



Proposed tax amendments for 2019

The National Treasury published the draft Taxation Laws Amendment Bill for comment on 21 July 2019. This article provides a brief overview of proposals relating to the application of anti-dividend stripping rules to dilutive share issues, exclusion of certain items from the corporate roll-over rules as well as a limitation of the deduction allowed in respect of expenditure to subscribe for venture capital company shares. The bill remains open for comment until 23 August 2019.

The draft Taxation Laws Amendment Bill for 2019 (draft TLAB) was published by the National Treasury on 21 July 2019. The draft bill contains proposals for amendments to be made as part of the 2019 legislative cycle. This article briefly reviews a selection of the proposed amendments in this bill.

Expansion of the anti-dividend stripping rules

Anti-dividend stripping rules were introduced into the Income Tax Act in 2009 and further refined in 2017. These rules apply where a company, as a shareholder with a significant interest in another company (qualifying interest), received a substantial exempt dividend (extraordinary dividend) prior to or as part of the disposal of shares in the other company. The extraordinary dividend is deemed to be proceeds from the disposal and taxed accordingly.

The draft TLAB contains a proposal to expand the scope of these rules to include arrangements where an extraordinary dividend is followed by a dilution in shareholding, rather than a disposal of shares. It is proposed that this is achieved by deeming a share issue by the investee company to another person which has the result of reducing the effective interest that another company holds in the investee to be a disposal of the percentage of shares equal to the reduction in the effective interest. Unfortunately the term *effective interest*, which has a significant bearing on the effect of the proposed amendment, is not defined in the amendment or further explained in the accompanying explanatory memorandum.

As announced in the budget review, this proposal will take effect from 20 February 2019 if enacted.

Corporate rules to exclude interest-bearing instruments and exchange items

The corporate rules allow taxpayers to enter into certain transactions (as defined in ss 42 to 47) on a tax neutral basis. Some of these transactions may involve the transfer of interest-bearing

instruments or exchange items. It is proposed that the corporate rules should not override the specific disposal and realisation rules contained in sections 24J and 24I. The explanatory memorandum indicates that this will mean that the following tax consequences may arise for transferors, even if the transaction qualifies for roll-over relief:

- ▶ Adjusted gains or losses on the transfer of interest-bearing instruments, and
- ▶ Realisation of exchange gains or losses that were deferred by the transferor.

As a result, transactions within the scope of ss 42 to 47 may not be completely tax neutral. Certain anti-avoidance provisions currently override the corporate rules. The policy rationale for excluding sections 24J and 24I, neither of which is an anti-avoidance provisions, from the roll-over relief is however not clear from the explanatory memorandum.

Limitation of venture capital company deductions

The scope of the venture capital company tax incentive in section 12J has been narrowed down over the past 2 years to ensure that it incentivises true venturer capitalists rather than provide an alternative means of funding for taxpayers' own projects. In an attempt to strike a balance between providing an effective incentive while protecting the fiscus at the same time, it is proposed that, with effect from 21 July 2019, deductions in respect of expenditure incurred to subscribe for venture capital company shares be limited to R2,5 million per investor per year of assessment.

Concluding thoughts

The amendments discussed above are only proposed amendments at this point in time. The draft TLAB is open for comment until 23 August 2019.