What the new bills mean to corporate taxpayers

By Kemp Munnik

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Two pieces of tax legislation have been published and are currently open for public comment before the final legislation is passed by parliament.

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The 2017 Draft Taxation Laws Amendment Bill and the 2017 Draft Tax Administration Laws Amendment Bill (Talab) were published by the National Treasury and the South African Revenue Service (Sars) on 19 July 2017.

The bills deal with the following:

Contributed tax capital

The 2017 Budget Speech proposed amendments to the definition of contributed tax capital (CTC), to prevent abuse of capital distributions to international companies, to avoid paying dividends tax. Measures to limit the CTC in the draft bill include:

- group companies are interposed to benefit from CTC enhancements afforded by asset for share transactions; and
- disguised sale of share transactions involving the subscription for new shares and buy-back of the sale shares by way of dividend.

The proposed amendments are included in the new section 8G of the Income Tax Act and are effective from 19 July 2017.

Share buy-backs and dividend stripping

To curb the use of share buy-back schemes and circumventing dividend stripping rules, the draft bill proposes the rules be broadened to include “tainted” dividends in the proceeds on sale of shares under certain circumstances. The mischief the amendments seek to address is the conversion of taxable share sale consideration into exempt dividends.

The proposed amendments are to section 22B and paragraph 43A of the 8th schedule of the Income Tax Act and are intended to be effective from 19 July 2017.

Using trusts for tax avoidance

Section 7C, which came into operation on 1 March 2017, significantly amended the tax treatment of trusts. It is applicable in circumstances where a loan is made to a trust and no interest (or interest lower than the official rate of interest contemplated in the 7th schedule to the Income Tax Act (currently 8%)), is payable on the loan, and the loan is made available (whether directly or indirectly) to the trust by a natural person or a company that is a connected person in relation to that natural person.

The effects of the application of section 7C would be as follows:

- any interest forgone by the taxpayer in respect of the interest free or low-interest loan would be treated as an ongoing and annual donation to the trust; and
- no deduction, loss, allowance or capital loss may be claimed by the taxpayer in respect of the interest free or low interest loan made to the trust.

Section 7C is a specific-avoidance section, targetting the avoidance of estate duty and donations tax. Certain taxpayers attempted to avoid the application of Section 7C by advancing interest free or low-interest loans to companies where shares are held by trusts. By advancing the loan to the company rather than the trust, the anti-avoidance measure will not apply as it currently only applies to loans advanced to trusts. An alternative mechanism was to transfer the loan claims to current or future beneficiaries of trusts, to break the link with the “connected person”.

The draft bill introduces mechanisms to curb these practices, which came into effect on 19 July 2017 and applies to any amount owed by a trust or company in respect of a loan, advance or credit provided to that trust before, on or after that date.

On the positive side, a specific exclusion is also introduced to ensure that bona fide employee share schemes are not negatively affected by section 7C.

Tax on expatriates

The current tax exemption on South Africans working in a foreign country for more than 183 days in a year is to be repealed.

The draft bill proposes to tax all South African residents on income earned outside South Africa, who were previously exempt.

The proposed repeal of section 10(1)(o)(ii) will come into effect on 1 March 2019 and will be applicable in respect of years of assessment commencing on or after that date.

ABOUT THE AUTHOR

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