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Client Alert

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South Africa: National Budget Speech 2024 - key developments

In brief

On 21 February 2024, South Africa's Finance Minister Enoch Godongwana delivered the South African National Budget Speech. We outline below our comments on the salient issues in the Budget Speech that affect businesses operating in South Africa.

You may access our infographic summary of the Budget Speech here.

Contents

In more detail

Customs updates

- **Customs export bills of entry - timing**

Customs Act to be amended such that exporters can submit export bills of entry at a different time than what is currently provided for in the Act.

- **e-Commerce**

Customs Act proposals will be made to review the process for the importation of packages imported via eCommerce.

- **Vouchers of correction - changes coming**

Proposals will be made to simplify the process of substituting bills of entry in certain circumstances.

Taxes

- **Tax records**

Legislative changes coming following the Arena Holdings Constitutional Court judgment

It has been announced that changes will be made to affected legislation (the TAA and PAIA) to implement the Constitutional Court judgment regarding access to tax records.

- **Carbon Tax Act**

Carbon Tax Act amendments are coming to allow for a renewable energy premium deduction. It is proposed that the Carbon Tax Act be amended to allow generators of electricity to continue to claim the renewable energy premium deduction for PPAs ceded to the National Transmission Company of South Africa, with effect from 1 January 2024.

- **There will be no increase in fuel levies, but...**

The fuel levies will not be increased, resulting in ZAR 4 billion in foregone taxes, partially offset by above-inflation increases in excise duties on alcohol and certain categories of tobacco products.

- **Plastic bag levy**

The plastic bag levy is to increase from 28c/bag to 32c/bag from 1 April 2024.

- **Incandescent light bulb levy**

The incandescent light bulb levy will increase from ZAR 15 to ZAR 20 per light bulb from 1 April 2024. This complements the phase-out of inefficient light bulbs and promotes compliance with the new energy efficiency standards published by the DTIC.

- **Motor vehicle emissions tax**

Motor vehicle emissions tax is to increase from ZAR 132 to ZAR 146 per gram of CO2 emissions per kilometer for passenger vehicles, and the tax rate for double cabs will increase from ZAR 176 to ZAR 195 per gram of CO2 emissions per kilometer from 1 April 2024.

Organizational requirements

- **Public officer update**

It is common knowledge that every newly incorporated company must have a public officer, and generally, this must be done within one month of incorporation. However, this is sometimes overlooked, and there may be a period where a public officer is not in place. The intention is to remove this grace period, given that companies are automatically registered for income tax on formation. A newly formed company will thus have both its directors and public officer in place on formation.

- **Pillar 2 coming sooner than anticipated**

Having announced the intention to look at Pillar 2 in 2023, it now appears that National Treasury will quickly move to implement an income inclusion rule and a domestic minimum top up tax for qualifying multinationals from 1 January 2024.

- **Limited partners in en commandite partnerships**

Section 1 of the Income Tax Act stipulates that within a partnership or an international partnership (as characterized in the same section), every partner is deemed a connected person in connection to every other partner, and likewise to any individuals or entities that are considered connected to any partner of the partnership. This implies that all partners in a partnership are linked to one another, as well as to any associated entities of the partners within the partnership structure. The government has taken note of the situation that limited partners in *en commandite* partnerships (where the partnership activity is carried out in the name of certain partners and the silent partners only provide a set amount of capital and are not liable beyond their investment even in the event of losses) are encapsulated by the broad scope of the connected person definition.

In response to this issue, there is a proposal to re-evaluate how "connected person" pertains to a "qualifying investor," as this term will be delineated within the context of the Income Tax Act. The reassessment aims to refine the definition to be more equitable and reflective of the economic realities of partners within the private equity space, particularly recognizing the distinct positions and limited liability that limited partners typically hold in these investment structures.

- **Assessed loss**

There is many a time when trying to clean up a company's balance sheet for purposes of de-registrations, liquidations or wind-up results in tax to be paid. The joy of having an assessed loss to absorb the cost is generally curbed where a company has not traded over a year-end and therefore loses the ability to use those losses. It would appear that National Treasury is looking to make amendments to allow companies to use the assessed loss while in the process of liquidation, deregistration or winding up.

- **Renewable energy threshold**

The government has announced a proposal to raise the eligibility threshold for renewable energy projects in terms of installed capacity for the carbon offset allowance. This increase moves the threshold from 15 megawatts to 30 megawatts, with these changes already in effect as of 1 January 2024. Concurrently, the Department of Mineral Resources and Energy is working to establish a comprehensive framework to set domestic carbon offset standards within this year. These initiatives are aimed at alleviating the financial load that project developers currently face in relation to the registration and approval processes of carbon offset projects.

- **Personal income tax**

In line with predictions, the space to increase personal income tax rates has resulted in no increases.

- **Technical tax rules continue to be revised**

The Budget indicates that work will continue to reform key aspects of technical tax rules affecting corporates, and especially mergers and acquisitions:

  - Interest deductibility

    - Contributed tax capital
    - Reform of the de-grouping charge and scope of qualifying amalgamation transactions

- **Welcome clarity for private equity funds on connected persons**

The Budget proposes amending the definition of 'connected persons' in the context of *en commandite* partnerships to limit the knock-on connection between partners and the entities with which they are connected persons.

- **Electronic Service Providers and Representative Vendors**

To increase engagement and compliance by non-resident electronic service providers, South African Revenue Service (SARS) as removed the exemption from appointing a representative vendor in South Africa.

VAT

- **Overpayment of import VAT: changes proposed**

Proposals are to be made under the VAT Act to cater for refunds of overpaid import VAT to persons not registered as vendors.

- **Electronic Services Regulations - proposals coming**

In light of the developments in the digital economy, proposals will be made to revise the Electronic Services Regulations under the Value Added Tax Act, 1991. These proposals will impact foreign suppliers of electronic services to South African customers.

- **Changes impacting input tax deductions**

Proposals will be made to limit taxpayer claims for input tax deductions, under the VAT Act, to the period in which the entitlement to that deduction arose. Taxpayers to keep in mind the accounting basis on which they are registered, as this will be one of the factors that inform the correct tax period within which to make a deduction.

- **Proposals to amend the definition for "resident in the Republic" under the VAT Act**

Under current tax legislation, non-resident subsidiaries of South African based companies may qualify as "resident" companies (by virtue of the "enterprise" definition and being effectively managed in South Africa). It is proposed that the VAT Act be amended to exclude these subsidiaries from the definition of "resident in the Republic" to ensure that services supplied to them qualify for zero-rating.

Other changes

- **Retirement fund changes**

Retirement fund members will have the option to withdraw from the savings component of their fund before their retirement. This change will take effect from 1 September 2024. However, the retirement component will remain protected. Any pre-retirement withdrawals from the savings component will be subject to marginal tax rates, like any other income. However, taxpayers will be taxed at lower rates when their taxable income is lower. Please note that only one withdrawal may be made in a tax year, and the minimum withdrawal amount is ZAR 2000.

- **Proposed incentivization of the production of electric vehicles in South Africa**

In order to encourage the production of electronic vehicles in South Africa, the government has proposed the introduction of an investment allowance from 1 March 2026. Under the proposed allowance, electric vehicle producers would be able to claim 150% of qualifying investment spending on the production of electric vehicles. Additionally, the DTIC will reprioritize ZAR 964 million in order to assist the transition to electric vehicles, as set out in the New Energy Vehicles White Paper that was approved by Cabinet in 2023.

Conclusion

Businesses operating in South Africa should ensure they are aware of the changes announced in the South African Budget Speech and that they are compliant with, and are able to benefit from, any new developments regarding tax rates, levies, thresholds and incentives that will be implemented going forward.

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