national treasury
Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

TAXATION LAWS AMENDMENT BILLS

National Treasury releases for public comment a draft of the taxation laws to give effect to the tax proposals announced in the 2009 Budget and outlined in the 2009 Budget Review (available on www.treasury.gov.za). A draft of the 2009 Taxation Laws Amendment Bills can be found on the websites of the National Treasury or SARS (www.sars.gov.za).

The draft 2009 Taxation Laws Amendment Bills are published for public comment before the Bills are formally tabled in Parliament. The Standing Committee on Finance (previously the Portfolio Committee on Finance), established in terms of the Money Bills Amendment Procedure and Related Matters Act, convenes informal hearings on the draft bills and considers public comments received. The Bills are then revised by the National Treasury and presented to the Committee, before being formally tabled by the Minister of Finance. This procedure has become the established practice for the annual tax legislation to allow members of the public, practitioners and other role players to make inputs. The established procedure continues to apply to these bills, as the new procedure outlined in the Money Bill Amendment Procedure Act only takes effect after the passing of the Appropriation Bill later this year. It is the prerogative of the Standing Committee to apply the new procedure outlined in the new Money Bill Amendment Procedure Act at the appropriate time.

For technical reasons, the draft tax laws also have to be split into two bills - a money bill (section 77 of Constitution) and an ordinary section 75 (of the Constitution) bill - as has been the practice in previous years. There will therefore be no Revenue Laws Amendment Bills in 2009. The Taxation Laws Amendment Bills incorporates the Revenue Laws Amendment Bills, as well as the draft bills published on 19 February 2009 dealing with rates, thresholds and urgent matters.

The draft legislation deals with a number of matters, notably:

1. *Environmental incentives:* The Income Tax Act contains two incentives in support of the environment. The sale of certified emission reductions (also known as carbon emission reductions credits) will be exempt from income tax. Secondly, businesses will obtain notional deductions for income tax purposes for energy efficiency savings from certified baselines based on energy efficiency certificates issued by the National Energy Efficiency Agency.

Note that the implementation of the environmental levy of 2 cents per kWh on electricity generated from non-renewable resources as announced in 2008 was delayed and will now take effect on 1 July 2009. The imposition of this levy does not require any new legislation in these draft bills.

2. *Conversion of the Secondary Tax on Companies to the new Dividends Tax:* In 2008, the basic rubric for the new Dividends Tax was enacted. The proposed 2009 legislation contains supporting amendments. These amendments prevent taxpayers from converting the taxable sale of shares into tax-exempt pre-sale dividends, and impose the new Dividends Tax in respect of deemed dividends (e.g. loans to connected persons). The legislation also creates an equal playing field for both domestic and foreign shares listed on the JSE, and hence the 10 per cent charge on dividends will also apply to foreign shares listed on the JSE.

3. *Learnership tax allowance:* The tax incentive to encourage employers to train/up-skill their employees through registered learnerships or apprenticeships will be streamlined and further enhanced. If an employee successfully completes a 12 month learnership, his or her employer will be able to claim an additional deduction of R60 000. This will result in a tax relief for the employer of R16 800 per employee. Where an employee successfully completes a three year apprenticeship, the employer will be able to claim an additional allowance of R180 000 at the end of the third year, resulting in a tax relief of R50 400 per employee. A more generous dispensation applies to employers who train employees with disabilities, with employers qualifying for a 66.67 per cent higher tax relief than for that for employees without disabilities.

4. *Travel (car) allowances: Repeal of the deemed kilometre method:* The deemed kilometre method for deducting travel expenses will be repealed with effect from 1 March 2010. The repeal of this method will eliminate an unintended subsidy for commuting by car (a personal expense). Individuals who use their private vehicles for businesses purposes and who receive a travel (car) allowance will still be able to claim such expense by maintaining a logbook of business kilometres travelled. The PAYE system for travel (car) allowances will be adjusted so that 80 per cent of this allowance will be subject to PAYE. The 80 per cent rule will prevent under-withholding from taxpayers once the deemed kilometre method is repealed.

5. *Retirement withdrawals:* The proposed legislation completes the reform process set in motion in 2008 regarding the taxation of retirement and pre-retirement withdrawal lump sums. Most of the proposed legislation dealing with lump sum tables and clarification of anomalies was published in the first batch of draft legislation in February 2009. The proposed legislation also seeks to simplify the taxation of minor beneficiary funds subject to regulation by the Financial Services Board, and to clarify the law when employers legitimately withdraw employer surpluses from retirement funds.

6. *Estate Duty:* The proposed amendments seek to assist middle-income families while deterring Estate Duty avoidance at the upper end. In terms of assisting the middle class, the proposed amendments allow the R3.5 million deduction from Estate Duty to rollover from the deceased to a surviving spouse (so that the surviving spouse can use a R7 million deduction amount on

death). In terms of anti-avoidance, the rules close a commonly utilised 1-year usufructory arrangement that artificially seeks to undermine the value of inherited property.

7. *Provisional tax:* In 2008, the provisional tax system was tightened to require 80 per cent accuracy in respect of the second provisional payment when compared to final assessed taxes due. Amid concerns that this requirement may not always be possible (especially for smaller businesses), the 20 per cent penalty will be waived in certain circumstances.

Public Comments and Parliamentary Hearings

The National Treasury and SARS are scheduled to brief the Parliament's Standing Committee on Finance regarding the draft legislation in mid-June 2009. For further details about the exact date, contact Bradley Viljoen at Parliament at bviljoen@parliament.gov.za or by telephone on 021 403 3759. Comments should be submitted to both the Parliamentary Standing Committee on Finance at the above email, and directly to the National Treasury to Nomfanelo Mpotulo at nomfanelo.mpotulo@treasury.gov.za by **26 June 2009**. To assist in processing these comments, comments should be given in the order listed as per the explanatory memorandum.

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