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TAX & EXCHANGE CONTROL ALERT

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Procedure, procedure: Proposed amendments in the Draft TALAB regarding tax administration

The proposals in the draft 2021 Taxation Laws Amendment Bill have been getting a lot of attention since its release on 28 July 2021, but on the same day, National Treasury also released the draft Tax Administration Laws Amendment Bill, 2021 (Draft TALAB). In today's article, we briefly discuss some of the proposals in the Draft TALAB, all of which relate to tax administration.



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Procedure, procedure: Proposed amendments in the Draft TALAB regarding tax administration

To ensure that only valid donations are claimed as a deduction and to enhance SARS' ability to pre-populate individuals' returns, it is proposed that the information required in the receipts be extended to allow such information as SARS may prescribe by public notice from time to time.

The proposals in the draft 2021 Taxation Laws Amendment Bill have been getting a lot of attention since its release on 28 July 2021, but on the same day, National Treasury also released the draft Tax Administration Laws Amendment Bill, 2021 (Draft TALAB). In today's article, we briefly discuss some of the proposals in the Draft TALAB, all of which relate to tax administration.

Section 18A of the Income Tax Act: Receipts for tax-deductible donations

The Draft Memorandum on the Objects of the Tax Administration Laws Amendment Bill (Memo), states that section 18A of the Income Tax Act 58 of 1962 (Income Tax Act) does not require taxpayers issuing receipts for deductible donations to provide third-party data to the South African Revenue Service (SARS) on a systematic basis. SARS has detected that receipts are being issued by entities that are not approved to do so. To ensure that only valid donations are claimed as a deduction and to enhance SARS' ability to pre-populate individuals' returns, it is proposed that the information required in the receipts be extended to allow such information as SARS may prescribe by public notice from time to time. The Memo notes that third-party reporting will be extended in future to cover the receipts issued.

Paragraph 21 of Schedule 4 of the Income Tax Act: Provisional tax

The Memo explains that provisional taxpayers are required to make provisional tax payments within six months after the commencement of a year of assessment and then again by the end of the year

of assessment. Currently, no provision is made for instances where a taxpayer has a short year of assessment, whether by reason of death, ceasing to be a tax resident, a company being incorporated during a year, or a change of a company's financial year. The Draft TALAB therefore proposes an amendment so that a provisional tax payment and return will not be required when the duration of a year of assessment does not exceed six months.

Paragraph 14 of Schedule 4: Employees' tax

The Memo explains that SARS may impose a penalty for the non-submission of the six-monthly employees' tax returns by employers. The penalty is calculated as a percentage of the employees' tax for the period covered by the return. Where the employees' tax for the period is not known to SARS, due to the non-submission of monthly or six-monthly returns, the penalty can only be imposed retrospectively. This undermines the purpose and deterrent effect of the non-compliance penalty. The Draft TALAB therefore proposes amending this provision so that SARS is able raise the penalty on an alternative basis in such cases, through an estimate of the employees' tax with an adjustment once the actual employees' tax is known.

Section 95 of the TAA: Estimated assessments

The Memo explains that in terms of the Tax Administration Act 28 of 2011 (TAA), SARS may make an original, additional, reduced or jeopardy assessment based in whole or in part on an estimate, if the taxpayer does not submit a response

Procedure, procedure: Proposed amendments in the Draft TALAB regarding tax administration...*continued*

It may happen that SARS issues an additional estimated assessment close to the end of the relevant prescription period.

to a request for relevant material after delivery of more than one request for such material. In terms of section 95(6) of the TAA, the taxpayer may, within 40 business days from the assessment, request SARS to issue a reduced or additional assessment by submitting the relevant material. Section 95(7) of the TAA states that a senior SARS official may extend the 40 business days period for a period not exceeding the relevant prescription periods under section 99 of the TAA.

It may happen that SARS issues an additional estimated assessment close to the end of the relevant prescription period. The 40 business days period may thus end after the prescription date or very close to it, which means that the taxpayer is unable to request a reduced or additional

assessment. The Draft TALAB proposes amending this provision to provide SARS with a discretion to extend the 40 business days period for up to 40 business days beyond the prescription date in these unusual circumstances.

Comment

As noted in our previous Tax & Exchange Control alerts, the public had until 28 August 2021 to make submissions on the draft bills, including the Draft TALAB. The next step in the public consultation process is for National Treasury to indicate when workshops on the draft bills will take place, during which the public will have an opportunity to engage with National Treasury directly regarding the draft bills and the submissions that have been made.

Louis Botha

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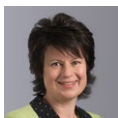
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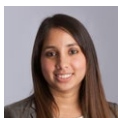
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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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