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# TAX & EXCHANGE CONTROL ALERT

## IN THIS ISSUE

### On the way to Parliament: National Treasury's response to submissions received regarding the Draft TLAB and Draft TALAB

On 30 October 2019, the Minister of Finance (Minister) will deliver the Medium-Term Budget Policy Statement (MTBPS) in Parliament. It is anticipated that the Minister will also table several bills on the same day, including the Taxation Laws Amendment Bill, 2019 (TLAB) and the Tax Administration Laws Amendment Bill, 2019 (TALAB), pursuant to which the TLAB and TALAB will be considered by and eventually adopted by Parliament.

### Customs & Excise Highlights

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

## On the way to Parliament: National Treasury's response to submissions received regarding the Draft TLAB and Draft TALAB

Pursuant to the public consultation process, National Treasury (NT) prepared a response document on the Draft TLAB, Draft TALAB and the 2019 Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill, which was published on 18 September 2019 and sets out its responses to the key issues raised during the public consultation process (Response Document).

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The tabling of the TLAB and TALAB in Parliament follow on from the publication of the 2019 Draft Taxation Laws Amendment Bill (Draft TLAB) and the 2019 Draft Tax Administration Laws Amendment Bill (Draft TALAB), which were published on 21 July 2019 and the public consultation process, during which the public was given an opportunity to make submissions on the Draft TLAB and Draft TALAB. We reported on the publication of the Draft TLAB and Draft TALAB in our [Tax & Exchange Control Alert](#) of 25 July 2019. In the latter alert and in our Tax & Exchange Control Alerts of [1 August 2019](#), [22 August 2019](#), [13 September 2019](#) and [19 September 2019](#), we discussed some of the proposed amendments in the Draft TLAB and Draft TALAB, including those pertaining to the controlled foreign companies (CFC) provisions in the Income Tax Act No 58 of 1962 (IT Act).

Pursuant to the public consultation process, National Treasury (NT) prepared a response document on the Draft TLAB, Draft TALAB and the 2019 Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill, which was published on 18 September 2019 and sets out its responses to the key issues raised during the public consultation process (Response Document). In this week's Alert, we briefly discuss NT's response to some of the submissions made by the public regarding the proposed amendments to the CFC provisions and to the provisions regarding public benefit organisations (PBOs) in s30 of the Act.

### CFC provisions

As discussed in our [Tax & Exchange Control Alert](#) of 25 July 2019, NT proposed reducing the comparable tax exemption threshold in s9D of the Act from 75% to 67.5% as the current threshold of 75% is no longer comparable and therefore provides little or no assistance to cater for South African CFCs in the current world order.

According to the Response Document, one of the submissions NT received argued that it has become globally acceptable that a corporate tax rate of 15% and higher is not considered to be "low". Using 15% as a reasonable benchmark, it is the taxpayer's view that an appropriate comparable tax exemption would be 53.5%.

## On the way to Parliament: National Treasury's response to submissions received regarding the Draft TLAB and Draft TALAB...*continued*

The Response Document further states that the comparable tax exemption will be assessed each financial year in order to determine its competitiveness and comparability, and if necessary legislative changes will be proposed based on such assessment.

NT did not accept this submission and in the Response Document it is explained that currently, South Africa's major trading partners in which the majority of CFCs are located are covered by the proposed comparable tax exemption of 67.5%. The Response Document further states that the comparable tax exemption will be assessed each financial year in order to determine its competitiveness and comparability, and if necessary legislative changes will be proposed based on such assessment.

### Public benefit organisations

As stated in the Response Document, the Act currently affords SARS the discretion to retrospectively approve an organisation as a PBO in terms of s30(3B) of the Act. Once approved as a PBO, the receipts and accruals of such entity are exempt from income tax provided that certain conditions in s10 of the Act are met. In the Draft TLAB, it was proposed to delete s30(3B) and to remove obsolete transitional measures initially introduced to provide organisations that were exempt from the Act under the repealed legislation the opportunity to re-apply for exemption under s30 of the Act. Organisations were granted until December 2004 to re-apply for exemption under s30.

The Response Document indicates that one of the submissions NT received indicated that the deletion of s30(3B) will have adverse financial effects for such entities, as they have limited resources available which makes it difficult for them to deal with tax technical issues timeously.

According to the Response Document, NT noted this submission and explained that the granting of retrospective approval to PBOs that have been in existence for several years has the consequence that previously taxed receipts and accruals become exempt. This results in refunds having to be paid by SARS with interest, in some cases dating back to years that have already prescribed. NT indicated that as opposed to deleting s30(3B) of the Act, PBOs seeking retrospective approval as exempt entities shall be granted such approval if they meet certain requirements, and only at the discretion of SARS.

### Next step

Pursuant to the publication of the Response Document and based on what is stated therein, NT will amend the Draft TLAB and Draft TALAB, following which the Minister will likely table these amended versions of the bills in Parliament on 30 October 2019.

*Louis Botha*

## Customs & Excise Highlights

This week's selected highlights in the Customs & Excise environment since our last instalment:

### Amendments to the Rules to the Customs & Excise Act, No 91 of 1964 (Act) (certain sections quoted from the SARS website)

1. Section 6(1)(hB) of the Act empowers the Commissioner to appoint places where licensed container depots may be established for the storage, detention, unpacking or examination of containers or the contents of containers, for the delivery to importers of the contents of containers after such contents have been duly entered or for the packing of containers for export. This amendment is intended to list Lebombo in item 200.08 in terms of s6(1)(hB) of the Act as approved places where licensed container depots may be established.

Due date for comments is 15 October 2019 and may be sent to: [C&E\\_legislativecomments@sars.gov.za](mailto:C&E_legislativecomments@sars.gov.za).

2. New rules are proposed under s110 of the Act that oblige the licensee of a customs and excise manufacturing warehouse for the manufacture of tobacco products to determine the quantities of all tobacco products manufactured in the warehouse by means of a functional product counter on each tobacco manufacturing

machine. The draft rules explain the physical requirements of the product counter system of which further details will be communicated by the Commissioner to the licensee in writing at least 30 days before the installation date. The licensee would need to further adhere to strict reporting requirements, but may request approval from the Commissioner for an alternative methodology if the prescribed product counter system cannot be used.

### Amendments to Schedules to the Act (certain sections quoted from the SARS website)

1. Schedule 1 Part 1:
  - 1.1 The substitution of tariff subheadings 1001.91 and 1001.99 as well as 1101.00.10, 1101.00.20, 1101.00.30 and 1101.00.90 to reduce the rate of customs duty on wheat and wheaten flour from 95.80c/kg and 143.69c/kg to 66.47c/kg and 99.71c/kg respectively, in terms of the existing variable tariff formula; and
2. Schedule 2:
  - 2.1 The substitution of anti-dumping items 204.05/2004.10.2/03.07 and 204.05/2004.10.2/04.07, relating to chips or French fries, to amend the name of the producer/exporter Pinguin Lutosa Foods B.V to Lutosa.

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

## Customs & Excise Highlights...continued

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### SARS communication

1. SARS published the follow communication to stakeholders stating, *inter alia*, as follows:

*"This month, a new MobiApp is being introduced to assist Customs officers working in the field (eg. members of the Detector Dog Unit) in order for them to record and manage all cases on the SARS system.*

*The app will also generate a case number which will be given to clients to enable them to keep track of the case.*

*The MobiApp is being piloted at OR Tambo International airport from 30 September 2019 and will then move on to the sea modality, followed by the road and rail modalities".*

It is hoped that this new App will streamline examinations with a view to quicker turn-around times.

### Notice published by the Department of Agriculture, Forestry and Fisheries (certain sections quoted from the notice):

1. On 27 September 2019, the department published a notice regarding an amendment of the appeal procedures. The notice provides for, *inter alia*, the format of the appeal form, specific time periods within which decisions must be appealed, a prescribed fee for such appeal and the period within which the appeal must be decided.

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*Petr Erasmus*

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