



**national treasury**

Department:  
National Treasury  
REPUBLIC OF SOUTH AFRICA

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## **MEDIA STATEMENT**

### **First Batch of the draft Taxation Laws Amendment Bill, 2015**

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National Treasury will be publishing the full text of the 2015 draft Taxation Laws Amendment Bill for public comment in the first half of July 2015. National Treasury today publishes an initial first batch of the 2015 draft Taxation Laws Amendment Bill to cover specific provisions that require additional consultation. This initial and shorter public comment process will enable the more detailed second round process of public comments when these provisions are revised for the second batch of the draft Taxation Laws Amendment Bill in July. Written comments are due at the close of business on 26 June 2015.

This First batch of the 2015 draft Taxation Laws Amendment Bill is intended to solicit comments on three specific amendments that might require further consultation before it is included in the draft Taxation Laws Amendment Bill to be published in July. It will also serve notice to taxpayers of proposals for earlier effective dates for some of the proposed amendments.

The three specific amendments in the first batch include:

#### **1. Counter measure for tax-free corporate migrations**

With effect from 1 April 2014, changes were made in the Income Tax Act to counter erosion of the South African tax base through tax-free corporate migration facilitated through cross-border cross-issues of shares. The effect of these reforms is that, if a South African resident company issues shares as consideration for its acquisition of shares in a foreign company, a capital gain will result for the South African resident company.

However, concerns have been expressed that these anti-avoidance measures are very broad and also affect bona-fide commercial transactions, even in instances where there is no element of corporate migration and profit shifting. In addition, a number of potential tax avoidance schemes on tax-free corporate migrations involving the use of the participation exemptions have been identified as a potential risk to the fiscus.

In order to allow legitimate commercial transactions that will potentially grow and expand the base for South African companies operating in other countries, it is proposed that the issue of shares by a South African resident company as

consideration for shares in a foreign company will no longer be subject to capital gains tax. It is proposed that this amendment should be applied retrospectively to the date of the introduction of the initial legislation i.e. 1 April 2014.

In order to counter the identified base erosion strategies that use the participation exemptions to facilitate tax-free corporate migrations, it is proposed that the disposal of foreign shares by South African residents to connected persons should not benefit from the participation exemption. In addition to this, it is proposed that upon ceasing to be tax resident in South Africa, any participation exemption benefits previously enjoyed by a South African resident during the three year period before ceasing to be a resident will be subjected to tax. Though these anti-avoidance measures will be considered by Parliament later this year and possibly legislated thereafter, notice is given that the intention of the Minister is that this provision will be dated to apply from today, 5 June 2015, the date of publication of this Media Statement.

## **2. Transitional tax issues resulting from the regulation of the business of hedge funds**

With effect from 1 April 2015, Government classified the business of hedge funds as collective investment schemes, therefore subjecting them to similar rules as other collective investment schemes in terms of the Collective Investment Schemes Control Act. The regulation of the business of hedge funds has unintended transitional tax consequences. It includes the disposal of assets by the unregulated hedge funds to trading vehicles to be approved by the Financial Services Board as collective investment schemes.

In order to allow for the effective regulation of the business of hedge funds, it is proposed that transitional relief be allowed by deferring potential capital gains and income tax consequences that may arise on the transfer of assets from unregulated investment structures to persons that will be regulated as CISs. It is proposed in the draft legislation that this amendment will apply retrospectively from 1 April 2015, i.e. the date of the declaration of hedge funds as a CIS by the Minister.

## **3. Tax implications of outright transfer of collateral**

Most debt agreements involve the usage of collateral, more specifically the use of equity going forward as the demand for high liquidity assets is increasing due to higher capital and liquidity requirements. The provision of collateral can take two forms, namely, (i) pledge (no transfer of beneficial ownership with no tax implications) and (ii) outright transfer (out and out cession of beneficial ownership with tax implications). The taxation of the outright transfer of collateral may have negative effects on acceptable business practices. To mitigate these challenges, amendments are proposed to allow for situations where non-cash collateral is provided on an out-and-out basis. No capital gains tax and securities transfer tax implications will arise to the extent that the non-cash collateral is returned to the borrower by the lender within twelve months from the date that the collateral arrangement was entered into. It is proposed that these amendments will apply with effect from 1 January 2016.

The draft legislation and explanatory memorandum can be found on the National Treasury ([www.treasury.gov.za](http://www.treasury.gov.za)) and SARS ([www.sars.gov.za](http://www.sars.gov.za)) websites.

Please forward written comments to Nomalizo Bulisile at: [Nomalizo.bulisile@treasury.gov.za](mailto:Nomalizo.bulisile@treasury.gov.za) and Adele Collins at [acollins@sars.gov.za](mailto:acollins@sars.gov.za) by the close of business on **26 June 2015**.