VAT RATE INCREASE FROM 14% TO 15% – THE PRACTICAL IMPLICATIONS
TAX-DEBT WRITE-OFF AND COMPROMISE
THE NEW 20% DIVIDEND WITHHOLDING TAX RATES

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CONTENTS

FROM SAIPA
04  Word from CoTE
05  SAIPA News – Budget Breakfast

INDUSTRY INSIGHTS
06  Budget 2018 – What you need to know
10  Additional tax proposals

TAX TECHNICAL
12  VAT rate increase from 14% to 15% – The practical implications
14  Tax-debt write-off and compromise
18  Retirement annuities: the new trust
20  Are pension funds, PBOs and universities exempt from all taxes?
21  Extensive Reform for Suppliers of Electronic Services
22  The new 20% dividend withholding tax rates…

BUSINESS
24  Back To Basics – The Power of Attorney
25  Book review
26  Broad-Based Black Economic Sector Codes
28  8 Clever tax tips

OFF BALANCE SHEET
30  Staff profile – Sugar Ntwampe
The New Year is in full swing as we move to the second quarter of 2018, with the dust settling from recent changes and tax proposal updates courtesy of the 2018/19 Budget Speech.

It is an exciting time. This excitement is however also accompanied by a certain level of anxiety because of the current state of the economy. The anxiety stems from the fact that it may be difficult to fund the allocations as per the budget, given the fact that there were reports at some point of a shortfall in revenue collection of R50.8 billion.

The crux of the matter is for Government to generate more revenue through its collection agency, SARS. However, generating more revenue usually means increases in taxes which impact heavily on many South Africans, especially those who will struggle with such increases.

The Budget Speech saw Finance Minister make some “challenging decisions” to address a revenue shortfall and fund free higher education. South Africans will be facing an increase in VAT, the fuel levy and estate duty tax. In addition, some relief for the poor and working class will be implemented with the below-inflation increase in personal income tax, and an above average increase in social grants.

The SAIPA 2018/19 Tax Guides are now available. Be sure to get your hands on a copy.

Sugar
Tax Specialist, SAIPA-CoTE
SAIPA’s annual Budget Breakfast event took to the Northern Region at the Royal Elephant Hotel & Conference in Pretoria in February, where members enjoyed the opportunity to network and unpack the 2018 Budget Speech and what it meant for SAIPA members. SAIPA’s high-ranking experts, including Etienne Retief chairperson of the national tax and SARS stakeholders committees at SAIPA; Judge Bernard Ngoepe of the Office of the Tax Ombud; Faith Ngwenya, Technical Standards & Services Executive at SAIPA; Professor Jannie Rossouw, Head of the School of Economic and Business Sciences, Wits University; as well as Zweli Mabhoza, founder and director of Priority Tax Solutions, weighed in on the 2018 Budget Speech.

Giving their expert opinions (from left to right): Faith Ngwenya, Zweli Mabhoza, Judge Bernard Ngoepe and Etienne Retief discuss the implications of the 2018 Budget Speech.

Sage’s Laurica Kok with Ange Baard – winner of the Sage hamper.

Members enjoy the opportunity of networking.

Sugar Ntwampe, Tax Specialist, SAIPA-CoTE, thanks Judge Ngoepe for sharing his insights.

Zimkhitha Zatu, Head of Edge, Standard Bank.

Karen Camberg with winner of the Juta hamper.

Bongani Coka, SAIPA Chief Executive, officially opened the 2018 Budget Breakfast event.
Government expects a revenue deficit of R48.2 billion in 2017/18. This is slightly lower than the R50.8 billion projected in the 2017 MTBPS, but substantially higher than the R30.7 billion revenue gaps in 2016/17. As a result, government proposes a combination of expenditure cuts and revenue increases to make up for the shortfall.

At the time of 2008 financial crisis when South Africa had a gross debt-to-GDP ratio that was just above 26 per cent. That ratio now stands at 53.3 per cent. Tax policy is designed to raise R36 billion in additional revenue in 2018/19. The question hinges on whether the increased collection of taxes will be used to reduce the debt. However, evidence indicates that the increased revenue will be used to fund activities which will not reduce the debt-to-GDP ratio.

The largest contribution is R22.9 billion from the one percentage point increase in VAT. In addition, R6.8 billion will be raised from lower-than-inflation increases to the personal income tax rebates and brackets.

It is alleged that these measures along with public spending cuts, will contribute to reducing the budget deficit and funding fee-free higher education and training for poor and working-class students.

Table 1: Personal income tax rates and bracket adjustments

<table>
<thead>
<tr>
<th>Taxable income (R)</th>
<th>2017/18 Rates of tax</th>
<th>Taxable income (R)</th>
<th>2018/19 Rates of tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>R0 - R189 880</td>
<td>18% of each R1</td>
<td>R0 - R195 850</td>
<td>18% of each R1</td>
</tr>
<tr>
<td>R189 881 - R296 540</td>
<td>R34 178 + 26% of the amount above R189 880</td>
<td>R195 851 - R305 850</td>
<td>R35 253 + 26% of the amount above R195 850</td>
</tr>
<tr>
<td>R296 541 - R410 460</td>
<td>R61 910 + 31% of the amount above R296 540</td>
<td>R305 851 - R423 300</td>
<td>R63 853 + 31% of the amount above R305 850</td>
</tr>
<tr>
<td>R410 461 - R555 600</td>
<td>R97 225 + 36% of the amount above R410 460</td>
<td>R423 301 - R555 600</td>
<td>R100 263 + 36% of the amount above R423 300</td>
</tr>
<tr>
<td>R555 601 - R708 310</td>
<td>R149 475 + 39% of the amount above R555 600</td>
<td>R555 601 - R708 310</td>
<td>R147 891 + 39% of the amount above R555 600</td>
</tr>
<tr>
<td>R708 311 - R1 500 000</td>
<td>R209 032 + 41% of the amount above R708 310</td>
<td>R708 311 - R1 500 000</td>
<td>R207 448 + 41% of the amount above R708 310</td>
</tr>
<tr>
<td>R1 500 001 and above</td>
<td>R533 625 + 45% of the amount above R1 500 000</td>
<td>R1 500 001 and above</td>
<td>R532 041 + 45% of the amount above R1 500 000</td>
</tr>
</tbody>
</table>

Rebates
- Primary: R13 635
- Secondary: R7 479
- Tertiary: R2 493

Tax threshold
- Below age 65: R75 750
- Age 65 and over: R117 300
- Age 75 and over: R131 150

Rebates
- Primary: R14 067
- Secondary: R7 713
- Tertiary: R2 574

Tax threshold
- Below age 65: R78 150
- Age 65 and over: R121 000
- Age 75 and over: R135 300

Source: National Treasury
THE MAIN TAX PROPOSALS FOR 2018/19

1. A one percentage point increase in VAT to 15 per cent with effect from 1 April 2018. The zero-rating of 19 basic food items mitigates the effect of the increase on poor households. As of 1 April 2018, government proposes to amend the VAT Act such that only brown read and whole wheat brown bread will be zero-rated. Products such as rye or low GI bread, will not be zero-rated. Regulations prescribing foreign electronic services subject to VAT would be broadened to include cloud computing and other online services. Legislation will be published for public comments.

2. No adjustments to the top four income tax brackets, and below inflation adjustments to the bottom three brackets.

3. An increase of 52c/litre for fuel, consisting of a 22c/litre increase in the general fuel levy and 30c/litre increase in the Road Accident Fund levy.

4. Higher ad valorem excise duties for luxury goods. Effective 1 April 2018, the maximum ad valorem excise duty for motor vehicles will be increased from 25 per cent to 30 per cent. The classification of cellular telephones will be updated to include “smart phones” to ensure they attract ad valorem excise duties. In addition, the ad valorem excise duty rates, now at 5 per cent and 7 per cent, will be increased to 7 per cent and 9 per cent, ensuring that households spending more on luxury goods contribute proportionately more to revenue.

5. Increased estate duty, to be levied at 25 per cent for estates above R30 million. The 2018 Budget proposes to increase estate duty from 20 per cent to 25 per cent for estates worth R30 million and more. To limit the staggering of donations to avoid the higher estate duty rate, any donations above R30 million in one tax year will also be taxed at 25 per cent. Both measures are effective from 1 March 2018.

6. The plastic bag levy was increased by 50 per cent to 12 cents per bag effective 1 April 2018.

7. The environmental levy on incandescent light bulbs will increase from R6 to R8 to incentivise more energy-efficient behaviour. This measure takes effect from 1 April 2018.

8. The vehicle emissions tax will be increased to R110 for every gram above 120 gCO₂/km for passenger vehicles and R150 for every gram above 175 gCO₂/km for double cab vehicles, effective 1 April 2018.

9. The health promotion levy, which taxes sugary beverages, will be implemented from 1 April 2018.

10. The medical tax credit for the year of assessment Government ending February 28 in

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>R303 in respect of benefits to the taxpayer per month</td>
</tr>
<tr>
<td>2018</td>
<td>R606 in respect taxpayer and one dependant per month</td>
</tr>
<tr>
<td>2018</td>
<td>R204 per month for the remaining beneficiaries</td>
</tr>
<tr>
<td>2019</td>
<td>R310 in respect of benefits to the taxpayer per month</td>
</tr>
<tr>
<td>2019</td>
<td>R620 in respect taxpayer and one dependant per month</td>
</tr>
<tr>
<td>2019</td>
<td>R209 per month for the remaining beneficiaries</td>
</tr>
</tbody>
</table>
PERSONAL INCOME TAX

The tax burden on individuals has been increasing over the years. Effective capital gains tax rates have also been increased over time to build on the progressive character of the tax system.

South Africa’s personal income tax burden has increased steadily from 8.3 per cent of GDP in 2010/11 to 9.8 per cent in 2017/18. Last year government added a new top income tax bracket of 45 per cent for those earning above R1.5 million.

The following table illustrates the effect of the changes to the personal income tax rates will have on the various income levels for taxpayers under 65 years:

<table>
<thead>
<tr>
<th>Taxable income</th>
<th>2018/2019 tax due</th>
<th>Change from 2017/2018</th>
<th>% change</th>
</tr>
</thead>
<tbody>
<tr>
<td>R 100 000</td>
<td>R3 933</td>
<td>- R432</td>
<td>-9.9%</td>
</tr>
<tr>
<td>R 200 000</td>
<td>R22 265</td>
<td>- R910</td>
<td>-3.9%</td>
</tr>
<tr>
<td>R 500 000</td>
<td>R113 807</td>
<td>- R2 017</td>
<td>-1.7%</td>
</tr>
<tr>
<td>R 1 000 000</td>
<td>R312 973</td>
<td>- R2 017</td>
<td>-0.6%</td>
</tr>
<tr>
<td>R 1 500 000</td>
<td>R517 973</td>
<td>- R1 07</td>
<td>-0.4%</td>
</tr>
<tr>
<td>R 2 000 000</td>
<td>R742 973</td>
<td>- R2 017</td>
<td>-0.3%</td>
</tr>
</tbody>
</table>

Analysis by PWC

Table 3: Total combined fuel taxes on petrol and diesel

<table>
<thead>
<tr>
<th>Rands/litre</th>
<th>2016/17 93 octane petrol</th>
<th>2017/18 93 octane petrol</th>
<th>2018/19 93 octane petrol</th>
<th>Diesel 93 octane petrol</th>
<th>Diesel 93 octane petrol</th>
</tr>
</thead>
<tbody>
<tr>
<td>General fuel levy</td>
<td>2.85</td>
<td>2.70</td>
<td>3.15</td>
<td>3.00</td>
<td>3.37</td>
</tr>
<tr>
<td>Road Accident Fund levy</td>
<td>1.54</td>
<td>1.54</td>
<td>1.63</td>
<td>1.63</td>
<td>1.93</td>
</tr>
<tr>
<td>Customs and excise levy</td>
<td>0.04</td>
<td>0.04</td>
<td>0.04</td>
<td>0.04</td>
<td>0.04</td>
</tr>
<tr>
<td>Total</td>
<td>4.43</td>
<td>4.28</td>
<td>4.82</td>
<td>4.67</td>
<td>5.34</td>
</tr>
<tr>
<td>Pump price</td>
<td>12.69</td>
<td>11.11</td>
<td>13.55</td>
<td>11.96</td>
<td>13.90</td>
</tr>
<tr>
<td>Taxes as percentage of pump price</td>
<td>34.9%</td>
<td>38.5%</td>
<td>35.6%</td>
<td>39.0%</td>
<td>38.4%</td>
</tr>
</tbody>
</table>

1. Average Gauteng pump price for the 2016/17 and 2017/18 years. The 2018/19 figure is the Gauteng pump price in February 2018. Diesel (0.05% sulphur) wholesale price (retail price not regulated). [Source: National Treasury]

The following table illustrates the effect of the changes to the excise duty rates will have on the various products:

<table>
<thead>
<tr>
<th>Product</th>
<th>Current excise duty rate</th>
<th>Proposed excise duty rate</th>
<th>Percentage change Nominal</th>
<th>Percentage change Real</th>
</tr>
</thead>
<tbody>
<tr>
<td>Malt beer</td>
<td>R86.39/litre of absolute alcohol (146,9c / average 340ml can)</td>
<td>R95.03 / litre of absolute alcohol (161,56c / average 340ml can)</td>
<td>10.0</td>
<td>4.5</td>
</tr>
<tr>
<td>Traditional African beer powder</td>
<td>7.82c/litre</td>
<td>7.82c/litre</td>
<td>-</td>
<td>-5.5</td>
</tr>
<tr>
<td>Unfortified wine</td>
<td>R3.61/litre</td>
<td>R3.91/litre</td>
<td>8.5</td>
<td>3.0</td>
</tr>
<tr>
<td>Fortified wine</td>
<td>R6.17/litre</td>
<td>R6.54/litre</td>
<td>6.0</td>
<td>0.5</td>
</tr>
<tr>
<td>Sparkling wine</td>
<td>R11.46/litre</td>
<td>R12.43/litre</td>
<td>8.5</td>
<td>3.0</td>
</tr>
<tr>
<td>Ciders and alcoholic fruit beverages</td>
<td>R86.39/litre of absolute alcohol (146,9c/average 340ml can)</td>
<td>R95.03/litre of absolute alcohol (161,56c / average 340ml can)</td>
<td>10.0</td>
<td>4.5</td>
</tr>
<tr>
<td>Spirits</td>
<td>R175.19/litre of absolute alcohol (R56.50/750ml bottle)</td>
<td>R190.08/litre of absolute alcohol (R61.30/750ml bottle)</td>
<td>8.5</td>
<td>3.0</td>
</tr>
<tr>
<td>Cigarettes</td>
<td>R14.30/20 cigarettes</td>
<td>R15.52/20 cigarettes</td>
<td>8.5</td>
<td>3.0</td>
</tr>
<tr>
<td>Cigarette tobacco</td>
<td>R16.07/50g</td>
<td>R17.44/50g</td>
<td>8.5</td>
<td>3.0</td>
</tr>
<tr>
<td>Pipe tobacco</td>
<td>R4.56/25g</td>
<td>R4.94/25g</td>
<td>8.5</td>
<td>3.0</td>
</tr>
<tr>
<td>Cigars</td>
<td>R75.86/23g</td>
<td>R82.31/ 23g</td>
<td>8.5</td>
<td>3.0</td>
</tr>
</tbody>
</table>

Source: National Treasury
SUBSISTENCE ALLOWANCE (S8(1)(c) ITA)

Where an employee is required to spend at least one night away from his/her usual place of residence on business, the employer may pay a subsistence allowance. No employees’ tax is deducted from a subsistence allowance. The full allowance however, must be reflected on the IRP5 and reflected as non-taxable. However, if the payments exceed the limits, the excessive payment is assessed by SARS.

The following limits for subsistence allowances are for travel within the Republic:

1) Meals and incidental costs – R416 (2018: R397) per day is deemed to have been expended.
2) Incidental costs only – R128 (2018: R122) per day is deemed to have been expended.

The deemed expenditure for subsistence allowances for travelling outside the Republic is based on an amount prescribed and updated annually, based on a rate per country, which may not be for a period of more than six consecutive weeks. Details of these amounts are published in the SARS website.

“No fuel cost may be claimed if the employee has not borne the full cost of fuel used in the vehicle.”

Note:
80% of the travelling allowance must be included in the employee’s remuneration for the purposes of calculating PAYE. The percentage is reduced to 20% if the employer is satisfied that at least 80% of the use of the motor vehicle for the tax year will be for business purposes. No fuel cost may be claimed if the employee has not borne the full cost of fuel used in the vehicle and no maintenance cost may be claimed if the employee has not borne the full cost of maintaining the vehicle (e.g. if the vehicle is covered by a maintenance plan). The fixed cost must be reduced on a pro-rata basis if the vehicle is used for business purposes for less than a full year. The actual distance travelled during a tax year and the distance travelled for business purposes substantiated by a log book are used to determine the costs which may be claimed against a travelling allowance.

TRAVELLING ALLOWANCE

Rates per kilometre, which may be used in determining the allowable deduction for business travel against an allowance or advance where actual costs are not claimed, are determined by using the following table:

<table>
<thead>
<tr>
<th>Deemed Expenditure 2018</th>
<th>Fixed cost</th>
<th>Fuel cost c/km</th>
<th>Maintenance costs c/km</th>
</tr>
</thead>
<tbody>
<tr>
<td>Where the value of the vehicle</td>
<td>R</td>
<td>c/km</td>
<td>c/km</td>
</tr>
<tr>
<td>Does not exceed R85 000</td>
<td>28 352</td>
<td>95.7</td>
<td>34.4</td>
</tr>
<tr>
<td>Exceeds R85 000 but does not exceed R170 000</td>
<td>50 631</td>
<td>106.8</td>
<td>43.1</td>
</tr>
<tr>
<td>Exceeds R170 000 but does not exceed R255 000</td>
<td>72 983</td>
<td>116.</td>
<td>47.5</td>
</tr>
<tr>
<td>Exceeds R255 000 but does not exceed R340 000</td>
<td>92 683</td>
<td>124.8</td>
<td>51.9</td>
</tr>
<tr>
<td>Exceeds R340 000 but does not exceed R425 000</td>
<td>112 443</td>
<td>133.5</td>
<td>60.9</td>
</tr>
<tr>
<td>Exceeds R425 000 but does not exceed R510 000</td>
<td>133 147</td>
<td>153.2</td>
<td>71.6</td>
</tr>
<tr>
<td>Exceeds R510 000 but does not exceed R595 000</td>
<td>153 850</td>
<td>158.4</td>
<td>88.9</td>
</tr>
<tr>
<td>Exceeds R595 000</td>
<td>153 850</td>
<td>158.4</td>
<td>88.9</td>
</tr>
</tbody>
</table>

INCOME TAX: SMALL BUSINESS CORPORATIONS

Financial years ending on any date between 1 April 2018 and 31 March 2019

<table>
<thead>
<tr>
<th>Taxable Income (R)</th>
<th>Rate of Tax (R)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-78 150</td>
<td>0% of taxable income</td>
</tr>
<tr>
<td>78 151-365 000</td>
<td>7% of taxable income above 78 150</td>
</tr>
<tr>
<td>365 001-550 000</td>
<td>20 080 + 21% of taxable income above 365 000</td>
</tr>
<tr>
<td>550 001 and above</td>
<td>58 930 + 28% of the amount above 550 000</td>
</tr>
</tbody>
</table>

TURNOVER TAX FOR MICRO BUSINESSES

Financial years ending on any date between 1 March 2018 and 28 February 2019

<table>
<thead>
<tr>
<th>Taxable turnover (R)</th>
<th>Rate of tax (R)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-335 000</td>
<td>0% of taxable turnover</td>
</tr>
<tr>
<td>335 001-500 000</td>
<td>1% of taxable turnover above 335 000</td>
</tr>
<tr>
<td>500 001-750 000</td>
<td>1 650 + 2% of taxable turnover above 500 000</td>
</tr>
<tr>
<td>750 001 and above</td>
<td>6 650 + 3% of taxable turnover above 750 000</td>
</tr>
</tbody>
</table>
Additional Tax Proposals - Budget 2018

The former Minister of Finance, Malusi Gigaba, delivered South Africa’s 2018 Budget speech to Parliament on 21 February 2018. R36 billion in additional tax revenue will be raised by other tax proposals, including:

Conor McFadden, Fasken

- A higher estate duty tax rate of 25% for estates greater than R30 million.
- A 52 cents per litre increase in the levies on fuel, made up of 22 cents per litre for the general fuel levy and 30 cents per litre increase in the Road Accident Fund Levy.
- An ad-valorem excise duty rate on luxury goods increased from 7%-9%.
- A higher donations tax rate of 25% for donations exceeding R30 million in one tax year.
- Increases in the alcohol and tobacco excise duties of 6%.

In the 2018 Budget Review some additional tax amendments were proposed by the Minister. Below is a summary of some of the proposals. It is important to bear in mind that the enacting legislation in respect of these proposals will only be sent out for public comment later in the year.

DEBT RELIEF RULES

Last year the Income Tax Act was amended to address the tax consequences of applying debt relief rules. Government has noted concerns about unintended consequences that may arise from the application of these tax amendments and has proposed that further amendments be made to address these concerns. It is not clear what specific concerns are to be addressed. However, a discussion document inviting comments will soon be published to facilitate public consultation.

SHARE BUYBACKS AND DIVIDEND STRIPPING

In 2017, anti-avoidance rules dealing with share buybacks and dividend stripping were revised. One such rule specified that anti-avoidance rules would override corporate reorganisation rules to prevent taxpayers from stripping dividends out of a target company, and thereby devaluing the company, before a reorganisation transaction. Government has recognised that these changes may affect some legitimate transactions and arrangements. Accordingly, it has proposed that the interaction of these anti-avoidance rules and some of the corporate reorganisation rules be reviewed. In addition, anti-avoidance
rules dealing with share buybacks and dividend stripping regarding preference shares should be clarified.

DEBT-FINANCED ACQUISITIONS OF CONTROLLING INTEREST IN AN OPERATING COMPANY

After the proposed suspension of intra-group transactions in 2012, a special interest deduction was introduced instead of allowing implementation of debt push-down structures. Companies can claim this deduction if they used debt funding to acquire a qualifying controlling interest in an operating company.

In 2015, the legislation was amended to prevent the abuse of this deduction. To qualify for this deduction, an operating company is now defined as a company where at least 80 per cent of its receipts and accruals constitute income for tax purposes. However, it has been recognised that amendments to the current provisions are needed to clarify when this test should be applied.

In addition, it has been proposed that the relevant legislation be reviewed to determine whether this test should be applied when an operating company transfers its business as a going concern to a company that forms part of the same group of companies as that operating company.

REVIEW OF VENTURE CAPITAL COMPANY RULES

Government’s venture capital companies tax incentive regime, introduced in 2008, has grown significantly over the past two years. The number of approved venture capital companies is currently 90 with total investments of R2.5 billion. However, administrative and technical issues are obstructing increased uptake. It has been proposed that the legislation be amended to address rules relating to the investment income threshold limitations in the qualifying company test, as well as when the controlled company test needs to be applied. The rules relating to the connected person test will also be reviewed, specifically the rule for retroactive withdrawal of venture capital company status.

VALUE-ADDED TAX

A VAT vendor can claim a deduction for VAT on taxable supplies that have to be written off. If the vendor cedes or sells the debt that has been written off on a non-recourse basis for an amount that is less than the amount owing, then the sale of the debt is exempt from VAT and the vendor is not required to make any adjustments to the previous VAT deduction. Government has noted that some vendors (such as collection agents or banks) that buy the book debt in terms of the abovementioned arrangement then attempt to claim a further VAT deduction if they write off all or part of this debt in future. This results in a double VAT deduction, which is against the intention of the legislation.

To prevent this double VAT deduction, it is proposed that the term “face value of a debt transferred” will be defined in the VAT Act. An amendment has been proposed to provide legal certainty that the members of a joint venture may also be jointly and severally liable for the VAT debts of that venture. Updated draft regulations prescribing foreign electronic services and supporting amendments to the VAT legislation have been published for public comment.

“Government’s view is that cryptocurrencies pose risks to the income tax system as they are extremely volatile, and their sustainability is uncertain.”

TAX TREATMENT OF CRYPTOCURRENCY TRANSACTIONS

Government’s view is that cryptocurrencies pose risks to the income tax system as they are extremely volatile, and their sustainability is uncertain. At the same time, the supply of cryptocurrency can cause administrative difficulties in the VAT system. To address these issues, it is proposed that the income tax and VAT legislation be amended.

NOTIFICATION OF COMMENCEMENT OF AN AUDIT

In a welcome move, it is proposed that a taxpayer be notified at the start of an audit to keep all parties informed.

CARBON TAX

Parliament is currently considering the draft Carbon Tax Bill and the Minster stated that the Act is to come into force from 1 January 2019 in order meet its nationally determined contributions under the 2015 Paris Agreement of the United Nations Framework Convention on Climate Change. Parliament has convened hearings following the release of the draft bill in December 2017.

EXCHANGE CONTROL PROPOSALS

Reforming loop structures

Loop structures take place when South Africans invest in South Africa via an entity in another country. Such structures may be set up for genuine reasons, for example, when the entity has investors from around the world. But sometimes these structures are set up to avoid tax. It is proposed that the loop structure provision is increased from 20 per cent to a maximum of 40 per cent for bona fide business investment, growth and expansion transactions. The current minimum requirement of 10 per cent is abolished. This applies to companies, including private equity funds, provided that the entity is a tax resident in South Africa. Loop structures above the prescribed threshold will require Reserve Bank approval with due consideration to transparency, tax, equivalent audit standards and governance.

Inward listings

In 2018, the National Treasury will release a comprehensive inward listings review paper, which will address various matters, including the standards of reporting and information provision, company track records, arms-length arrangements, valuation of the acquiring company, management arrangements, funding arrangements, deployment of listing proceeds, due diligence, audit history, stakeholder protection, better treatment of holders of securities, and confidence among market participants.

Review of significant and strategic transactions

To support cross-border investment and increase transparency, the National Treasury will release a paper later this year on a proposed policy framework for the review and approval of complex cross-border transactions.
The accountancy fraternity was up in arms when it was announced that the standard VAT rate was increased by 1% with effect from 1 April 2018. Their concerns related to the submissions of VAT returns for periods approaching the implementation date.

The VAT Act permits the Minister to announce changes in the VAT rate becoming effective from the date specified in that announcement, provided, that Parliament passes the legislation giving effect to the announcement. It is further observed that the VAT rate may change via an announcement by the Minister and such announcement must be made in Parliament but not restricted to Budget Day.

The purpose of this brief is to determine what the VAT implication would be during the transition of the VAT rate from 14% to 15% effective from 1 April 2018. The questions are as follows:

1) What are the VAT implications for transactions originating before the announcement on 21 February 2018; and,
2) What are the VAT implications for transactions originating before the implementation date 1 April 2018, but the services and goods are rendered or delivered after implementation date?

This discussion can only be pursued by identifying a few common transactions frequently undertaken by vendors (taxpayers).

Of course, the VAT Act is not silent on the VAT outcomes for transactions occurring during the period when a change in VAT rate is envisaged. The relevant section of the VAT Act was last applied almost 25 years ago when the VAT rate was changed from 10% to 14%. Hence, tax practitioners, understandably, tend to forget the existence of sections in the Act relating to the application of increases or decreases in the VAT rate.

It is only vendors under Category B (March/April), Category E (annual return) and most farmers registered under Category D VAT reporting periods, who will have transactions subject to the VAT at both the existing rate (14%) and new rate (15%).

**TRANSACTIONS IDENTIFIED**

**General remarks**

The general rule for time of supply for goods or services is deemed to take place at the time an invoice is issued by the supplier or the time any payment is received by the supplier, which ever time is earlier. This supply rule is still applicable but there are two specific rules regarding the application of the increased VAT rate. The effect of the first rule, is that, if a transaction was concluded before 1 April 2018, but the delivery of the goods or the performance of the service only takes place on or after 1 April 2018, then the following rules apply:

- Goods shall be deemed to be provided by the supplier when such good are delivered to the recipient, or made available for collection, and
- In the case of services, the rate applicable is the date when the services were physically performed.

**The supply of goods**

As per the abovementioned deeming provisions, goods delivered by a vendor before 1 April 2018, the applicable rate is 14% irrespective of the date of invoice or payment.
Therefore, a delivery note confirming the transfer of ownership of the good will is an essential document required in order to pay the output tax at 14%.

Please note that this rule does not apply to the sale of fixed property.

Rental agreement and progressive/periodic supply of goods

The rental agreement and progressive supply of goods which expires before 1 April 2018, the applicable rate is 14%. However, if the supply of goods/services expires after 1 April 2018, for example, December 2018, the value of the supply shall be based on fair apportionment. Hence the supply of goods relating to the period before 1 April 2018 will be at 14% and the supply of goods relating to the period after 1 April 2018 shall be at 15%.

Services

With references to the supply of services which are performed during a period that ends before 1 April 2018, the applicable rate is 14%. Electricity bills, supplied by a municipality are in monthly arrears, implying that the service were consumed in the month of March but the invoice will be issued in April 2018. Hence the VAT for this invoice will be at 14%. However, if the supply of or the performance of services ends after 1 April 2018, for example, December 2018, the value of the supply shall be based on fair apportionment. Hence the supply of services relating to the period before 1 April 2018 will be at 14% and the supply of services relating to the period after 1 April 2018 shall be at 15%.

The supplies to which this provision applies are:

- Rental agreements,
- Progressive/periodic supplies of the goods,
- Construction activities, and
- Services physically rendered over the period concerned.

Please note that this rule does not apply to fixed property.

Supply of goods or services after 21 February 2018 but before 1 April 2018

The discussion below refers to the second specific rule which is applicable when the VAT rate is increased. Section 67A(2) of the VAT Act deals, specifically with, the situation in which where an invoice or payment falls in a period after the date of announcement (in this situation 21 February 2018) of the increase in VAT rate, and before the date of change (in this situation 1 April 2018) of VAT rate, but the good or service is supplied for more than 21 days after 1 April 2018 (meaning the supply of good or service well beyond 23 April 2018 inclusive, an example is the supply of commercial accommodation, such as office block), the applicable VAT rate will be 15%.

However, this rule will not apply in the following situations:

- Where payments are traditionally made in advance or where invoices are issued in advanced. Practical examples, of such situations, where payments are made in advance could the indemnity insurance policy, maintenance contracts and when SAIPA issue invoices at the beginning of 2018 in respect of membership fees, and
- Whereby, written contracts are legally concluded before 1 April 2018 and the price was stated in the legally valid contract. This applies to the sale of fixed property consisting of dwelling and together with land on which it is erected. It also includes share block companies.

Please note that the rate of tax applicable is at the date on which such agreement was concluded. The VAT consequence does not depend on when the building of the dwelling commenced or when the building of the dwelling was completed.

Lay-by sales

With reference to lay-by sales whereby the goods sold are for a consideration not exceeding R10 000 and all the following must be applicable before 1 April 2018:

- Deposit is received,
- Agreement is concluded, and the
- The amount for the lay-by good was paid by the supplier.

Then only will the the applicable VAT rate will be the date on which such agreement is concluded that is 14%.

Credit/debit notes

Recall that credit notes are issued by a supplier after a tax invoice was issued and the consideration for the supply is reduced (for example, when faulty goods are returned to a supplier). A vendor that issues a credit note is required to make an adjustment either to input tax or output tax. The vendor receiving a credit note must make an adjustment to output tax. These adjustments must be accounted for in the VAT return for the tax period in which the decrease in consideration occurs, that is, in the tax period in which the credit note is issued.

A vendor that issues a debit note is required to make an adjustment to output tax. The vendor receiving a debit note must make an adjustment to input tax. These adjustments must be accounted for in the VAT return for the tax period in which the increase in consideration occurs, that is, in the tax period in which the debit note is issued by the vendor. However, it is likely that this credit/debit will be issued long after 1 April 2018, that is, when the new VAT rate of 15% is applicable. It is very likely that these credit/debit notes refer to transactions occurred when the VAT rate was 14%. So, although these notes were issued after 1 April 2018, the adjustment must be made at rates applicable to the original supply.

Conclusion

It is hoped that this brief will assist vendors in applying the correct VAT rate during this transition from 14% to 15% with effect from 1 April 2018. The tax fraction with effect from 1 April 2018 will be 15/115. Hence, for every R100 spent on non-zerated items, taxpayers will pay an additional 76 cents.
Any amount due to SARS represents a liability that places a responsibility on the taxpayer to fulfil its financial obligations, as with any other creditor. In practice, taxpayers treat obligations with SARS as a long-term creditor with no fixed period of payment – only paying the outstanding debt when surplus cash is available. SARS, however, expects taxpayers to give the same priority to tax obligations as they give to the other creditors.

Like all business entities, SARS will perform a risk assessment on the recoverability of the tax-debt. SARS will consider the tax debtor’s individual circumstances and compliance history to determine the financial status of the taxpayer. For example, the tax debtor’s history in lodging correct returns and documents and paying taxes on time are considered favourably by SARS when pursuing a tax-debt recovery.

If a taxpayer cannot pay a tax-debt, or if it would be financially onerous on SARS to pursue a tax-debt, the provisions dealing with the compromise of a tax-debt becomes relevant and the tax practitioner, on behalf of the taxpayer, could apply for a compromise of a tax-debt.

Thereafter, SARS will decide, whether, to accept the application for the compromise, or to write-off the debt in its entirety. A compromise is a partial write-off a tax-debt. It is a part-payment of the debt usually expressed as cents in a rand. A write-off of a debt is a complete eradication of the outstanding tax-debt. It is further noted that an application for a compromise of a tax-debt does not always lead to a complete write-off of a tax-debt.
Both the compromise of a tax-debt and a complete write-off of a debt may be either of a temporary or of a permanent nature.

CONDITIONS FOR TABLING AN APPLICATION FOR A COMPROMISE

It is important to note that the application for a compromise of a tax-debt may only be tabled if the liability to pay the debt is not in dispute\(^1\). So, tax practitioners, this brief becomes relevant only if the taxpayer accepts that the tax-debt outstanding is payable, but the taxpayer is not able to settle the amount because of his/her financial position. The taxpayer could have previously contested the tax liability by observing the rules of dispute resolution. However, at the time of tabling an application for a compromise, there must be no dispute on the amount of tax-debt outstanding. The taxpayer would have objected to an assessment previously but on the eve of tabling an application for a compromise, there is unanimous acceptance of the tax liability. The request for a compromise may only be tabled if the tax-debt is finalised and the taxpayer agrees with the amount due and does not intend to dispute it.

COMPROMISE OF A TAX-DEBT

The tabling of an application for a compromise of a tax-debt

The tax practitioner, on behalf of a taxpayer, applies for a compromise of a tax-debt. The taxpayer is expected to submit a detailed statement disclosing the following:

1. The assets and liabilities reflecting their current fair market value,
2. The amounts received by or accrued to, and expenditure incurred by, during the 12 months immediately preceding the request,
3. The assets which have been disposed of in the preceding three years, or such longer period as a senior SARS official deems appropriate, together with their value, the consideration received or accrued, the identity of the person who acquired the assets and the relationship between the taxpayer and the person who acquired the assets, if any (this is essentially a test for cash/asset stripping),
4. Future interests in any assets, whether certain or contingent or subject to the exercise of a discretionary power by another person (examine if conditional rights on assets not included in first point above),
5. The assets over which the taxpayer either alone or with other persons, has a direct or indirect power of appointment or disposal, whether as trustee or otherwise (test whether transactions where undertaken at arms-length),
6. Details of any connected person in relation to the taxpayer.
7. Present sources and level of income and the anticipated sources and level of income for the next three years, with an outline of the taxpayer's financial plans; and (budgets, forecasts and cash budgets), and
8. Reasons for seeking a compromise.

In addition, the taxpayer must:

1. Supply evidence supporting the claims for not being able to make payment of the full amount of the tax-debt, and
2. Testify that the information provided in the application is accurate and complete.

It is further noted that only a senior SARS official may request additional information.

Tax practitioners, acting on behalf of taxpayers, must submit the information justifying the claims for not being able to pay the full amount of the tax-debt.

Circumstances in which SARS would not compromise a tax-debt

A senior SARS official may not compromise any amount of a tax-debt if the taxpayer:

1. Was party to an agreement with SARS to compromise an amount of tax-debt within the period of three years immediately before the request for the compromise,
2. Tax affairs (other than the outstanding tax-debt) are not up to date,
3. Another creditor has communicated its intention to initiate or has initiated liquidation or sequestration proceedings,
4. The compromise will prejudice other creditors (unless the affected creditors consent to the compromise) or if other creditors will be placed in a position of advantage relative to SARS,
5. It may adversely affect broader taxpayer compliance, or
6. Is a company or a trust and SARS has not first explored action against or recovery from the personal assets of the persons (third parties) who may be liable for the debt.

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Procedure for compromising a tax-debt

A senior SARS official and the taxpayer must sign a compromise agreement thereby giving effect to the compromise of the tax-debt. The agreement\(^2\) must:

- State the amount payable by the taxpayer in full satisfaction of the debt,
- Disclose an undertaking by SARS not to pursue recovery of the balance of the tax-debt, and
- The conditions subject to which the tax-debt is compromised by SARS.

The above conditions may include a requirement that the taxpayer must:

- Comply with subsequent obligations imposed in terms of a tax Act,
- Pay the tax-debt in the manner prescribed by SARS, or
- Give up specified existing or future tax benefits, such as carryovers of losses, deductions, credits and rebates.

If a taxpayer, hypothetically, owes SARS R2 000 000 and the agreement states that the taxpayer must pay an amount of R250 000 in full settlement of the debt, the agreement would also stipulate a time-frame within which the R250 000 should be paid. If the taxpayer adheres to these conditions then SARS must agree to waive and not recover the outstanding debt of R1 750 000 (R2m – R250 000).

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\(^1\) Section 201 of the Tax Administration Act 28 of 2011
\(^2\) Section 194 of the Tax Administration Act 28 of 2011
\(^3\)Section 204 of the Tax Administration Act 28 of 2011.
“A temporary write-off is a mere suspension of the recovery of a debt, and the debt may still be recoverable during the prescription period.”

Compromise of a debt: temporary or permanent

It is possible that a compromise agreement would include a clause stating that the taxpayer must comply with his/her future obligations imposed under a tax act. Failure to promptly comply with a tax act in the future could result in the permanent compromise of a tax-debt being reduced to a temporary compromise. SARS could claim the outstanding tax-debt of (R1 750 000 in our example) if the taxpayer fails to adhere to any tax obligations in the future.

SARS not bound by compromise of tax-debt

There are circumstances under which SARS will not be bound by a compromise agreement. These are:

- When the taxpayer fails to disclose a material fact relating to the compromise,
- Taxpayer supplies materially incorrect information, or
- Taxpayer fails to honour a condition listed in the compromise agreement.

WRITE-OFF OF TAX-DEBT

Whilst SARS is mandated to collect all tax-debt in terms of the South African Revenue Service Act 34 of 1997, there are circumstances under which SARS may take a decision to write-off a tax-debt and consequently not to pursue its collection. Tax-debt may be written-off, temporarily or permanently, when a debt is irrecoverable and the effort and cost of pursuing it is uneconomical to SARS or it is regarded as being a legal impossibility.

Temporary write-off of debt

A temporary write-off is a mere suspension of the recovery of a debt, and the debt may still be recoverable during the prescription period. This period, under the Act, will be 15 years from the date a tax-debt comes into existence i.e. from the date of assessment of tax, or the date of a decision that is subject to objection and appeal giving rise to a tax liability, becomes final i.e. when a taxpayer fails to pay tax by the due date.

Only a senior SARS official may authorise a temporary write-off of an amount of tax-debt whilst the taxpayer (a debtor in this situation) is subject to business rescue proceedings as per the Companies Act. Section 195(1)(b) of the Tax Administration Act, stipulates that whilst SARS is a party to the business rescue agreement, it cannot recover the tax outstanding from a taxpayer who is in business rescue since the payment of its debt is suspended by operation of law. SARS has agreed to suspend or freeze the repayment of debt as per the agreement of creditors.

SARS’ status as a creditor during an approved business rescue is no different from any other concurrent creditor of the company.

However, in situation of insolvency, SARS as a creditor is afforded preferential status. If the taxpayer is insolvent, then SARS will be paid after the secured creditors and employees who have claims against the insolvent estate. In other words, SARS receives payment before a company’s creditors who do not have security (concurrent creditors).

The decision to write-off a tax-debt is made by a senior SARS official and it is not initiated by the taxpayer. If the taxpayer’s circumstances changes and SARS consequently hold a view that it is economical to collect the debt, the decision to temporary write-off the tax-debt can be withdrawn by SARS.

SARS’ could consider the following factors in determining whether a debt is uneconomical to pursue.

<table>
<thead>
<tr>
<th>Act</th>
<th>Commentary</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The amount of the tax-debt</td>
<td>The debts must be compared in relation to the cost of recovery to determine the cost benefit of pursuing the matter</td>
</tr>
<tr>
<td>2. The length of time that the tax-debt has been outstanding</td>
<td>The time the debt is outstanding as well as the response of the taxpayer to SARS communication will influence how the matter will be pursued</td>
</tr>
<tr>
<td>3. The steps taken to date to recover the tax-debt and the costs involved in those steps, including steps taken to locate or trace the debtor</td>
<td></td>
</tr>
<tr>
<td>4. The likely costs of continuing action to recover the tax-debt and the anticipated return from that action, including the likely recovery of costs that may be awarded to SARS</td>
<td>An obvious reference to the lifestyle of the taxpayer. A taxpayer should not have a wasteful luxury expenses whilst pleading poverty to SARS</td>
</tr>
<tr>
<td>5. The likely costs of continuing action to recover the tax-debt and the anticipated return from that action, including the likely recovery of costs that may be awarded to SARS</td>
<td></td>
</tr>
<tr>
<td>6. Any other information available about the recoverability of the tax-debt</td>
<td>In practice, it is noted that the cost to recover the tax-debt cannot be included in the outstanding tax-debt.</td>
</tr>
</tbody>
</table>

1 Section 99 of the Tax Administration Act 28 of 2011.
2 Section 145(4)(b) of the Companies Act 71 of 2008 and tax case law SARS vs Beginsel NO (case number 15080, 31 October 2012).
3 Section 99 of the Insolvency Act No 24 of 1936. Preference in regard to certain statutory obligations.
4 Section 196 of the Tax Administration Act 28 of 2011.
Permanent write-off of debt
A permanent write-off is made by a senior SARS official when it is an integral part of a compromise or if the tax-debt is irrecoverable by law. So, what is tax-debt irrecoverable at law? This can best be explained by section 198 of the Tax Administration Act. It reads as follows:

A tax-debt is irrecoverable at law if:
1. It cannot be recovered by action and judgment of a court, or
2. It is owed by a taxpayer/debtor that is in liquidation or sequestration and it represents the balance outstanding after notice is given by the liquidator or trustee that no further dividend is to be paid or a final dividend has been paid to the creditors of the estate, or
3. It is owed by a taxpayer/debtor that is subject to a business rescue plan referred to in Part D of Chapter 6 of the ‘Companies Act’8, to the extent that it is not enforceable in terms of section 154 of that Act.

A tax-debt is not irrecoverable at law if SARS has not first explored action against or recovery from the assets of the persons who may be liable for the debt under Part D of Chapter 11.

Part D of Chapter 11 of the Tax Administration Act refers the collection of tax-debt from third parties. Thus, it is imperative that SARS must investigate whether it can recover the tax-debt from the taxpayer via the third parties associated with the defaulting taxpayer. SARS would investigate (as per section 180 of the Tax Administration Act) whether the person (or financial manager) liable for the payment of the outstanding tax-debt of the taxpayer was negligent or was fraudulent, giving rise to the tax-debt. SARS could also attempt to recover the tax from the person who consciously dissipated the taxpayer’s asset to obstruct the collection of a tax-debt of the taxpayer (section 183 of the Tax Administration Act.).

Procedure for writing-off the tax-debt
A SARS official must follow four steps before he/she can decide to write-off a tax-debt. Before deciding to ‘write-off’ a tax-debt, a senior SARS official must:
1. Determine whether there are any other tax-debts owing to SARS by the taxpayer (debtor),
2. Reconcile amounts owed by and to the taxpayer (debtor), including penalties, interest and costs,
3. Obtain a breakdown of the tax-debt and the periods to which the outstanding amounts relate, and
4. Document the history of the recovery process and the reasons for deciding to ‘write-off’ the tax-debt.

CONCLUSION
It is imperative for tax practitioners to note that although the discussion appears tedious and laborious, many taxpayers have been successful in obtaining a permanent compromise or a permanent write-off of their tax-debts. The successful applicant is the one who discloses all material facts in relation to the compromise of the debt and SARS is of the view that no significant information is withheld by the taxpayer.

It is likely that a taxpayer may have tax-debts outstanding embracing a variety of taxes, such as, income tax, PAYE, VAT, SDL, and UIF. SARS, however, may award compromises or write-offs on taxes such as PAYE, VAT, SDL and UIF outstanding, although the taxpayer seeking the compromise is an agent collecting these taxes on behalf of SARS. However, interest and penalties, arising from these taxes may be waived by SARS as part of the write-off or compromise by SARS. Finally, tax legislations do not specify which taxes are a candidate for a write-off or compromise of a tax-debt.

References
Companies Act 71 of 2008 (updated May 201)
Income Tax Act 58 of 1962, as amended
Tax Administration Act 28 of 2011

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A senior SARS official must decide whether to support a business rescue plan dealt with in Part D of Chapter 6 of the Companies Act or a compromise made to creditors under section 155 of the Companies Act. This section of the Companies Act requires a company that is being wounded to make a proposal of its financial obligations to all its creditors.
Considering the various legislative changes to Trusts over the past year, a lot of speculation has emerged on the future of Trusts as an estate planning tool.

Although Trusts have been placed under the spotlight, the purpose of the Trust and the circumstances of each client should be the determining factors in deciding to create a Trust.

When considering the appropriateness of a Trust, the following factors are considered to determine the suitability thereof:

1. Growth Pegging of Assets
2. Protection of Assets from Creditors
3. Tax Implications
4. Circumstances of Each Person

If a Trust, however, taking regard to recent changes in terms of Section 7C of the Income Tax Act and the above mentioned factors and costs, do not meet your expectations, then consideration of the use of a retirement annuity might just tick all your boxes. Retirement Annuities (RA) have become a popular estate planning tool because of, not only, the tax savings opportunities, but also the benefits of using an RA to achieve growth outside of your estate.

Albeit the fact that both a Trust and RA have a place, considering the circumstances of each person, it is worthwhile to mention the benefits of a RA as an alternative to the use of a Trust. To further argue the popularity of the RA in recent years, an increased tax deduction for retirement savings from 15% to 27.5%, has only made this planning tool more attractive as a substitute for trusts.

Take table 1 into account to compare the similarities between the two vehicles. Except for the significant difference in structuring of payment, the similarities are uncanny.

If we take the table above into account, the advantages of an RA when compared to that of the Trust confirm that should a trust not be the best suited vehicle, an RA can be the second best, if not, in certain circumstances, the best replacement for your specific purpose.

The Minister of Finance, in his 2018 Budget Speech, announced a long-anticipated amendment to the rate of estate duty. With effect from the 1 of March 2018, estates with a net asset value of less than R30 000 000 will be subject to estate duty at the rate of 20%, and for those estates with a value greater than R30 000 000, the rate increases to 25%. For those persons who fall into the latter category, it may be prudent to take advantage of RAs to ensure that, as far as possible and considering annual limits applicable to RAs, your dutiable estate falls below the R30 000 000 bracket, so as to reduce your estate duty liability while still ensuring that your dependents are financially provided for.

There isn’t a one size fits all answer to the ongoing questions around the future or suitability of trusts, but it might be reassuring to know that there are other options available to suit your specific circumstances.
<table>
<thead>
<tr>
<th>Factors</th>
<th>Trust</th>
<th>Retirement Annuity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Growth pegging</td>
<td>Growth takes place within the Trust.</td>
<td>Growth of assets takes place within the RA.</td>
</tr>
<tr>
<td>Protection from creditors</td>
<td>Separate legal entity, thus protected from creditors.</td>
<td>Protection from creditors in terms of Section 37A and B of the Pension Funds Act.</td>
</tr>
<tr>
<td>Tax implications when assets are placed in the vehicle</td>
<td>1. Subject to Donations Tax at 20% for donations less than R30m or 25% for donations greater than R30m in any tax year, or 2. Capital gains Tax Implications when sold to the Trust, or 3. Interest at the official rate on funds loaned to the Trust.</td>
<td>Contributions qualify for an income tax deduction: Limited to the higher of 27.5% of remuneration or taxable income, subject to an annual ceiling of R350 000.</td>
</tr>
<tr>
<td>Tax implications on income received within the vehicle</td>
<td>1. Taxed according to the conduit principle at marginal rate of beneficiary; 2. Taxed within the Trust at 45%.</td>
<td>Taxed within the Four Funds Approach at 0%.</td>
</tr>
<tr>
<td>Estate Duty implications</td>
<td>Separate legal entity – thus no estate duty implications.</td>
<td>Does not form part of your estate – thus no estate duty implications.</td>
</tr>
<tr>
<td>Liquidity</td>
<td>Discretion of Trustees in terms of the Trust Deed to distribute income/capital to beneficiaries.</td>
<td>1. Funds are only available at death, retirement, retrenchment, 2. At death, the Trustees of the Fund have a discretion in terms of section 37C of the Pension Funds Act of distribution of funds to dependents – thus beneficiary nomination not binding.</td>
</tr>
</tbody>
</table>
Are pension funds, PBOs and universities exempt from all taxes?

Magda Snyckers and Sarah Gama, ENS Africa

The South African Income Tax Act, 1962 (the “Income Tax Act”) contains exemptions from income tax that apply to institutions such as pension funds, certain universities and non-profit public benefit organisations, with an altruistic or philanthropic intent.

More specifically, a non-profit organisation may apply to the South African Revenue Service (SARS) to be registered as a Public Benefit Organisation (PBO) in terms of section 30 of the Income Tax Act if it meets certain specified requirements. If the requirements of section 10(1)(cN) of the Income Tax Act are met by the PBO then the accruals and receipts of such PBO are exempt from income tax.

Furthermore, the receipts and accruals of a university, of which the principal object is the conducting of scientific, technical or industrial research, which are approved by SARS and comply with the requirements of section 10(1)(cA), are exempt from income tax.

In addition, the receipts and accruals of a “pension fund” (as defined in the Income Tax Act) are exempt in terms of section 10(1)(d) of the Income Tax Act.

Tax exemptions are not limited to income tax – pension funds, PBOs and universities may also qualify for an exemption from donations tax, dividends tax and capital gains tax (all levied in terms of the Income Tax Act).

However, to the extent that tax-exempt institutions acquire shares, the tax position is slightly different. Securities transfer tax (STT) is levied upon the transfer of shares that are issued by South African incorporated companies or foreign companies that are listed on a South African exchange. These provisions are set out in the Securities Transfer Tax Act, 2007 (the STT Act). STT is currently levied at a rate of 0.25% on the taxable amount of every transfer of a security. In the context of the acquisition of listed shares, the STT liability is that of the member (ie, stock broker) or central securities depository participant from or through whom the shares are acquired. However, the STT Act provides that the tax may be recovered from the person to whom the shares are transferred. A pension fund, PBO or university may, absent an applicable exemption, effectively suffer STT upon the acquisition of shares.

Section 8 of the STT Act contains certain exemptions from STT. In particular, section 8(1)(d) of the STT Act provides that STT is not payable in respect of a transfer of a security if the security is transferred to a PBO that is exempt from income tax in terms of section 10(1)(cN) of the Income Tax Act, if the tax thereon would be legally payable and borne by that PBO. A similar exemption is provided for in section 8(1)(e) of the STT Act for an institution that is exempt from tax in terms of section 10(1)(cA)(i) of the Income Tax Act.

Therefore, registered PBOs and approved universities that are exempt from the payment of income tax in terms of sections 10(1)(cN) or 10(1)(cA)(i) of the Income Tax Act are also exempt from STT in terms of sections 8(1)(d) and (e) of the STT Act.

However, it is noted that a pension fund is not entitled to a similar STT exemption and it is not clear on what basis a pension fund has not been afforded the same STT relief.
Extensive Reform for Suppliers of Electronic Services

Charles de Wet: Head of Indirect Tax, PwC Africa

Proposed amendments expanding the scope of electronic services resulting in a VAT registration liability for foreign suppliers

In 2014 the Value-Added Tax Act, 89 of 1991 was amended to include in the definition of “enterprise” the supply of “electronic services” by a non-resident to a recipient in South Africa. Accordingly, foreign suppliers of such electronic services are required to register for VAT where supplies made exceeded R50 000.

The regulation defining such “electronic services” included the provision of certain educational services, games and games of chance, internet-based auction services, e-books, audio-visual content, still images, music and various subscription services, but excluded services such as cloud-computing and software, which are often supplied in the business-to-business (B2B) environment. During the 2017 Budget Review it was announced that regulations prescribing foreign electronic services subject to VAT would be broadened to include cloud computing and other online services.

On 21 February 2018 the Minister of Finance published draft regulations (Draft Regulation) as well as a draft explanatory memorandum to propose changes in the VAT Act which, if enacted, would result in a significant overhaul of the VAT treatment electronic services.

The proposed amendments in essence:

• Repeal the current ESS Regulation and provide for the deletion of all the specific categories of electronic services previously stated, and
• Now defines “electronic services” broadly to include any service supplied by means of an electronic agent, electronic communication or the internet, excluding the supply of telecommunications services as defined and the supply of educational services by a person regulated by an educational authority in a foreign country.

This new definition is sufficiently broad to require that SA VAT is accounted by the foreign supplier on many services that were not previously in scope. These include:

• Supplies of software, anti-virus and cloud-computing,
• Administrative services in a corporate group environment delivered electronically,
• Online advertising,
• Broadcasting,
• Access to databases and information systems,
• Any consulting services delivered online, including on a pay by use basis,
• Training via e-Learns, and
• Monetising electronic agents, electronic communication or websites.

The result of the amendment is so broad that possibly every supply of services by means of an electronic agent, electronic communication or the internet, except for telecommunications and educational services, for a consideration, would fall within the ambit of the Draft Regulation and could potentially require foreign suppliers to register and account for VAT to the South African Revenue Service (SARS).

It is significant that the SA VAT Act does not contain any specific distinction between Business to Business (B2B) supplies and supplies made directly to South African consumers (B2C). Internationally this distinction often applies and results in a lower compliance burden on foreign business. Excluding B2B supplies also reduces the compliance burden for SARS as auditing, collecting and enforcing VAT requirements cross-border is a difficult and costly exercise for Revenue Authorities with no ultimate revenue gain.

A registration threshold of R50 000 in any consecutive period of 12 months is, when converted to foreign currency (approximately $4 300, €3 500 or £3 000), very relatively low. This ignores the costly impact of compliance cost that such a low registration threshold has on non-resident businesses. This threshold is also substantially lower than the R1 million threshold that applies to resident business and goes against the principle of neutrality that is included in the OECD International VAT guidelines.

It has been proposed that intermediaries and platforms be allowed to register as vendors and to account for the VAT on sales made through such platforms, provided that the platform/intermediary facilitates the supply and is responsible for issuing the invoice and collection of the payment. This may assist to alleviate the administrative burden that may be caused by increasing the number of electronic services suppliers that will have to register as vendors.

If enacted, the proposed amendments will become effective on 1 October 2018.
A year ago taxpayers were startled to learn that shareholders had to pay a higher dividend tax rate of 20% – not with effect from 1 March 2017 (the commencement date of the new tax year for individuals) but rather with immediate effect, that is, seconds after the Minister of Finance announced the new rate on 22 February 2017, in the famous National Assembly, of the South African Parliament, thereby implying that the change was implemented for the 2017 year of assessment.

Many taxpayers cried foul arguing that the immediate implementation of the new higher tax rate of 20% is irregular and certainly a behaviour not displayed by any previous minister of finance in South Africa. Generally, taxpayers have an expectation that new tax rates announced on Budget Day become effective on the first day of the new tax-year immediately after Budget Day (1 March for individuals and the first day of the new financial year for companies). Historically, this has not been the case, not only in South Africa but in many of the modern nations of the world as well.

This article focuses briefly on the following:
- Validity of the immediacy of the new dividend tax rate,
- Have other finance ministers ever instituted new tax rules to be implemented with almost immediate effect?
- The Constitutional implications of the new dividend withholding tax rules;
- Brief review of existing tax legislation;
- The experience of other revenue authorities in the world regarding the immediate implementation of new tax rules; and
- Reflecting on past dividend tax policies in South Africa.

The Rates and Monetary Amounts Act 14 of 2017 is explicit. The relevant section of this Act reads as follows: The new dividend tax rate of 20% comes into operation on 22 February 2017 and applies in respect of any dividend paid on or after that date. It is apparent that the immediate implementation of the legislation would minimise the opportunities of businesses and shareholders to implement schemes that will reduce the dividend tax burden to shareholder but risk the liquidity of the business.
It is obvious that if the new dividend tax rate were to become effective in the not-too-distant future, the nation will witness an avalanche of dividend declarations and payments of dividend withholding tax on the ‘eve’ of the implementation date. The scheme by citizens is obviously understandable and any brawl between the national fiscus and taxpayers is a natural order of occurrences within a democracy, with both sides doing what it takes to win the maximum turf. Therefore, a balance must be struck between the rights of the taxpayer and the national fiscus. Taxpayers’ always have rights; taxpayers’ rights are never negotiable.

Another implication of this change in legislation is that the increase in the dividend tax rate removes tax avoidance opportunities, for example, when high income earners may choose to earn their salaries in the form of dividends and, consequently, escape the new income tax brackets for the super high-income earners.

**HAVE OTHER SOUTH AFRICAN FINANCE MINISTERS EVER INSTITUTED NEW TAX RULES TO BE IMPLEMENTED WITH ALMOST IMMEDIATE EFFECT?**

It is noted that tax legislations have in the past also been amended at short notice during non-Budget Day events. The case of non-payment of STC within a group of resident companies is a good example. An erroneous view was held that this non-payment of STC was also extended to a non-resident (foreign) company, which was also a member of the same group of South African companies. The then Minister of Finance effected a change in tax legislation on the date of announcement on 26 August 2004. There was little opposition from industry because it was well-understood that foreign companies could not also benefit from the STC relief just as local companies.

Tax proposals on sin products were also tabled on Budget Day and became effective at 2.32pm on that day. Citizens have elected to remain silent on this issue only because of their views on the influence of these sins products on society.

**THE CONSTITUTIONALITY OF THE IMMEDIATE IMPLEMENTATION OF THE NEW TAX RULES**

The Constitutional Court in South Africa would also approve the actions of the revenue authority largely because it is aware that many irregular schemes would surface if the changes to the tax legislation are not implemented with immediate effect. It is

the function of revenue authority to ascertain taxable income and have wide-ranging enquiry tools to do so. The immediate implementation of a new tax rule is an example of a wide-ranging-tool. (Australian Case: (Industrial Equity LTD v Deputy Commissioner of Taxation (1990) 170 CLR 649).

**BRIEF REVIEW OF EXISTING TAX LEGISLATION**

Interrogation of The Income Tax Act 58 of 1962, The Transfer Duty Act 40 of 1949 and the Securities Transfer Tax Act 25 of 2007, provides that where the Minister announces that different rates apply in relations to these Acts, those changes in the law will apply from the date stated or determined by the Minister in that announcement (implying that announcement to changes in rates could apply are not limited to announcement on Budget Day only – as was the case with STC in 2004). The effective date of the change in the law could therefore be from the date of the announcement itself (immediate), or it could apply from a date specified in that announcement (as the case may be). The legislation giving effect to those changes must be passed within a period of 12 months from the date that the change in the law was intended to come into effect.

**THE EXPERIENCE OF OTHER REVENUE AUTHORITIES IN THE WORLD**

It appears that revenue authorities everywhere in the world institute tax changes within almost immediate effect. However, we need to cite the example from Great Britain to demonstrate this point. In 1968 the Provisional Collection of Taxes Act was passed in Britain that allowed changes to, and continuation of, existing proposed changes in their Budget Statement to be immediately effective.

**REFLECTING ON PAST DIVIDEND TAX POLICIES IN SOUTH AFRICA**

South Africa previously had two dividend taxes operating simultaneously, namely, the non-resident shareholder tax (NRST) and the undistributed profit tax (UPT). Originally (in 1941), non-residents had to pay 5% withholding tax on South African sourced dividends. This was eventually increased to 15%.

The UPT was a tax on the profits of the company that was not distributed to its shareholders. In other words, the undistributed profits of a private company were deemed as dividends in the hands of the shareholders. As a result, the company was penalised for not declaring dividends. UPT was payable by companies at the rate of 33.3% on the amount by which the distributable profit of a company exceeded the dividends distributed during the specified period relating to the year of assessment. Both these taxes lasted almost 50 years and were dismantled in the 1990s. Currently, South African companies do not pay dividend tax on the retained earnings (undistributed profit) of companies.

Our first impression of the new dividend tax rules may be hostile or even antagonistic, but after taking into consideration the aforementioned discussion, the changes to the dividend withholding tax rates, although substantial, is not as brutal as past dividend tax regimes. In addition, the immediacy, in which the dividend tax rate was applied, is not unconstitutional. We can expected that the practice of immediate implementation, that is, on Budget Day, to be repeated in future as well and it is not only restricted to dividend tax.

**References:**

SARS guide on: Guide for Tax Rates/Duties/Levies (Issue 12)

1 Government Gazette: 14 December 2017, Vol 630 Number 41323
2 Section 11(2),
3 Section 5,
4 Section 2 (3),
5 Section 2 (3),
7 SARS guide on: Guide for Tax Rates/Duties/Levies (Issue 12) page 3
In this time of busy schedules of individuals and businesses that tend to turn complex, Tax Practitioners are needed to look into the tax affairs of taxpayers. Section 240 of the Tax Administration Act was also implemented in order for Tax Practitioners to be regulated by SARS, requiring them to first register with a Recognised Controlling Body before they can register as Tax Practitioner with SARS. For a Tax Practitioner to do business with SARS on behalf of his client, a Power of Attorney (POA) is required, a document which gives the tax practitioner the authority to act as such.

The three types of Power of Attorneys are found on the SARS website are:
- SPPOA – Special Power of Attorney
- TPPOA – Special Power of Attorney to Tax Practitioner
- ASPOA – Authority on Special Power of Attorney by Tax Practitioner

The characteristics of this legal document are that it should:
- Be completed in full by the taxpayer,
- Be signed by both the taxpayer and the Tax Practitioner,
- Indicate the tax products that the Tax Practitioner is given mandate to deal with,
- Be on a template as provided by SARS,
- If not on a SARS template, have a letterhead with logo of the business, and
- Be produced at each interaction with SARS on behalf of the taxpayer.

All these characteristics are important for this piece of document to allow and give the Tax Practitioner the authority to deal with the tax affairs of the taxpayer. However, it has been an observation that some Tax Practitioners complete the Power of Attorney themselves, and then get any person to sign on behalf of the taxpayer. The persons who signs may be a friend of the Practitioner, family or worse still, a fellow Tax Practitioner who do not even know the taxpayer, let alone signing this document for that taxpayer.

The crux of the matter here is that any signature on the POA that does not belong to the taxpayer makes the document null and void, and this should not be used for interaction with SARS on behalf of that taxpayer. This is in fact an integrity issue on the part of the Tax Practitioner and the Practitioner should ensure that the signature on the POA is that of the taxpayer. Doing things the correct way by using a duly signed Power of Attorney will prevent a whole lot of issues should anything go wrong with the tax affairs of the taxpayer. As technology and systems improve, signatures will be able to be verified on the system, but until then, Tax Practitioners should ensure that the POA’s that they present to SARS have indeed been signed by the real taxpayer.

In conclusion, let us go back to basics and let a duly signed Power of Attorney be used to interact with SARS on behalf of taxpayers. It is the right thing to do.

The crux of the matter here is that any signature on the POA that does not belong to the taxpayer makes the document null and void, and this should not be used for interaction with SARS on behalf of that taxpayer.
It is widely known that taxpayers are not aware of their rights when aggrieved by a SARS decision. But the days of not knowing your rights as taxpayers are over. Thanks to Beric Croome and his wife, Judy, who recently released a holy script for taxpayers—appropriately titled Street Smart Taxpayers: A practical guide to your rights in South Africa.


The book has appreciable narratives on the following:
- Seeking help as a taxpayer,
- What are your rights as a taxpayer,
- It is noted that the SARS Service Charter has literally, disappeared from SARS website. The books remind us what were the key elements of 2002 and 2005 edition of Service Charter. The key element of the Service Charter is completely removed from the current website. The narrative is a credible attempt to remind the reader of the key provisions of the missing Service Charter. (see chapter 14 as well),
- Taxpayer rights to property,
- Set-off of tax-debts and refunds,
- Interest on delayed funds,
- Retrospective tax amendments,
- Taxpayers’ rights to equality,
- Denial of deduction to salaried employees,
- Child-care cost for working parents,
- Trust with non-residents beneficiaries,
- A very clear and up-to-date discussion on legal professional privilege (chapter 9),
- Taxpayer rights to privacy,
- Tips when confronted with a tax audit: what must a taxpayer remember if SARS auditors arrive at your doorstep,
- Taxpayers’ Rights to administrative justice,
- Remedies available to an aggrieved taxpayer,
- Taxpayers’ Rights to remain silent,
- Taxpayers’ Rights to access the courts,
- The ethics of paying tax (chapter 15) with a commentary by various religious denominations and the paying of tax.

The chapters are appropriately interlude with practical issues confronted by taxpayers under the headings: Taxpayers’ troubles, Did you know?, Columns. More interestingly, each chapter cites relevant quotations by various court judges and prominent taxpayers. Only two are reproduced here:

1) Freedom from taxation is not a fundamental right, nothing protects the subject against taxation, not even death – J H Conradie, Judge of the high court in South Africa.
2) On tax and slavery: I sit here before you to figure out how to pay a tax-debt – if that’s not like enough to slavery, I don’t know. Lauryn Hill. A US Jazz artist (also performed in the Cape Town International Jazz festival before being charged in the US for tax evasion).

Surprising, the book also makes brief comments on the income tax implication of paying lobola.

Beric and Judy are quite unapologetic by arguing that taxpayers’ rights are specie of human rights. The procedure to table objections and appeal as per the Tax Administration Act, the SARS Complaint Management Office (CMO) and the Tax Ombud office are not the only vehicles available to enforce taxpayers’ rights. Taxpayers’ rights can be enforced by reference to the following:
- Bill of Rights as enacted in the country’s Constitution,
- the enactment of the Promotion of Access to Information Act (PAIA – chapter 10), and
- the Promotion of Administrative Justice act (PAJA) (chapter 11)

A SARS tax assessment (for example) to a taxpayer constitutes administrative action. Consequently, if the Tax Ombud does not provide favourable results, the taxpayer could resort to the legal remedy under PAJA. This requires the matter to be raised in the expensive High Court, the Public Protector, and the South African Human Rights Commission.

Taxpayers are highly indebted to the authors of this book.
Broad-Based Black Economic Empowerment (B-BBEE) is a socio-economic process that directly contributes to the economic transformation of South Africa, by increasing the number of black people that manage, own and control the country’s economy.

It is 14 years since the implementation of the B-BBEE Act No 53 of 2003 (The Act). And although an industry has been built around servicing B-BBEE compliance, there are many people working in the B-BBEE value chain, assisting corporate South Africa to comply, that do not fully comprehend the Who, What, Why, When and How of B-BBEE. In this column I endeavour to introduce B-BBEE to you and remove the complexities surrounding B-BBEE to eliminate any misconceptions surrounding this economic policy.

Since the implementation of the BEE Act of 2003 (The Act), an industry was born that brings a unique lingo to the corridors of organisations doing business in South Africa. Today words such as Discounting, Equity Equivalent, Weighting Points, Bonus Points and Scorecards have a unique place in the South African business arena.

Face it, the importance of B-BBEE has created a whole industry to service, monitor and measure the strides made by transforming organisations operating in South Africa. Highlighting its importance, on 15 October 2015 was the announcement that a B-BBEE Commission would be established. Commissioner Zodwa Ntuli took office in April 2016 with the mandate of overseeing the ethical process of B-BBEE in line with legislation. Essentially, organisations have to be on point when they strategise and roll-out their B-BBEE strategy. They have to be fully prepared for the verification process whether they are measured on the Amended Codes or a Sector Code. Many questions are raised: “Why so many codes?”, “How is the criteria of a Sector Code established?” and “Who qualifies to be measured under what Sector Code?”

It is imperative that organisations know which Code they qualify to be measured on. The general consensus is based on which sector at least 50% of an organisation’s income is generated. In terms of section 9 of the BEE Act, organisations that fall under the scope of a specific sector must be measured on the criteria of that particular Sector Code. Without an identified Sector Code, organisations are automatically measured on the 2013 Codes of Good Practice (Amended Codes).

TWO DECADES IN BRIEF

In 1997, before BEE legislation, The Liquid Fuel Charter came into effect, followed by The Mining Charter in 2002. These were the only two Charters legislated prior to The Act coming into effect in 2003. Once the policy of Broad-Based Black Economic Empowerment was adopted by Government as the driving force behind transformation, it had to be measured. The first measurement benchmark of B-BBEE was in the form of the 2007 Codes of Good Practice and The Sector Codes of Good Practice. This was followed by the 2013 Codes of Good Practice (Amended Codes) and Amended Sector Codes of Good Practice.
A SECTOR CODE CREATED

Sector Charter Councils, per sector, were established to evaluate and monitor the sector they represent. Their mandate was to identify specific shortfalls and areas falling short of transformation in their sector against the expectations of the Amended Codes. In essence, a Sector Codes take a holistic view of the expectations of the Amended Codes then adapts it to their specific sector scorecard to expedite transformation within their Sector. Statement 003 of the Amended Codes states that all Sector Codes must be aligned with, and address all the elements in the Amended Codes. This must include using the same definitions and the application of similar calculation methodologies.

In doing this, specific elements, targets, points available and thresholds may differ from sector-to-sector.

There are specific processes in line with legislation that must be followed for a Sector Code to be legally binding. By way of example, a Sector Charter Council negotiates a Sector Charter that is legally processed to become a legally binding Sector Code of Good Practice. To clarify: The Act makes an allowance for the establishment of Sector Charter Councils with the aim of developing a Sector Charter to address the challenges and peculiarities of transformation that would otherwise not be addressed fully by the Amended Codes. This makes sense as it allows each sector to implement transformation based on the needs of their sector.

A Sector Charter Council firstly negotiates with the sector through industry associations and other relevant parties, which may include communities and labour, under the guidance of government. This negotiation initiates a Sector Charter that is gazetted in terms of Section 12. Essentially, this expresses a sector’s commitment to transformation but is not legally binding for the private sector, organs-of-state or public entities.

For a Sector Charter to become a legally binding Sector Code of Good Practice, it must be gazetted in terms of Section 9 of The Act which includes a 60-day public comment period.

For a Sector Charter to become a legally binding Sector Code of Good Practice, it must be gazetted in terms of Section 9 of The Act which includes a 60-day public comment period. On gazetting, a Sector Charter becomes a Sector Code of Good Practice. It then holds the same status as Amended Codes and makes it legally binding to the private sector, organs-of-state and public entities.

Summary of the current Sector Codes

<table>
<thead>
<tr>
<th>Sector Code</th>
<th>Current Status</th>
<th>Current Code Applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amended Tourism Sector Code</td>
<td>✔</td>
<td>Gazetted November 2015</td>
</tr>
<tr>
<td>Marketing, Advertising and Communication Sector Code (MAC)</td>
<td>✔</td>
<td>Gazetted May 2016</td>
</tr>
<tr>
<td>Amended Information and Communication Technology Sector Code (ICT)</td>
<td>✔</td>
<td>Gazetted November 2016</td>
</tr>
<tr>
<td>Chartered Accountancy Sector Code</td>
<td>Repealed</td>
<td>Amended Codes</td>
</tr>
<tr>
<td>Amended Construction Sector Code</td>
<td>✔</td>
<td>Gazetted December 2017</td>
</tr>
<tr>
<td>Amended Property Sector Code</td>
<td>✔</td>
<td>Gazetted June 2017</td>
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</tbody>
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Julia Nzimande worked for the Department of Trade and Industry for 10 years, where she initially held the post as Deputy Director in the Industrial Development Division, followed by that of Deputy Director B-BBEE Partnerships and Stakeholder Engagement at the B-BBEE Chief Directorate. She sits on the Association for BEE Professionals (ABP) Board and forms part of the Technical Committee at SAIPA.
8 clever tax tips every South African should know about in 2018

While South Africa has been focused on the outcome of the 2018 budget, it’s important to remember that 28 February is also the end of the tax year for all individuals, trusts and many companies and close corporations.

Meredith Harington

Each year new regulations and amendments aim to combat tax avoidance and ‘loopholes’ as a means of ensuring tax payers are contributing as much as possible to the fiscus.

However, there are still some clever ways to get your filings in order and save money when you submit, according to financial managers Meredith Harington.

BELOW ARE 8 TIPS AND TRICKS TO KNOW TO HELP OPTIMISE YOUR TAX POSITION:

Individual tax savings by topping up retirement annuities
As up to 27.5% of taxable income, capped at R350 000 per year, may be deducted from your income in respect of retirement annuity contributions made before 28 February, now is the time to be reviewing your retirement provision. If this could affect you, now is the time to speak to your financial planner.

Reducing your estate by donating to the family trust
Each individual taxpayer may make donations up to R100 000 per annum free of donations tax. Such donations must be made in cash or kind. If one is using a trust for estate planning (or any other) purposes, such donations might be made to the trust. This has the effect of lowering the personal estate and increasing the assets of the trust.

Both the taxpayer and spouse may make tax-free donations as described, provided this is done before 28 February.

Minimising taxation of trust income by distributing before year end
The income received by or accrued to a trust will be taxed in the trust (at high rates) unless: The income is attributable to the founder and taxed in his hands; or the income is distributed to a beneficiary within the same tax year. The beneficiary/ies would then be taxed on such income unless one of the attribution rules apply.

As the tax rate of beneficiaries will often be lower than that of the trust, it makes sense, from a tax point of view, to distribute some or all of the taxable income. Of course there might well be other factors in deciding what portion, if any, of a trust’s income should be distributed.

The needs, estates and tax position of each beneficiary should be considered before a decision is reached by the trustees. Of critical importance is that such distributions are only made to beneficiaries recorded in the trust deed.

It is worth remembering too that distributions to beneficiaries do not require to be made in cash, and the terms of eventual payment by the trust should be carefully considered by trustees, having regard to the current liquidity and future cash requirements of the trust to fulfil its responsibilities to all beneficiaries.

In making this decision, we advise that the new Section 7C amendment needs to be taken into consideration with regards to any interest-free or low-interest loans made to trusts. As from 1 March 2017 loans made to trusts at below the SARS prescribed interest rate will be deemed to be donations, attracting donations tax at the rate of 20%.

The donation is calculated on the difference between interest charged and interest at the SARS prescribed rate. We suggest that you contact us to discuss the possible clearing out of any loans that you might have made to any trust.

If you have made any such loans to your trust during the period 1 March 2017 to 28 February 2018, the donation arising from the application of Section 7C is deemed to be have been made on 28 February 2018. The donations tax thereon is payable by the end of March 2018.

This means that any person who lends to a trust needs to be aware of those loan balances by 28 February 2018, to calculate donations tax repayable in March 2018. This will no doubt require a more pro-active and timeous book-keeping process.

As the income for the year ending 28 February will only be known after that date, it will be necessary to make an accurate estimate before a distribution. The trustees might instead be advised to resolve before year end to distribute for example “all net interest to beneficiary A and B in equal shares” or “the whole of the capital gain to beneficiary C”.

What is crucial however, is that the distribution must be made before 28 February and that the decision to distribute must be made and ratified prior to that date. This decision should be evidenced by a signed resolution dated accordingly.

Use a tax-free investment account to benefit from long-term tax savings
In March 2015 the government introduced a tax-free investment product to encourage us to save our after-tax money. You can invest R33 000 per year (up to a maximum of R500 000 over your lifetime) and benefit from growth free of dividends tax, income tax on interest and capital gains tax.

Eliminating debit loan accounts in companies by distributing dividends now
Should a company make a loan to its shareholder or another entity
controlled by its shareholder, such loan could have deemed dividend consequences, unless interest is charged at a rate at least equal to the SARS official rate. The amount of the deemed dividend is calculated by determining the difference between actual interest charged on the loan and interest charged at the SARS prescribed rate. To avoid the deemed dividend, this loan account needs to be repaid in full by the end of February (or interest needs to be charged at the SARS prescribed rate).

However, in certain circumstances it could be beneficial to not repay the loan account and accept that a deemed dividend is payable. This is because an interest-free loan from your company is probably the cheapest form of finance you will be able to find, assuming that the company is able to facilitate the loan. Please contact us in order that we may carry out a cost vs benefit analysis of your debit loan position.

Taking advantage of the annual Capital Gains Tax (CGT) exemption
All individuals are entitled to an annual exclusion of R40 000 on any capital gains earned during the tax year. By selling certain growth assets before year-end (eg. unit trusts) and re-purchasing them shortly thereafter, the tax-payer can make use of this annual exclusion and increase the base cost of his or her portfolio. By increasing the base cost of the portfolio, the eventual CGT on disposal of the assets is reduced. Of course transaction costs will have to be considered in making this decision.

Saving tax by spending on research and development
Should your company incur expenditure on research and development of products, intellectual property or computer programs (other than those used in the business or certain prohibited industries), a generous tax allowance might be available in respect of expenditure incurred in the tax year ie before 28 February. To be eligible for this tax allowance the taxpayer must register annually with the Department of Science and Technology. If your budget has not yet been consumed, this can provide a useful tax planning opportunity.

Urgent reminder about provisional tax
Taxpayers, including companies, with a taxable income over R1 million have been burdened with the responsibility of estimating their total taxable income including capital gains, with greater accuracy. For these taxpayers, should their estimates of total tax payable for purposes of their second (payable 28 February) provisional tax return be less than 80% of the tax eventually assessed, a penalty of 20% of the incremental tax will be payable. Any taxpayer therefore, whose total taxable income including the taxable portion of capital gains might reach or exceed R1 million, should take particular care in calculating their second provisional tax return.

For taxpayers with income under R1 million there is also a potential trap if their estimate is based on amounts lower than the last year assessed.

In this case, penalties are payable if their estimate is less than 90% of the eventual assessed taxable income. It is often safer to use the last year assessed, and not to reduce the estimate.

Source: www.businesstech.co.za
Sugar Ntwampe
Tax Specialist, CoTE

TELL US A LITTLE ABOUT YOURSELF

I am a people person, goal- and service-oriented and thrive on helping people. Integrity and honesty are key to me. I previously worked at SARS and managed various branches, where I attained extensive knowledge in taxation, particularly around the policy and procedures of SARS. I was most recently at the SARS Tax Practitioner unit in Pretoria, where I helped set up the branch and assisted with the implementation of Section 240 of the Tax Administration Act, where tax practitioners had to first register with a Recognised Controlling Body before registering with SARS as Tax Practitioners representing their clients.

WHAT DO YOU DO AT SAIPA/CoTE?

I am a Tax Specialist at the SAIPA Centre of Tax Excellence, and my main duties are to ensure that members’ tax queries are resolved, the continuous development of SAIPA members takes place, effective Stakeholder Management (SARS/RCB) and building of professional relationships with other partners in the industry. It is crucial for me to use and impart the knowledge I gained at SARS to help resolve tax matters for SAIPA members.

WHAT IS THE BEST PART OF YOUR JOB?

Imparting knowledge and assisting in resolving members tax queries. An example is where I acted as a mediator where an Appeal for Administrative Penalties was ultimately reduced by SARS based on the grounds given, which was a pleasing moment for the SAIPA member because only a small amount was going to be paid by the taxpayer. Now that makes me fulfilled!

WHAT ARE SOME OF THE MORE CHALLENGING ASPECTS OF YOUR JOB?

Challenges will always be there, and it is crucial that they be embraced and dealt with. The one challenge in my job is keeping up to date on the any change or amendments in tax legislations. Staying abreast is crucial for the resolution of member queries.

WHAT ARE YOUR THOUGHTS ON THE SOUTH AFRICAN TAX SECTOR AND SAIPA’S ROLE IN IT?

We generally have a stable and regulated tax sector in the country, where taxpayers still co-operate by paying their fair share of taxes. The challenge that the country faces is that of ensuring that the collected revenue is spent correctly and does not fall into the wrong hands where fraud and corruption are the order of the day. If this is not addressed, then tax morality kicks in, where taxpayers start to not do the right thing of paying taxes honestly and timeously. The lower the tax morality, the lower the revenue collection. The Government needs to create an environment where taxpayers trust that the money they pay goes to good use.

SAIPA plays a crucial role in that members are in a position to ensure that the tax affairs of their clients are up to date, income is declared honestly, and no fictitious deductions are put through SARS’ systems. In this way SAIPA contributes to increased revenue collection and ultimately the economic growth of the country.

WHO DO YOU ADMIRE?

Faith Ngwenya, the Technical and Standards Executive at SAIPA. She is very knowledgeable, hard-working, supportive and approachable. Of importance is that she lets me be. I am free to come up with ideas, bounce them off her and implement them – this is a good recipe for growth – she is indeed a leader.

WHAT DO YOU DO FOR FUN?

In my spare time I volunteer at two old age homes around Pretoria and help with serving lunch to the aged on Saturdays and washing dishes afterwards. I play tennis and golf when there is an opportunity.

ANY PERSONAL GOALS OR FUTURE PLANS YOU’D LIKE TO SHARE WITH US?

My plan is to end up in the operations department of the early child development centre that my daughter attends. Part of what I will be doing is to ensure that the centre carries financial records and books correctly and complies with the taxation laws and regulations of the country. In that way, I will be giving back to the community.
SAIPA Centre of Tax Excellence (CoTE)

SAIPA has a Centre of Tax Excellence (CoTE) for tax practitioners who wish to specialise in the field of taxation and obtain a higher standard of distinction.

The SAIPA Professional Tax Specialist (SA), Tax Practitioner (SA) and Tax Technician (SA) build strong relationships and a thorough understanding of their clients. They are able to offer services and advice, tailored to each client’s business and its needs, addressing challenges as well as anticipating and creating opportunities for success.

TAX AFFILIATE MEMBERSHIP AND TAX SPECIALISATION DESIGNATIONS:

- Professional Tax Specialist (SA)
- Professional Tax Practitioner (SA)
- Professional Tax Technician (SA)

WHY BECOME A MEMBER OF THE SAIPA COTE?

Being a SAIPA member associates you with the respectability of the Institute and affords the member many advantages within the marketplace.

More than 12 000 Professional Accountants (SA) benefit from membership with SAIPA. Some of the many advantages of SAIPA membership include:

- Professional designations, and recognition within the industry.
- Credibility attached to an organisation with over 35 years of professional history.
- Assurance by clients that you are recognised by SARS as a good-standing, credible tax practitioner in the industry.
- SAIPA members must meet the highest entrance qualifications, both academic and practical and abide by both the International Federation of Accountants (IFAC) and SAIPA Codes of Conduct, Constitutions and By-laws.
- Professional and business advancement.
- CoTE members benefit from representation by SAIPA at various relevant stakeholder forums such as SARS, CIPC etc.

MEMBERS CAN:

- Apply for recognition as a compliance officer and financial services advisor in terms of the Financial and Intermediary Services Act.
- Perform functions and issue reports in terms of the micro lending industry regulations, Sectional Titles Act, Non-Profit Organisations Act, Schools Act as well as the Close Corporations Act.

PERSONAL AND BUSINESS BENEFITS:

- Members enjoy Professional Indemnity (PI) insurance cover.
- SAIPA has partnered with specially selected high-end services providers to provide members with exclusive benefits. Visit the SAIPA website for more information.
- Members have access to preferred rates, cash back on purchases and other special offers.

SUPPORT AND DEVELOPMENT:

- Members receive continuous support and development through powerful networking, growth opportunities and abundant resources.
- Telephonic and email support by the SAIPA Centre of Tax Excellence service centre for technical queries and questions.
- Tax dedicated Continuous Professional Development (CPD) events are provided at extremely competitive rates.
- CoTE members receive dedicated monthly online tax newsletters, a dedicated quarterly tax magazine and benefit from various other SAIPA services made available to the Professional Accountant (SA).
- Receive alerts and notifications for breaking news on any tax legislation changes.
Elephants in the Masai Mara, Kenya
Victoria Falls, Zimbabwe
Wildebeest Migration, Serengeti, Tanzania
NgoroNgoro Crater, Tanzania
Mokoro Ride in the Okovango Delta, Botswana
Perfect Sunset, Greater Kruger, South Africa

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