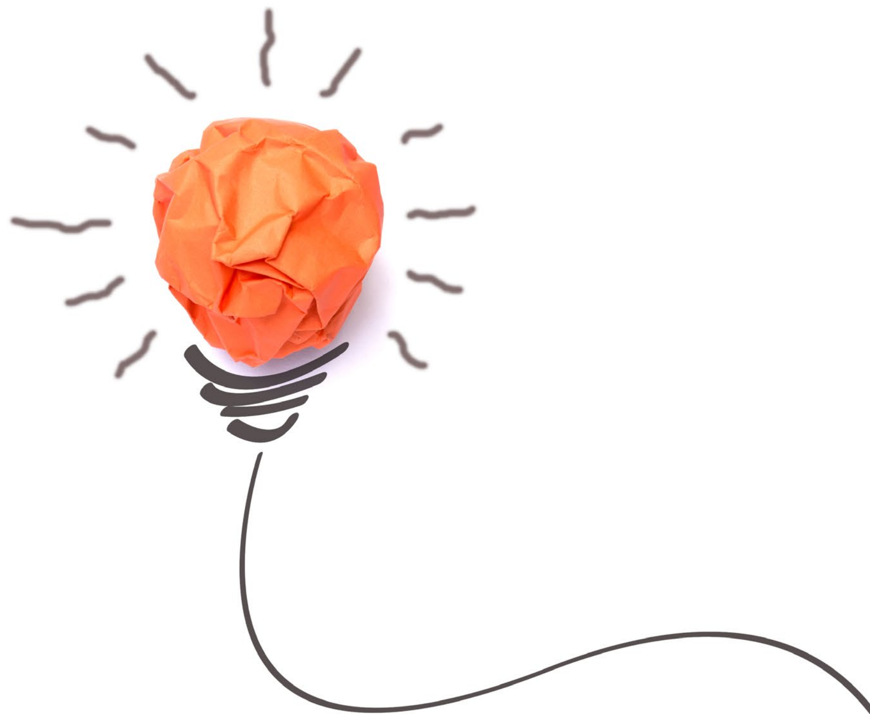
WEBBER WENTZEL

in alliance with > Linklaters

Budget Review 2018:
Insights on tax and exchange control



Budget Review 2018

The Budget Review 2018 proposes to raise additional revenue of ZAR 36 billion in 2018/19 with the largest contributor of ZAR 22.9 billion through the increase in VAT by 1%. An additional ZAR 6.8 billion will be raised from lower-than-inflation adjustments to the personal income tax rebates and marginal income tax brackets. The Budget acknowledges that the global trend is to reduce corporate tax rates as can be seen in countries that have strong trading ties and investments in South Africa. There is thus limited scope to increase corporate tax rates as South Africa's high rate of 28% affects its global competitiveness.

Some of the notable proposed amendments in Annexure C of the Budget which should be in the 2018 draft amendment bills circulated later this year include further amendments to address the impact of the new debt relief provisions introduced in 2017, clarifications on the interaction between the new share buyback and corporate rules, and VAT and income tax amendments to cater for cryptocurrencies.

The Budget also proposes to increase economic growth through better access and efficient use of incentives such as the venture capital company and research and development incentives and there should be further refinements of these incentives in the draft bills.

In line with the global trend to reduce corporate tax rates, there are indications in the Budget that the 75% high tax exemption rate for controlled foreign companies could be reduced. The extension of controlled foreign company rules to foreign companies held through foreign trusts and foundations will once again be revisited in this 2018 legislative cycle.

Outside of the draft bills, there should also be updated regulations defining foreign electronic services for VAT purposes and a discussion document on excessive debt financing in the near future.

We comment on the proposed amendments in the Budget on tax and exchange control in more detail in this newsletter. We will also continue to contribute towards the public participation process of the draft 2018 amendment bills and will share our insights with you on the proposed amendments as they unfold during the year.

Kind Regards

Brian Dennehy
Director, Head of Tax

Table of Contents

CORPORATE TAX 4

Interaction between share buyback and corporate rules to be reviewed ... 4
Refining rules for debt-financed acquisitions of controlling interest in an operating company ... 5
Debt relief measures may provide (some) relief ... 6
Venture capital company limitations to be addressed ... 7
Addressing the abuse of collateral lending arrangements by foreign shareholders ... 7
Clarifying tax treatment of doubtful debts ... 8
Change of effective date for section 29A amendments ... 8
Treatment of trading profits realised by collective investment schemes ... 9
Better road ahead for R&D incentive ... 9
Write-off of electronic communication lines ... 10
The tax implications of fruitless and wasteful expenditure ... 11

VALUE-ADDED TAX 12

Various aspects relating to the increase in the VAT rate ... 12
Correction of tax invoices ... 14
VAT on sale of book debts ... 15
Updating VAT regulations for the supply of "electronic services" ... 15
Cryptocurrency transactions ... 15

INTERNATIONAL TAX 17

Overlap in treatment of dividends ... 17
Reversing exchange difference for exchange items disposed of at a loss ... 18
Proposed amendments to CFC ... 18
Interest paid to a non-resident beneficiary of a trust ... 19
Tax treatment of excessive debt financing under review ... 19

EXCHANGE CONTROL 21

Various amendments on exchange control ... 21

INDIVIDUALS 22

Medical rebate, adjusted today gone tomorrow ... 22
Retirement reforms ... 22

TAX ADMINISTRATION 23

Aligning the "official rate of interest" in ITA with the prime rate ... 23
Notification of commencement of audit ... 23
Commission of enquiry into SARS, the Tax Ombud and changes to improve operational independence ... 24

CUSTOMS AND EXCISE 27

Enhancing tax administration ... 27

CORPORATE TAX

Interaction between share buyback and corporate rules to be reviewed

Authors: Joon Chong and Brian Dennehy

There have been various amendments to the Income Tax Act 58 of 1962 (ITA) targeting the perceived abuse of share buybacks and dividend stripping arrangements since 2011. The most recent measures to target share buybacks were the 2017 amendments to section 22B and paragraph 43A in the Eighth Schedule of the ITA. Exempt dividends which are "extraordinary dividends" received or accrued (i) 18 months prior to a disposal of shares; or (ii) in respect, by reason or in consequence of such disposal, could result in these dividends being treated as income or proceeds for capital gains tax (CGT) purposes. This would be the case if a shareholder company holds a "qualifying interest" in the company distributing these "extraordinary dividends". These dividends would be treated as income if the shares were held as trading stock, and as proceeds, if held as capital assets.

For unlisted companies, a "qualifying interest" is at least 50% of the equity shares or voting rights in the company making the distribution, or 20% if no other shareholder holds a majority. For listed companies, any shareholder holding at least 10% of equity shares or voting rights would have a qualifying interest.

For preference shares with dividends expressed as a rate, an "extraordinary dividend" is any exempt dividend received or accrued which rate is more than 15%. For any other share, extraordinary dividends are exempt dividends that exceed 15% of the higher of the market value of the shares disposed of (i) at the beginning of the 18-month period; or (ii) on the date of disposal of the shares.

As is typical with anti-avoidance measures, these provisions came into effect on the date the draft Taxation Laws Amendment Bill 2017 (TLAB 2017) was circulated (19 July 2017), and applied to any disposals on or after this date. However, to provide some relief, these provisions do not apply to agreements which had been signed by 19 July 2017, although not yet unconditional on this date.

Furthermore, these amendments also take precedence over the corporate rules. This has resulted in the current uncertainty for groups of companies intending to streamline and wind-up their subsidiaries. Any corporate rule requiring a liquidation distribution to terminate the legal existence of a subsidiary being streamlined/ wound up could result in CGT for the holding entity. This potential CGT struck at the core of the corporate rules, which was to provide corporate reorganisations with the flexibility of tax rollover relief where the economic ownership of the reorganised assets or businesses remained largely the same.

There are two corporate rules which require the winding-up or deregistration of the entity being streamlined, the section 44 amalgamation transaction and section 47 liquidation distribution. There would be liquidation distributions of any remaining residual assets on completion of the winding-up in terms of these rules. The winding-up of a company inevitably results in a disposal of shares held by the shareholder as the legal existence of the company comes to an end. A liquidation distribution received by a shareholder could arguably be received "in respect, by reason or in consequence" of such disposal, resulting in CGT if such dividend is an "extraordinary dividend" and the shareholder holds a "qualifying interest". This could be the case even if the legal existence had terminated with the company reflecting as "dissolved" on the Companies and Intellectual Property Commission website and the finalisation of the liquidation and distribution account by the liquidators taking place more than 18 months after the termination.

Other issues causing uncertainty in the 2017 amendments were the meaning of a "preference share" as this was not defined in section 22B and paragraph 43A; and the available definitions in the ITA only applied in specific sections of the ITA such as in the context of "hybrid equity instruments" in section 8E and "third-party backed shares" in section 8EA. Additional clarity was also required on whether the 15% threshold would be applied to cumulative preference dividends distributed on redemption of the share, or was the 15% threshold the coupon rate?

Any shareholder holding 10% equity interest or voting rights in a listed company was considered to hold a qualifying interest as opposed to the higher 20% for unlisted companies. The lower 10% threshold was also considered to be too low.

The Webber Wentzel Tax Team had made submissions on the above and other issues arising from the overly broad wording of the 2017 amendments. As a result of submissions made, the Budget Review 2018 (Budget) proposes to re-examine the interaction between the corporate rules and these new provisions to address the unintended consequences and also to clarify the meaning of preference shares in the 2017 amendments.

We hope that the proposed amendments in the 2018 draft bills to be circulated later this year will provide for section 22B and paragraph 43A not to override the corporate rules. Specific anti-avoidance provisions should be used to target the particular abuse of the corporate rules in mind. Furthermore, the preference share 15% threshold rate should only apply to a coupon rate, and not to a cumulative redemption rate. There should also be no difference between the qualifying interest held by a shareholder in a listed and unlisted company. Any proposed amendments should hopefully be implemented with retrospective effect, from 19 July 2017, in order to preserve the fundamental purpose of the corporate rules.

The Budget was required to address a shortfall in revenue as well as provide a stimulus for much-needed economic growth in a slowing economy. A clearer legislative environment would do much to encourage corporate reorganisations, mergers and acquisitions, and investments into South Africa. All of these would boost economic growth, and in some ways, better than more direct measures proposed in the Budget such as tax incentives.

Refining rules for debt-financed acquisitions of controlling interest in an operating company

Author: Kyle Beilings

Section 24O of the ITA was introduced in 2012 and was aimed at discouraging the use of so called "debt push-down" structures (using section 45) by deeming interest incurred on a loan used by a taxpayer to acquire shares in a resident operating company (as defined in section 24O), to be incurred in the production of the income of that taxpayer and laid out for the purposes of its trade. This deeming provision allowed such taxpayer to claim interest expenses as a deduction (subject to certain interest limitation provisions).

As mentioned in the Budget, there were amendments to section 24O in 2015 (2015 Amendments), which were aimed at preventing the perceived abuse of allowing a deduction of the interest expenses for an acquirer, where the operating company itself did not produce taxable income. Consequently, the 2015 Amendments resulted in an amendment to the definition of operating company, which is now defined as a company in which at least 80% of its receipts and accruals constitute taxable income.

The Webber Wentzel Tax Team welcomes the Budget proposal to clarify the position as to when the 80% test should be applied and whether the test should be applied when the operating company transfers its business as a going concern to another company in the same group.

Unfortunately, the Budget did not mention any potential extension of the relief for the acquisition of shares in a foreign company. While the provisions of section 24O should apply when a taxpayer acquires shares in a foreign company which meets the definition of an operating company, section 24O provides that an interest deduction will not be allowed during any period where the taxpayer and the operating company do not form part of the same group of companies. A "group of companies" in the circumstances does not include a resident company and a non-resident company, and the provisions of section 24O will accordingly not apply where a taxpayer acquires shares in a non-resident company, even if South African debt has been used to achieve this. To the extent that South African debt is used to acquire shares in a non- resident company, there is no reason to limit the application of section 24O to the scenario where a resident company acquires shares in a non-resident company, particularly considering that the non-resident company will, in any event, become a controlled foreign company (CFC) in relation to the resident company and be subject to the provisions of section 9D, notwithstanding that it should qualify as having a foreign business establishment.

In our view, section 24O should additionally be amended to allow for the deduction of interest (subject to the limitations of section 23N) incurred on a loan used to acquire shares in a non-resident company where that company qualifies as an operating company for purposes of section 24O,

and a CFC for purposes of section 9D (despite having a foreign business establishment).

Debt relief measures may provide (some) relief
Authors: Joon Chong and Wesley Grimm

The proposed debt relief measures in the 2017 amendments to section 19 and paragraph 12A of the Eighth Schedule of the ITA did not provide much relief to "assist companies in financial distress", as was the intention in the *Explanatory Memorandum* to the draft TLAB 2017. In fact, the measures appear to have caused more distress due to the financial implications and the legislative uncertainty during the interim period between the effective date of 1 January 2018 and the date when any amendments proposed by the Budget would take effect.

The old "debt reduction" rules in section 19 and paragraph 12A were expanded significantly to apply to any "concession or compromise" of debt which gave rise to a "debt benefit" to a debtor. The old "debt reduction" rules only applied when there was an actual waiver or reduction of debt owed.

The new definition of "concession or compromise" is widely defined to cover all forms of debt restructuring including any changes and waivers of terms and conditions of debt, an exchange of any obligation for the debt obligation, and direct or indirect settlements of debt with shares in the debtor. The purpose of the expanded definition was to provide for a tax trigger event for any possible debt restructuring or refinancing strategy and to ensure that any benefit to the debtor, when triggered, results in an immediate tax impact to the debtor.

The old position provided for a tax impact on the debtor when there was an actual amount of debt waived or reduced. The new position provided for a tax impact on a notional valued "debt benefit" to the debtor when there was a "concession or compromise". A "debt benefit" arises for the debtor if the face value of the claim before the concession or compromise exceeds the market value of the claim after. Where debt is settled with shares, a debt benefit arises for the debtor if the face value of the claim before the settlement is greater than the market value of the shares. There is, however, no provision to deal with a negative value "debt benefit" on the same claim in the future.

Group relief is only available between resident debtors and creditors in the same group where:

(i) the debt benefit arises as a result of direct and indirect settlements of debt with shares; or

(ii) the debtor did not trade in the year of assessment in which the debt benefit arises and during the previous year.

Notably, there is no group relief where a South African debtor receives a write-off of its foreign shareholder loan.

The Webber Wentzel Tax Team had made submissions to National Treasury on the above issues. Fortunately, the Budget has "noted concerns about unintended consequences" of the 2017 amendments and proposes further amendments to these provisions to address these concerns.

We hope that the 2018 draft bill will provide for the definition of "concession or compromise" to be narrowed to exclude any change in the terms and conditions of debt, or exchange or novation of obligations.

A debt refinancing for a longer period to enable a debtor to repay would trigger a "debt benefit" under the current wording. The increased debt term would already give rise to increased interest payments over the extended period and finance costs. There is no further need to levy a notional charge on the debtor for the perceived "debt benefit".

We hope that the concept of requiring valuation of a "debt benefit" be revisited entirely. A major issue faced by debtors is the difficulty of obtaining the value of a "debt benefit". A debtor would need to value the "market value of claims" or "market value of shares" arising as a result of implementing the concession or compromise. These market values would then need to be compared with the face value of the debt where "debt" is defined to exclude interest. There is also the expense of having to obtain complex valuations each time the debtor enters into a "concession or compromise" which results in a "debt benefit". As a concession or compromise is widely defined, the expense may be frequent for a distressed debtor, which is no relief at all. Notably, this expense is aside from the tax impact which would also be significant.

We hope that any proposed amendments will be made with retrospective effect from the effective date of 1 January 2018 as the new provisions (which are in force) have a number of practical difficulties, as discussed above. Submissions by the tax community to postpone the effective date to at least 1 January 2019 to avoid the prevailing levels of uncertainty during this interim period were, unfortunately, not accepted.

The Budget notes that it has taken many years to build the foundation of trust that underpins South Africa's tax morality. Corruption and wasteful expenditure in the public sector have eroded taxpayer morality and steps would be taken to address this. We hope that there will also be clearer tax amendments in the future and more regard for concerns raised by the tax community as this would also contribute towards rebuilding the culture of trust.

Venture capital company limitations to be addressed

Authors: Shirleen Ritchie and Donald Fisher-Jeffes

Annexure C to the Budget includes a proposed further refinement of the venture capital company (VCC) investment incentive, as contemplated in section 12J of the ITA. The proposal in the Budget to review and amend investment threshold limitations, the connected person test and specifically to consider the retroactive withdrawal of approval as a VCC is welcomed. There has been a significant increase in the registration of VCCs as private wealth and individuals seek shelter from higher marginal income tax rates by investing in VCCs.

In our experience, the most significant hurdle for unlocking investments in VCCs is contained in the connected person limitation. This limitation precludes investors from taking up more than 20% in a VCC and an investor is required to recoup their deduction upon becoming a connected person. During 2016, the implications of breaching the connected person rule were amended to result in the VCC being liable for an amount of tax equal to 125% of the subscription consideration incurred by any person for shares in that VCC. This change proved detrimental as each investor was now at risk to the extent that any one of the investors becomes a connected person to the VCC. In addition, the VCC is at risk of losing its approval as a VCC entirely and not only in respect of the period in which the breach occurred.

An amendment to limit the severity of a breach of the connected person test would allow VCCs to access investments more easily. Specifically, a limitation of the loss of approval as a VCC and the cash tax implications for the VCC that potentially adversely affect all investors in the VCC would remove a significant hurdle to investment as well as reducing the complexity of protections required by VCC shareholders.

The proposal to amend the limitations in the qualifying company test specifically pertaining to the controlled company test and the investment income levels would allow VCCs to invest in more complex structures, which may include passive income exceeding 20% of gross income.

The ability to have a more diverse portfolio of assets will be an advantage to VCCs especially in seeking investment from more sophisticated investors.

Addressing the abuse of collateral lending arrangements by foreign shareholders

Author: Joon Chong and Wesley Grimm

As a general point, there are no securities transfer tax, income tax and CGT implications if listed shares or government bonds are transferred in terms of securities and collateral lending arrangements.

More specifically, the transfer of listed shares in a "collateral arrangement", as defined in the Securities Transfer Tax Act 25 of 2007, would not be subject to securities transfer tax or income tax if the transfer was to provide security for an amount owed by the transferor to the transferee, and the transferee agrees to return the identical shares within 24 months of the transfer, and to compensate the transferor for any distributions received on the listed shares. The transferor remains at risk for market fluctuations on the value of the listed shares during this period. It appears that the beneficial ownership of the listed shares transferred as security for the loan owed remains with the transferor who enjoys all the economic ownership and risks of the shares, even though the transferee is registered as the legal owner.

The Budget notes that the above collateral arrangement allows foreign shareholders to avoid dividends withholding tax (DWT) by entering into loan agreements with resident companies using listed shares as collateral for such loans.

A resident lender company would receive any distributions from a listed company exempt from DWT. The resident lender would then transfer the full amount of dividends distributed to the foreign transferor as manufactured dividends. The foreign transferor would have received the distribution net of DWT if it held the listed shares directly at the time of distribution. The Budget proposes that legislation be amended to prevent this abuse.

It is useful, at this point, to refer to the following often-cited paragraph in the *CIR v Conhage* 1999 Supreme Court of Appeal decision:

> "Within the bounds of any anti-avoidance provisions in the relevant legislation, a taxpayer may minimise his tax liability by arranging his affairs in a suitable manner. If, for example, the same commercial result can be achieved in different ways, he may enter into the type of transaction which does not attract tax or attracts less tax... "

It remains to be seen the extent of the above proposed amendment in the draft bills and whether the amendment would be overly broad. We note that the definition of "collateral arrangement" in the STT Act already requires the transferor to demonstrate that the arrangement was not entered into for the purposes of the avoidance of tax.

Clarifying tax treatment of doubtful debts

Author: Shirleen Ritchie

During 2015, the discretion of the Commissioner of the South African Revenue Service (Commissioner) was deleted to allow for a criteria-based deduction. It was intended that the criteria be formulated and published in a public notice, but, to date, no notice has been published. This has given rise to uncertainty in relation to how the doubtful debt deduction should be applied.

To address the uncertainty, the Budget proposes to include the criteria in the wording of section 11(j) of the ITA. It will be imperative that the wording includes clear and unambiguous criteria and transitional provisions to avoid a stark change from the traditional tests and deductible percentages. Many taxpayers may need to update systems and processes to allow them to adjust to revised criteria. We recommend the amendments be closely followed to ensure that such systems and processes are appropriately adjusted to enable compliance with the criteria.

Change of effective date for section 29A amendments

Authors: Joon Chong, Craig Miller and Darren Roy

The ITA was amended, with effect from 2016, to introduce the risk policy fund for long-term insurers and deal with the impact of the solvency assessment and management framework. The Budget notes that recent amendments affecting the risk policy fund did not take effect when the fund was introduced to section 29A of the ITA. The Budget therefore proposes that the effective date of the relevant amendments be changed.

We note that a number of amendments to section 29A only come into effect and apply to years of assessments ending on or after the date of commencement of the Insurance Act of 2017. These amendments include new definitions of "adjusted IFRS rules", "negative liabilities" and "value of liabilities", and the phasing-in rules in section 29A(14) and 29A(15).

The definition of "adjusted IFRS rules" introduced in 2017 is now worded as a formula which should make it easier to apply. This definition is also amended to allow a deduction of "negative liabilities", deferred acquisition costs (DAC) and deferred revenue determined in terms of International Financial Reporting Standards (IFRS). "Negative liabilities" is the excess of expected present value (EPV) of future premiums over EPV of future claims and expenses. DAC of long-term policies are costs, such as commissions, which are deferred and paid in the future. The tax treatment of DAC is clarified by excluding them as "assets" for purposes of this section, if they are recognised as assets for IFRS purposes. Further, the DAC amount should be deducted against liabilities of the long-term policies in the amended definition of "adjusted IFRS rules".

The "phasing-in amount" rules were further clarified in 2017 to provide for the reduction of negative liabilities recognised as an asset for IFRS purposes only if the relevant fund is in a net asset position.

Treatment of trading profits realised by collective investment schemes

Authors: Lisa Lumley and Graham Viljoen

Paragraph 61 of the Eighth Schedule of the ITA provides that a holder of a "participatory interest" in a portfolio of a collective investment scheme (other than a portfolio of a collective investment scheme in property), must determine a capital gain or capital loss in respect of the participatory interest only upon the disposal of that participatory interest. Any capital gain or capital loss in respect of the disposal of an asset by a portfolio of a collective investment scheme (other than a collective investment scheme in property) must be disregarded.

Section 25BA(1)(a) of the ITA provides that amounts (other than amounts of a capital nature) are taxable in the portfolio of a collective investment scheme, unless they are distributed to participatory interest holders within 12 months of accrual.

Some collective investment schemes trade frequently in the underlying assets in order to try and maximise the return on investments for their investors. In practice, the trading profits realised by these collective investment schemes are generally treated as being capital in nature and, consequently, disregarded in terms of paragraph 61.

In the Budget, it was announced that National Treasury has raised a concern that collective investment schemes that trade frequently, by constantly acquiring and disposing of underlying assets, are acting contrary to current case law by treating the realised profits as being of a capital nature. The Budget thus proposes that the current rules for collective investment schemes be clarified to provide certainty on the treatment of trading profits realised on the disposal of underlying assets.

Better road ahead for R&D incentive

Author: Joon Chong

The Budget has the task of funding a projected revenue shortfall of ZAR 48.2 billion in 2017/2018 and also of promoting economic growth in an economy which has shown signs of lethargy in recent times. One of the measures the Budget proposes to boost the economy is through better use of tax incentives, including the research and development (R&D) incentive in section 11D of the ITA.

The R&D incentive in section 11D of the ITA currently allows taxpayers to deduct 150% of expenditure incurred on qualifying projects. Currently, section 11D requires taxpayers to apply for pre-approval of their R&D projects from the Department of Science and Technology (DST) before the taxpayer may qualify for the 150% deduction. The committee tasked with approving these applications consists of three individuals from the DST, one from National Treasury and three from the South African Revenue Service (SARS). Over the last two years, the DST has worked to reduce the backlog of applications through measures such as moving to an online system to process applications.

The Budget proposes that aspects of section 11D which have created complexity in accessing the incentive and the backlog of applications would be considered for revision. These simplifications are to be welcomed in order to ensure that the R&D incentive achieves maximum impact to encourage innovation, skills development and employment.

A joint government-industry task team was established to review the R&D incentive and the task team issued its final report to the DST on 15 April 2016 (R&D Report). Among the recommendations made in the R&D Report were that the procedures to access the incentive be improved, including using a simplified application form, providing new guidelines, ensuring coherence of information provided on the DST website and updating SARS Interpretation Note 50 on the documentary requirements to claim the incentive. There should also be increased internal administrative staff as well as additional external experts to assess the applications. The DST plans to increase the number of experts to 20 who will assist with clearing the backlog. The DST also has a target to provide the pre-approval decision within 90 days of receiving an application. The R&D Report also recommended that the pre-approval system be examined to determine whether it would be possible to change to a retrospective system. The retrospective system would allow companies to register to indicate their intention to undertake R&D in the year ahead and to submit details of the R&D undertaken at year-end. The claim stage

would thus be at the year-end when companies would have most of the information required on the R&D expenditure undertaken. The current pre-approval system requires companies to submit R&D information, plans and budgets before actual R&D activities, spending and progress reports are undertaken. The current pre-approval system is uncommon when compared to international best practice as the detailed R&D information and costs required for the committee to make a decision on an application may not be readily available to an applicant before or at early stages of the R&D project. The complexity of information, the application requirements and processes increase the need for consultancy services and reduce the benefits of the incentive.

On measures in place for taxpayers to claim the tax deduction from SARS, the R&D Report observed that delays in obtaining the approval has prejudiced applicants as they would only receive a deduction after two or three years of incurring R&D expenditure. Taxpayers generally avoid re-opening their submitted tax returns as this could trigger a larger-scale audit. Further, if it is not possible to submit revised tax returns, taxpayers would need to lodge objections to existing assessments which may take months or years to finalise and for refunds to be paid. The R&D Report recommends that DST consults with SARS on the issuing of guidelines on information requirements that taxpayers should prepare when claiming the deduction. Furthermore, the R&D Report recommends that SARS publish summary tables annually in aggregated form and per industry, of amounts claimed, amounts allowed and amounts disallowed under this incentive.

To address the challenge of the lengthy delays in receiving feedback on applications and prejudice suffered by applicants, the R&D Report recommends a once-off amendment to section 11D to allow taxpayers a once-off cumulative tax deduction in the year of assessment in which the pre-approval is received from the DST.

The R&D Report also recommends that aspects of the eligibility requirements in section 11D be clarified. The requirement of "innovativeness" should be relaxed to allow a certain level of adaptation of technologies that are new to the country (and not necessarily new to the world). To encourage a critical mass of innovative activities, the R&D Report proposed the criteria of "new to the firm" be considered, provided the knowledge will not generally be available in the public domain.

The R&D Report made a key observation that the requirement for uncertainty in software development was counter-intuitive as the existence of uncertainty could result in the cancellation of the project. The R&D Report observed that the high rate of rejections of applications with information and communication technology (ICT) related activities indicate that the policy intent in section 11D and the ICT activities taking place are not aligned. The DST intends to initiate a separate process to review available support for R&D activities in ICT. This is to be welcomed.

The R&D Report recommends that section 11D(1) be amended to remove the requirement of "uncertainty" from the eligibility requirements for software development. Further, the R&D Report also recommends that the DST issues regulations or guidelines to provide much needed clarification on how the eligibility criteria for software development would apply in practice.

Annexure B of the Budget provides estimates of tax revenue that is foregone as a result of deductions, exemptions and rebates. R&D expenditure in this annexure has seen a steady decrease over the years from 361 million in 2011/2012 year, 340 million in 2012/13, 163 million in 2013/14 and 34 million in 2014/15. We hope that any proposed amendments to section 11D in the 2018 draft bills take effect sooner rather than later, and that they could be implemented and have an impact on R&D as soon as possible. As can be seen from the "revenue foregone" from the R&D deduction/ incentive claimed, there has been a significant decrease of amounts claimed over the period.

Write-off of electronic communication lines

Authors: Lumen Louw and Sean Gilmour

The current write-off period for electronic communication lines is 15 years. Due to rapid technological changes and enhancements in recent years, it could be argued that 15 years is not reflective of the economic useful life of electronic communication lines.

The Budget proposes to reduce the period over which electronic communication lines and fibre optic cables are written off. The purpose of this

proposal is to align the South African tax system with technological advances and international best practice.

This proposal will be welcomed by companies that provide telecommunications infrastructure, as most of these companies have been migrating from copper cables to fibre-optic cables in recent years. In addition, the Budget proposes considering further alignment between taxpayers that own these assets and those with the right to use them.

The tax implications of fruitless and wasteful expenditure

Authors: Yashika Govind and Rudi Katzke

One of the areas addressed under the heading "Tax Proposals" is "Ensuring a Sustainable Tax Base". Under the latter heading, perhaps the most unusual proposal is entitled "Tax Implications of Fruitless and Wasteful Expenditure".

The Budget candidly notes that poorly governed and administered public entities are a burden to the fiscus due to the substantial costs of operational inefficiencies and financial mismanagement. Media reports over the last few years have echoed this, and, increasingly, notes that public entities, in particular, are plagued by fruitless and wasteful expenditure.

As it stands, the ITA does not use the term "fruitless and wasteful expenditure" in any of its provisions, nor does it contain a tailored fiscal mechanism to penalise public entities for that specific mischief. The Public Finance Management Act 1 of 1999 (PFMA), in contrast, defines fruitless and wasteful expenditure as "expenditure which was made in vain and would have been avoided had reasonable care been exercised".

Yet it appears that the applicable sanctions imposed by the PFMA are not wholly effective in addressing this rampant disorder.

As part of its stated efforts to undo the ill effects of corruption on tax morality and in order to repair domestic confidence in public entities, the Budget proposes to disallow income tax deductions available to public entities (listed in Schedules 2 and 3 of the PFMA), in instances where losses and expenditure are classified as fruitless and wasteful. Whether terminology similar to that of the PFMA will be introduced to the ITA, which specific types of expenditure will be targeted and what test(s) will be employed to determine whether the expenditure is fruitless and wasteful, remains to be seen.

It is possible that proposed amendments to the ITA to give effect to this proposal will be circulated for comment in the 2018 draft bills. However, given the scope for political sensitivities it is also possible that a thorough consultation process involving the relevant Ministries and public entities will first be undertaken. We submit that if the latter route is followed, National Treasury would be well served by keeping the public informed on progress and not allow this opportunity to become obscured by political wrangling.

In any event, this is an encouraging proposal, which will hopefully be realised soon in the form of a clear and practical fiscal remedy to address a very prevalent and harmful ill hampering the proper functioning of many public entities.

VALUE-ADDED TAX

Various aspects relating to the increase in the VAT rate

Author: Des Kruger

- **The effect of the Ministerial announcement of the rate change**
  The Minister of Finance announced in his recent Budget Speech that the VAT rate would be increased from 14% to 15% with effect from 1 April 2018. While the necessary legislative provisions to give effect to the proposed increase are still to be adopted by Parliament, the Value-Added Tax Act 89 of 1991 (VAT Act) was amended in 2016 to provide that any change in the VAT rate announced by the Minister in the annual budget would be effective from the date determined by the Minister in that announcement. That rate continues to apply for a period of 12 months, subject to Parliament passing legislation giving effect to that rate change within 12 months of the Minister's announcement. It follows that the rate of 15% will apply from 1 April 2018, unless Parliament passes legislation to the contrary.

- **The effective date of the change**
  The draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill that was tabled at the time of the Budget Speech provides that the amendment that increases the VAT rate from 14% to 15% will be "deemed to have come into operation on 1 April 2018". In essence, this means that any supplies that take place on or after 1 April 2018 will be subject to VAT at 15%.

- **Which supplies will be subject to the increased rate?**
  Given that the increase in the VAT rate will take effect in respect of all supplies of goods or services by vendors that take place on or after 1 April 2018, the starting point is to determine when the relevant supply is regarded as having taken place. General and specific time of supply rules govern when a supply of goods or services is deemed to take place (section 9 of the VAT Act). As a general rule, supplies of goods or services are deemed to take place at the earlier of the date upon which an "invoice" (any document notifying an obligation to make payment - not necessarily a prescribed "tax invoice") is issued or any payment is received by the vendor. It follows that to trigger a liability for tax at the "old" 14% rate, the vendor must actually have "issued" the invoice. In a United Kingdom VAT case dealing with a change of rate, the court found that while the vendors (car dealers) had printed the relevant invoices (reflecting the "old" lower rate of VAT), such invoices had not been "issued" to the recipients of the supplies as they had been placed in a drawer and only provided to the purchasers after the date upon which the rate had increased as it was only then that the cars had been delivered to the purchasers (certain car dealers had sought to trigger a liability for VAT at the old rate notwithstanding that the cars were still only on order).

  It follows that unless one of the special time of supply rules apply to the relevant supply, VAT at 15% will need to be accounted for on any supplies in respect of which an "invoice" is "issued" by the vendor on or after 1 April 2018, or any payment relating to that supply is received by the vendor on or after that date - regardless of when the relevant goods are delivered or the services performed.

  By contrast, where an invoice is issued or any payment is made in relation to a supply that is treated as having taken place before 1 April 2018, the relevant supply will be deemed to have been made at that time and VAT at 14% will apply.

  However, special time of supply rules apply to, *inter alia*, the provision of goods or the performance of services that span the increase date, credit agreements subject to the National Credit Act 34 of 2005, rental agreements, the sale of residential property, the construction of a residence (dwelling), the progressive or periodic supply of goods and instalment credit agreements.

  As regards the position where goods (other than fixed property) are provided, or services are performed, before the date that an increase in VAT becomes effective (1 April 2018), but such goods or services are deemed in terms of section 9 to have taken place after the date the VAT rate was increased (because the relevant invoice was issued, or payment for

the supply was received after 1 April 2018), the supply of such goods or services is deemed under section 67A(1)(i) of the VAT Act to be subject to VAT at 14%. Importantly, all the services to be supplied under the supply must have been performed before the increase date, otherwise apportionment of the value of the supply will be necessary and VAT at differing rates will apply to the services performed on and after the increase date - as more fully explained below.

Where services are performed under a supply before and after the increase date, the "old" rate of 14% will continue to apply to the services performed prior to 1 April 2018, notwithstanding that the supply is in terms of section 9 deemed to take place after 1 April 2018. The increased rate of 15% will apply in respect of the services performed after the increase date. Section 67A(1)(ii) requires a "fair and reasonable apportionment" of the consideration for the supply of services that straddles the increase date.

These rules apply specifically to rental agreements, periodic or progressive supplies of goods, and construction related supplies of goods, as contemplated in section 9(3)(a) and (b). It follows that where the supply of these goods are provided before and after the increase date, a "fair and reasonable" apportionment of the value of the supply must be made, the value relating to the goods provided before the increase date being subject to VAT at 14%, and those provided after the increase date being subject to VAT at 15%.

Section 67A(2), in effect, provides for an anti-avoidance rule. Where any goods or services would be deemed to take place in terms of section 9 between the date of the Minister's announcement of the increase in VAT rate (21 February 2018) and the day before the increase becomes effective (31 March 2018), and such goods are provided, or the services are performed, after the increase date, such goods or services are deemed to take place on the date that the VAT rate is increased. Thus, notwithstanding that the relevant time of supply is triggered before the increase in VAT rate, the new 15% rate will apply to the affected supplies, "to the extent to which" the goods are provided in that time period. These anti-avoidance provisions do not however apply where, (i) the relevant payments are "customarily made... or invoices customarily issued" at regular intervals for the provision of such goods and the performance of such services or, (ii) there is a written agreement relating to the supply of a dwelling (private residence).

Section 67A(3) clarifies when goods are to be regarded as having been "provided". Goods are deemed to be "provided" by the supplier thereof when the goods are delivered to the recipient. Where goods are supplied under a rental agreement, they are deemed to have been "provided" to the recipient when the recipient (lessee) takes possession or occupation of the rental property. Importantly, where goods consisting of fixed property are supplied by way of sale and transfer thereof is effected by registration in a deeds registry, such fixed property is deemed to be delivered (and therefore "provided") to the recipient when such registration is effected.

Section 67A(4) provides special rules in relation to the sale of fixed property consisting of land and a dwelling (residence), the sale of land for the purpose of erecting any new dwelling or the construction of any new dwelling. Where the price in respect of the fixed property, land or construction, as the case may be, was determined or stated in a written agreement in force before the increase date, and the supply thereof is deemed, in terms of section 9, to take place on or after the date upon which the VAT rate was increased, the VAT rate to be applied to such supplies is the "rate at which tax would have been levied had the supply taken place on the date the agreement was concluded".

Finally, section 67A(5) provides that in the case of a lay-by agreement, any deposit paid before the VAT rate was increased, that is applied as consideration for a supply of goods or services after the VAT rate was increased, must be taxed at the rate that applied at the time the agreement was concluded.

- **Existing contractual agreements/pricing arrangements**
  The VAT that a vendor is required to account for on its supplies (output tax) is only recoverable from the recipients of those supplies if there is a contractual right to recover such VAT. There is no general legislative right of recovery, except where there is a change in the rate of VAT. Section 67 of the VAT Act provides that where the rate of VAT is increased (or decreased) in respect of a supply of goods or services in relation to which "any agreement is entered into by the acceptance of an offer made before the tax was increased", the vendor may recover such additional tax "as an addition to the amount payable by the recipient to the vendor". The vendor may not, however, rely on the provisions of section 67 if there is a written agreement to the contrary, that is, the written agreement specifically provides that the vendor may not recover any increase in the VAT rate.

  The position is similar where the supply of goods or services is subject to "any fee, charge or other amount...prescribed by, or determined pursuant to, any Act or by any regulation or measure having the force of law".

- **Bad debts**
  A vendor is able to claim VAT relief where a debt relating to a taxable supply in respect of which the vendor has accounted for output tax is treated as "irrecoverable" (section 22). The vendor may have accounted for VAT at 14%, in respect of a supply that was made before 1 April 2018, but the consideration for the supply is now regarded as irrecoverable. In terms of section 22(1) of the VAT Act, the vendor may only claim relief based on the VAT rate that applied to that particular supply. Vendors will need to ensure they are able to identify the rate of tax that must be applied in determining the relief available under section 22 where an amount of consideration is treated as irrecoverable.

- **Conclusion re change in VAT rate**
  Vendors need to ascertain when their supplies are deemed to have taken place under section 9 of the VAT Act, consider whether any of the special rules provided for in section 67A apply and ensure that their systems are geared to identify those supplies that will be deemed to have taken place after 1 April 2018.

Correction of tax invoices

Authors: Kagiso Nonyane and Chetan Vanmali

The issuing of a tax invoice is an obligation on every vendor when making taxable supplies in the course and furtherance of an enterprise. In this regard, the VAT Act prescribes that a tax invoice must contain certain details about the taxable supply made as well as details of the parties to the transaction. In addition, it is unlawful for a vendor to issue more than one tax invoice for each taxable supply.

Furthermore, while a vendor is entitled to an input tax deduction where the goods or services concerned are acquired by the vendor for the purpose of consumption, use or supply in the course of making taxable supplies, no deduction of the input tax can be made unless the vendor (ie recipient of the services or goods) is in possession of a tax invoice issued in accordance with the provisions of the VAT Act.

In practice, it often occurs that a vendor may issue a tax invoice that does not comply with the requirement for a valid tax invoice, as prescribed in the VAT Act as it, for example, includes incorrect information relating to the value of the supply or the recipient's VAT number is incorrectly reflected on the tax invoice. As the document issued by the vendor does not qualify as a tax invoice as defined in the VAT Act, the recipient vendor is prohibited from using it to deduct input tax. In this regard, the recipient often requests that the tax invoice be reissued, with the correct information, so that the input tax deduction can be made.

As it is unlawful to issue more than one tax invoice for each taxable supply, and given the limited instances when a debit or credit note may be issued, the Budget proposes to clarify that under the circumstances described above, a vendor that cancels the initial document and reissues an invoice in line with the provisions of the VAT Act will not be committing an offence. The proposed amendment will also require the vendor to maintain a proper audit trail.

Whilst this is indeed a welcome change and will provide certainty as to when an invoice may be reissued, the onus is still on the recipient to ensure

that they are in possession of a valid tax invoice when making an input tax deduction.

VAT on sale of book debts

Authors: Kagiso Nonyane and Chetan Vanmali

A vendor is entitled to claim a deduction of input tax on taxable supplies that are written off as irrecoverable. Where the vendor then sells or cedes the debt written off to another vendor on a non-recourse basis, the sale of the debt constitutes the supply of a financial service and is exempt from VAT. Consequently, the supplying vendor is not required to make any adjustments to the VAT previously deducted.

To the extent that the purchaser subsequently writes off the book debts acquired, the purchaser (as with the seller) is entitled to a VAT deduction of the debt written off as irrecoverable. The purchaser may deduct an amount equal to the tax fraction of the face-value of the debt written off limited to the amount paid by the purchaser for the debt.

This results in a double VAT deduction, which is contrary to the intention of the legislation. It is proposed that the term "face value of a debt transferred" be defined in the VAT Act to clarify that such face value amount is the amount, less any amounts previously written off by a seller as irrecoverable.

Updating VAT regulations for the supply of "electronic services"

Author: Des Kruger

At present, any person who supplies any "electronic services" as defined (by regulation) from a place outside South Africa to a South African recipient is deemed to carry on an "enterprise" for South African VAT purposes, and is required to register and account for VAT on such supplies if the value of such supplies exceed ZAR 50,000 in any 12-month period.

At present, "electronic services" is defined in the regulations published under *Government Gazette No. R 221 of 28 March 2014* (Regulations). The Regulations include, within the ambit of the definition of "electronic services", specified educational services, games and games of chance, information system services, internet-based auction services, maintenance services (ie the administration, maintenance and technical support of, or in relation to, *inter alia*, any blog, database or information system), miscellaneous services (ie e-book, films and images, music and software) and any subscription service to, *inter alia*, any blog, database, or information system services).

The Minister announced in his Budget Speech that changes would be made to the present regime. Draft amendments to the Regulations (Proposed Regulations) have been proposed that in many respects simplify matters, but, with respect, deviate from the Organisation for Economic Co-operation and Development (OECD) *International VAT/GST Guidelines* relating to e-commerce that have been adopted by most VAT jurisdictions. More particularly, no distinction is made between business-to-business (B2B) and business-to-customer (B2C) supplies of electronic services.

In essence, the Proposed Regulations will substitute the definition in the Regulations with a reference to "services supplied by means of an electronic agent, electronic communication or the internet", but excluding "telecommunications services", as defined, and "educational services supplied by a person regulated by an educational authority in a foreign country". It will be apparent that the proposed formulation of the definition of "electronic services" is much broader than the current definition.

"Electronic agent", "electronic communication" and the "internet" are defined by reference to the definition of those terms in section 1 of the Electronic Communications and Transactions Act 25 of 2002.

The amended definition of "electronic services" will come into operation on 1 October 2018.

Cryptocurrency transactions

Authors: Chetan Vanmali and Kagiso Nonyane

In South Africa, as with most other countries around the world, there is no guidance and regulation regarding cryptocurrencies such as Bitcoin. The Budget proposes that the income tax and VAT legislation be amended to deal with cryptocurrencies, which pose a risk to the South African tax system. Given the current Budget deficit, the imposition of taxes on cryptocurrencies would assist SARS with increasing its revenue collection going forward.

Given the uncertainty as to the nature of cryptocurrency, it is imperative that National Treasury and SARS issue clear and concise rules regarding the tax treatment of cryptocurrencies in South Africa.

From a VAT perspective, it is important to determine whether cryptocurrencies would be considered as the supply of money (and therefore fall outside the VAT net), or whether it could be considered to constitute the supply of goods or services that are subject to VAT.

"Money", as defined in the VAT Act, includes South African coins and any paper currency that is legal tender under the South African Reserve Bank Act 90 of 1989. In this regard, the South African Reserve Bank (SARB) has already stated that cryptocurrencies do not have legal-tender status. Consequently, cryptocurrencies do not constitute "money" for VAT purposes.

The next question is whether trading in cryptocurrencies can be regarded as the supply of goods for VAT purposes? "Goods" are defined in the VAT Act as corporeal movable things, fixed property and any real right in any such thing or fixed property. Given that cryptocurrencies are incorporeal, they would not constitute "goods". However, it is apparent that they do constitute "services", as defined, in that they can be said to constitute a right, facility or advantage as contemplated in the definition of "services".

To the extent that the trade (supply) in cryptocurrencies is considered to be a supply of services, it would most certainly trigger VAT consequences if it is bought or sold in the carrying on of an enterprise.

Authorities in other jurisdictions around the world, such as Germany, do not regard cryptocurrencies as "e-money" within the meaning of the Payment Services Oversight Act *(Zahlungsdiensteaufsichtsgesetz, ZAG)* and the European Union Electronic Money Directive and are of the view that it should be classified as a financial instrument.

The United Kingdom has classified cryptocurrencies as "taxable vouchers" and therefore VAT would have to be levied on the sale thereof. The Chinese Central Bank on the other hand has completely prohibited banks and payment processers from being involved with cryptocurrency- related transactions and the Russian Central Bank has indicated that virtual currency is illegal in terms of Article 27 of the Federal Law.

Canada appears to be the leading jurisdiction when it comes to regulating cryptocurrencies. It has two separate rules and the application thereof depends on whether cryptocurrency is used to buy goods or services or whether it is merely bought and sold for speculative purposes. In circumstances where cryptocurrency is purchased for speculative purposes, it is taxed just like any other investment.

National Treasury has not yet revealed which route it will be taking regarding the taxation of cryptocurrencies in South Africa. However, they are likely to adopt an approach that would allow them to collect additional revenue and contribute to reducing the budget deficit.

Overlap in treatment of dividends

Author: Joon Chong

Section 1 of the ITA defines a "dividend" to be any amount transferred by a resident company for the benefit of any person in respect of any share in that company whether by way of a distribution or consideration for a share repurchase but does not exclude a reduction of contributed tax capital of the company.

The section 31 transfer pricing rules in the ITA require transactions between resident and non-resident connected parties (affected transactions) to be carried out on an arm's length basis. To the extent that this is not done, section 31(2) requires a taxpayer to calculate its taxable income to account for any adjustments necessary, as if any affected transaction has been entered into on an arm's length basis. This is the primary adjustment to taxable income.

Section 31(3) requires a taxpayer to make a further secondary adjustment as follows. If there is a difference in:

- the taxable income calculated to account for any arm's length adjustment; and
- the taxable income calculated which did not account for such adjustments,

the difference in taxable income would be considered to be a distribution *in specie* (ie in a form other than cash) of the resident company on the last day six months after the end of the financial year.

The Budget notes that there is potential overlap between the treatment of dividend in section 1 and the treatment of dividend under the transfer pricing rules in section 31. To remove the anomaly, the Budget proposes to amend section 31 to provide that the deemed distribution in this section be treated as a dividend *in specie*, unless the amount already constitutes a dividend as defined in section 1.

The scope of the proposed amendment to section 31 described in the Budget is not clear. We are uncertain from the wording used in the Budget whether there would only be an amendment to section 31 to provide for the deeming distribution (as there is already a deeming distribution), or would there also be a corresponding amendment to the definition of "dividend" in section 1 as well. It is also unclear how a "distribution *in specie*" would not fall into the definition of "dividend" in section 1, hence the necessity of the proposed amendment to provide for two types of distributions - a deemed distribution *in specie* unless the distribution is already a dividend.

We note, however, the interesting views expressed by SARS in the *Comprehensive Guide to Dividends Tax (Issue 2)* (Guide) that a resident company will not qualify for the exemption for DWT or treaty relief for the deemed dividend distribution *in specie* in terms of section 31(3).

SARS expresses the view in the Guide that the beneficial owner of the dividend must submit the declaration and written undertaking in order to qualify for the DWT exemption or treaty relief. The term "beneficial owner" is defined as the person entitled to the benefit of the dividend attaching to a share. SARS is of the view that the recipient of the section 31(3) deemed distribution *in specie* is not entitled to the benefit of the dividend because the recipient derives no benefit. The deemed dividend *in specie* is an amount calculated for tax purposes only and is the difference from two taxable income calculations. The actual economic benefit received by the recipient of the affected transaction is different to the deemed dividend *in specie* as section 31 does not re-characterise the actual benefit to be a dividend. The deemed dividend *in specie* arises over and above the underlying transaction.

As there is no beneficial owner of the section 31(3) deemed dividend in specie, it is not possible for any treaty relief to apply regardless of the definition of "dividend" or requirement of holding specific capital or voting rights in applicable treaties.

However, the Guide continues, even if there is a benefit received by the recipient, the benefit would not be considered to attach to a share. There is no direct link between the benefit and the share. The benefit attaches to the affected transaction "that gave rise to" the application of section 31(2) and 31(3).

The Guide does not refer to any international jurisprudence or OECD instrument in support of the views expressed.

It remains to be seen in the 2018 draft bills whether the proposed amendment to section 31 is intended to support the views expressed in the Guide, and if it is, how. We hope that there would be commentary and examples in the explanatory memorandum to clarify the overlap and the purpose of the proposed amendment.

Reversing exchange difference for exchange items disposed of at a loss
Author: Sean Gilmour

The current framework of rules relating to the taxation of foreign exchange and losses includes a provision which allows for the reversal of foreign exchange gains and losses if they arose in respect of an exchange item which comprised of a debt, and such debt became irrecoverable as a result of the debtor not being able to pay.

The Budget proposes that the provisions be extended to also apply to debt which is disposed of at a loss due to poor market conditions, and not as a result of a debtor not being able to pay. The relief will apply to foreign exchange gains and losses recognised in relation to that portion of the debt that is written off.

Proposed amendments to CFC
Authors: Nola Brown and Sean Gilmour

- **Review of 75% high tax exemption**
  South Africa's tax legislation contains CFC rules which aim to prevent South African taxpayers from locating companies in low tax jurisdictions in an effort to avoid paying South African tax. The CFC attribution or imputation rules apply in certain circumstances where South African tax residents hold majority stakes (shareholding/participation or voting rights) in foreign companies (directly or indirectly).

  Section 9D of the ITA treats a foreign company as a CFC where more than 50% of the total participation rights or voting rights in that company are directly or indirectly held by South African tax residents.

  If a foreign company qualifies as a CFC, the "net income" of the company for its foreign tax year is imputed to the South African resident participants in proportion to their participation rights in that company (unless that South African resident holds, together with any connected person, in aggregate, less than 10% of the participation rights and may not exercise at least 10% of the voting rights in a CFC). The amount so imputed is then included in the South African resident's income and taxed at his marginal income tax rate.

  Various exemptions from the CFC rules are available, including the so-called "high tax" exemption. This exemption applies to CFCs operating in countries where the tax payable by the CFC is at least 75% of the tax that the CFC would have paid had it been a South African tax resident.

  Two calculations need to be done for the CFC at the end of its tax year, one determining its foreign tax liability, and another notional tax calculation to determine its South African tax liability (had it been a South African tax resident).

  The two computations are then compared, and if the foreign tax is equal to or greater than 75% of the notional South African tax calculated, the net income of the CFC will be deemed to be nil (and therefore the imputation to the South African resident will be nil).

  Generally, where a CFC is located in a jurisdiction which has a tax rate of at least 21%, it is likely to qualify for the high tax exemption.

  There has been a global trend towards lowering corporate tax rates. The Davis Tax Committee (DTC) acknowledged this, pointing out that, for example, the United Kingdom plans to reduce its corporate tax rate to 16% by 2020, the average rate of corporate tax in Europe for 2015 was 20.24% and the average rate for Asia was 21.91%. Accordingly, taking into account South Africa's relatively high corporate tax rate of 28%, the 75% factor needs to be reduced, in order for the exemption to be effective.

- **Extension of CFC rules to include foreign trusts and foundations**
  If a foreign discretionary trust/foundation is interposed between South African tax residents and a foreign company, that foreign company will not typically constitute a CFC, even if the trust/foundation meets the CFC participation or voting rights threshold in the foreign company. This is because the South African resident beneficiaries have no "participation

rights" in the foreign company of which the trust/foundation is a shareholder, but merely a spes or a hope (which might never be realised) that the trustees of the trust/foundation council will vest any income or capital that might be derived by the foreign company in them in the future. The South African resident beneficiaries also have no voting rights in such foreign company.

There is concern that trusts or foundations may be deliberately interposed in offshore structures in order to avoid CFC implications. Changes to the CFC rules were proposed in the 2017 draft bills which were aimed at bringing income derived by foreign companies directly or indirectly held by non-South African tax resident trusts or foundations with South African beneficiaries, into the South African tax net. The proposed section 25BC provided that if any resident (other than a company) was a beneficiary of a non-resident trust or a foreign foundation, and that trust or foundation held a participation right in a foreign company which would have constituted a CFC had that trust or foundation been a resident, any amount received by or accrued to or in favour of that person from that trust or foundation, had to be included in that person's income.

However, the proposed changes were likely to apply to many structures which were in no way abusive or tax driven. For example, the use of the words "any amount" in section 25BC appeared punitive as this suggested that all amounts vested in a resident beneficiary of a qualifying trust/foundation, whether or not derived from the applicable underlying foreign company, would be taxable as income in that resident beneficiary's hands. The proposed changes also had the effect that such amounts would be taxable as income no matter how proportionately small any distribution to the resident beneficiary may be (relative to distributions to other beneficiaries) and even where the beneficiary may have no control of any kind over the foreign company.

As the proposed changes were extremely broad in scope and controversial, they were withdrawn in the final 2017 bills. Nevertheless, the Budget has indicated that these proposed changes would be reconsidered in the 2018 draft bills.

Interest paid to a non-resident beneficiary of a trust

Authors: Nola Brown and Sean Gilmour

The withholding tax rules for interest paid by a trust to a non-resident beneficiary will be clarified.

South Africa imposes a withholding tax on interest at a rate of 15% on the payment of any interest to a foreign person, if such interest arises from a South African source.

Although the foreign person is liable for the tax, it is withheld and paid to SARS on the foreign person's behalf, by the South African resident paying the interest.

The Budget points out that the current tax rules are unclear with regards to who bears the withholding obligation in a scenario in which interest is paid to a non-resident beneficiary by a trust after vesting. In addition, the rules dealing with trust income and beneficiaries do not deem the trust to have paid interest to beneficiaries if they are non-residents.

National Treasury proposes to clarify whether the interest vested in the non-resident beneficiary is subject to withholding tax, and, if it is, who should withhold the tax.

Tax treatment of excessive debt financing under review

Author: Joon Chong

The Budget notes that the deductibility of interest payments on debt acts as an incentive to use debt rather than equity funding, and can be used to strip profits from high tax countries. In an effort to preserve the tax base, the Budget notes that there has been progress in reviewing the tax treatment of excessive debt financing and a discussion document will be circulated for comment. Taxpayers and foreign investors would welcome the clarification on what would constitute an arm's length acceptable level of debt and interest rate.

Inbound debt funding from connected persons currently fall within the ambit of transfer pricing rules in section 31 of the ITA as financial assistance. Historically, taxpayers could rely on the formulaic approach in Practice Note 2 (PN 2) which was based on the repealed section 31 in force before 1 April 2012. Despite a new section 31, PN 2 has not been officially withdrawn. SARS released a draft interpretation note (draft IN) which was intended

to replace PN 2 in March 2013. The draft IN would apply to years of assessment commencing on or after 1 April 2012, the same effective date as the current section 31. The draft IN remains in circulation and there is currently no final interpretation or guidance note from SARS on the interpretation of section 31 on thin capitalisation. This has created uncertainty as to what would constitute arm's length levels of debt and interest as the draft IN emphasized that there were no safe harbours but indicative risk factors.

The draft IN proposes a two test approach to applying transfer pricing rules to inbound debt. First, is the amount of debt funding arm's length, as in would a third party lender be prepared to lend the borrower the same level of debt under the same terms and conditions? Second, is the interest rate on the loan an acceptable arm's length interest rate to be applied to the loan?

The draft IN provides that a borrower with debt to earnings before interest, tax, depreciation and amortisation (EBITDA) ratio of 3:1 was less likely to be subject to an audit. Further, interest rates of weighted average JIBAR (Johannesburg Interbank Agreed Rate) plus 2% or weighted average of the relevant base rate plus 2% were considered to be of lower risk. The draft IN however, remains a draft and has no legal effect.

The Davis Tax Committee: Second Interim Report on Base Erosion and Profit Shifting (BEPS) *in South Africa on Action 4: Limit base erosion involving interest deductions and other financial payments* specifically notes the uncertainty arising from the draft IN remaining in draft. The DTC recommends that a "safe harbour" with a fixed rate be introduced in section 31 or a finalised interpretation note to provide non-residents funding South African entities with more certainty as to acceptable levels of debt.

Guidance from SARS on thin capitalisation should be consistent with the OECD recommendations and international precedent on the *BEPS 2015 Final Reports* on Action 4. To this end, the OECD recommends that the arm's length test should only apply to the pricing of the debt, ie on the interest rate. The DTC observes that it may thus be preferable to retain in the South African context the approach of evaluating the extent of debt (ie thin capitalisation) and the debt pricing (ie the interest rate) separately.

The OECD recommended approach is based on a fixed ratio rule which limits an entity's net deductions for interest to a % of EBITDA, with a range of possible ratios between 10% and 30%. The OECD recommendations also propose a group ratio rule alongside the fixed ratio rule. This would allow an entity with a net interest expense above a country's fixed ratio to deduct interest up to the level of net interest/EBITDA ratio of its worldwide group.

Further, the DTC also recommends that the transfer pricing rules for acceptable interest rates should take into account the outcome of the *General Electric* and *Chevron* cases. In these cases, the court held that the implicit support of the group resulting in a higher credit rating of a borrower should be considered in the factors determining the credit-worthiness of the borrower. Acting independently in an arm's length transaction did not mean being entirely independent of the group, merely independent of the lender. An arm's length rate for a borrower with the support of the group would thus be lower than a comparable rate for a borrower without such support.

The DTC also recommends simplification of the rules and introducing ways to reduce the compliance costs for taxpayers with a low risk of BEPS through interest deductions. These could be by introducing a safe harbour with a fixed ratio or threshold based on a loan value or other measure. Interest rates acceptable for exchange control should also be aligned with acceptable levels of interest rates for transfer pricing purposes.

We hope that the discussion document would incorporate the OECD and DTC recommendations on transfer pricing rules applicable to interest deduction and that the discussion document would be circulated for comment and finalised sooner rather than later.

EXCHANGE CONTROL

Various amendments on exchange control

Authors: Hillary Botha, Lumen Louw and Sean Gilmour

- **Relaxation of loop structures**
  The "foreign direct investment" dispensation, which was in place prior to the Budget Speech, permitted South African companies to acquire an interest in a foreign target entity which could, in turn, hold investments in the Common Monetary Area (CMA) - a so-called "loop structure". The interest to be acquired in the foreign target entity had to comprise of at least 10% of the equity or voting rights, but could not exceed 20%.

  In a welcome development, Annexure F of the Budget proposes that South African companies are now permitted to acquire up to 40% of the equity or voting rights in a foreign target entity which may, in turn, hold investments in the CMA. It should be noted that this will not apply if the South African company on its own or collectively with other South African companies, will in aggregate own more than 40% equity or voting rights in the foreign target entity.

  The requirement that South African companies need to hold at least 10% of the equity or voting rights in a foreign target company has also been abolished, with investments which are below this threshold to fall within a new category of so-called "foreign portfolio investments" for exchange control reporting purposes.

  Loop structures that exceed the 40% threshold will require approval from SARB, which will ensure that due regard is given to tax consequences, transparency, governance and equivalent audit standards and governance.

- **Institutional investors**
  The Budget proposes that the foreign portfolio investment allowance, which is available to qualifying institutional investors, be increased by 5% in all categories. The additional allowance which is available for African investments has also been increased to 10%. This announcement is to be welcomed.

- **South African holding companies**
  The Budget proposes that the limits in place for foreign investment by South African holding companies be increased. Listed companies are now permitted to transfer ZAR 3 billion offshore, while unlisted companies are now permitted to transfer ZAR 2 billion offshore. All transfers are subject to the usual SARB reporting requirements.

INDIVIDUALS

Medical rebate, adjusted today gone tomorrow

Author: Wesley Grimm

The ITA was amended in 2012 to provide for a different method of treating medical expenses for individuals. The former system, which allowed for a deduction of medical aid contributions against an individual's taxable income, was replaced by a medical tax credit system (MTC). The MTC consists of the medical scheme fees tax credit (section 6A) and the additional medical expenses tax credit (section 6B).

The MTC was originally implemented to grant a measure of tax relief to those individuals incurring certain medical-related expenses, specifically lower and middle-income taxpayers.

At present, a taxpayer responsible for contributing to the medical scheme of another person is allowed, as a rebate in terms of section 6A, a fixed, monthly amount determined by the Minister. This amount has been increased in the Budget from ZAR 303 to ZAR 310 per month for the first two beneficiaries and from ZAR 204 to ZAR 209 per month for the remaining beneficiaries.

The adjustment fails to account for the full effects of inflation and is expected to yield additional revenue of ZAR 700 million in the 2018/19 tax year, ZAR 640 million in 2019/2020 and ZAR 580 million in 2020/21. This additional revenue is ear-marked to contribute to the National Health Insurance (NHI) system. The additional revenue, however, is unlikely to have a significant impact on the cost of the NHI, which is currently anticipated to be in the region of ZAR 250 billion upon commencement.

National Treasury now also argues that some individuals are "excessively benefiting" from the MTC, specifically where multiple taxpayers contribute to the medical scheme fees or other medical expenses of a third party eg where adult children jointly contribute to an elderly parent's medical scheme. Consequently, the Budget proposes that where taxpayers carry a share of the medical scheme contribution or medical cost, the MTC must be apportioned between the various contributors.

If the DTC's recommendations on the MTC align with National Treasury's thinking, it may be deduced that the MTC's days are numbered. Simply stated, if the MTC is abolished, an additional ZAR 300 to ZAR 1,000 per month will be taken out of the pockets of, specifically lower and middle-income, households and made available to the fiscus.

Retirement reforms

Authors: Leani Nortjé and Sean Gilmour

Various retirement reforms were proposed in the Budget this year.

The Budget proposes that a review be undertaken regarding the interaction between the exemption for retirement benefits derived from employment rendered outside of South Africa, double taxation agreements and other provisions of the ITA, in order to ensure that retirement contributions are only deductible if benefits derived therefrom are taxable.

Currently, only transfers to retirement annuity funds are permitted after the retirement date of an employee. The Budget proposes that transfers to pension preservation funds and provident preservation funds should also be permitted.

Retrospective amendments are to be implemented in order to rectify unintended tax liabilities which are triggered for members as a result of them transferring amounts previously contributed between or within retirement funds with the same employer.

In addition, the Budget proposes that the tax treatment of withdrawal benefits from all types of retirement funds upon an individual emigrating for exchange control purposes are to be aligned.

TAX ADMINISTRATION

Aligning the "official rate of interest" in ITA with the prime rate

Authors: Kagiso Nonyane and Nirvasha Singh

The Budget proposes that the "official rate of interest" be changed to a percentage that is aligned to the prime rate of interest, which is presently 10.25%.

The official rate of interest is currently set at the repurchase rate plus 100 basis points, which is 7.75%. The official interest rate is used, amongst others, to calculate the following:

- deemed donations in respect of low-interest loans to trusts by connected natural persons made before, on and after 1 March 2017; or
- low-interest rate loans provided by employers to employees.

The impact on deemed donations in respect of low-interest loans to trusts by connected natural persons

In terms of section 7C(3) of the ITA, if a connected person makes a loan to a trust without imposing any interest or, it is made at an interest rate that is lower than the official rate of interest, the difference between the interest actually charged and the interest that should have been charged will be deemed to be a donation.

An increase in the official interest rate to a percentage that is closer to the prime interest rate will increase the taxation of that donation.

The impact in respect of low-interest rate loans provided by employers to employees

Paragraph (i) of the definition of "gross income" in section 1 of the ITA specifically stipulates that a fringe benefit (as determined in terms of paragraph 2(f) of the Seventh Schedule of the ITA) must be included in a person's gross income. If an employee obtains a loan from his or her employer and either no interest is charged on the said loan or the interest levied is lower than the official rate of interest, a taxable fringe benefit arises in the hands of the employee which is equal to the interest foregone.

If the official rate of interest is increased to a level that is closer to the prime rate of interest, this would translate to a higher taxable benefit.

In light of the significant impact that this increase will have, taxpayers will need to be mindful where lower interest rates than prime are levied on the above transactions.

Notification of commencement of audit

Authors: Yashika Govind and Nirvasha Singh

The obligation of SARS to collect tax and taxpayers' rights are often at odds with each other. In an attempt to address this issue, the Budget proposes to reconcile the taxpayers' constitutional rights with SARS' constitutional obligations by including a provision in the Tax Administration Act 28 of 2011 (TAA) stipulating that SARS must inform the taxpayer at commencement of the audit when the information submitted in a tax return will be audited. The provision is intended to cover desk audits which involve inspection or enquiries, without necessarily meeting with the taxpayer or third parties in person.

It has been confirmed that the decision to audit a taxpayer is considered "administrative action" in terms of the Promotion of Administrative Justice Act 3 of 2000 (PAJA). As a result, it is imperative that the Commissioner's decision as well as the audit carried out by SARS be procedurally fair. Consequently, any administrative action (ie a decision to audit or the issue of an additional assessment) must, for the purposes of procedural fairness, comply with the following five requirements listed in section 3(2) of PAJA:

- adequate notice of the nature and purpose of the proposed administrative action must be given to the taxpayer;
- a reasonable opportunity to make representations must be given to the taxpayer;
- SARS must give the taxpayer a clear statement of the administrative action;
- where applicable, the taxpayer must be given adequate notice of any right of review or internal appeal; and
- adequate notice of the right to request reasons, in terms of section 5 of PAJA, must be given to the taxpayer.

The outcome of the audit, and the corresponding notification to the taxpayer, is therefore a necessary precursor to the issuing of an additional assessment. Sections 40, 42 and 48 of the

TAA give effect to and echo the administrative justice provisions set out in section 33 of the Constitution of the Republic of South Africa Act 108 of 1996 (Constitution) and the aforementioned provisions of PAJA.

The TAA prescribes the procedure that SARS has to follow prior to, during and after a field audit or criminal investigation. Section 48(1) of the TAA (which sets out the procedure to be followed by SARS during a field audit or criminal investigation) provides that SARS must notify a taxpayer at least 10 business days prior to commencement of the audit of the relevant material that the SARS auditor may require to perform his/her field audit.

Furthermore, section 42 of the TAA requires SARS to keep the taxpayer informed during the course of an audit. In addition, SARS must convey the outcome of the audit or criminal investigation to the taxpayer, within 21 days of concluding the audit or criminal investigation.

A recent, unreported judgement handed down by the Tax Court of Port Elizabeth confirms the importance of procedural fairness during an audit. In this case, SARS did not inform the taxpayer that his returns were being audited, nor did SARS convey the outcome of the audit to the taxpayer.

The court found that the taxpayer was deprived of the opportunity to respond to the issues raised in the assessment. As a result, the court held that SARS' failure to comply with sections 40 and 42 of the TAA was an affront to the Constitution and the principle of legality. Accordingly, SARS' decision to issue an additional assessment without providing the taxpayer with proper notice was found to be invalid and was set aside by the court as it did not comply with the peremptory prescripts of the TAA.

In light of the above, it comes as no surprise that the Budget proposes to require that taxpayers be notified at the start of an audit to ensure procedural fairness to all taxpayers subject to any type of audit.

In difficult economic times where taxpayers are forced to endure declining revenues and ever increasing costs, it important for taxpayers to remember their constitutional rights and SARS' constitutional obligations when carrying out its function of administering the tax statutes.

Commission of enquiry into SARS, the Tax Ombud and changes to improve operational independence

Authors: Andile Miya and Rudi Katzke

The Minister made the following notable statements regarding tax morality in South Africa in the Budget:

> "It has taken many years to build the foundation of trust that underpins South Africa's tax morality. But such trust can erode rapidly. In recent years, corruption and wasteful expenditure in the public sector have eroded taxpayer morality. The lack of an effective government response to allegations of corruption and poor governance has undermined the social contract between taxpayers and the state.
>
> The President will establish a commission of inquiry into the functioning and governance of SARS. Steps will be taken to improve the governance and accountability of SARS, and to strengthen the operational independence of the Tax Ombud, following recommendations made by the DTC."

Other than the comments above, the Budget does not provide any further detail regarding proposed legislative changes to enhance tax morality. Accordingly, this article briefly highlights the most salient recommendations of the DTC pertaining to this topic.

In September 2017, the DTC submitted a report setting out recommendations to the Minister to address certain issues relating to tax administration in South Africa and the implications for the structure, operation and practice of SARS (Report). The Report addresses issues faced by tax administration in South Africa, including BEPS, the administration of high net worth individuals (HNWIs) for tax purposes, the need for a Taxpayer Bill of Rights (TBOR), and the need to improve the role and powers of the Tax Ombud. The Report also deals with SARS' existing structure as well as its governing legislation and assesses whether or not the current structure promotes the principles of accountability and integrity of administration.

The Report largely endorses the BEPS-related actions dealt with by the OECD in its Action Plan. Many of the actions proposed by the OECD, and supported by the DTC, have already been

implemented in South Africa. SARS has stated that they require skilled resources to be effective in this area. The DTC acknowledged this need when it reported that the procurement, training and retention of suitably skilled resources to deal with the complex issues that give rise to BEPS is crucial for SARS. The DTC further advises that the strictest levels of governance should be applied when recruiting such staff to SARS and that SARS regularly benchmarks itself against other developing countries to ensure that its staff and skills adequately compare in the area of BEPS.

Regarding the tax administration of HNWIs in South Africa, the Report considered the research conducted by the OECD to formulate recommendations on the improvement of compliance when dealing with HNWIs. The DTC supports SARS' focus on HNWIs as a separate segment and advises that in order to achieve effective implementation of an HNWI unit, SARS may consider the option to develop the unit incrementally in proportion to changing demands, thus incorporating different functions as and when the unit's functionality improves.

The DTC has also recommended that a TBOR be developed, to not only guarantee the rights of taxpayers in their interactions with SARS, but also to help SARS be more responsible in its dealings with taxpayers and to better regulate the interactions and expectations of the relationship between SARS and taxpayers. The TBOR should be enforceable and have full legal effect. The DTC further recommends that the Tax Ombud be given the powers to enforce the TBOR, based on the interplay between the TBOR and the powers of the Tax Ombud.

The Report further includes a detailed consideration of the functions and powers of the Office of the Tax Ombud (OTO). The DTC recommends improvements that could be implemented to the OTO to enhance its efficiency, credibility and reliability, through an analysis of the functions and powers of similar institutions in various jurisdictions. The DTC recommends that the confidence in, and credibility of, the OTO be heightened through greater transparency in its activities and that over time, the OTO's functions and powers be extended to include the powers to:

- propose amendments to tax norms (both of administrative and technical nature), in order to enable the Tax Ombud to proactively participate in the improvement of the tax system;
- act as a mediator in a tax alternative dispute resolution mechanism to solve differences between audited taxpayers and tax authorities; and
- adjudicate disputes brought before the Tax Ombud, subject to review and appeal by the courts, including technical matters that taxpayers may dispute with SARS.

The DTC recommends that the OTO be staffed with adequately qualified tax technical analysts to be able to allocate tax disputes and immediately address simpler issues and proactively monitor public concerns with the tax system. It is further advised that the Tax Ombud should standardise its processes, particularly in relation to turnaround times (21 calendar days is recommended), and provide greater clarity on the resolution of taxpayer disputes referred to the Tax Ombud.

The Tax Ombud should further be legislatively mandated to provide its reports directly to the Minister and to Parliament without review by anyone outside the OTO, especially the Commissioner. To foster greater accountability, SARS should report to Parliament in relation to actions recommended by the Tax Ombud and should submit a report to Parliament detailing the treatment of the recommendations and the reasons for their treatment.

Finally, the Report recommends that the Tax Ombud be granted the power to provide appropriate relief to taxpayers who may be placed under significant hardship by the manner in which SARS administers tax laws. Taxpayers in need should, it is proposed, be granted legal representation in disputes against SARS, subject to appropriate monetary limits and viability requirements. The Report advises that this recommendation be considered at a later stage due to the complex nature of its implementation.

One may have hoped for more clarity in the Budget as to which recommendations of the Report have been accepted, how they will be prioritised and when they will likely be implemented. Nonetheless, National Treasury's open acknowledgement of the systemic ills that plague SARS, and the resultant

erosion of tax morality, is encouraging. In particular, we will closely monitor any steps to implement the DTC's recommendations pertaining to the OTO, as the proposed measures may contribute to returning SARS to its former status as an effective institution and trustworthy revenue authority on par with its international peers.

CUSTOMS AND EXCISE

Enhancing tax administration

Authors: Yashika Govind and Rudi Katzke

Chapter 4 of the Budget deals with Revenue Trends and Tax Policy. This chapter notes that SARS collects more than 30% of total revenue from the customs and excise system. The Budget accordingly, seeks to improve the customs and excise system even further by strengthening the data and revenue collection associated with cross-border trade. The Budget also notes that SARS is at an advanced stage in implementing the customs modernisation programme, although no estimated date of completion has been provided.

- **Forestalling**
  The Budget proposes to amend the Customs and Excise Act 91 of 1964 (C&E Act) to prevent a tax-avoidance practice known as "forestalling", whereby excessive quantities of goods are removed from warehouses into the market because an increase in the rate of excise duty is expected. The Budget does not give any details regarding the proposed amendment to the C&E Act to prevent this practice, but it may involve sanctions where goods are removed in quantities exceeding a certain maximum threshold. We will closely monitor developments in this regard.

- **Counterfeit cigarettes**
  Tax increases on cigarettes and other tobacco products often exceed the rate of inflation, which, in turn, leads consumers to seek more affordable products. Criminals take advantage of such situations by engaging in illicit trade and the smuggling of tobacco products. To help curb such activities, the Budget proposes to insert provisions in the C&E Act to extend the use of "fiscal markers" to assist with eliminating illicit trade in tobacco products and possibly other counterfeit products as well.

  This would be a significant step in SARS' ongoing battle against criminals engaging in the illicit trade of tobacco products, a practice which has a highly detrimental effect on revenue collection.

- **Excise Duty**
  - ***Ad valorem* excise duties**
    The Budget proposes to increase duties and levies on certain products from 1 April 2018. In particular, the maximum *ad valorem* excise duty on luxury products such as motor vehicles, cellular telephones (the classification of which will be updated to include "smartphones", so that they also attract *ad valorem* excise duties) and other general products will be increased, as indicated in the table below:

PRODUCT	INCREASE
Motor vehicles	25% to 30%
Cellular telephones	The flat rate of 7% may be replaced with a progressive rate duty structure, based on the item's value. This proposal will still be subject to a public consultation process in due course.
General	5% to 7%; and 7% to 9%

As expected, with effect from 21 February 2018 excise duties on tobacco products will increase by 8.5%. Excise duties on alcohol will increase by 6% to 10%. National Treasury and the Department of Health are also working together to explore additional measures to reduce the consumption of tobacco products, including a minimum price and stronger enforcement by way of extended fiscal marking, as mentioned above.

- **Specific excise duties**
  In relation to specific excise duties, Annexure C of the Budget also referred to the Budget Review 2015, which announced the holistic reform of the diesel refund administration system. A discussion document on this was published by National Treasury and SARS in February 2017, which received extensive comments from the public.

  Currently, the administration provisions governing the diesel refund system are contained in section 16(3)(l) of the VAT Act. The reform process proposes to separate the diesel refund system from the VAT system.

  National Treasury and SARS are planning to engage with the affected industries and other stakeholders in 2018 in order to inform the design of the new diesel refund administration system with the new system to be proposed in the Budget Review 2019. We will monitor developments in this sphere with interest.

TAX TEAM

BRIAN DENNEHY
Director, Head of Tax
T: +27 11 530 5998
E: brian.dennehy@webberwentzel.com

KYLE BEILINGS
Partner
T: +27 11 530 5211
E: kyle.beilings@webberwentzel.com

ANNE BENNETT
Partner
T: +27 11 530 5886
E: anne.bennett@webberwentzel.com

JOON CHONG
Partner
T: +27 21 431 7362
E: joon.chong@webberwentzel.com

DONALD FISHER-JEFFES
Director
T: +27 11 530 5018
E: donald.fisher-jeffes@webberwentzel.com

SEAN GILMOUR
Partner
T: +27 11 530 5094
E: sean.gilmour@webberwentzel.com

NINA KEYSER
Partner
T: +27 21 431 7357
E: nina.keyser@webberwentzel.com

CRAIG MILLER
Director
T: +27 11 530 5551
E: craig.miller@webberwentzel.com

ASHFORD NYATSUMBA
Partner
T: +27 11 530 5259
E: ashford.nyatsumba@webberwentzel.com

NICOLE PAIGE
Partner
T: +27 11 530 5857
E: nicole.paige@webberwentzel.com

NIRVASHA SINGH
Partner
T: +27 11 530 5176
E: nirvasha.singh@webberwentzel.com

CHETAN VANMALI
Partner
T: +27 11 530 5204
E: chetan.vanmali@webberwentzel.com

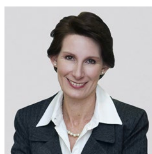
GRAHAM VILJOEN
Director
T: +27 11 530 5293
E: graham.viljoen@webberwentzel.com

DES KRUGER
Consultant
T: +27 21 431 7333
E: des.kruger@webberwentzel.com

KAREN MILLER
Consultant
T: +27 21 431 7216
E: karen.miller@webberwentzel.com

KEITH VEITCH
Consultant
T: +27 11 530 5202
E: keith.veitch@webberwentzel.com

TAX TEAM



NOLA BROWN
Associate Director
T: +27 11 530 5454
E: nola.brown@webberwentzel.com

YASHIKA GOVIND
Senior Associate
T: +27 11 530 5865
E: yashika.govind@webberwentzel.com

RUDI KATZKE
Senior Associate
T: +27 21 431 7363
E: rudi.katzke@webberwentzel.com

LEANI NORTJE
Senior Associate
T: +27 11 530 5580
E: leani.nortje@webberwentzel.com

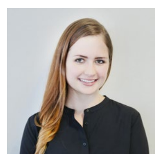
SHIRLEEN RITCHIE
Senior Associate
T: +27 11 530 5504
E: shirleen.ritchie@webberwentzel.com

DARREN ROY
Senior Tax Manager
T: +27 11 530 5466
E: darren.roy@webberwentzel.com

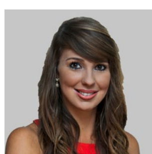
GITTE TRUTER
Senior Associate
T: +27 11 530 5996
E: gitte.truter@webberwentzel.com

CARRYN ALEXANDER
Associate
T: +27 21 431 7070
E: carryn.alexander@webberwentzel.com

WESLEY GRIMM
Associate
T: +27 11 530 5124
E: wesley.grimm@webberwentzel.com



LUMEN LOUW
Tax Manager
T: +27 11 530 5481
E: lumen.louw@webberwentzel.com



LISA LUMLEY
Associate
T: +27 11 530 5647
E: lisa.lumley@webberwentzel.com

ROB NEWHAM
Associate
T: +27 11 530 5645
E: rob.newham@webberwentzel.com

KAGISO NONYANE
Associate
T: +27 11 530 5450
E: kagiso.nonyane@webberwentzel.com

HILLARY BOTHA
Candidate Attorney
T: +27 11 530 5184
E: hillary.botha@webberwentzel.com

ERIC MADUMO
Candidate Attorney
T: +27 11 530 5982
E: eric.madumo@webberwentzel.com

CHEVON MARUPEN
Candidate Attorney
T: +27 11 530 5542
E: chevon.marupen@webberwentzel.com

JOHANNESBURG OFFICE
90 Rivonia Road, Sandton, 2196, Gauteng.
PO Box 61771, Marshalltown, Johannesburg, 2107, South Africa

T: +27 11 530 5000

CAPE TOWN OFFICE
15th Floor, Convention Tower, Heerengracht, Foreshore,
Cape Town, 8001
PO Box 3667, Cape Town, 8000, South Africa

T: +27 21 431 7000

www.webberwentzel.com

WEBBER WENTZEL

in alliance with > Linklaters