



# Legislative update: Discussion on the draft Tax Amendment Bills

31 August 2023

*YOUR KEY TO THE TAX COMMUNITY*



## PANELISTS



**Prof. Keith Engel** - CEO of the SAIT

Keith is heavily engaged in tax at a policy, legislative and interpretative level (e.g. with National Treasury, Parliament, SARS, the Davis Tax Committee and the private sector). His role also includes presentations and participation in a wide range of South African tax and regional African tax issues for technical audiences and is repeatedly engaging with the media. Outside of the Institute, he regularly teaches at the Wits University as an adjunct professor and provides lectures at other universities.

Keith Engel has engaged in a broad range of tax issues with a special emphasis on international and transactional tax.



**Prof. Deborah Tickle** – Adjunct Associate Professor at the UCT

Deborah Tickle is a Chartered Accountant and she specialises in international and corporate tax. She has also spent time working in the London office of KPMG. In addition, she is currently appointed an Adjunct Associate Professor at the University of Cape Town.

She currently lectures in the areas of the international and corporate tax at Masters degree level.



**Nokukhanya Madilonga** - Senior Manager at SNG Grant Thornton

Nokukhanya has over seventeen years of experience in taxation. She has been operating as a tax specialist at Senior level, both in the private and public sectors. Nokukhanya has been involved in the audit of small, large and medium private companies in various industries.

She has provided various advisory services for companies on global mobility. Her experience includes working for the South African Revenue Service (SARS) as a Senior Tax Auditor.





# PRACTICE NOTE 31

## REVIEWING THE PRINCIPLES OF PRACTICE NOTE 31 OF 1994

- SARS' initial intention to withdraw in 2022.
- DTLAB proposal in 2023
- It is proposed that a company may deduct expenditure it incurs in the production of interest income accruing from another company that forms part of the same group of companies (as defined in section 1(1)) as that company if the following requirements are met:
  - The expenditure incurred by that company must be in respect of amounts owing for purposes of providing funding directly or indirectly to one or more companies that form part of the same group of companies as that company;
  - The other company must use or have used the funds advanced or credit made available by that company for purposes of its trade to produce income; and
  - The deduction of the expenditure incurred by that company during any year of assessment must be limited to the interest income accruing directly or indirectly from that other company during that year of assessment.



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## REVIEWING THE PRINCIPLES OF PRACTICE NOTE 31 OF 1994

- Practical considerations and implications
  - Application is limited only to groups of companies
  - Where the ultimate shareholder is not a company, for example, a trust, the parties will not qualify for relief.
  - In the context of family businesses and trusts, where a loan is extended to a party that does not form part of the group, they will be excluded from the proposed provisions.



# FOREIGN BUSINESS ESTABLISHMENT

## CLARIFYING THE FOREIGN BUSINESS ESTABLISHMENT EXEMPTION FOR CONTROLLED FOREIGN COMPANIES

Proposed amendment to section 221 of the TAA – ETI excess “refund” subject to understatement penalties

- Effective 1 September 2022 (retrospective) – SARS to clarify whether this will apply to additional assessments issued after this date (which may involve prior periods), or only in respect of ETI “refunds” claimed from 1 September onwards

Amendments to section 10 of the Employment Tax Incentive Act 26 of 2013

- No significant changes but there is still no clarity regarding the “prescribed form and manner” for submission of ETI claims – clarity from SARS would be welcomed



# PARAGRAPH 2 OF THE FOURTH SCHEDULE TO THE ACT



## ***Income Tax Act, 1962: Amendment of paragraph 2 of Fourth Schedule***

13. Paragraph 2 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (1) for items (a) and (b) of the following words:

“[(a)] employer [who is **resident**] or representative employer[: or

(b) **representative employer in the case of any employer who is not a resident**],” and

(b) by the substitution in subparagraph (5) for item (c) of the following item:

“(c) An employer shall not be required to deduct or withhold employees’ tax from any remuneration paid or payable by [him] the employer to any person who produces to the employer a valid certificate of exemption issued by the Commissioner under item (a).”.

## ***Income Tax Act, 1962: Amendment of paragraph 2 of Fourth Schedule***

- *Paragraph (a):*
  - The proposed amendment removes the distinction between resident and non-resident employers
  - Any employer (resident or foreign) must deduct employees' tax (PAYE), and then also widens the deduction obligation to include all representative employers.
  - Hence, non-resident employers will become obliged to deduct and withhold PAYE.
  - The proposed amendment will furthermore level the playing field between resident and non-resident employers and ensure alignment with skills development levies and unemployment insurance contributions, which many pay.



## ***Income Tax Act, 1962: Amendment of paragraph 2 of Fourth Schedule***

- Concerns regarding the proposed amendment
  - Non-resident companies, over and above being required to register in accordance with the provisions of Chapter 3 of the Tax Administration Act, No. 28 of 2011 will now become liable to deduct and withhold PAYE.
  - Administrative burden may deter non-resident companies from employing South African residents -where employment rates are already very low.
  - Steps taken by the Department of Home Affairs relating to “digital nomad” visas.
  - No practical manner of registering for PAYE, without registering for SDL and UIF.
  - Not possible to register as an employer with SARS without a CIPC number, income tax number and a South African bank account, if the employer is a company.





**THANK YOU FOR ATTENDING**