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TAX & EXCHANGE CONTROL ALERT

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Proposed amendments to the Employment Tax Incentive Act: A win-win for employers and employees

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Customs & Excise Highlights

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

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Proposed amendments to the Employment Tax Incentive Act: A win-win for employers and employees

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To encourage employment across specific sectors in South Africa, the Employment Tax Incentive Scheme (ETI Programme) was introduced. Since 2014, this ETI Programme was structured in a way which mutually benefits both the employee and the employer. This mutually beneficial relationship was achieved by offering an employer an employees' tax incentive if the employer employed anyone within the definition of "qualifying employees" in the Employment Tax Incentive Act, No 26 of 2013 (ETI Act).

In terms of the Explanatory Memorandum to the Draft Taxation Laws Amendment Bill, 2019 (Memorandum) (Draft TLAB), the ETI Programme was initially only intended to be in force for a period of three years, but in 2017 this was extended for a further two years. Considering the need to support youth employment as highlighted in the State of the Nation Address (SONA) and after further consultations with NEDLAC, in 2018 the decision was taken to extend the programme until 2029.

Pursuant to this extension of the ETI, the Draft TLAB and Memorandum were recently published for public comment. The Draft TLAB contains, among other things, the proposed amendments to the ETI Act, while the Memorandum explains the reason behind the proposed amendments.

The proposed amendments were initially mooted in the 2019 Budget Review, which we discussed in our [Special Edition Budget Speech Alert 2019](#).

General Principles and Proposed Amendments of ETI

The ETI Act was initially implemented in 2014 as a temporary measure/scheme primarily designed to promote the employment of young employees. Specifically, the definition of "qualifying employees" states that the following persons, amongst others, fall within this definition:

- Persons between the ages of 18 and 29 (s6(a)(i) of the ETI Act);
- Any employee employed by an employer operating through a fixed place of business located within a special economic zone (s6(a)(ii) of the ETI Act); and
- Employees within a specific industry as designated by the Minister of Finance (s6(a)(iii) of the ETI Act).

To promote employment for the abovementioned groups of persons, employers were incentivised to employ them by reducing employees' tax payable by the employer in an amount determined in terms of s7 of the ETI Act. The Memorandum explains that this would reduce the cost to an employer for hiring employees from the stipulated groups by way of a cost sharing mechanism with the Government while leaving the employees' remuneration unaffected.

Proposed amendments to the Employment Tax Incentive Act: A win-win for employers and employees...*continued*

The ETI Act looks to incentivise the recruitment of employees within the parameters of the Act and assists employers by offering a tax incentive for doing so.

Proposed Amendment and Reason for change

Amendments to the ETI Act which have been proposed are, among others, that of consideration for the new national minimum wage provisions in accordance with the National Minimum Wage Act, No 9 of 2018 (NMWA). It is proposed that the provisions relating to wages applicable in the NMWA be catered for under s4 of the ETI Act.

This has been as a direct consequence of the implementation of the NMWA and its regulations which only came into effect on 1 January 2019. The amendments seek to align the ETI with the provisions and regulations set out in the NMWA. It has been suggested that the national minimum wage should also be included as one of the eligibility criteria for purposes of claiming the ETI.

Another proposed amendment is that of the maximum amount of earnings for eligible employees in s6(g) of the ETI Act. According to the Draft TLAB, the

amendment that has been proposed is to increase the earnings threshold of eligible employees to that of an amount of R6,500 as opposed to the original R6,000. This is to account for inflation, and to continue to include the employees which the legislature originally had in mind.

Comment

In the economic climate we as South Africans find ourselves in, more and more people are struggling to find work, and employers are looking to downscale in order to continue running profitable businesses. The ETI Act looks to incentivise the recruitment of employees within the parameters of the ETI Act and assists employers by offering a tax incentive for doing so.

The amendments proposed seek to allow for a continued positive implementation of the Act for the next 10 years, ultimately looking to benefit both employees and employers.

Jessica Osmond and Louis Botha

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Customs & Excise Highlights

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

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

Schedule 5:

- The draft amendment provides for circumstances where a refund or drawback of duty as contemplated in s75(1)(c), s54D or s54J, may be granted if the customs procedure code applicable to the export as specified in the list published on the SARS website referred to in rule 00.06 and the relevant refund or drawback item are not reflected on the export bill of entry or other export clearance declaration.
- Draft amendment to Note 8 of Schedule No. 5 was published for comment on 10 April 2019 up to and including 8 May 2019 and the draft is being published for further comment as changes made to the original draft are considered to be significant.
- Comments can be submitted to technicaltariff@sars.gov.za. Due date for comments is 17 August 2019.

Imposition of provisional payments in terms of s57A of the Act against the alleged:

- increased imports of threaded fasteners of iron or steel (excluding those of stainless steel and those identifiable for aircraft) classifiable in tariff subheadings 7318.15.41, 7318.15.42 and 7318.16.30; and
- dumping of poly(ethylene terephthalate) originating in or imported from the People's Republic of China, classifiable in tariff subheading 3907.6.

On 21 July 2019 SARS published the 2019 Budget Draft Tax Bills for public comment (certain sections quoted from the media statements). These include inter alia the 2019:

Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill (which was first published on Budget Day – 20 February 2019), which includes increases in excise duties on alcohol and tobacco.

Draft Taxation Laws Amendment Bill, providing for the proposed amendment by the deletion of the reference in s65(8) to "non-rebated" customs duty, which has the effect that all customs duty payable on imported goods in terms of Part 1 of Schedule No. 1 must be taken into account when calculating the value for purposes of *ad valorem* duty on such goods, and not only non-rebated customs duty;

Draft Tax Administration Laws Amendment Bill, providing for the following proposed amendments to the Act:

- Section 1 – a correction to reflect the new name of the country previously known as Swaziland;
- Section 4(3) and s4(3A) – provide the authorisation for the sharing of information required to administer carbon offsets and greenhouse gas emissions reporting with the Department of Energy and the Department of Environmental Affairs. Provision is also made for the sharing of information with authorised dealers in foreign exchange to assist such dealers in the verification of applications for advance foreign exchange payments in respect of goods that are to be imported. It is anticipated that the sharing of such information will aid in the verification of legitimate financial flows;

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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- Section 41 – aims to clarify that an invoice may, if an amount reflected on the invoice is to be changed, be amended by the issuing of a credit or debit note, without reissuing the invoice;
- Section 47:
 - Proposed deletion of subsection (9)(a)(iii) and insertion of the content of the subparagraph in adjusted form as subsection (11A) clarifies that a tariff determination made in terms of subsection (9) applies to identical goods entered by the same person, whether the goods were entered before or after the date when the determination is issued. A tariff determination made in terms of subsection (9) can be applied retrospectively to identical goods imported by the same person before the determination was issued for purposes of refunds for overpayments of duty as well as liability for underpayments of duty, taking into account the applicable prescription period;
 - Removals of bulk wine between excise manufacturing warehouses are excluded from compulsory tariff determination. Such removals are aimed at further manufacture and the bulk wine removed is not the final alcoholic beverage;
- Section 53 – intended to retrospectively correct an inadvertent overlap between s53 and s54G of the Act. Part 7 of Schedule No. 1 has already been set aside for the health promotion levy in terms of s54G.
- Section 65 – the proposed amendment is related to the amendment to s47(9) and clarifies that a value determination made in terms of subsection (4)(a) or (5) applies to goods mentioned in the determination entered by the same person before or after the date when the determination is issued. A determination made in terms of subsection (4)(a) or (5) can be applied retrospectively to goods mentioned in the determination imported by the same person before the determination was issued for purposes of refunds for overpayments of duty as well as liability for underpayments of duty, taking into account the applicable prescription period;
- Section 76:
 - The proposed amendment is consequential to proposed amendments to items 412.09, 495.00, 497.01, 624.50, 634.03, 670.10, 680.02 and 690.01 of the Customs and Excise Tariff, which aim to exclude duty rebates in circumstances where damage, destruction or loss of goods as contemplated in those items occur due to robbery or theft. This is in line with an international approach to not allow duty rebates in cases of robbery or theft, the rationale being that the goods have entered into home consumption and that the amount of any duty payable should be covered by an insurance policy;
 - The proposed amendment to s76(d) intends to ensure parity in the treatment of refunds of duty already paid, and rebates in respect of duty payable, on goods damaged, destroyed or lost due to robbery or theft;

Customs & Excise Highlights...continued

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- Section 114A – the proposed amendment makes provision for options, in addition to those dealt with in s114 of the Act, for the collection of debt owed to SARS in terms of the Act, by making Part D of Chapter 11 of the Tax Administration Act, No 28 of 2011, with the necessary changes as the context may require, applicable for purposes of the Act; and
- Section 120 – the proposed amendment authorises the Commissioner to prescribe rules relating to the making of advance foreign currency payments in relation to the importation of goods. The purpose of these rules is to aid in the verification of legitimate financial flows by requiring persons intending to apply to authorised dealers in foreign exchange for making advance foreign exchange payments, to first notify the Commissioner of such intention, and by requiring authorised dealers to report certain information in relation to advance foreign exchange payments to the Commissioner.

National Treasury and SARS invited comments in writing on the Bills. Written comments are to be sent to National Treasury's tax policy depository at 2019AnnexCProp@treasury.gov.za and Adele Collins at acollins@sars.gov.za by close of business on 23 August 2019.

The International Trade Administration Commission has (certain sections quoted from the notices):

Received the following applications concerning the Customs Tariff:

- On 26 July 2019, the reduction in the general rate of customs duty on cooker hoods having a maximum horizontal side not exceeding 120 cm,

domestic type, classifiable under tariff subheading 8414.60.20, from 15% *ad valorem* to free of duty.

Representations should be made within four (4) weeks of the date of the notice.

Enquiries: ITAC Ref: 10/2019.
Mr. Tshepiso Sejamoholo /
Ms. Ndivhudzannyi Mokou.
Tel: (012) 394-1605/3627 or
email tsejamoholo@itac.org.za /
nmokou@itac.org.za.

- On 26 July 2019, the creation of a rebate facility on:
 - Optic fibre cables, classifiable in tariff subheading 8544.70, for use in international submarine optic fibre cable infrastructure, at such times and in such quantities and subject to such conditions as the International Trade Administration Commission may allow by specific permit, provided that optic fibre cables are not available in the SACU market; and
 - Electrical apparatus for making connections to or in electrical circuits, for a voltage not exceeding 1000 volts, other, classifiable in tariff subheading 8536.90.90, for use in international submarine optic fibre cable infrastructure, at such times and in such quantities and subject to such conditions as the International Trade Administration Commission may allow by specific permit, provided that optic fibre cables are not available in the SACU market.

Representations should be made within four (4) weeks of the date of the notice.

Customs & Excise Highlights...continued

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Enquiries: ITAC Ref: 09/2019.
Mr. Pfarelo Phaswana and/or
Mr. Pardon Hadzhi,
Tel: (012) 394-3628/3634 or
pphaswana@itac.org.za /
phadzhi@itac.org.za.

- On 26 July 2019, notices of initiation of sunset reviews of the anti-dumping duties on:
 - Wire ropes and cables of a diameter exceeding 32 mm originating in or imported from the United Kingdom and Germany and on stranded wire of a diameter exceeding or equal to 12.7mm originating in or imported from the People's Republic of China classifiable under tariff subheadings 7312.10.20, 7312.10.25, 7312.10.40 and 7312.10.90.

Queries to be directed to Ms Selma Takacs at (012) 394-3596 or Ms Mosa Sebe at (012) 394-1850.

- Boards, sheets, panels, tiles and similar articles of plaster or of compositions based on plaster, not ornamented, faced or reinforced with paper or paperboard only, not ornamented originating in or imported from Thailand and Indonesia classifiable under tariff subheading 6809.11.

Queries to be directed to Mr Zuko Ntsangani at (012) 394-3662 or Mr Emmanuel Manamela at (012) 394-3632 or at fax number (012) 394-0518.

- Frozen potato chips originating in or imported from Belgium and the Netherlands classifiable under tariff headings 2004.10.21 and 2004.10.29.

Queries to be directed to Mr Pfananani Muumba at (012) 394-3689 or Mr Sandile Mantolo at (012) 394-3902.

The Senior Manager: Trade Remedies I, should receive all responses, including non-confidential copies of the responses, not later than 30 days from the date of the notice, or from the date on which the letter accompanying the questionnaire was received. The said letter shall be deemed to have been received seven days after the day of its dispatch.

- On 26 July 2019, a call for public interest submissions into the investigation for remedial action in the form of a safeguard measure against the increased imports of threaded fasteners of iron or steel: bolt ends & screw studs, screw studding and other hexagon nuts (excluding those of stainless steel and those identifiable for aircraft).

Queries to be directed to Ms Thuli Nkomo at (012) 394-1190 / tnkomo@itac.org.za and Ms Mercy Mutheiwana at (012) 394-3907 / mmutheiwana@itac.org.za or at fax number (012) 394-0518.

SARS published its Manual on the Promotion of Access to Information Act, No 2 of 2000 (PAIA). The manual contains the procedures for making a request for any of SARS's records or information and the procedures for lodging an internal appeal in terms of PAIA. The Notice has been duplicated as a Guide. The effective date of the manual is 19 July 2019.

Petr Erasmus

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