New withholding tax on interest soon into operation

By Graeme Palmer

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With the new withholding tax on interest soon coming into operation on 1 March 2015, preparations by affected parties for the tax should be well under way.

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The new tax provides that, any person who pays interest to or for the benefit of any foreign person to the extent that the amount was received or accrued from a source within South Africa, will have to withhold tax at a rate of 15%.

A 'foreign person' is defined as any person who is not a resident. 'Interest', on the other hand, has not been defined in the new law. It is therefore unclear whether the definition of 'interest' in section 24J of the Income Tax Act, 1962, or the common law definition will apply.

However, what is critical to the application of the withholding tax provisions found in sections 50A - 50H of the Act, is that the interest must have been received or accrued from a source within South Africa. The interest is deemed to be paid to the foreign person on the earlier of the date on which the interest is paid or becomes due and payable*.

Submit a return

Any person who withholds the tax must submit a return and pay the tax to the commissioner by the last day of the month following the month during which the interest is paid.

If an amount withheld by a person is denominated in any currency other than rands, the amount withheld must, for the purposes of determining the amount to be paid to the commissioner, be translated to rands at the spot rate on the date on which the amount was withheld.

There are a number exemptions from the withholding tax, for example, any interest paid to a foreign person by the government, any bank, or a headquarter company granting financial assistance.

But careful consideration must be given to these exemptions to see if they apply. For instance, an exemption will not apply, where interest is paid to a foreign person for an amount advanced by the foreign person to a bank, if the amount is advanced in the course of a transaction to which the foreign person and any other person are parties, and in terms of which the bank advances any amount to that other person on the strength of the amount advanced by the foreign person to the bank.

**The date the interest is paid is when liability for the tax arises. There are two possibilities here, (1) the date when the foreign person actually receives the interest; or 2) the date when the interest becomes due and payable. The interest may of course become due and payable to the foreign person, but not have actually been paid to that foreign person. It is the earlier of these two dates when liability to pay the tax arises.*

ABOUT GRAEME PALMER

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