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## The 2020 tax amendments

The National Treasury recently released bills that contain the amendments to the tax laws for the 2020 legislative cycle. This article reviews the amendments that relate to preference shares in estate planning structures, the exemption for employer-provided bursaries and VAT neutral re-organisation transactions. It is necessary to consult with your regular tax advisor on the effect of all the amendments in this legislative cycle that are relevant to your particular circumstances to avoid unanticipated tax surprises in future.

The National Treasury recently published a number of bills that contain the amendments to the tax laws for the 2020 legislative cycle. This article reviews a selection of amendments that are likely to be of broad relevance to taxpayers and advisors. It is not intended to be a comprehensive review of all the amendments by any means. It is necessary to consult your regular tax advisor to consider the impact of all the relevant amendments in this legislative cycle to your particular circumstances.

### Estate planning using preference shares

Estate planning structures aim to limit the growth of wealth in the hands of a natural person where it would ultimately be subject to tax upon death. This is often done by housing the wealth in a trust structure. If the natural person is the source of the wealth or has already accumulated wealth in his or her personal capacity, this may be tricky. Estate planning involves that this wealth is transferred to a trust while simultaneously attempting to freeze growth in the hands of the transferor. In the past, this was generally achieved by transferring the wealth to a trust on an interest-free loan. During 2016, this practice was curbed by the introduction of section 7C into the Income Tax Act. This provision deems a taxpayer to have made a donation to the extent that a loan to a trust (or company owned by a trust) does not bear interest at the official rate of interest. Many planners resorted to using shares to try to achieve a similar outcome.

The scope of section 7C is broadened to also apply to preference shares issued by companies in which 20% or more of the equity shares are ultimately held by a trust that is a connected person to the preference shareholder. The amendment applies to dividends (or the lack thereof) that accrue during years of assessment commencing on or after 1 January 2021.

### Bursary structures

In recent years there have been a number of bursary schemes that involved a sacrifice of remuneration by employees for a bursary to cover studies of the employee's relatives. This resulted

in a portion of the employee's income being exempt from tax. The exemption is only available for *bona fide* scholarships and bursaries. Some held the view that arrangements that involved an element of salary sacrifice may still represent *bona fide* bursaries. This position appears to have been based on the following views of the National Treasury in the explanatory memorandum to the 2006 amendments:

"To simplify matters, the proposed amendment provides that all *bona fide* scholarships and bursaries for employees will be tax-exempt regardless of whether or not elements of a salary sacrifice are present".

For years of assessment commencing 1 March 2021, the explicit prohibition against salary sacrifice schemes is re-introduced. Any bursary or scholarship granted to enable a relative of an employee to study will not be exempt if the employee sacrificed any remuneration or future remuneration.

### VAT neutral re-organisation transactions

The corporate rules in the Income Tax Act allow for tax neutral re-organisation transactions. The VAT Act similarly allows for tax neutral treatment by deeming two vendors to be one and the same person where the corporate rules apply (i.e. the transaction is a non-event). The VAT relief is narrower in the case of asset-for-share and intra-group transactions. It only applies where a going concern is supplied in an attempt to ensure that the relief does not eliminate VAT on day-to-day transactions in a group context.

Some re-organisation transactions involve assets that do not qualify for relief under the corporate rules. This leaves taxpayers in a position where the deemed non-supply rule does not apply to the whole transaction, while the zero-rating for the supply of a going concern is also not available to the other part of the transaction. To avoid this outcome vendors involved in a re-organisation transaction may, from 1 April 2021, elect in writing to apply the zero-rating for the supply of a going concern to the whole transaction, instead of utilising the deemed non-supply rule. This is something that should be considered and explicitly stated when agreements for these transactions are drafted.

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