INSTITUTE OF ACCOUNTING & COMMERCE

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The Professional

Volume 7, Issue 5 July 2016

BREAKING NEWS

Draft tax legislation published for comment.

Respond on or before

8 August 2016

Inside this issue:

Draft tax legislation open for public comment

The purpose of this special edition of the Professional is to give our members an overview of the proposed legislative amendments in order to assist them in submitting comments on/before 8 August 2016.

The Draft Taxation Laws Amendment Bill,2016 and Draft Tax Administration Laws Amendment Bill , 2016 were published on National Treasury's website on 8 July 2016. These Draft Bills contain amendments to tax Acts to give effect to changes proposed in the 2016 Budget Speech and Budget Review,

The public was invited to send in comments on or before 8 August 2016.

In addition to the above mentioned Tax Bills, the following draft documents were also published for public comment on 20 July 2016.

- Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill, 2016;
- Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill (Administration), 2016; and
- Draft Explanatory Memorandum on the Special Voluntary Disclosure Programme in respect of offshore assets and income.

Special voluntary disclosure programme

The Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill, 2016 contains a revised Special Voluntary Disclosure Programme to allow non-compliant taxpayers the opportunity to voluntarily disclose offshore assets and income before the new global standard for automatic exchange of information between tax authorities becomes effective in 2017.

The main changes since the previously published legislation are as follows:

- Instead of calculating two different amounts for seed capital and investment returns for inclusion in the taxpayer's taxable income, a single amount is now included. This amount equals 50% of the highest value of the aggregate of all the taxpayer's assets outside South Africa between 1/3/2010 and 28/2/2015 that were derived from undeclared income. The value is determined based on the market value in the foreign currency which is translated to Rand using the spot rate at the end of the tax period within which the highest value fell ;
- The undeclared income giving rise to the above mentioned foreign assets will be exempt from income tax, donations tax and estate duty. Future income will however be fully taxed and the declared assets will be subject to donations tax and estate duty if the tax payer donates the assets or passes away;
- Taxpayers who disposed of the foreign assets held before 1/3/2010 may also apply for relief and special rules apply in this instance.

Non-compliance in respect of VAT, PAYE, UIF and SDL does not qualify for the special voluntary disclosure programme. Relief for associated penalties will however be covered under the existing voluntary disclosure programme per the Tax Administration Act.

Comments on the Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill, 2016 and explanatory memorandum must be forwarded to both of the following persons by 8 August 2016:

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Small business corporation: Personal liability companies

Special dispensations currently exist for qualifying small business. In order to qualify for the special dispensation, the entity has to be a close corporation or a company registered as a private company in terms of the then applicable Companies Act, 1973 (Act No. 61 of 1973). Furthermore, the scope of the definition of small business corporation was intentionally limited to curb the disguise of passive income and remuneration as business earnings.

An anomaly was created by the 2008 Companies Act which excluded personal liability companies from the definition of "private company". The result is that, as the definition of a small business corporation in the Income Tax Act includes a private company, a personal liability companies which typically render personal services are currently automatically excluded from being small business corporations for tax purposes.

In order to correct this anomaly, it is proposed that personal liability companies should be expressly included in the definition of a "small business corporation" contained in the Income Tax Act.

The personal liability companies would however still be subject to the requirement to employ at least three full-time employees who do not have an interest in the entity and are not connected persons in relation to those that have an interest in the entity.

There are no secrets to success. It is the result of preparation, hard work, and learning from failure.

Colin Powell

Small business corporations: Special economic zones

Companies that qualify for the incentives under the SEZ regime are taxed at a more favorable rate of 15 per cent and are also eligible for an accelerated capital allowance on buildings built within a designated SEZ.

However, the current provisions of the Income Tax Act that provide for these incentives do not provide clarity on the tax rates applicable in the instance that the qualifying company is a small business corporation as defined in section 12E of the Income Tax Act.

It is proposed that the legislation should be amended to clarify that small business corporations located within an SEZ should be able to benefit from the lower effective tax rate, i.e. the small business corporation will be subject to tax at the flat rate of 15 per cent **or** the effective rate determined in terms of the graduated marginal structure, whichever is the lower.

These amendments are deemed to have come into effect from the date on which the Special Economic Zones Act, 2014 came into operation. The rates applicable are reflected in the 2016 Rates and Monetary Amounts and Revenue Laws Amendment Bill.

Government grants

Government grants are only exempt from Income Tax if it -

- forms part of the comprehensive legislative list set out in the Eleventh Schedule; or
- Is specifically identified by the Minister of Finance by notice in the Gazette as a mechanism to cater for grants originating in the middle of a legislative cycle for which there will be a delay in listing them in the Eleventh Schedule.

These two mechanisms were introduced to ensure that the key determinations to be observed when seeking to exempt any government grant are properly considered. The intention is that these mechanisms would ensure that only genuine grants and not some forms of disguised consideration or transfer paid for or in exchange for goods and services required by Government would be exempt and that the financial and tax implications were borne in mind when deciding to grant an exemption. Currently a government grant that is neither listed in the Eleventh Schedule nor identified by the Minister in the Gazette may still avoid being taxed if it is regarded as being capital in nature. It is proposed that all government grants are included in "gross income" after which the specific exclusion rules of section 12P will apply.

Lump sum from South African retirement fund

The provisions of section 10(1)(gC) allows a South African tax resident who is employed outside of the Republic to receive those retirement benefits (that they earned while outside the country) free from tax.

There is however uncertainty regarding the interpretation of the current provisions of section 10(1)(gC). The consequence is that South African tax residents who work outside of the Republic can receive a tax deduction on contributions made to the South Africa retirement fund (local retirement fund). The deduction can either be made in the same tax year if they have other forms of taxable income or worked partially within that year or the amounts can be rolled over to be deducted in a future year of assessment. However, upon receipt of the retirement benefits the amount that accrued while South African tax resident was employed outside the Republic will be free from tax.

To ensure a fair tax treatment of retirement benefits received by South African residents, it is proposed that the exemption provided in section 10(1)(gC)(ii) only applies to retirement benefits from foreign retirement funds, i.e. retirement funds other than a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund as defined in section 1 of the Act (where members are eligible for deductible contributions).

Emigration: Withdrawal from retirement fund

In 2015, changes were made in the Act to allow individuals to withdraw a lump sum from the retirement annuity fund when they cease to be tax resident or when they leave South Africa at the end of their work visa.

Currently, Individuals may withdraw a lump sum from their retirement annuity fund :

- when the individual ceases to be tax resident; or
- when the individual leaves South Africa at the expiry of the work visa contemplated in the Immigration Act, 2002.

It has come to Government attention that exclusion of the requirement that an individual must emigrate from the Republic and that emigration must be recognised by the South African Reserve Bank for purposes of exchange control creates a loophole for South African nationals or tax residents to be able to make an early withdrawal from their retirement annuity funds, without formally emigrating. This was not the original policy intention. An additional requirement will therefore be added that *the individual must emigrate from the Republic and that emigration must be recognised by the South African Reserve Bank.*

Happiness does not come from doing easy work but from the afterglow of satisfaction that comes after the achievement of a difficult task that demanded our best.

Theodore Isaac Rubin

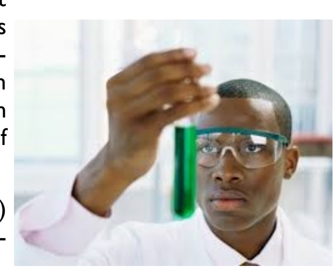
Research and development incentive prescription rules

The submission of income tax and provisional tax returns should not be delayed pending pre-approval by the R&D committee. Further, taxpayers have been advised that when submitting such returns they should not assume a successful pre-approval as wrongfully doing so could result in them being subject to the imposition of interest and penalties. There has however been significant delays in the approval process.

It is proposed that section 11D be amended to allow for the reopening of assessments where approval is obtained from the Department of Science and Technology after the relevant year of assessment even though the assessment may have been prescribed due to the delays in obtaining approval.

According to the proposed wording, the Commissioner may, notwithstanding the provisions of sections99 and 100, make a reduced assessment where expenditure incurred during that year in respect of research and development would have been allowable as a deduction in terms of section 11D had the approval in terms of subsection (9) been granted during that year of assessment.

This new subsection 11D(20) is deemed to come into operation on 1/10/2012.



The first responsibility of a leader is to define reality. The last is to say thank you. In between, the leader is a servant.

Max de Pree

Retirement funds

Deduction against passive income

From 1 March 2016 the tax treatment of contributions to retirement funds was amended to be harmonized across all retirement funds. Previously, deductions to retirement annuity funds were only allowed to be set off against "non-retirement funding income" while deductions to pension funds could only be set off against "retirement funding income" . Non-retirement funding includes passive income such as interest or royalties, but excluded taxable capital gains whereas "retirement funding income" represented income from employment and did not include passive income. The amendment to section 11 (k) unintentionally excluded passive income resulting in members of retirement annuity funds who were using the deduction against passive income to no longer able to deduct their contributions against the passive income.

It was therefore proposed that deductions for contributions to all retirement funds should be allowed to be set off against passive income. For the purpose of the section 11(k) deductions, the passive income does not include taxable capital gains. The proposed amendments are deemed to have come into effect from 1 March 2016.

Excess retirement fund contributions

Before 1 March 2016 retirement annuity contributions that were above the allowable deductible amounts were allowed to be rolled over to the following year . Pension fund contributions that were above the limit were not allowed to be rolled over to the following year, but upon retirement these amounts could be taken tax free.

The 2016 harmonisation changes did not cater for any excess contributions made before 1 March 2016 and previous contributions above the limit to retirement annuity funds can no longer be rolled over. Contributions above the limits to both retirement annuity funds and pension funds made before 1 March 2016 would then not be afforded the rollover treatment and could only be received tax free at retirement.

To continue with the current rollover treatment for retirement annuity funds and align the treatment for excess contributions to pension funds it is proposed that excess contributions to both of these funds before 1 March 2016 should be allowed to be rolled over and deducted in the following tax year. Excess provident fund contributions would not be allowed to be rolled over since there was no requirement for provident funds to purchase an annuity before 1 March 2016. The proposed amendments are deemed to have come into effect from 1 March 2016.

RA: Source rules

Sections 9(2)(i) and 9(3) of the Act deems the portion of the lump sum and annuity payments from a pension fund and provident fund to be from a source outside South Africa, if the amounts received are in respect of services rendered outside South Africa. There is however ambiguity with respect to the treatment of retirement annuity funds. These funds are however not linked to employment. It is proposed that changes should be made in section 9(2)(i) of the Act to remove the ambiguity and clarify that the exclusion from South Africa source rule in section 9(2)(i) does not apply to lump sum, or annuities received from retirement annuity funds. It is also proposed that section 9(3) of the Act be repealed as it creates ambiguity.

The proposed amendments will come into effect on the date of promulgation of the Taxation Laws Amendment Act, 2016.

Fringe benefit: Defined benefit contributions

The new paragraph 12D of the Seventh Schedule (dealing with the valuation of contributions made by employers to certain retirement funds) inserted a formula to calculate the taxable fringe benefit for contributions to a retirement fund that has a defined benefit component. The provisions of paragraph 12D of the Seventh Schedule stated the formula would cover contributions by the employer to the retirement fund. The current wording of "A" in the formula is not clear which creates potential loopholes. It is proposed that changes be made in paragraph 12D of the Seventh Schedule to adjust the definition of income to determine the value "A" in the formula and to include contributions made by the fund on behalf of the employer.

The proposed amendment in respect of the adjustment of the definition of income to determine the value "A" in the formula will apply in respect of contributions made after 1 March 2017.

The proposed amendments in respect of inclusion of contributions made by the fund on behalf of the employer will be deemed to apply in respect of contributions made after 1 March 2016.

Employer provided bursaries

The Income Tax Act currently exempts all "bona fide" bursaries or scholarships granted by employers to employees (or relatives of qualifying employees), from tax subject to certain monetary limits and other requirements.

If a bursary or scholarship is awarded to a relative of the employee, the exemption only applies if the employee's remuneration does not exceed R250 000 during the year of assessment. The exemption is however limited to –

- R10 000 for studies from Grade R to 12 including qualifications in NQF levels 1 to 4 and
- R30 000 for qualifications in NQF levels 5 to 10.

These amounts were last revised in 2013.

It was therefore proposed that

- The monetary limit in respect of remuneration for qualifying employees will be increased from R250 000 to R400 000.
- The monetary limits in respect of exempt bursary or scholarship will be increased from R10 000 to R15 000 and from R30 000 to R40 000 respectively.

The proposed amendments are deemed to have come into effect from 1 March 2016 and will be applicable in respect of years of assessment commencing on or after that date.

Trusts—Use of interest free loans

A person has the following options when transferring assets to a trust:

- Donate the assets and trigger donations tax at 20 per cent of the fair market value of the assets in the hands of the person.
- Sell the assets to the trust on loan account at an arm's length interest charge. If interest on the loan is market related, the seller will be fully taxed on the interest portion of the loan repayments.
- Sell the assets to the trust on loan account at an interest charge that is below arm's length or charge no interest on the loan.

The tax treatment of the above mentioned options differ significantly.

In order to limit taxpayers' ability to transfer wealth without being subject to tax, it is proposed that rules focusing on interest free loans or loans with interest below market rates that are made directly or indirectly by a natural person, or by a company that is a connected person in relation to that person to a trust, be introduced.

According to these rules, it is proposed that an amount equal to the difference between interest that would arise as determined with reference the official rate of interest and the applicable actual rate of the loan below market rates made to a trust and will be regarded as an amount of income accrued or received by the seller. Such amount imputed as income in the hands of the seller will not qualify for the section 10(1)(i) exemption in respect of interest.

On the basis that there is no actual payment of interest by the trust to the seller, no deduction may be claimed by the trust. On the other hand, with regard to loans with interest rates below market value, only the amount of interest below market rates that is actually paid by the trust to the seller can be claimed as a deduction if the requirements of the general deduction formula are met.

In addition, any reduction of the interest free loans or to loans with interest below market rates to which these rules apply will not qualify for the section 56(2)(b) R100,000 annual exemption of donations tax.

Furthermore, the seller may recover the normal tax attributable to the income which is included in the income received or accrued to the seller from the trust as the trust benefits from the low or no interest charge.

If the seller does not recover this amount of tax from the trust within a period of three years after the end of the year of assessment in which the income was included in the income of the seller, the tax attributable to that income will be treated as a donation by the seller to the trust on the date on which the three year period ends, and thus attracting donations tax.

The proposed amendments will come into effect on 1 March 2017 and applies in respect of years of assessment ending after that date.

The secret of business is to know something that nobody else knows.

Aristotle Onassis

Industry based education and training

The Income Tax Act provides for tax exemption for certain public benefit organisations. Currently, the Ninth Schedule does not provide specific exemption to special industry associations which promote the common interest of members in that particular industry or profession even though training is provided.

In order to encourage the industry to provide education and development, it is proposed that amendments be made in the Act to extend the list of public benefit activities qualifying public benefit organisations for tax exemption to education and training activities to benefit industry based training organisations.

It was therefore proposed that:

- receipts and accruals of industry based public benefit associations providing education and training programmes and courses for the development of persons or employees in that particular industry be exempt from normal taxation by including the activities performed by them under "Education and Development" in paragraph 4 of Part I of the Ninth Schedule to the Act provided that those qualifications are compatible with the type of qualifications in the Quality Council for Trades and Occupations.
- Receipts and accruals of industry based public benefit associations administering examination and providing certification programmes for the benefit of that particular industry be exempt from normal taxation by including the activities performed by them under "Education and Development" in paragraph 4 of Part I of the Ninth Schedule to the Act, provided that that association is accredited to conduct those activities by the South African National Accreditation System (SANAS), South Africa's member of the International Accreditation Forum.

The proposed amendments will come into operation on the date of promulgation of the Taxation Laws Amendment Act of 2016.

Success or failure in business is caused more by the mental attitude even than by mental capacities.

Walter Scott

Repeal: Withholding tax on cross-border services

The withholding tax on cross-border services is a final tax in respect of fees payable by a resident to a non-resident for technical, management and consulting services rendered by that non-resident to a resident. The tax rate for the withholding tax on services is 15 per cent of the gross amount of fees paid to a non-resident (subject to tax treaty relief). The liability to withhold the tax is with the payor of the service fees to or for the benefit of the non-resident taxpayer.

Reportable arrangement

On 3 February 2016, SARS issued in Notice 140 of the Government Gazette no 39650 which contained a revised list of reportable arrangements. According to this Notice an arrangement for the rendering of consultancy, construction, engineering, installation, logistical, managerial, supervisory, technical or training services to a South African resident or a non-resident having a permanent establishment in South Africa, in terms of which arrangement a non-resident was, is, or is anticipated to be physically present in South Africa in connection with or for purposes of rendering the services and the expenditure incurred or to be incurred in respect of the services exceeds or is anticipated to exceed R10 million, is a reportable arrangement in terms of the Tax Administration Act provided that it does not qualify as 'remuneration' for employees' tax purposes.

The cross-border services withholding tax and reportable arrangement regimes are virtually aimed at achieving the same goal (i.e. identifying and collecting revenue from non-resident taxpayers who provide technical, management or consulting services). A further concern is the uncertainty regarding the application of domestic tax law and limited revenue due to limited taxing rights under tax treaties

It was therefore proposed that that the withholding tax on services be repealed from the Act. Consequently, payment of certain service fees by South African residents to non-residents will now be dealt with under the provisions of Reportable Arrangements in the Tax Administration Act.

The proposed amendments will be effective to all service fees that are paid or that become due and payable on or after 1 January 2017.

Exchange differences: Bad debts on foreign loans

Currently, exchange differences arising on a foreign currency denominated loan by a South African taxpayer, (who is not a money-lender) to another person are taken into account in the determination of a taxable income as either an inclusion of deduction.

Currently the tax provisions do not give a taxpayer any relief in relation to the foreign exchange differences on irrecoverable foreign loans.

In order to provide relief in relation to exchange differences that are included in taxable income, it is proposed that the provisions of section 11(i) of the Act be extended to apply to any exchange difference in respect of a debt that has been included in income during the year of assessment.

The proposed amendment will be effective for years of assessment commencing on or after 1 March 2015.

Interest withholding tax—Interest written off

Withholding tax on interest applies in respect of interest paid by a South African resident to or for the benefit of any foreign person to the extent that the interest is from a South African source. The withholding tax is levied at a final withholding tax rate of 15 per cent of the amount of the interest paid to a foreign person. However, the withholding tax is subject to some exemptions.

The interest withholding tax have deeming provisions which deems interest to be paid on the earlier of the date on which the interest is paid or becomes due and payable. In circumstances where interest withholding tax is paid on interest that becomes due and payable, but the interest is subsequently written-off as irrecoverable, there is no mechanism for SARS to refund the interest withholding tax already paid.

it is proposed that interest that is subject to withholding tax on interest monthly will be interest that accrues to the foreign person in a particular month excluding any interest which becomes irrecoverable in the same month, to the extent that the interest withholding tax was paid in respect of such irrecoverable interest. The proposed amendment will be effective for years of assessment commencing on or after 1 March 2015.

Whenever you find yourself on the side of the majority, it is time to pause and reflect.

Mark Twain

VAT: Second hand gold

In 2014, changes were made in the VAT Act to amend the definition of "second-hand goods" to specifically exclude "gold" and "goods containing gold" from the definition and thereby denying the notional input tax credit on these goods. The policy rationale was to curb fraudulent notional input tax deductions on the acquisition of gold and gold jewelry. There was however unintended consequences whereby the notional input tax credit on all goods containing gold is denied to vendors that are dealers in second-hand goods.

In order to address the above-mentioned unintended consequences, it is proposed , paragraph (ii) of the definition of "second-hand goods" in section 1(1) of the VAT Act be amended to allow the deduction of the notional input tax credit on goods containing gold, provided that the goods are *sold in the same or substantially the same state as when those goods were acquired*.

The proposed amendments will come into effect from 1 April 2017.

VAT: Lost, destroyed or damaged imported goods

Schedule 4 of the Customs and Excise Act provides that a taxpayer is exempt from paying customs duty and fuel levy (if applicable) on the importation of goods if those goods are subsequently lost, destroyed or damaged through natural disasters or under such circumstances as the Commissioner deems exceptional.

Unfortunately, the VAT Act does not have an exemption similar to Schedule 4 of the Customs and Excise Act, in respect of goods that are imported, if those goods, after importation and before being entered for home consumption, are lost, destroyed or damaged through natural disasters or under such circumstances as the Commissioner deems exceptional

In order to remove the ambiguity and provide certainty, it is proposed that Schedule 1 of the VAT Act be aligned to Schedule 4 of the Customs and Excise Act by introducing an exemption from the tax imposed in terms of section 7(1)(b) of the VAT Act, where those goods are lost, destroyed or damaged through natural disasters or under such circumstances as the Commissioner deems exceptional, as contemplated in the Customs And Excise Act, provided that such goods have not yet been entered for home consumption.

The proposed amendments will come into effect from 1 April 2017.

An organization, no matter how well designed, is only as good as the people who live and work in it.

Dee Hock

Deduction of input tax—Documents

The Value-Added Tax Act places a statutory obligation on vendors to issue documents in a defined form and manner. The recipient of the supply may then deduct the relevant input tax based on the document issued by the supplier (generally a tax invoice) if the recipient is a vendor, incurred the cost in the course of its enterprise if the deduction is not specifically blocked.

Recipient vendors are occasionally issued with defective documents or are unable to obtain documents from supplying vendors, resulting in an inability to make input tax deductions.

With effect from 1 April 2015, section 25 of the Tax Administration Laws Amendment Act, 2015, introduced section 16(2)(g) in the Value-Added Tax Act to provide relief to recipient vendors in these situations. The proposed amendment provides clarity with regard to the considerations that the Commissioner will take into account for accepting alternative documentary proof. It is important to note that vendors can only access this relief as a last resort. Vendors must still be able to demonstrate that a sincere effort has been put into obtaining the proper documents and maintain proof of those efforts. Furthermore, vendors would have to make an application for a ruling and only if and when that ruling is issued, may the amount be deducted as input tax at that later stage. Lastly, invoking this provision will not allow vendors to backdate the claim to a past tax period that has already been closed.

According to the proposed wording of the amended paragraph, "*the Commissioner may only issue a ruling in terms of this paragraph if satisfied that—*

(aa) the vendor has taken reasonable steps to obtain a document required in terms of paragraph (a), (b), (c), (d), (dA), (e) or (f) and is unable to obtain said document due to circumstances beyond the vendor's control; and

(bb) no other provision of this Act can be applied to make the deduction:".

Provisional tax

Foreign employer

If foreign employers in South Africa do not deduct PAYE, local employees have to pay provisional tax in terms of the Fourth Schedule. Currently there is no provision in the Fourth Schedule which compels the local recruits who earn remuneration to register as provisional taxpayers.

In terms of paragraph (c) of the definition of a provisional taxpayer, a person can become a provisional taxpayer upon notification by the Commissioner.

Sending individual letters to the various employers informing them that all local recruits employed by them are regarded as provisional taxpayers is cumbersome and administratively onerous for SARS. In many cases SARS may not even have some of the personal information of the local recruits on record. This will require SARS to obtain all the necessary information from the employers and thereafter inform the employees that they are provisional taxpayers.

The proposed amendment aims to avoid this administratively onerous task by providing for the Commissioner to notify such persons by public notice that they are provisional taxpayers.

Private company directors

The proposed amendment repeals the provision for payment of employees' tax (PAYE) by directors of private companies. The provisions of section 7B would apply to the variable remuneration received by the director in that it is deemed to accrue to the director on the date on which it is paid to the director. This is also the date on which the amount of the remuneration becomes claimable as expenditure by the private company.

One of the tests of leadership is the ability to recognize a problem before it becomes an emergency.

Arnold H. Glasow

Changes in VAT Rate

The draft Bill proposes changes to the VAT charging section and repeal of section 77 of the VAT Act. The Minister of Finance will now be able to set the VAT rate without having to promulgate it in the Government Gazette. The proposed subsection reads as follows:

"If the Minister makes an announcement in the annual national budget contemplated in section 27(1) of the Public Finance Management, 1999 (Act No. 1 of 1999) that the VAT rate specified in this section is to be altered, that alteration will be effective from a date determined by the Minister in that announcement, and continues to apply for a period of 12 months from that date unless Parliament passes legislation giving effect to that announcement within that period of 12 months.".

The explanatory memorandum indicates that the change is proposed to align the VAT Act with the other tax Acts and that the repeal of section 77 is merely consequential.

It is however important to note that section 77 sets out the process to be followed in amending the VAT rate, including giving notice in the Government Gazette.

On the basis that no effective date is specified, the new subsection will become effective on the day the 2016 Taxation Laws Amendment Act is promulgated.

Dispute resolution

The general principle is that finality of a dispute must be achieved, i.e. the resolution of a dispute in respect of the issues in dispute and the relevant tax period must be final. If not, the right to object and appeal will become irrelevant. The proposed amendment to section 100 of the Tax Administration Act clarifies that SARS will only be allowed to "reopen" the tax period, audit and issue an additional assessment after prescription in exceptional circumstances. Prior to the expiry of the periods listed in section 99(1), where the factors listed in section 99(2) are absent, SARS may still issue an additional assessment to comply with its statutory duties to ensure payment of the correct amount of tax in respect of the tax period that was under dispute within the normal expiry period for that tax period.

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It is the aim of the Institute of Accounting and Commerce to promote actively the effective utilisation and development of qualified manpower through the achievement of the highest standards of professional competence and ethical conduct amongst its members.

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Other proposed amendments

Please note that this newsletter did not address all of the proposed amendments. Below is a list of other proposed amendments to consider when commenting. This list is not exhaustive and SARS' or Treasury's websites can be visited to download the respective draft Bills and Explanatory Memoranda:

- Employee based share incentive schemes
- Cross-border hybrid debt instruments
- Asset-for-share transactions for natural persons employed by a company
- Outright transfer of collateral
- Third party backed shares
- REITs
- Venture capital regime
- Urban development zones—*extending to more Municipalities*
- Accelerated capital allowances for renewable energy supporting infrastructure
- Land donated under lad reform initiatives
- Tax relief for mining companies for infrastructure spending for benefit of mining community
- Exemption of collective investment schemes from controlled foreign companies rules
- Multilateral development finance institutions
- Deferred exchange rate gains and losses
- VAT: Municipal entities
- Special economic zones
- Various administrative matters.

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