Latest Tax Developments
March 2017
Introduction

• Monthly webinar

• 3rd of 11 webinars

• Recent developments:
  – This one – March 2017;
  – Cannot cover all developments in detail;
  – Relevance of developments;
  – Some will roll over to next month - time;
  – If we missed something that you would like us to cover, please let us know for inclusion in next webinar.
Overview

• General developments;
• Dispute resolution – Court Case Ratios;
• Tax guide for small businesses (2015/16);
• Interpretation Note 5 (Issue 2);
• Tax guide for share owners (issue 5);
• Interpretation Note 43 (Issue 6) – circumstances in which certain amounts received or accrued from the disposal of shares are deemed to be of a capital nature;
• Binding Private Ruling 267 – dividends tax and the most favoured nation clause in a tax treaty; and
• Binding General Ruling 25 (issue 2) – exemption – foreign pensions.
General Developments


3. Cost scale

<table>
<thead>
<tr>
<th>Where the value of the vehicle—</th>
<th>Fixed Cost</th>
<th>Fuel Cost</th>
<th>Maintenance Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>does not exceed R85 000</td>
<td>28 492</td>
<td>91.2</td>
<td>32.9</td>
</tr>
<tr>
<td>exceeds R85 000 but does not exceed R170 000</td>
<td>50 924</td>
<td>101.8</td>
<td>41.2</td>
</tr>
<tr>
<td>exceeds R170 000 but does not exceed R255 000</td>
<td>73 427</td>
<td>110.6</td>
<td>45.4</td>
</tr>
<tr>
<td>exceeds R255 000 but does not exceed R340 000</td>
<td>93 267</td>
<td>118.9</td>
<td>49.6</td>
</tr>
<tr>
<td>exceeds R340 000 but does not exceed R425 000</td>
<td>113 179</td>
<td>127.2</td>
<td>58.2</td>
</tr>
<tr>
<td>exceeds R425 000 but does not exceed R510 000</td>
<td>134 035</td>
<td>146.0</td>
<td>68.4</td>
</tr>
<tr>
<td>exceeds R510 000 but does not exceed R595 000</td>
<td>154 879</td>
<td>150.9</td>
<td>84.9</td>
</tr>
<tr>
<td>exceeds R595 000</td>
<td>154 879</td>
<td>150.9</td>
<td>84.9</td>
</tr>
</tbody>
</table>
General Developments – contd.

• Income Tax Notice 194 – concerns section 8(1) of the Income Tax Act, 1962 – relating to the daily amount in respect of meals and incidental costs [effective from 1 March 2017];

• Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill, 2017 [due date for comments: 31 March 2017];

• Notice published in terms of section 210(2) relating to the incidences of non-compliance in respect of the OECD Common Reporting Standard Regulations under section 257, that are subject to a fixed amount penalty in accordance with section 210(2);

• Notice published in terms of section 26 requiring the submission of third party returns by reporting financial institutions for purposes of the OECD Common Reporting Standard Regulations;
General Developments – contd.

- Tables A and B of the Average Exchange Rates have been updated
  - Table A - [http://www.sars.gov.za/AllDocs/LegalDoclib/Rates/LAPD-Pub-AER-2012-02-%20Average%20Exchange%20Rates%20Table%20A.pdf](http://www.sars.gov.za/AllDocs/LegalDoclib/Rates/LAPD-Pub-AER-2012-02-%20Average%20Exchange%20Rates%20Table%20A.pdf)
  - Table B - [http://www.sars.gov.za/AllDocs/LegalDoclib/Rates/LAPD-Pub-AER-2012-03-%20Average%20Exchange%20Rates%20Table%20B.pdf](http://www.sars.gov.za/AllDocs/LegalDoclib/Rates/LAPD-Pub-AER-2012-03-%20Average%20Exchange%20Rates%20Table%20B.pdf)

- Draft Interpretation Note on the Withholding Tax on Royalties [due date for comments: 21 April 2017];

- Form available – Section 185 of the Tax Administration Act, 2011 – Certificate for tax recovery on behalf of foreign governments;

- Draft Interpretation Note on section 24l – gains or losses on foreign exchange transactions [due date for comments: 31 August 2017]
Dispute Resolution – Court Case Ratios

Outcome of Reported Judgments: 2014 - 2017

- In favour of SARS: 57.53%
- In favour of the taxpayer/appellant: 38.36%
- Partly upheld (partly in favour of the taxpayer): 5.48%
Tax Guide For Small Businesses

SARS and Business - Registration

– As soon as a person commences a business, the person must register as a taxpayer with the local SARS branch.

– The person must register within 21 business days after becoming liable for any normal tax or liable to submit a return.

– Turnover, payroll, import and exports will determine liability for VAT, PAYE, Customs and Excise, SDL and UIF.
Tax Guide For Small Businesses

SARS and Business – **Year of assessment and filing returns**

- Year of assessment may coincide with financial year end of company.

- If company ceases residency, return must be filed for period starting on first day of financial year and ending of last day of residency.
Tax Guide For Small Businesses

SARS and Business – Provisional Tax

- As soon as taxpayer commences business, taxpayer is liable for provisional tax.
- First payment made within 6 months of start of company’s YOA.
- Second payment made at end of company’s YOA.
Tax Guide For Small Businesses

SARS and Business – Employees Tax

– Employer required to deduct PAYE.

– Becomes liable to register with SARS for PAYE as soon as employer is liable to pay any form of remuneration.

– Must submit monthly EMP201 within 7 days of end of month.

– If none of employers employees are liable for income tax, no need to register as an employer.
The remuneration of directors of private companies is often only finally determined late in the year of assessment or in the following year.

Directors in these circumstances finance their living expenditure out of their loan accounts until their remuneration is determined.

In order to overcome the problem of no monthly remuneration being payable from which PAYE is to be withheld, a formula is used to determine a director’s deemed monthly remuneration from which the company must deduct PAYE.
SARS and Business – Net profit and taxable income

– The concept “net profit” is an accounting concept and describes the amount of the profit made by a business from an accounting point of view.

– The term “taxable income” on the other hand is defined in section 1(1) and describes the amount on which a business’ normal tax is calculated.

– These two amounts will often be different because of the basic differences in the income and deductions taken into account in determining these amounts.
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SARS and Business – Taxable income of Corporates

- Companies (including close corporations but excluding companies mining for gold, oil and gas companies in respect of taxable income attributable to its oil and gas income, long term insurance companies in respect of its individual policyholder fund, companies qualifying as small business corporations and companies qualifying as micro businesses).

- 28% of Taxable Income.
SARS and Business – Special Allowances or Deductions

– The cost to a taxpayer of an asset on which an allowance may be claimed, can include expenditure to effect obligatory improvements on property owned by public private partnerships, the three spheres of government (national, provincial or local sphere) or certain exempt entities (see section 12N).
SARS and Business – Special Allowances or Deductions - Contd

- Industrial Buildings - manufacturing (section 13)
- Commercial buildings (section 13quin)
- Buildings used by hotel keepers (section 13bis)
- Aircraft or Ships (section 12C)
- Rolling Stock (trains and carriages) (Section 12DA)
- Certain Pipelines, transmission lines and railway lines (section 12D)
- Airport Assets (section 12F)
- Port Assets (section 12F)
SARS and Business – Special Allowances or Deductions - Contd

- Machinery, plant, implements, utensils and articles (section 11(e))
- Manufacturing assets (section 12C)
- Plant or machinery of small business corporations (section 12E)
- Machinery, plant, implements, utensils and articles or improvements thereto used in the farming or production of renewable energy (section 12B)
- Inventions, patents, designs, trademarks, copyrights and knowledge (section 11(gA))
SARS and Business – Tax Relief measures for Small businesses

- Tax relief measures for small business corporations (section 12E)

- The SBC tax legislation allows for two major concessions to entities (private companies, close corporations and co-operatives) which comply with all of the following requirements:
SARS and Business – Tax Relief measures for Small businesses

- All the holders of shares in the company or members of the close corporation or co-operative must at all times during a year of assessment be natural persons.

- No holders of shares or members should hold any shares or have any interest in the equity of any other company, other than companies as specified in the definition of “small business corporation” in section 12E(4).
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SARS and Business – Tax Relief measures for Small businesses

- The gross income of the entity for the year of assessment may not exceed R20 million.

- Not more than 20% of the total of all receipts and accruals (other than those of a capital nature) and all the capital gains of the entity may consist collectively of “investment income” as defined in section 12E(4) and income from rendering a “personal service” as defined in section 12E(4).

- The entity may not be a “personal service provider” as defined in the Fourth Schedule.
The second concession is the immediate write-off of all plant or machinery brought into use for the first time by the entity for purpose of its trade (other than mining or farming) and used by the entity directly in a process of manufacture or similar process in the year of assessment. Furthermore the entity can elect under section 12E (1A) to claim depreciation on its depreciable assets (other than manufacturing assets) acquired on or after 1 April 2005 at either:

- the wear-and-tear allowance under section 12E(1A)(a) read with section 11(e); or
Tax Guide For Small Businesses

SARS and Business – Tax Relief measures for Small businesses

– at an accelerated write-off allowance under section 12E(1A)(b).

– An entity which is engaged in the provision of personal services will still qualify for relief provided it employs three or more full-time employees as specified throughout the year of assessment and the service must not be performed by a person who holds an interest in that entity.
A person will qualify as a micro business if that person is a –

- natural person (or the deceased or insolvent estate of a natural person that was a registered micro business at the time of death or insolvency); or

- company,

and the “qualifying turnover”, as defined in paragraph 1 of the Sixth Schedule, of that person for the year of assessment does not exceed R1 million.
Tax Guide For Small Businesses

SARS and Business – Tax Relief measures for micro businesses

- If that person carries on a business during a year of assessment for a period less than 12 months, the R1million is reduced proportionally by taking into account the number of full months that the person carried on business during that year.

- Micro businesses have a simplified tax system (turnover tax) and serves as an alternative to the current income tax, VAT, provisional tax and CGT. A micro business may, however, be registered for VAT whilst registered under the tax regime for micro businesses.
SARS and Business – Ring-fencing of assessed losses of certain trades

– Section 11(a) contains the general requirements to be met for deducting expenditure and losses to the extent that a person derives income from carrying on any trade.

– Not every activity constitutes the carrying on of a trade, even if intended or labelled by a taxpayer as such.

– Whether an activity constitutes the carrying on of a trade, is a question of law that depends on the “facts and circumstances” of each case.
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SARS and Business – Ring-fencing of assessed losses of certain trades

– Section 20A was inserted in the Act to prevent assessed losses incurred in respect of certain trades to be set off against any income derived otherwise than from carrying on that trade.

– Section 20A applies only to natural persons meeting certain requirements.
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SARS and Business – Prohibited Deductions

– Domestic or Private expenses (23(a) and (b))

– Bribes, Fines or Penalties (23(o)(i) and (ii))

– Other prohibited deductions (23(d), (e) and (g))
Disposal

- CGT is triggered by the disposal of an asset. The word “disposal” is described very widely in the Eighth Schedule.

- Events that trigger a disposal include a sale, donation, exchange or loss of an asset.

- A person is deemed to have disposed of assets for CGT purposes on death or when ceasing to be a resident.
Capital Losses

- Capital losses may be set off only against capital gains.

- The sum of all capital gains and capital losses, less an annual exclusion if applicable, is carried forward to the next year of assessment if this amount is a negative figure.

- An assessed capital loss must be set off against an aggregate capital gain in a year of assessment.
A natural person who operates a small business as sole proprietor, in a partnership or owner in a company must, if certain requirements are met, disregard a capital gain on disposal of an active business asset, interest in the active business assets of a partnership or entire direct interest in a company.

The person must have attained the age of 55 years or the disposal must be in consequence of ill-health, other infirmity, superannuation or death. The sum of amounts to be disregarded during the lifetime of the person may not exceed R1,8million.
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SARS and Business – Value Added Tax

- VAT is levied on all supplies made by a vendor in the course or furtherance of its enterprise and only a vendor may levy VAT.

- A vendor may not charge VAT on any exempt supplies nor deduct any VAT as input tax if an expense is incurred to make exempt supplies or for any other non-taxable purpose.
Tax Guide For Small Businesses

SARS and Business – Value Added Tax

- The mechanics of the VAT system are based on a subtractive or credit-input method which allows the vendor to deduct the tax incurred on enterprise inputs (input tax) from the tax collected on the supplies made by the enterprise (output tax).

- The difference between the input tax and output tax in a tax period is the VAT that must be paid to SARS, or if the input tax exceeds the output tax in a tax period, SARS will refund the difference to the vendor.
Tax Guide For Small Businesses

SARS and Business – Value Added Tax

– Most supplies of goods or services by vendors are subject to the standard rate of VAT (currently 14%). The same applies to most goods imported into South Africa and any services which fall in the definition of “imported services”.

– The standard rate applies as a default if there is no exemption or zero-rating provision which covers the supply or the importation in question.
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SARS and Business – Value Added Tax

- Zero Rated Supplies
  - Goods exported from South Africa
  - Petrol, diesel and illuminating paraffin
  - Certain gold coins issued by the South African Reserve Bank, including Krugerrands
  - International transport and related services
  - Services physically rendered outside South Africa
  - Certain basic foodstuffs supplied for human consumption
Tax Guide For Small Businesses

SARS and Business – Value Added Tax

• Zero Rated Supplies

  – The effect of applying the zero rate of VAT means that the purchaser does not pay any VAT to the vendor making the supply.

  – However, as zero-rated supplies are regarded as taxable supplies, it means that the VAT incurred by the vendor to make those zero-rated supplies may generally be deducted as input tax, subject to the required documents such as valid tax invoices being held.
Tax Guide For Small Businesses

SARS and Business – Value Added Tax

• Exempt Supplies

  – Financial services.
  – Public transport of fare-paying passengers by road and rail.
  – The supply of a dwelling under a lease agreement.
  – Certain educational services, for example, in primary and secondary schools, universities and universities of technology.
  – Certain supplies of goods or services made by an employee organisation, bargaining council or political party to any of its members, subject to certain conditions.
  – Childminding services in crèches and after-school centres.
Tax Guide For Small Businesses

SARS and Business – Value Added Tax

- Exempt Supplies
  - Unlike zero-rated supplies, an exempt supply does not qualify as a taxable supply which means that the supplier of exempt goods or services does not levy VAT (output tax) and any VAT incurred in the course of making those exempt supplies is not deductible as input tax.
Tax Guide For Small Businesses

SARS and Business – Value Added Tax

• Compulsory Registration

  – Any person carrying on an enterprise if taxable turnover exceeds R1 mil over 12 months.

  – Agreement that will exceed R1 mil.

  – Non-resident suppliers of Electronic Services if total taxable supply has exceeded R50 000.
Tax Guide For Small Businesses

SARS and Business – Value Added Tax

- Voluntary Registration
  - Any person carrying on an enterprise if taxable turnover is less than R1 mil over 12 months.
  - Total taxable supply must exceed R50 000.
Tax Guide For Small Businesses

SARS and Business – Value Added Tax

• Tax periods

  – A tax period refers to a predetermined period of time in respect of which a vendor is required to calculate the VAT on transactions and submit a VAT return.

  – There are five different types of tax periods.
Tax Guide For Small Businesses

SARS and Business – Value Added Tax

- Tax periods
  - Monthly
  - Bi-monthly
  - Four-monthly
  - Semi-Annually
  - Annually
Tax Guide For Small Businesses

SARS and Business – Value Added Tax

• Duties of a vendor

• Once registered as a vendor, that person has certain responsibilities under the TA Act and the VAT Act, including, amongst others, the following:

  – Provide correct and accurate information to SARS.

  – Collect VAT and submit returns and payments on time.

  – Include VAT in all prices, advertisements and quotes.
Tax Guide For Small Businesses
SARS and Business – Value Added Tax

- Duties of a vendor - cont
  - Keep accurate accounting records.
  - Produce relevant documents when required by SARS.
  - Notify SARS about any changes affecting the business.
  - Issue tax invoices, debit and credit notes in connection with any taxable supplies made.
Skills Development Levy (SDL)

- SARS administers the collection of SDL. SDL is levied on payrolls in order to finance the development of skills and thus enhance productivity. An employer must pay SDL if the employer pays annual salaries, wages and other remuneration in excess of R500 000. SDL is payable by employers at a rate of 1% of the payroll.

- Employers with an anticipated payroll of R500 000 or less (whether registered for PAYE purposes with SARS or not) during the following 12 month period are exempt from the payment of this levy.
Tax Guide For Small Businesses

SARS and Business – Employees’ Tax

- Unemployment Insurance Fund
  - The Unemployment Insurance Fund (UIF) gives short-term relief to workers when they become unemployed or are unable to work because of maternity, adoption leave, or illness. It also provides relief to the dependants of a deceased contributor.

- SARS administers the collection of the bulk of UIF contributions.

- UIF contributions, which are equal to 2% of the remuneration (subject to specified exclusions) paid or payable by an employer to its employees, are collected from employers on a monthly basis.
Tax Guide For Small Businesses

SARS and Business – Employees’ Tax

• Unemployment Insurance Fund
  – The total amount of contributions so collected consist of– the sum of the contribution made by each employee equal to 1% of the employee’s remuneration (before taking into account any allowable deductions which the employer may deduct for purposes of calculating the PAYE) paid or payable by the employer to the employee during any month; and

  – a contribution made by the employer equal to 1% of the remuneration (before taking into account any allowable deductions which the employer may deduct for purposes of calculating PAYE) paid or payable by the employer to its employees during any month.
Tax Guide For Small Businesses

• Information in this presentation is very general.

• There are specific applications to Companies that may exist in specialised sectors.

• Our advise is to read the guide and submit to us any questions you may have.
Interpretation Note 5

Deals with Employees Tax: Directors of Private Companies (which include persons in close corporations who perform functions similar to directors of companies).

Paragraphs 1, 9(5) and 11C of Fourth Schedule.

Archived on 6 March 2017: Paragraph 11C of the Fourth Schedule was repealed with effect from 1 March 2017.
Tax Guide for Share Owners (Issue 5)

• Introduction
  – Guide is based on legislation as at 19 January 2017 and focuses on 2017 YOA.
  
  – Guide aimed at SA residents who own shares in their own names and also considers liability for income tax and CGT.

• Income Tax v CGT
  – General Principles:
    • Shares held as trading stock bought with main purpose of resale at profit → gain/loss on disposal will be revenue in nature and subject to income tax.
    • Shares held as capital asset (i.e. long-term dividend-producing instrument) → gain/loss on disposal will be capital in nature and subject to CGT.
    • If shares purchased as part of scheme of profit-making → profit/loss on disposal will be revenue in nature.
Tax Guide for Share Owners (Issue 5)

- **Capital v Revenue**
  - Taxpayer’s intention when shares bought and sold is most important factor.
    - Courts indicate that intention must be tested against surrounding circumstances.

- **Intention**
  - **Iro mixed intentions:** main/ dominant purpose will be decisive.
  - **Iro secondary purpose of making a profit:** revenue in nature.
    - E.g. taxpayer purchases shares ripe with dividends, receives the dividends and then sells the shares, the resulting profits are revenue in nature.
Surrounding Circumstances

- A transaction-by-transaction approach to be taken;

- Frequency of sale of shares is important but still not conclusive.

- Where shares bought with main purpose of obtaining highest dividends → capital in nature.

- Proceeds are revenue in nature when type of share purchased does not produce dividends.

Income Tax

- Shares held as trading stock
  - Cost of such shares are allowable as deduction under section 11(a).
  - Amount included in income as closing stock becomes deductible as opening stock for following YOA.
Income Tax – contd.

- Employee share incentive schemes (Sec 8A, 8B and 8C)
  - Sec 8A (shares/options acquired by employee from employer before 26 October 2004):
    - employee pays less than market value for shares/options and Sec 8A applies → any revenue gain incl in income.
    - Any future gain/loss when dispose of shares → subject to CGT/ if shares held as trading stock → income tax liability.

  - Sec 8B (broad-based employee share plans, where at least 80% of employees entitled to participate):
    - Market value of shares given to employee in current and last 4 years → not exceed R50 000;
    - If such shares held for at least 5 years → disposal will trigger CGT;
    - If shares held for less than 5 years → taxed as income and sec 9C (which deems shares to be held for at least 3 years to be capital) does not apply.
Tax Guide for Share Owners (Issue 5)

• Income Tax – contd.
  – Employee share incentive schemes (Sec 8A, 8B and 8C) – contd.
    • Sec 8C (shares/options acquired on or after 26 October 2004):
      – Replaced sec 8A;
      – Revenue gain/loss arises when share vests (i.e. when share acquired with no restriction).

  – Taxation of Foreign Dividends (FD)
    • FD from non-resident companies to be incl in GI, but may be partially/wholly exempt from normal tax.
      – Complete exemption (Sec 10B(2)):
        » If person holds at least 10% of total equity shares and voting rights in company declaring FD;
        » If receiver and payer of FD are foreign companies and they are resident in same country;
        » If FD derived from CFC;
        » If FD from share listed on SA exchange and doesn’t consist of asset in specie;
        » FD in specie exempt if accrued/received by resident company from listed share on/after 1 March 2014.
Income Tax – contd.

- Taxation of Foreign Dividends (FD)
  - Partial exemption (Sec 10B(3)):
    » 26/41 portion exempt – individuals, deceased estates, insolvent estates and trusts from 2016 YOA onwards;
    » 13/28 portion exempt – companies and insurers iro company policyholder fund, corporate fund and risk policy fund;
    » 15/30 portion exempt – insurers iro their individual policyholder fund.

- Sec 23(q) prohibits deduction of any expenditure incurred in production of income in form of FD.

- Sec 23(f) prohibits deduction of any expenses incurred iro amounts that do not constitute “income” (FD is exempt from tax under sec 10B).

- May be able to claim rebate under sec 6quat for foreign taxes withheld from foreign dividend income.
Tax Guide for Share Owners (Issue 5)

- **CGT**
  - Any shares held as other than trading stock = capital and CGT applicable.

- **3-year Rule (Sec 9C):**
  
  - Deems amount (Excl dividends) received/accrued and expenses incurred iro **equity share** to be **capital**, if equity share is **held for at least 3 years** → resulting in CGT being payable.

- "**Equity Share**" = share in a resident company / non-resident company that is listed on SA exchange/ interest in CC/ participatory interest in a CIS in securities.
Interpretation Note 43 (Issue 6)

• Deals with interpretation of Sec 9C – circumstances in which certain amounts received/ accrued from disposal of shares are deemed to be capital in nature.

• **Background**
  
  – Sec 9C applies iro disposal of “qualifying shares” (= “equity share”, as defined in sec 9C(1)).

  – Section 9C does not, however, apply in respect of all types of shares or to a disposal of shares within 3 years.
• **Amount Deemed to be of a Capital Nature – Sec 9C(2)**
  – Sec 9C(2) deems any amount received/accrued or any expenditure incurred iro equity share to be **capital**, if the equity share was held for **at least 3 years**.

  – **3-Year Holding Requirement**
    • **Iro a partnership**: commences on date of acquisition of share by partner (i.e. when **partner acquires fractional interest in share**).

    • **Iro discretionary trust**: commences on date of acquisition until date of disposal (**disposal date** = when shares are **sold** to third party **or vest** in beneficiary).

    • **Iro beneficiary to trust**: commences on date of vesting until date of disposal of share.
Interpretation Note 43 (Issue 6)

• Amount Deemed to be of a Capital Nature – Sec 9C(2) – contd.
  – 3 Year Holding Requirement – contd.

• Iro bewind trust (trust where beneficiaries remain owners): although trustee acts as administrator until administrative control transf back to beneficiary, this does not interrupt beneficiary’s 3-year holding period.

• Iro non-resident: if non-resident trades on SA exchange, need to first determine source of income derived from disposal of shares (i.e. only taxed if source is within SA). Source = where share-dealing business is carried on (this usually where capital employed/ where taxpayer’s wits and labour are exercised).
Interpretation Note 43 (Issue 6)

- **Anti-Avoidance Measures Applying to Immovable Property and *Bare Dominium* Schemes – Sec 9C(3)**

  - **Background**
    - Where Sec 9C(3) applies, then Sec 9C(2) will not apply - amount not automatically be deemed to be capital – general principles laid down re whether capital/revenue must be used.
    - Sec 9C(3) requires taxpayer to be a **connected person** irt company that issued shares.

  - **Companies holding Immovable Property – Sec 9C(3)(a)**
    - Sec 9C(3)(a) only applies if: (1) more than 50% of market value of equity shares being disposed of are attributable to immovable property and (2) taxpayer is **connected person** irt company that issued shares – then disposal not deemed to be capital in nature.

    - **Note:** if immovable property held for more than 3 years before disposal / if taxpayer is **not** connected person then Sec 9C(3)(a) not applicable and shares are then deemed to be capital irto Sec 9C(2).
Interpretation Note 43 (Issue 6)

- Anti-Avoidance Measures Applying to Immovable Property and *Bare Dominium* Schemes – Sec 9C(3) – contd.

  - *Bare Dominium Scheme – Sec 9C(3)(b)*
    - Applies when company (which held equity shares) acquired any asset during 3 year period immediately before disposal; and
    - Rentals iro assets were **paid to person other than company** for use of asset, while asset was held by company during 3 year period.

- Recoupment of Expenditure or Losses – Sec 9C(5)
  - Any expenditure/loss allowed as deduction under Sec 11 iro equity share held for at least 3 years → to be **recouped in taxpayer’s hands** in YOA in which share disposed of.
    - Recoupment also incl any **reduction in cost price** of share allowed under Sec 22(1)(a) read with Sec 11(x).
Share-dealers (SD)

- No distinction drawn in Sec 9C between: (1) SD carrying on business of buying and selling shares for profit and (2) person who invests in shares as long-term investment. – i.e. iro both, amounts prev allowed as deduction must be recouped on disposal of shares.

- SD entitled to claim:
  - In year of acquisition, cost of acquisition of shares – Sec 11(a) (provided that shares are incl in closing stock under Sec 22(1) at end of that YOA. Closing stock of prev year then deductible as opening stock under Sec 22(2)); and

  - On-going expenses (e.g. bank charges, internet access charges and telephone call costs) – these deductible during 3 years following date of acquisition. In year 4, no longer deductible under Sec 11(a) – no longer in production of income and deemed to be capital under Sec 9C(2).
Interpretation Note 43 (Issue 6)

• **Share-dealers (SD) – contd.**
  – In year of disposal, SD must incl in income under Sec 9C(5), value of shares incl in opening stock and any other expenses claimed as deduction in any YOA – some of recouped expenses incl in base cost for CGT (i.e. where recouped expenses comply with Par 20).

• **“First-in-first-out” method – Sec 9C(6)**
  – Applies when taxpayer acquired shares of same class and in same company on various dates and then disposes of some of shares – necessary to establish which shares are disposed of to identify if 3-year period requirement has been met.

  – Sec 9C(6) deems taxpayer to have disposed of shares that taxpayer held for the longest period of time.
Interpretation Note 43 (Issue 6)

- **Sec 9C(7)**
  - Sec 9C(7) deems equity share to be *capital* in nature once held for more than 3 years *irrespective* of whether equity share acquired other than by way of *arm’s length sale* (e.g. donated / less than market value).
BPR 267: Dividends Tax And The Most Favoured Nation Clause In A Tax Treaty

Issue date: 01 March 2017.

Summary

• This ruling determines whether dividends tax must be withheld when a dividend is paid to the beneficial owner that is a resident of the Kingdom of Sweden.

• Sweden and South Africa concluded the SA/Sweden tax treaty which, when read with the Protocol, includes a ‘most favoured nation’ clause.
BPR 267: Dividends Tax And The Most Favoured Nation Clause In A Tax Treaty

Law considered

- Sections 64G(3) and 108 of the Income Tax Act No. 58 of 1962 (the Act).


BPR 267: Dividends Tax And The Most Favoured Nation Clause In A Tax Treaty

Law considered

BPR 267: Dividends Tax And The Most Favoured Nation Clause In A Tax Treaty

Parties to the transaction

- The Applicant: A private company incorporated in and a resident of South Africa that is a wholly-owned subsidiary of Company A.
- Company A: A company incorporated in and a resident of Sweden.

Description of the proposed transaction

- Company A is the beneficial owner of the shares in the Applicant and of any dividends that may accrue in respect of those shares.
- The Applicant proposes to pay a dividend to Company A.
BPR 267: Dividends Tax And The Most Favoured Nation Clause In A Tax Treaty

Description of the proposed transaction (cont.)

- Article II of the Protocol lays down that –

“[i]f any agreement or convention between South Africa and a third state provides that South Africa shall exempt from tax dividends ... arising in South Africa, or limit the tax charged in South Africa on such dividends ... to a rate lower than ... [5%], such exemption or lower rate shall automatically apply to dividends ... arising in South Africa and beneficially owned by a resident of Sweden” (our emphasis).
BPR 267: Dividends Tax And The Most Favoured Nation Clause In A Tax Treaty

In this regard, the SA/Kuwait Tax Treaty provides in article 10 paragraph 1 that should dividends be paid by a company that is a resident of South Africa to a resident of Kuwait who is the beneficial owner, those dividends would be taxable in Kuwait only (our emphasis).

Ruling

- The Applicant will not be required to withhold dividends tax from the dividend payments to Company A if Company A complies with the documentary requirements in section 64G(3).

- This binding private ruling is valid for a period of three years from 7 December 2016.
BGR 25 (Issue 2): Foreign Pensions Exemption

Issue date: 16 March 2017.

Purpose

• Section 10(1)(gC)(ii) exempts from normal tax any pension received by or accrued to a resident from a source outside the Republic as consideration for past employment outside the Republic.

• This BGR provides clarity on the interpretation and application of the words “from a source outside the Republic” in section 10(1)(gC)(ii) in relation to pension payments that are received by or accrue to a resident.

• The term “past employment outside the Republic” refers to services rendered outside the Republic. Only the portion of a pension that relates to services rendered outside the Republic is exempt from income tax.
BGR 25 (Issue 2): Foreign Pensions Exemption

Purpose – contd.

The term “past employment outside the Republic” refers to services rendered outside the Republic. Only the portion of a pension that relates to services rendered outside the Republic is exempt from income tax.

Ruling

• The term “source outside the Republic”, for purposes of section 10(1)(gC)(ii), refers to the originating cause which gave rise to the pension income, namely, where the services have been rendered.
BGR 25 (Issue 2): Foreign Pensions Exemption

Application

• The following formula is used to calculate the portion of a pension that will be exempt due to services rendered outside the Republic:

\[
\text{Foreign services rendered} \times \frac{\text{Total pension received or accrued}}{\text{Total services rendered}}
\]

Note

• Section 10(1)(gC)(ii) was amended with effect from 1 March 2017. The exemption now only applies to a lump sum, pension or annuity transferred from a source outside the Republic.
BGR 25 (Issue 2): Foreign Pensions Exemption

Note – contd.

• Section 10(1)(gC)(ii) was amended with effect from 1 March 2017. The exemption now only applies to a lump sum, pension or annuity transferred from a source outside the Republic.

• This means that any lump sum, pension or annuity paid or payable by a “pension fund”, “pension preservation fund”, “provident fund”, “provident preservation fund” and “retirement annuity fund” as defined in section 1(1), will from 1 March 2017, no longer be exempt irrespective of where the services were rendered.
Not Covered

– Interpretation Note 95 – Deduction of energy-efficiency savings

– Binding Class Ruling 056 – Amalgamation of portfolios of declared hedge fund collective investment schemes with registered hedge fund collective investment schemes; and

Thank you

• Thank you for listening; and
• Thanks to my technical team.

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