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Budget 2019: Business and corporate tax perspective

The National Treasury published the Budget Review 2019 on 20 February 2019. Although the Budget Review does not increase tax rates and has generally been perceived as containing relatively few tax changes, some of the proposals in Annexure C may have a significant impact for the taxpayers affected by it. This article provides an overview and brief analysis of a selection of these proposals.

The National Treasury published the Budget Review 2019 ('BR2019') on 20 February 2019. No significant adjustments were made to tax rates and the general perception of commentators appears rule to be that the BR2019 was less eventful from a tax perspective than in previous years. Annexure C of this document however contains a number of tax proposals that may have significant implications for those affected by it. This article provides an overview of a selection of these proposals that are likely to affect businesses and corporate taxpayers.

As is always the case with the budget review, the proposals made are only proposals at this stage. These proposals now have to go through the legislative cycle for it to be developed into detailed legislation to give effect to the proposals.

Arrangements involving dividends and share issues

The introduction of dividends tax in 2012, in particular the exemption of dividends paid by one resident company to another, created opportunities for taxpayers to extract value from companies in a tax-exempt manner.

During 2017 the National Treasury introduced anti-dividend stripping rules to prevent taxpayers from extracting value from shares through such dividends and thereafter disposing of the shares at a point when the value, and by implication capital gains tax on such value, is significantly lower than it would have been had it not been for the exempt dividend.

It was announced in BR2019 that the National Treasury have identified arrangements that undermine the anti-dividend stripping rules. These arrangements involve the distribution of dividends followed by a dilution of shareholding, as opposed to a disposal of shares. BR2019 indicates that amendments will be made to the share buy-back and dividend-stripping rules to curb this abuse.

The amendments will already take effect on 20 February 2019. This announcement will create significant uncertainty in any commercial arrangement that involves dividends and result in dilution of shareholding entered into between 20 February 2019 and the release of the draft tax laws amendments bill later this year. This is likely to be the first opportunity for taxpayers to get a glimpse of the proposed rules that will already have effect from 20 February 2019 onwards.

Corporate re-organisation rules

The corporate re-organisation rules are intended to allow taxpayers to perform certain re-organisation transactions in a tax neutral manner. BR2019 indicates that its application to exchange items and interest-bearing arrangements will be clarified. In addition, the interaction between various anti-avoidance rules in the corporate re-organisation rules will be refined.

The relief for re-organisation transactions also extend to VAT. Some of the VAT relief is only afforded where a going concern is transferred. It is proposed in the BR2019 that amendments be made to cater for certain fixed property transactions that do not meet this condition.

Venture capital company regime

The venture capital company regime in section 12J of the Income Tax Act was introduced in 2008 with the intention of encouraging equity investment in small and upcoming business. The regime uses an upfront deduction of the investment made as an incentive for investors. This regime and the upfront tax deduction however appear to be prone to abuse. Following significant amendments in 2018 to curb abuse, the National Treasury indicates in the BR2019 that the regime will again be amended to counter further abuse identified. The details of the abuse or proposed changes and effective dates are not provided in the BR2019.