE REORGANISATION RULES

In line with the corporate rollover relief afforded to group companies in the Income Tax Act, 1962, the VAT Act provides relief for group companies by deeming the supplier and the recipient for purposes of that supply or subsequent supplies, to be one and the same person. No VAT needs to be accounted for by the supplier or recipient on these supplies.

The corporate rollover relief may, however, not apply to certain of the business assets being transferred. In this instance, the VAT relief under section 8(25) will then also not apply. Reliance on the corporate rollover provisions automatically requires section 8(25) to apply. VAT relief will therefore not be available notwithstanding that the transfer of the business may have qualified for VAT relief under the going concern provisions in section 11(1)*(e)* of the VAT Act.

It follows that in certain instances, where the transfer of a business does not qualify for rollover relief, a vendor will not be able to rely on section 8(25) or section 11(1)*(e)* for relief, notwithstanding the vendor's intention that the entire business will be transferred. It is proposed that amendments be made to section 8(25) to address this issue.

SECTION 72 ARRANGEMENTS AND DECISIONS

Section 72 of the VAT Act allows the Commissioner in certain circumstances where "difficulties, anomalies or incongruities" have arisen, the discretion to disregard the provisions of the VAT Act, and to make arrangements or decisions as to the application of the provisions of the VAT Act, provided that the ultimate VAT liability was not affected.

In 2019, significant amendments were made to section 72 dealing with the Commissioner's discretion to make such arrangements or decisions. The amendments to section 72 have had an impact on the validity of arrangements or decisions made prior to 21 July 2019, when the amendments took effect. It has been proposed that government will review decisions and arrangements made prior to 21 July 2019 to ascertain whether they should be discontinued or extended in line with the amendments made to section 72.

"In 2019, significant amendments were made to section 72 dealing with the Commissioner's discretion to make such arrangements or decisions."

VAT TREATMENT OF IRRECOVERABLE DEBTS

In terms of section 22(3) of the VAT Act, where a recipient vendor who accounts for VAT on an invoice basis has claimed an input tax deduction in respect of an expense incurred, but then fails to pay the full consideration within twelve months of the due date for such payment, such vendor is required to account for output tax equal to the tax fraction of the outstanding debt in the next tax period after the expiry of the twelfth month.

Notwithstanding that section 22(3) currently provides for the time of supply in respect of irrecoverable debts, it has been expressed that there exists uncertainty regarding the value of supply of irrecoverable debts. It is therefore proposed that clarity be provided in the legislation to undress this certainty.

MEASURES TO ADDRESS UNDUE VAT REFUNDS ON GOLD

Fraudulent VAT refunds relating to gold exports have been on the increase. These malpractices generally involve the import of coins, and the purchase of Krugerrands and illicit gold. It has been proposed that appropriate regulations be introduced to address these schemes.

Cliffe Dekker Hofmeyr

Act sections:

- Electronic Communications and Transactions Act 25 of 2002;
- Value-Added Tax Act 89 of 1991: sections 8(25), 11(1)*(e)*, 22(3) & 72.

Tags: zero-rated supplies; corporate rollover relief.