



TAX

Tax Amendments – 2024

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Introduction

On 23 October 2024, when the Minister of Finance presented his Media-term Budget Policy Statement to Parliament, he also tabled various fiscal Bills. In this publication we deal only with the Taxation Laws Amendment Bill, 2024 and the Tax Administration Laws Amendment Bill, 2024.

As has been the trend for several years, the number of significant amendments has significantly reduced. The majority in number of the amendments are of a highly technical or esoteric nature, many of which are more of interest to tax professionals than to the business community in general.

Accordingly, we limit our discussion to those amendments which are likely to be of interest in the general business environment.

Foreign exchange gains and losses

Most of the deductions claimable under the Income Tax Act, 1962 (the Act) require that a taxpayer must be carrying on a trade, as defined in the Act. An exemption to this rule is section 24I of the Act dealing with foreign exchange gains and losses, whereby a

loss is deductible even in the absence of trade.

A difficulty has been noted in that a company might derive a foreign currency loss in circumstances where it has ceased to trade, eg, because it is insolvent and is being wound up, and the company incurs a foreign exchange loss, or its foreign exchange losses exceed its exchange gains.

Unlike individuals and trusts, an assessed loss may only be brought forward from the previous year by a company and used to shelter the current year's profit if it is carrying on a trade. Where the company has ceased trading operations and is being wound up, there might be no trade in the current year, but nevertheless a (net) exchange loss could be incurred that could be carried forward to, but not claimed in, the subsequent year owing to the absence of trade. On the other hand, there could be exchange gains in the following year, with nothing to shelter these gains. To resolve this problem, section 24I is to be amended to provide that, in the case of a company that is not carrying on trade:

- it will be taxable on the excess of the foreign exchange gains (including premiums or like consideration in relation to foreign currency option contracts) over the foreign exchange losses (including premiums or like consideration in relation to foreign currency option contracts); or
- if the losses exceed the gains, then the net loss is deemed to be an exchange loss of the company in the immediately succeeding year.

The effect is the same as if the loss had been carried forward but which, owing to the lack of trade, would not have been available to shelter foreign gains in the following year.

This amendment comes into operation on 1 January 2025 and applies in respect of tax years commencing on or after that date.

Interest limitation rules

There are two interest limitation rules in the Act, being sections 23M and 23N. The former relates to the limitation on a deduction for interest when it is paid to a foreign party that meets certain relationship tests, in which case the amount of interest claimable is limited to 30% of, what is colloquially referred to as, tax EBITDA.

The other section, section 23N, applies where there are group restructurings undertaken on essentially a tax-free basis but where interest-bearing loans are used to fund the acquisition, and the interest is claimable as a deduction. Section 23N also limits the amount of the interest that can be deducted.

Up until now the calculation of the percentage of tax EBITDA was determined in terms of a formula that was, in brief, linked to the Reserve Bank's repo rate. The higher the repo rate the greater the percentage, and therefore the greater the amount of deductible interest.

This year the section has been amended to bring it into line with section 23M, so that the interest allowable will be limited to 30% of tax EBITDA.

This amendment comes into operation on 1 January 2027 and applies in respect of tax years commencing on or after that date. This does allow for effectively a two-year phase-out period that might be sufficient in a number of cases where there will be adequate profits and/or adequate reductions in the debt, so that companies will not be affected too adversely in relation to existing loans.

Foreign Tax Credits

Section 6quat of the Act provides for the situation where a resident of South Africa derives foreign income and capital gains and the foreign country has imposed a tax thereon. The section allows the resident to claim the foreign tax paid as a credit against the South African tax payable, but only to the extent that the foreign income falls into taxable income.

In the case of capital gains individuals are taxable on 40% of the gain (which is why one speaks of a CGT rate of 18%, which is really 45% of 40%) and companies and trusts are taxable on 80% of the gains (for companies 80% of 27% is 21.6%, and for trusts 80% of 45% is 36%).

It follows that if a foreign country imposed a tax on a foreign capital gain, under section 6quat the taxpayer could claim only 40% or 80%, as the case may be, of the foreign tax paid.

This year's amendment now has the effect of allowing the full foreign tax paid to be claimed as a credit.

This amendment comes into operation on 1 January 2025 and applies in respect of tax years commencing on or after that date.

Tax administration

When a taxpayer wishes to dispute an assessment raised by SARS, the first step is to lodge objection. If the objection is disallowed (in whole or in part) the taxpayer is entitled to lodge appeal, in which case the matter will proceed to be heard in the Tax Court (or the Tax Board if the amount of tax in dispute does not exceed R1 million).

Before the appeal procedures commence (essentially being the equivalent of exchanging pleadings) the taxpayer is entitled to request alternative dispute resolution (ADR). Under ADR the taxpayer and SARS meet informally and on a without prejudice basis, often mediated by a suitable SARS official (or it could be an independent party) and the taxpayer and SARS attempt to reach a meeting of minds. Obviously, the taxpayer would seek to persuade SARS to accept the taxpayer's version, and SARS will do likewise in relation to its own position.

It does sometimes happen that a taxpayer manages to persuade SARS to concede the matter. More often than not, however, the best that the taxpayer will be able to do is propose and reach a settlement with SARS that will result in a lesser amount of tax (and penalties and interest) having to be paid. If the settlement proposal is agreed to by SARS, the settlement is embodied in a written agreement to which SARS must give effect by issuing reduced assessments, and the taxpayer must pay what has been agreed.

This year the legislation has been amended so that SARS and the taxpayer may, by mutual agreement, attempt to resolve the dispute through ADR prior to objection even having been lodged.

In such case the objection procedures are suspended while the ADR procedure is ongoing (so, for example, the obligation to lodge objection within 80 business days of the date of the assessment is suspended).

This change would facilitate an earlier resolution and/or settlement and would also save costs for the taxpayer and reduce the relevant resources that must be dedicated to the matter by SARS.

This amendment comes into operation on a date notified by the Minister of Finance in a notice published in the *Government Gazette*.



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