

TAX & EXCHANGE CONTROL ALERT

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ANNOUNCEMENT OF FURTHER REVISIONS TO THE DEBT REDUCTION RULES IN THE INCOME TAX ACT

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CUSTOMS HIGHLIGHTS

This week's selected highlights in the Customs and Excise environment since our last instalment.

ANNOUNCEMENT OF FURTHER REVISIONS TO THE DEBT REDUCTION RULES IN THE INCOME TAX ACT

One of the notable proposals by National Treasury in the first draft Taxation Laws Amendment Bill, 2017 included various proposed changes to the debt reduction provisions.

The Revised Bill, now contains further significant amendments to both s19 and paragraph 12A, such that the relevant provisions are to be substituted in their entirety.



The current s19 and paragraph 12A of the Eighth Schedule (Eighth Schedule) were introduced into the Income Tax Act, No 58 of 1962 (Act) with effect from years of assessment commencing on or after 1 January 2013. In essence, these provisions contain the debt reduction rules which attempt to create a uniform system that provides relief to persons under financial distress in certain circumstances. In simple terms, the relevant provisions set out the tax implications arising in respect of a debt that is reduced, cancelled, waived, or discharged by a creditor. The tax implications are dependent on what the debt originally funded, for instance trading stock, other deductible expenditure, allowance assets or capital assets.

The debt reduction provisions have been the subject of some debate since their introduction. The amount of rulings published by SARS since the introduction of these provisions is indicative of this. As a result, one of the notable proposals by National Treasury (Treasury) in the first draft Taxation Laws Amendment Bill, 2017 (Bill) published on 19 July 2017 (First Bill), included various proposed changes to the debt reduction provisions. The first round of amendments broadly addressed three issues:

- first, Treasury proposed to introduce specific rules dealing with debt foregone in respect of mining companies as contemplated in s36 of the Act;
- second, Treasury proposed to extend the paragraph 12A(6)(d) group exemption to also apply in the context of s19, however, such group exemption would be limited to dormant group companies (as defined); and

- lastly, in order to cater for the lacunae in the law which had thus far been mainly developed by way of various rulings issued by SARS, Treasury proposed to introduce definitive rules dealing with the tax treatment of conversions of debt into equity.

Subsequent to its publication, the First Bill went through the ordinary public consultation process, which resulted in Treasury publishing the revised Bill on 25 October 2017 (Revised Bill). The Revised Bill now contains further significant amendments to both s19 and paragraph 12A, such that the relevant provisions are to be substituted in their entirety. While the three issues mentioned above are still to be addressed in the proposed amendments, albeit with certain refinements and clarifications, one of the notable additional changes includes the proposal to amend what triggers the debt reduction provisions. Currently, the provisions are only triggered to the extent

Who's Who Legal

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ANNOUNCEMENT OF FURTHER REVISIONS TO THE DEBT REDUCTION RULES IN THE INCOME TAX ACT

CONTINUED

Taxpayers would be well advised to carefully monitor ongoing developments in this regard, particularly where debt restructuring is anticipated.



that, in simple terms, the amount by which a debt is reduced, exceeds any amount applied by that person as consideration for the reduction, namely the 'reduction amount'. However, the proposed amendments now include new definitions such as 'concession or compromise' and 'debt benefit'. Importantly, the Revised Bill provides that the debt reduction rules are only triggered to the extent that, amongst others, a 'debt benefit' arises by reason of 'a concession or compromise'. 'Concession or compromise' is specifically defined as any arrangement in terms of which:

- (a) any:
 - (i) term or condition applying in respect of a debt is changed or waived; or
 - (ii) obligation is substituted, whether by means of novation or otherwise, for the obligation in terms of which that debt is owed;
- or
- (b) a debt owed by a company is settled, directly or indirectly, by:
 - (i) being converted to or exchanged for shares in that company; or
 - (ii) applying the proceeds from shares issued by that company.

The rationale behind this additional amendment is found in the Draft Response Document on the Bill issued by Treasury on 14 September 2017 (Draft Response Document) which states the following at page 29:

The current definition of a reduction amount has technical limitations in respect of covering all instances of

debt concessions. Debt compromises such as, for example, subordination agreements that recognise, in effect, that the value of the claim that the creditor holds is less than the face value of that claim are arguably not covered in all instances. The same applies in respect of conversions of debt into equity. The benefits arising from any concession or compromise or debt restructuring arrangement should, from a policy point of view, be subject to the same rules. As such, amendments will be proposed in respect of the definition of a reduction amount in the 2017 Draft TLAB to ensure that the debt reduction rules apply in respect of all forms of debt restructuring arrangements.

The inclusion of the new concepts concerning the trigger of the debt reduction rules is a fundamental shift and encompasses a much wider set of circumstances. For instance, even an amendment of the relevant interest rate, repayment terms or period of the loan could potentially trigger the debt reduction provisions.

While the Bill is nevertheless still in draft form, it will be interesting to carefully consider the new provisions once they are published and come into force in early January 2018. It is difficult to predict what the final legislation may look like, however, taxpayers would be well advised to carefully monitor ongoing developments in this regard, particularly where debt restructuring is anticipated.

Jerome Brink

CUSTOMS AND EXCISE HIGHLIGHTS

Please note that this is not intended to be a comprehensive study or list of the amendments, changes and the like in the Customs and Excise environment, but merely selected highlights which may be of interest.

In the event that specific advice is required, kindly contact our Customs and Excise specialist, Director, Petr Erasmus.



This week's selected highlights in the Customs and Excise environment since our last instalment.

1. We previously reported that the draft rules for Chapter VB of the Customs & Excise Act, No 91 of 1964 (Act) in respect of the health promotion levy imposed on sugary beverages manufactured in or imported into the Republic in terms of item 191.00 in Section A of Part 7 of Schedule No. 1 have been published.

Please note that the forms (and related documents) referred to in Rule 541.06 have also been published, with comments due on 30 November 2017, as follows:
 - 1.1 DA 179 – Completion Notes for the sugary beverage levy return;
 - 1.2 DA 179 – Health Promotion levy return for sugary beverages form; and
 - 1.3 Revised DA185.4B2 – Application for a Manufacturing Warehouse form.Comments to: [C&E legislativecomments@sars.gov.za](mailto:C&E_legislativecomments@sars.gov.za).
2. Amendments to Schedules to the Act (certain sections quoted from the SARS website):
 - 2.1 Schedule 1 Part 1:
 - 2.1.1 Insertion, substitution and deletion of various tariff subheadings to give effect to technical amendments and to create separate 8-digit tariff subheadings classifiable in Chapters 28, 29, 38, 39, 73, 87 and 95;
 - 2.1.2 Insertion of additional Notes 1(a) to Chapter 29 and 30 as well as the creation of separate 8-digit tariff subheadings for antimicrobials;
 - 2.1.3 Insertion of additional Note 1 as well as the creation of separate 8-digit tariff subheadings in Chapter 76;
 - 2.1.4 Substitution of tariff subheadings 7604.21.15, 7604.29.15 and 7604.29.65 to increase the rate of customs duty on aluminium extrusions from 5% to 15%;
 - 2.1.5 Substitution of tariff heading 9406.90 and the insertion of tariff subheadings 9406.90.10 and 9406.90.90 to increase the rate of customs duty on prefabricated steel buildings from free to 20%; and
 - 2.1.6 Amendment by the substitution of tariff subheadings 3901.10, 3901.20, 3903.19, 3903.30, 3904.21 and 3904.22 which were omitted from

CUSTOMS AND EXCISE HIGHLIGHTS

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Government Notice 41257 dated 17 November 2017 (dealt with above).

2.2 Schedule 1 Part 2A:

2.2.1 This amendment is a consequence of the technical amendments in terms of chemicals in Chapter 38 as well as the description of item 104.17/22.06.

2.3 Schedule 1 Part 3E:

2.3.1 This amendment is a consequence of the technical amendments in terms of s87 to provide for road wheel and rims fitted with tyres.

2.4 Schedule 3:

2.4.1 These amendments are a consequence of the transposition of tariff subheading 4421.90 to 4421.99 with HS2017, rebate item 308.02/4421.99/01.06 has been inserted.

2.5 Schedule 4:

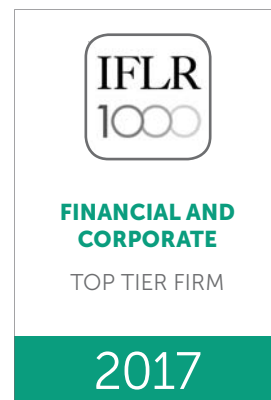
2.5.1 To amend the description of rebate item 412.11 to read in accordance with the content of description of item 412.11/00.00/01.01; and

2.5.2 Insertion of rebate item 460.15/9406.90.10/01.08 in order to create a temporary rebate provision for greenhouse of iron or non-alloy steel.

2.6 Schedule 6:

2.6.1 This amendment is a consequence of HS2017 amendments in Schedule No. 1 to insert a refund provision under 620.22 to make provision for wine in containers of more than 2 li but not more than 10 li.

Petr Erasmus



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