South Africa Budget 2015 – Tax and Exchange Control Proposals

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The Minister of Finance, Nhlanhla Musa Nene, delivered South Africa's 2015 Budget speech to Parliament on 25 February 2015. In his speech Minister Nene emphasized that the 2015 Budget tax proposals aim to increase tax revenues as required, limit the erosion of the corporate tax base, increase incentives for small businesses, and promote a greener economy.

With regard to limiting the erosion of the corporate tax base, Minister Nene specifically mentioned the recommendations put forward by the Davis Tax Committee which was appointed on 17 July 2013 to assess South Africa's tax policy framework and its role in supporting the objectives of inclusive growth, employment, development and fiscal sustainability. One of the key areas being investigated by the Davis Tax Committee concerns 'base erosion and profit shifting' (BEPS), especially in the context of corporate income tax. In this regard, Minister Nene mentioned that the South African Reserve Bank and the South African Revenue Service will work closely together to monitor capital flows to reduce both capital leakage and tax evasion.

In his speech the Minister said that there is a "structural gap between our revenue requirements and projected tax proceeds. To bridge this gap we require additional revenue." It is clear that the final recommendations of the Davis Tax Committee will play a crucial part in any future tax reforms.

The main tax proposals contained in the budget specifically relevant to the corporate sector are discussed briefly below.

Third-party-backed shares

Presently where a "preference share" is secured by a "financial instrument" or subject to an arrangement in terms of which a financial instrument may not be disposed of, all dividends received in relation to that share will be re-characterised as income for income tax purposes. An exemption exists where the preference share was issued for a "qualifying purpose". The Budget proposes a clarification of the requirements or meaning of 'qualifying purpose' to further the objectives of this section.

Securities lending arrangements

The Budget proposes a review of the tax treatment of the transfer in beneficial ownership of collateral in a securities lending arrangement to reduce any negative effects on acceptable business practices and limit the use of collateral in possible tax avoidance arrangements. In addition, the current tax treatment of securities lending arrangements will be reviewed to account for corporate actions during the term of such arrangements.

Depreciation deductions for hydropower generation

Presently investments in renewable energy to generate electricity are incentivised through accelerated depreciation deductions. However, a capacity limit of 30 megawatts is in place due to concerns relating to the potential environmental impact. The Budget proposes an extension of this incentive to hydropower generators of more than 30 megawatts if other environmental concerns are addressed.

Depreciation deductions for solar renewable energy

In the Budget speech it was mentioned that a number of tax measures to promote energy efficiency will be discussed further with industry, the electricity regulator, Eskom and other interested parties. One such measure mentioned in his speech, and which is under consideration, is enhancing the accelerated depreciation for solar photovoltaic renewable energy. Presumably this will result in changes to the current wording of section 12B of the Income Tax Act which provides for deductions in respect of certain machinery, plant, implements, utensils and articles used in the farming or production of renewable energy and which allows the taxpayer to depreciate 50% in the first year of use, 30% in the second and 20% in the third.

Revision of manufacturing assets deduction

Presently taxpayers are able to claim an accelerated depreciation deduction for manufacturing assets, provided that the assets are directly used for the purposes of the taxpayer’s trade. The Budget proposes that the conditions of the granting of this allowance will be reviewed, subject to the current limitation provisions in section 23D of the Income Tax Act.

Controlled foreign company (CFC) rules

The Budget proposes a reinstatement of the diversionary rules which had been removed from the Income Tax Act in 2011. According to Minister Nene, this proposal is made in light of the ineffectiveness of the current CFC rules in addressing profit shifting by South African resident companies.

Withholding tax on interest

The Budget proposes that a definition for ‘interest’ be inserted in the Income Tax Act for interest withholding tax purposes. Furthermore, it has been proposed that the provisions of the Income Tax Act be aligned to provide for an interest withholding tax exemption in respect of interest paid to a non-resident for debt owed by another non-resident. This proposed exemption would not apply if the other non-resident was present in South Africa for a period exceeding 183 days or the debt claim is connected to a permanent establishment in South Africa.

Transfer duty

There will be new transfer duty rates which eliminate transfer duty on properties below R750 000, while the rate on properties above R2.2 million will increase.

Transfer Pricing

Based on the advice of the Davis Tax Committee to ‘close tax evasion loopholes such as transfer pricing, and profit shifting strategies by SA corporates’, it has been proposed that amendments be made to improve transfer-pricing documentation.

VAT – Regulations prescribing electronic services

The regulations prescribing electronic services will be updated to include software and other electronic services.

VAT – deemed supply

Presently to qualify for corporate relief under section 8(25) of the VAT Act, a vendor must comply with the corporate reorganisation rules under the Income Tax Act.

However, the corporate reorganisation rules in the Income Tax Act only apply to groups of companies that are incorporated entities such as joint ventures and partnerships. The Budget proposes an amendment to the VAT Act to allow for reorganisation relief for all vendors.

Electricity Levy / Fuel Levy / Road Accident Fund Levy

The Budget proposed a temporary increase in the electricity levy, from 3.5c/kWh to 5.5c/kWh, to assist in demand management. This additional 2c/kWh will be withdrawn when the electricity shortage is over.

Environmental taxation

Tyre levy
The Budget proposes a tyre levy to be effective from the last quarter of 2015, which will be implemented through the Customs and Excise Act. The existing tyre levy which is administered through the Department of Environmental Affaire will be replaced with the proposed tyre levy.

Carbon tax
The draft Carbon Tax Bill will be published in 2015 whereafter public consultation sessions will be held. Further, amendments to the Customs and Excise Act will be effected to provide for the administration of carbon tax.

The details of the proposed tax amendments outlined above will be set out in this year's Taxation Laws Amendment Bill.

National Treasury's main exchange control proposals contained in the Budget Review are as follows:

The exchange control manual is to be simplified, to be completed in 2015.

The following threshold changes will take effect from 1 April 2015:

- Authorised dealers may process corporate investment up to R1 billion per year, from R500 million previously, as well as the carrying forward of any unused allowance.
- South African residents' foreign capital allowance will increase from R4 million to R10 million per calendar year or upon emigration, or R20 million per family unit.
- The subcategories under the individual single discretionary allowance are removed and the annual R1 million allowances may be used for any legal purpose abroad.
- The dispensation for credit card usage, currently limited to individuals, will be extended to corporates.