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DEDUCTIONS AND ALLOWANCES
SECTION 24O – INTEREST ON EQUITY SHARE ACQUISITIONS

INTERNATIONAL TAX
CONTROLLED FOREIGN COMPANIES AND OUTSOURCING

VALUE-ADDED TAX
TRANSFER PRICING ADJUSTMENT AND VAT BGR 68

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SECTION 24O – INTEREST ON EQUITY SHARE ACQUISITIONS

Hidden gems in the form of tax deductions do exist in the Income Tax Act, 1962 (the Act). With escalating taxes, any hidden tax breaks are always welcomed by taxpayers. One such gem is buried in section 24O of the Act. In this article the opportunities held by section 24O are shared by focusing on its use and application to those acquiring equity shares.

Section 24O can in certain circumstances be utilised in acquisition transactions when a company obtains financing to acquire equity shares in another company. The operative provision of this section essentially permits the interest levied on the financing to be claimed as a tax deduction. This is a welcome relief considering that interest expense is generally only deductible in terms of section 11*(a)* or 24J of the Act as an expenditure incurred in the production of income of the trade of the taxpayer, depending on whether the loan is repayable on demand or not. The acquisition of shares does not often fall within the ambit of the general deduction formula and would generally not, on its own, qualify as a deduction.

Unfortunately, however, this provision does not apply to all acquisition transactions. Certain criteria need to be present to qualify for the deduction. The debt must be incurred by a company to finance the acquisition of equity shares in terms of an acquisition transaction.

"Where large interest-bearing loans are taken to finance the purchase of equity shares, section 24O can be of great value to a taxpayer who can make use of this deduction."

Section 24O(1) defines an acquisition transaction as any transaction where a company acquires equity shares in another company that is –

- an operating company with the acquiring company becoming a controlling group company of that target operating company at the end of the transaction; or

- a controlling group company in relation to an operating company and that acquiring company controls the controlling group company at the end of the transaction.

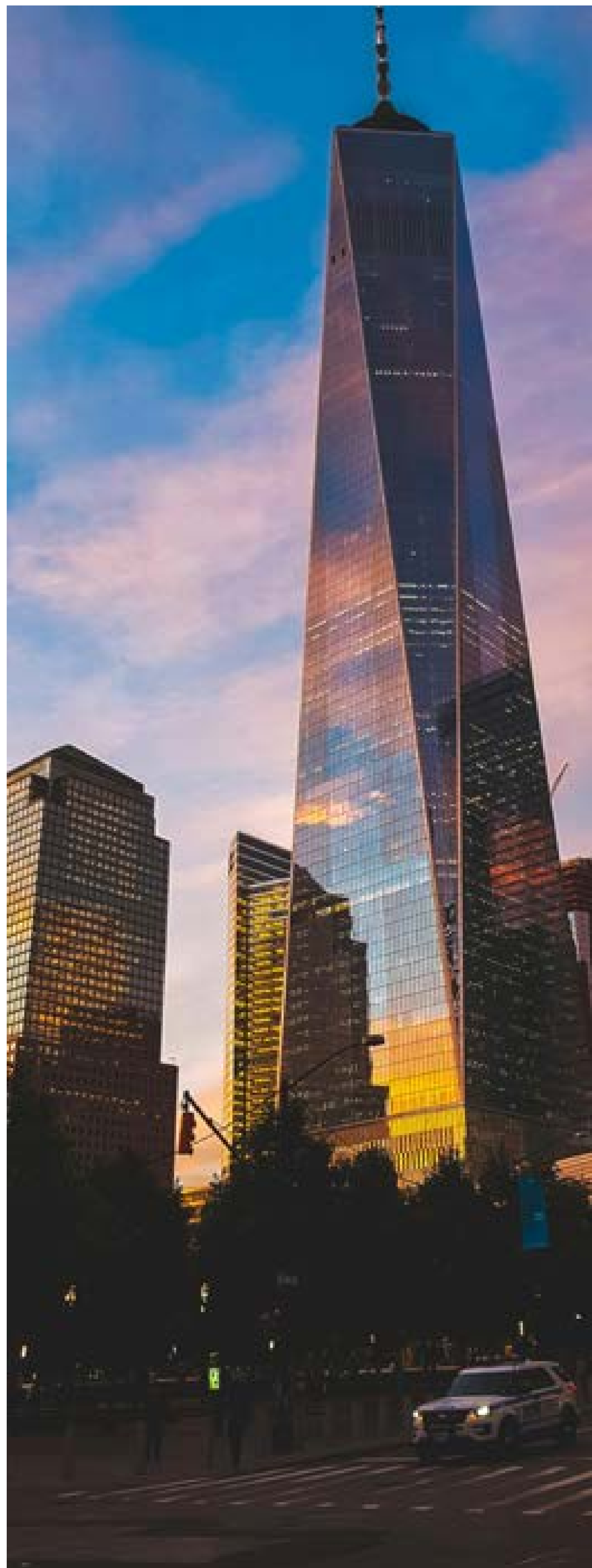
After the acquisition, there must be a change in control in order to rely on section 24O. In other words, the provision is not applicable to companies that already form part of the same group of companies.

To completely understand the implications of section 24O, it is vital to understand the meaning of "equity shares" and "operating company" (defined in sections 1(1) and 24O(1) of the Act, respectively). An operating company refers to a company where a minimum of 80% of the aggregate amounts received or accrued in a year of assessment is classified as income in the hands of that company and this income must be derived from a business carried on continuously by the operating company and which is derived from goods or services provided or rendered by the operating company for consideration.

Once it has been established that the debt was incurred for a qualifying acquisition transaction, the interest incurred on such debt, to the extent that the percentage of equity shares so acquired constitutes a qualifying interest in an operating company, will be deemed to be incurred in the production of income and deductible for tax purposes.

As is the case with all tax benefits, limitations must be imposed in order to prevent misuse. Section 23N of the Act applies to section 24O in that the allowable deduction is limited to an amount calculated by applying a specific formula to the income tax of the acquirer.

Where large interest-bearing loans are taken to finance the purchase of equity shares, section 24O can be of great value to a taxpayer who can make use of this deduction. But it is important to ensure that the criteria for the applicability of this section are met. As is the case with all hidden gems in terms of the Act, correct planning and implementation are key to the success of a notable tax deduction.



Ahmed Dhupli & Dr Candice Reynders

PH Attorneys

Acts and Bills

- Income Tax Act 58 of 1962: Sections 1(1) (definition of "equity share"), 11*(a)*, 23N & 24O (specific reference also to definition of "operating company" in subsection (1)).

Tags: acquisition transactions; operating company; acquiring company; controlling group company; equity shares; qualifying acquisition transaction; interest-bearing loans.

FOREIGN EMPLOYERS: PAYE OBLIGATIONS

Effective from 22 December 2023, South African tax legislation requires non-resident employers with a permanent establishment (PE) in the country to register as employers for employees' tax (PAYE) purposes and to withhold PAYE from remuneration paid to their employees.

This change could have a significant impact on employers with employees that opt to work in South Africa remotely, a situation that has become common, especially since the outbreak of the COVID-19 pandemic in 2020. This amended legislation means that foreign employers need to take greater care to ensure compliance with regard to their remote working population.

PREVIOUS REGULATIONS

Until this change, only South African resident employers or representative employers in the case of foreign employers were obligated to withhold PAYE. If there was no representative employer for the foreign employer, the employee was responsible for settling his or her personal tax liability through the provisional tax regime.

NEW COMPLIANCE REQUIREMENTS

Under the amended legislation, any remuneration paid from 22 December 2023 is subject to PAYE withholding. Therefore, some foreign employers may already find themselves non-compliant with South African PAYE regulations. These foreign employers are also required to contribute to the Skills Development Levies (SDL) and the Unemployment Insurance Fund (UIF) through the South African Revenue Service (SARS), regardless of whether the foreign employer has a subsidiary or offices in South Africa.

UNDERSTANDING PERMANENT ESTABLISHMENTS (PEs)

In section 1(1) of the Income Tax Act, 1962, a PE is defined in line with Article 5 of the Model Tax Convention of the Organisation for Economic Co-operation and Development (OECD), which encompasses a fixed place of business or authority to conclude contracts through employees or agents in South Africa.

Some foreign employers may not realise that their business activities have established a PE in South Africa. The definition can thus give rise to a PE in various situations, including but not limited to the following:

- **Home office with contract signing authority:** If a senior employee works from their home office in South Africa and has the authority to sign contracts on behalf of the foreign company, this can create a PE.

- **Long-term construction projects:** A construction project that continues for at least six months can result in a PE.

- **Storage and distribution activities:** A foreign company that rents storage space in South Africa to import and temporarily store goods that have already been sold to South African customers (pre-ordered before export) can establish a PE. This situation applies even if the company views itself merely as a distributor, conducting most of its business activities abroad, with only one employee in South Africa to assist with distribution.

- **Provision of services:** Providing services in South Africa for an extended period, particularly if employees or contractors of the foreign company are present in South Africa for those services, can establish a PE.

- **Management or control:** If significant management or control functions are carried out in South Africa, this may establish a PE.

Determining whether a PE is established is a complex matter that may require thorough analysis of the relevant double taxation agreement and potentially any multilateral agreement applicable in respect of the foreign company's tax jurisdiction and South Africa. It also requires an in-depth understanding of the business's operations and transactions in South Africa.

HOW TO ENSURE COMPLIANCE

- **Assess PE status:** Verify if the business activities create a PE in South Africa. Only those with a PE are required to register as employers and withhold PAYE.
- **Register as an external company:** If it is determined that a PE has been established, the business must register as an "external company" with the Companies and Intellectual Property Commission (CIPC). This step is necessary to register as an employer with SARS.
- **Handle payroll administration:** After registration, the business must manage a South African payroll by registering as an employer with SARS and perform monthly payroll duties.

Foreign employers should avoid rushing to register for PAYE in South Africa unless they are certain that they have a PE, such as a fully operational branch. Instead, they should first obtain a tax opinion to confirm their status and then proceed with PAYE registration if necessary.

IMPORTANCE OF COMPLIANCE

Non-compliance can result in significant penalties. It is therefore recommended that foreign employers act promptly to understand and comply with these requirements to avoid penalties and ensure smooth business operations in South Africa.

"Determining whether a PE is established is a complex matter that may require thorough analysis of the relevant double taxation agreement and potentially any multilateral agreement applicable in respect of the foreign company's tax jurisdiction and South Africa."

Dumisa Sihawu

BDO

Acts and Bills

- Income Tax Act 58 of 1962: Section 1(1) (definition of "permanent establishment").

Other documents

- Model Tax Convention on Income and on Capital of the Organisation for Economic Co-operation and Development (OECD): Article 5.

Tags: permanent establishment (PE); employees' tax (PAYE); fixed place of business; double taxation agreement; external company.

WITHDRAWALS UNDER THE TWO-POT RETIREMENT SYSTEM

While experts continue to debate the merits of the two-pot system, as from 1 September 2024 many South Africans have started withdrawing from their savings pot under the new system.

KEY CONSIDERATIONS

In this article five key considerations that fund members must be aware of before making a withdrawal are provided.

1. Seed capital and withdrawal limits

On 31 August 2024, 10% of the value of one's existing retirement fund, or R30 000, whichever is lower, was allocated to members' savings pots. This initial allocation of funds has been termed *seeding capital*. The seeding capital allocation is a once-off transfer at the commencement of the two-pot system and will not be repeated in the following years.

The savings pot will be accessible at any time to a fund member with only one withdrawal permitted in a tax year. There is no maximum withdrawal amount set for fund members looking to withdraw from their savings pot but it must be a minimum of R2 000.

2. SARS has the first right to your savings pot withdrawals

Fund members need to be aware that before any payment will be released, the fund administrator will need to apply to SARS for a tax directive. Where the taxpayer has an outstanding tax debt with SARS, the fund administrator will be issued with a notice to pay this debt from the withdrawal amount first and only pay the taxpayer the balance.

3. Annual withdrawals are not limited to a single policy per tax year

Another dimension of the savings pot is that a fund member is permitted to make one annual withdrawal *per policy*. This incentivises the concept of having a more diverse policy portfolio.

An example of this scenario is where an individual is contributing to three policies: the fund member would be eligible to make an annual withdrawal from each respective policy. Needless to say, a fund member will be limited to the actual amount that is held within the member's savings pot at the time of withdrawal.

4. Tax on savings

A withdrawal from a fund member's savings pot will be subject to tax at the member's marginal tax rate. This means that any withdrawal will be taxed in the same manner as a salary or other similar income.

The tax on the withdrawals will be withheld by the fund administrator in question and paid directly over to SARS.

5. No resignation required

Fund members must be aware that the new system has limited their right to withdraw from their 2/3 retirement pot. Previously fund members were permitted to access their total lump sum amount under their retirement policy upon a resignation. The new two-pot system thus implements a lock-in of the retirement pot until a fund member reaches retirement.

THE TAKEAWAY FOR FUND MEMBERS

Fund administrators have been sending out communications to their members on how savings withdrawal claims will be processed going forward.

Fund members are urged to consider the practical implications relating to their withdrawals from their savings pot, most importantly the tax implications. An impulsive withdrawal without understanding the implications could lead to far more harm than the relief afforded by accessing those funds.

For more information on the two-pot system the QR Code to the National Treasury's information portal is included is included here:

John-Paul Fraser

Tax Consulting SA

Tags: two-pot system; seeding capital; marginal tax rate.

CONTROLLED FOREIGN COMPANIES AND OUTSOURCING

Since the delivery of the Constitutional Court's (CC) judgment in Coronation Investment Management SA (Pty) Limited v Commissioner for the South African Revenue Service *[2024] on 21 June 2024, the judgment has been debated on various platforms by the South African tax advisory and business community.*

The CC held that the taxpayer, Coronation Investment Management SA (Pty) Ltd, had a foreign business establishment (FBE) in Ireland despite the Irish business procuring some services from companies in the UK and South Africa. As a result, the CC held that the taxpayer was exempt from section 9D of the Income Tax Act, 1962 (the Act), so that the (net) income of its Irish subsidiary, which is a controlled foreign company (CFC) under section 9D, was not subject to tax in South Africa.

This article delves into this issue in a bit more depth and considers some of the judgment's potential broader implications. However, before that is done, a brief overview is provided of section 9D, which forms the basis of the case.

SECTION 9D OVERVIEW

While this case focuses on investment management companies, it potentially has an impact on all South African resident multinational companies that currently rely on or may wish to rely on the FBE exemption when setting up operations outside South Africa.

Section 9D is an anti-avoidance provision aimed at imposing tax on South African taxpayers, specifically on income earned by South African owned foreign corporate entities. The phrase CFC is broadly defined in section 9D(1) to include any foreign company where more than 50% of the company's voting rights are held or participation rights are owned by South African residents. In other words, one looks at the cumulative holding of voting rights or cumulative ownership of participation rights to determine whether the entity is a CFC.

In terms of section 9D, the net income of a CFC is imputed to its South African resident shareholders and is taxable in South Africa. The imputation of income is subject to certain exceptions, one of which relates to whether that CFC is considered an FBE. Should the requirements of an FBE be met, some or all of the net income of the foreign company will be exempted from South African tax.

For the avoidance of doubt, section 9D does not seek to impose South African tax on a foreign company. It subjects the South African residents in relation to whom the foreign entity is a CFC to tax on the net income of the CFC, in proportion to their participation rights owned.

FACTS

Coronation Fund Managers Limited (Coronation) is a South African public company listed on the Johannesburg Stock Exchange. It has various subsidiaries within South Africa and abroad that operate within the fund management and investment management space.

Coronation Investment Management SA (Pty) Limited (Coronation SA) is a wholly owned subsidiary of Coronation and is in turn the holding company of Coronation Management Company (RF) (Pty) Limited and Coronation Asset Management (Pty) Limited (CAM), both registered as tax residents in South Africa.

Coronation SA was also the holding company of the now deregistered Coronation Fund Managers (Isle of Man) Limited. The latter company was the 100% owner of Coronation Global Fund Managers (Ireland) Limited (Coronation Ireland) and Coronation International Limited (CIL), which are registered and tax resident in Ireland and the UK, respectively.

Coronation Ireland holds a licence issued by the Central Bank of Ireland (CBI), the regulatory authority for investment funds in Ireland. In terms of the licence and its business plan, Coronation Ireland is licensed to perform various functions, including decision-making, monitoring compliance, risk management, monitoring of investment performance, financial control, monitoring of capital, internal audit, complaints handling, accounting policies and supervision of delegates. The licence did not authorise Coronation Ireland to conduct investment trading activities.

CAM and CIL are specialist investment managers licensed to conduct investment trading activities within their respective jurisdictions, being South Africa and the UK.

It was accepted that Coronation Ireland was a CFC (as defined) of Coronation SA. Coronation Ireland utilised a delegated business model whereby Coronation Ireland delegated the investment trading activities to CAM and CIL. These entities performed investment trading activities in respect of the collective investment funds in South Africa and the UK, respectively, under the supervision of Coronation Ireland. Coronation Ireland's oversight formed a significant part of its roles.

With regard to the 2012 year of assessment, the Commissioner for the South African Revenue Service (SARS) raised an assessment on Coronation SA's tax liability. The assessed amount included the entire net income of Coronation Ireland.

SARS had concluded that Coronation Ireland did not meet the requirements for recognition as an FBE and the exemption in section 9D(9)*(b)* did not apply. This was based on SARS' view that Coronation Ireland had outsourced the primary functions of its business and all that remained were ancillary non-core functions. Coronation SA objected to the additional assessment.

The tax court held that Coronation Ireland met the requirements of an FBE and accordingly qualified for the tax exemption. This court set aside SARS' additional assessment(s) against Coronation SA and ordered SARS to issue a reduced assessment that excluded any amount pertaining to Coronation Ireland's income (see *Coronation Investment Management SA (Pty) Ltd v The Commissioner for the South African Revenue Service* [2021] (tax court, Cape Town)).

"In summary, Coronation Ireland had adopted the delegated business model where it would perform investment management functions while delegating the investment trading functions, albeit retaining oversight over the delegated function."

SARS appealed the tax court's decision to the Supreme Court of Appeal (SCA). The SCA disagreed with the tax court's findings and concluded that Coronation Ireland had outsourced its primary business and, thus, did not meet the requirements for an FBE exemption, and that the net income of Coronation Ireland was attributable to Coronation SA in respect of the 2012 year of assessment. Therefore, the SCA ordered Coronation SA to pay income tax on Coronation Ireland's net income and interest thereon in terms of section 89(2) of the Act (see *Commissioner for the South African Revenue Service v Coronation Investment Management SA (Pty) Ltd* [2023]).

Aggrieved by the SCA's decision, Coronation SA took the matter on appeal to the CC.

QUESTIONS OF LAW

The CC first dealt with the question of jurisdiction and held that its jurisdiction had been established on the basis that the appeal raised arguable points of law of general public importance, being that the legal question involved forming a view on the meaning of section 9D, which impacts not only the interests of the parties, but also South African resident companies that hold CFCs, which is an important issue for the South African economy.

The key issue before the CC was whether the net income of Coronation Ireland was exempted from tax for the 2012 year of assessment, in terms of section 9D.

The exemption would only apply if Coronation Ireland had met the requirements of an FBE as set out in section 9D(9)*(b)*.

Before the judgment is discussed, the requirements of an FBE which are applicable to this case are set out.

WHAT IS AN FBE?

An FBE in relation to a CFC is defined in section 9D(1) as:

> "a fixed place of business located in a country other than the Republic that is used … for … carrying on of the business of that controlled foreign company for … not less than one year …"

That fixed place of business must be a suitable facility that is suitably staffed and equipped for conducting the "primary operations of that business". Further, it must be located outside South Africa "solely or mainly for a purpose other than the postponement or reduction" of South African tax.

Included in paragraph *(a)* of the definition is a proviso which permits the outsourcing of certain functions of a business.

The fundamental enquiry to the main legal question stems from the definition of FBE and is two-fold:

- identifying the "business" of Coronation Ireland; and
- determining what the "primary operations of that business" are.

This determination was crucial because if it was found that Coronation Ireland had not outsourced its core business and operated from a facility that was fit for purpose, equipped and suitably staffed, then the FBE requirements were met, and it qualified for the exemption.

KEY ARGUMENTS RAISED BY SARS

SARS submitted that Coronation Ireland had outsourced its core functions, including its primary function of investment management trading, to offshore entities.

While SARS acknowledged that the proviso to the FBE definition permits the outsourcing of certain functions, it submitted that Coronation Ireland fell short of the definition's proviso.

According to SARS, after Coronation Ireland outsourced its main function, it outsourced its primary function and therefore did not meet the requirements of the FBI definition.

JUDGMENT

In determining Coronation Ireland's "business" and the "primary operations of that business", the CC noted that the point of departure must be the distinction between a fund manager and an investment manager. This formed the crux of the issue.

The court first set out the rationale behind the enactment of section 9D with reference to the relevant legislative documents (National Treasury *Detailed Explanation to Section 9D of the Income Tax Act* (June 2022) and Explanatory Memorandum on the Taxation Laws Amendment Bill, 2009). Section 9D was enacted to deter South Africans from moving taxable income beyond South Africa's taxing jurisdiction by investing through a CFC. Section 9D also has the purpose of permitting South African multinational corporations to establish corporate entities abroad to enable them to compete in those jurisdictions.

Therefore, the aim of section 9D is to strike a balance between offshore competitiveness and protecting the South African tax base.

The CC then considered the difference between fund management and investment management, and according to the court SARS and the SCA had failed to appreciate this distinction, resulting in the wrong conclusion.

On the one hand, the court noted that Coronation Ireland performed the role of managing a collective investment fund, which entailed administration of the fund, trusteeship or custodianship, management of investments and distribution or marketing. Coronation Ireland also set policies, maintained oversight over them and set restrictions for investments. These roles were performed in the Dublin office under the auspices of the CBI. The court termed these functions as investment management in the "broad" sense.

On the other hand, the court held that investment trading or investment management in the "narrow" sense entails "professionally and expertly allocating the funds invested in a collective investment fund. These allocations are made strictly within the parameters, policies, mandate and limits set out in the prospectus issued by the fund manager". These are the functions Coronation Ireland delegated to CAM and CIL.

Having established the distinction, the CC held that Coronation Ireland's core business was fund management and not trading activities, and outlined three factors from the evidence to support this position.

1. The conditions of the CBI licence were such that Coronation Ireland was authorised to provide oversight and overall management of a collective investment fund. Coronation Ireland could not itself conduct investment management trading as that would be in contravention of the licensing conditions.
2. Separating the investment management function from the trading function was prudent, as it ensured that the investment manager retained supervision and prevented the investment trader from taking risks that were not acceptable to the investment manager.
3. Uncontested evidence showed that the separation of investment management and investment trading is standard practice in the industry, which is utilised by most of the Irish fund management companies.

Therefore, the court concluded that Coronation Ireland's core business and primary operations were fund management, which included the management, oversight and supervision of investment trading, which it had delegated.

In summary, Coronation Ireland had adopted the delegated business model where it would perform investment management functions while delegating the investment trading functions, albeit retaining oversight over the delegated function.

In addition, it was shown that in carrying out its core function of investment management, Coronation Ireland had a fixed place of business that was suitably staffed and equipped to conduct the primary operations of its business. It is important to note that SARS accepted that Coronation Ireland had adequate on-site operations, employees and management.

For these reasons, the court held that Coronation Ireland qualified for the FBE exemption and SARS was ordered to issue a reduced tax assessment in which the income of Coronation Ireland was excluded in the determination of Coronation SA's tax liability.

COMMENT

On the facts, it was found that the CFC (Coronation Ireland) did not delegate its core functions. Nevertheless, the implications of the judgment are potentially far-reaching in that it likely affects not only the investment and fund management industries, but also South African resident multinational companies in general. South African holding companies with CFCs, or CFCs with multiple South African resident shareholders can potentially claim the FBE exemption even where the CFC outsources or delegates certain functions, provided that those functions are not core to the business and within the limits of the proviso.

This is evident from the CC's judgment, where it states in paragraph 82 that section 9D –

> "… is not an anti-outsourcing enactment, as the [SCA] appears to approach it. Instead, it aims to ensure that an offshore business, regardless of its chosen business model, has economic substance in that foreign country and is not merely illusory or 'paper' business. And its objects are to ensure that the offshore company remains competitive with its foreign rivals."

An interesting question is exactly how National Treasury will respond to this. In 2023, after the SCA judgment in this matter, Treasury initially proposed amending section 9D but then decided to postpone any amendment until after the matter had been heard by the CC. Now that the CC's judgment has been handed down, Treasury will likely consider addressing the issue either in the 2024 Taxation Laws Amendment Bill (the Draft Taxation Laws Amendment Bill was published on 1 August 2024) or in 2025. One major difference, however, is that the composition of Parliament's Standing Committee on Finance (SCOF), compared to 2023, has changed pursuant to the outcome of the elections in May 2024. This means that if the same proposal now comes before the SCOF, it is not a foregone conclusion that a majority of its members will support the proposed amendment, which was more likely to be the case before the outcome of the 2024 elections.

"Therefore, the aim of section 9D is to strike a balance between offshore competitiveness and protecting the South African tax base."

Naomi Mudyiwa & Louis Botha

Cliffe Dekker Hofmeyr

Acts and Bills

- Income Tax Act 58 of 1962: Sections 9D (special emphasis on subsections (1) (specific reference to proviso to paragraph *(a)* of the definition of "foreign business establishment" (FBE)) & (9)) & 89(2);
- Draft Taxation Laws Amendment Bill, 2024 (published on 1 August 2024).

Other documents

- Explanatory Memorandum on the Taxation Laws Amendment Bill of 2009 (10 September 2009);
- National Treasury *Detailed Explanation to Section 9D of the Income Tax Act* (June 2022).

Cases

- *Coronation Investment Management SA (Pty) Ltd v The Commissioner for the South African Revenue Services,* (unreported judgment of the Tax Court of South Africa, Cape Town, Case 24596 (17 September 2021));
- *Commissioner for the South African Revenue Service v Coronation Investment Management SA (Pty) Ltd* [2023] ZASCA 10; [2023] (3) SA 404 (SCA);
- *Coronation Investment Management SA (Pty) Limited v Commissioner for the South African Revenue Service* [2024] ZACC 11; [2024] JDR 2620 (CC).

Tags: foreign business establishment (FBE); controlled foreign company (CFC); additional assessment; FBE exemption; fixed place of business.

RESIDENCY RECOMMENCEMENT CONSIDERATIONS

Historically, hundreds of thousands of South Africans have relocated to various foreign countries seeking greener pastures. Officially, Stats SA's March 2024 Migration Profile Report recorded that almost a million South Africans had been living and working abroad by 2020. This number increased from more than 743 000 expatriates residing abroad in 2010.

Whether they are pursuing lucrative career development opportunities in the Middle East, utilising a safer environment in Australasia to build their families, or claiming the benefits of European social and healthcare systems, a significant number of South African continue to emigrate.

Curiously, and notwithstanding the various well-documented socio-economic challenges in South Africa, some of these South Africans do elect to return home every year. In such cases, these inbound Saffas may find themselves reappearing on the radar of the South African Revenue Service (SARS).

BREAKING TAX RESIDENCY

Whilst living and working abroad, many expatriates mistakenly believe that they do not need to file tax returns or declare their foreign-sourced income to SARS. Many expatriates erroneously adopt a "head-in-the-sand" approach, simply neglecting their tax affairs whilst living and working abroad. In contrast, by obtaining formal confirmation that they have become tax non-residents, many conscientious expatriates may lawfully protect their foreign-sourced income from being taxed by SARS.

Depending on their circumstances and how long they intend to reside abroad, expatriates may elect to either cease their tax residency temporarily or permanently. A temporary cessation of tax residency is achieved in terms of the relevant double taxation agreement, while a more long-term cessation is achieved by means of the so-called financial emigration process.

However, where expatriates choose to return to South Africa, it is crucial that they proactively secure expert tax advice regarding tax residency, exchange control and estate planning considerations before touching down.

REPATRIATION: "PUSH" AND "PULL" FACTORS

There has been a noteworthy increase in the trend of expatriates returning to South Africa, with various reasons being cited for repatriation. Some of the chief reasons range from "push" factors such as –

- the steadily increasing cost of living in Europe and North America;
- security concerns surrounding the ongoing conflicts in Gaza and the Ukraine;

- the lack of familial support structures and cultural misalignment abroad; and
- extreme and adverse weather conditions and events.

Further, certain counterintuitive "pull" factors appear to be attracting some expatriates back to South Africa, which include –

- a relatively low cost of living, when compared with foreign countries;
- the desire to be closer to family members and friends, in particular elderly parents;
- capitalising on business opportunities in South Africa and throughout the broader African continent; and
- leveraging international work experience in local industries.

Regardless of the reason, expatriates would do well to be cognisant of various crucial compliance considerations, whilst preparing for repatriation to South Africa.

TAX CONSIDERATIONS

From a tax perspective, expatriates need to be aware that they invite the risk of recommencing their status as "normal" resident taxpayers in South Africa. This will have the effect that their worldwide income and assets will become taxable by SARS once more. By enlisting the assistance of specialist tax advisers, scope certainly exists for expatriates to engage in advance tax optimisation.

Tax residency planning. Determining when a returning expatriate is likely to recommence their tax residency in the context of South Africa's two robust tax residency tests, being the so-called "ordinarily resident" and "physical presence" tests.

"From a tax perspective, expatriates need to be aware that they invite the risk of recommencing their status as 'normal' resident taxpayers in South Africa. This will have the effect that their worldwide income and assets will become taxable by SARS once more."

Estate considerations. The strategic structuring of expatriates' assets and investments through the creation of suitable trust and estate planning vehicles, to legally avoid donations tax and estate duty in the long run.

Asset preservation. When an expatriate recommences tax residency, a reintroduction of their worldwide assets into the South African fiscus occurs. Simply put, a "reset" of the base cost of certain "qualifying assets" will occur on the date that they recommence their tax residency in South Africa. The assets that are most typically considered include –

- global shares;
- unit trust investments; and
- crypto currency assets.

BANKING AND EXCHANGE CONTROL

South Africa's authorised dealers (South African banks) will categorise expatriates' local bank accounts according to their tax residency statuses. The South African Reserve Bank (SARB) imposes the obligation on local banks to report on the status of accounts, as well as the cross-border movement of funds.

When expatriates elect to return to South Africa, they are required to align the status of their bank accounts with their tax residency status. Practically, expatriates are required to notify their South African banks of the recommencement of their tax residency, which will enable expatriates to –

- regain access to local credit facilities, such as overdrafts, loan funding, and credit cards;
- reinstate their annual Single Discretionary Allowance (SDA), allowing the remittance of up to R1 million abroad from South Africa; and
- comply with reporting obligations required by the SARB and imposed on their local South African bank.

Richan Schwellnus & Delano Abdoll

Tax Consulting SA

Tags: foreign-sourced income; double taxation agreement; "ordinarily resident" test; "physical presence" test; Single Discretionary Allowance (SDA).

TAX ASSESSMENTS AND OBJECTIONS

Receiving a tax assessment from SARS is often the starting point for a complex journey for taxpayers. In South Africa, taxpayers have the right to contest an assessment if they believe it to be incorrect, but this process comes with its own set of rules and challenges.

UNDERSTANDING THE GROUNDS OF ASSESSMENT AND THE BURDEN OF PROOF

Upon receiving a tax assessment, it is crucial for taxpayers to carefully review the details. If they disagree with the assessment, they have the right to lodge an objection. However, understanding the grounds on which the assessment was made is key. Unfortunately, there are instances where SARS fails to provide adequate reasons for its assessments, leaving taxpayers in the dark. In such cases, taxpayers can request the grounds for assessment within 30 business days from the date that the assessment was issued. Once it has received the requested grounds for the assessment, the taxpayer has 80 business days (from the date of delivery of the grounds by SARS) to lodge an objection.

In any tax dispute, the burden of proof lies with the taxpayer. They must demonstrate that on a balance of probabilities, the assessment was incorrect. This burden is significant, often requiring meticulous attention to detail and expert legal advice.

Several court cases have shed light on the complexities of tax disputes in South Africa. In the court case *Commissioner, South African Revenue Service v Pretoria East Motors (Pty) Ltd* [2014], the Supreme Court of Appeal laid out guidelines regarding what constitutes adequate proof for SARS when a taxpayer needs to demonstrate the validity of their claims. The case revolved around the taxpayer, a car dealership, which was audited by SARS, leading to additional assessments for income tax and VAT, along with penalties. The taxpayer objected against these assessments, but SARS disallowed their objections. The taxpayer then appealed to the tax court and eventually to the Supreme Court of Appeal. The latter court underscored that the dealership's assertions alone would not be sufficient to discharge the burden of proof; the assertions had to be evaluated in conjunction with all other evidence presented. The dealership was at a disadvantage as the burden of proof rested heavily on it.

Recognising this, the court noted that in the interests of justice, it was imperative to meticulously consider the dealership's testimony and the credibility of its witnesses, just as it would in any other legal case. The court criticised SARS' approach of making additional assessments whenever they encountered something in the accounts that they did not understand or believed was inadequately explained, without attempting to understand the dealership's accounting system, even though the necessary information was available to them. This practice, the court stated, was unfair, leaving the dealership with the burden of proving these assessments wrong at their hearings. The court concluded that SARS should raise additional assessments only on solid grounds and in a manner that allows for administrative fairness. This enables an effective response from the taxpayer, who must then demonstrate why the assessment is incorrect. This case highlights the necessity for SARS to engage with taxpayers transparently and fairly in the assessment process.

OBJECTING AGAINST ASSESSMENTS: PROCEDURES AND GROUNDS

When lodging an objection against an assessment, taxpayers must follow the specific procedures set out in the rules promulgated under section 103 of the Tax Administration Act, 2011 (the dispute resolution rules). These include completing the prescribed form, detailing the grounds of objection and providing supporting documentation and various other kinds of information.

If, for example, the grounds of objection are not stated, or are stated but the objection does not contain the documents required to substantiate the objection, SARS may regard the objection as invalid as it does not meet the requirements of a valid objection.

If a taxpayer receives a notification from SARS stating that their objection is invalid, they have an opportunity to submit a corrected objection. This must be done within 20 business days of receiving the notice of invalidity without the need to request an extension of time for lodging the objection, provided that the objection was lodged within the permitted period of 80 business days.

"The term 'new ground' is not defined in the Tax Administration Act but it appears reasonable to assume that new grounds may involve adding factual or legal grounds to the existing grounds of objection."

AMENDING OBJECTIONS AND APPEALING AGAINST DISALLOWED OBJECTIONS

It is imperative that proper consideration be given to the drafting of the grounds of objection. This is because in subsequent appeal proceedings, taxpayers are in general limited to the grounds that were contained in their objection. They may, however, introduce new grounds unless the new grounds constitute new objections against a part or amount of the disputed assessment not (previously) objected to (rule 10(2)(c)(iii) of the dispute resolution rules).

If SARS disallows an objection entirely or only allows it in part, the taxpayer has the right of appeal. The appeal process involves filing a notice of appeal, which in most cases must be filed within 30 business days of the date of delivery of the notice disallowing the objection. Among other requirements, the notice of appeal must specify in detail in respect of which of the grounds of objection the taxpayer is appealing. Failure to meet these requirements will invariably jeopardise the appeal process.

RECTIFYING GROUNDS AND RESPONDING TO NEW GROUNDS

As indicated above, in some cases taxpayers may need to rectify their grounds of objection or respond to new grounds introduced by SARS. This process involves careful consideration of legal requirements and procedural rules. Failure to address new grounds adequately can impact the outcome of a dispute.

The term "new ground" is not defined in the Tax Administration Act but it appears reasonable to assume that new grounds may involve adding factual or legal grounds to the existing grounds of objection.

As noted above, the taxpayer is allowed to include new grounds when filing a notice of appeal. Often one finds that where taxpayers themselves draft and file their notices of objection, they fail to consider all possible grounds that might apply and are barred by rule 10(2)(c)(iii) from introducing these grounds at a later stage, after specialist tax advice has been sought.

Whether an issue sought to be raised by the taxpayer was covered by its grounds of objection was the subject matter of the judgment in *H R Computek (Pty) Ltd v Commissioner, South African Revenue Service* [2012]. In this case, the taxpayer initially objected only to the imposition of the additional tax, interest and penalty and not the principal amount of the disputed assessment. The attempt to address the capital amount only came later, when filing its statement under rule 32. When the taxpayer initially objected against the assessment, it never included an objection against the principal amount of tax. The Supreme Court of Appeal found that the taxpayer was confined to its original grounds of objection for the duration of the dispute.

Although a taxpayer may only introduce new grounds in limited circumstances, SARS has wider scope to introduce new grounds in terms of rule 31(3), which states that SARS may include in its (rule 31) statement a new ground of assessment or basis for the partial allowance or disallowance of the objection, unless it constitutes a novation of the whole of the factual or legal basis of the disputed assessment or which requires the issue of a revised assessment.

If SARS issues new grounds of assessment under rule 31, the taxpayer must respond to the new grounds in its statement of grounds of appeal under rule 32. This rule allows the taxpayer to introduce new factual or legal grounds in their statement. However, according to rule 32(3), such a new ground cannot be against a part or amount of the disputed assessment that was not previously objected to under rule 7. SARS may also respond to the new grounds in a reply to the taxpayer's statement of grounds of appeal. This approach seeks to ensure that neither party experiences unfair disadvantage due to the introduction of new grounds by the opposing party during the appeal stage.

CONCLUSION

Navigating the complex areas of tax assessments and objections in South Africa requires a thorough understanding of legal procedures and requirements.

Nonhle Thabethe

BDO

Acts and Bills

- Tax Administration Act 28 of 2011: Section 103.

Other documents

- Dispute resolution rules (promulgated under section 103 of the TAA): Rules 7, 10(2)(c) (emphasis on subrule (2)(c)(iii)), 31(3) & 32(3);
- Rule 31 statement;
- Rule 32 statement.

Cases

- *Commissioner, South African Revenue Service v Pretoria East Motors (Pty) Ltd* [2014] (5) SA 231 (SCA);
- *H R Computek (Pty) Ltd v Commissioner, South African Revenue Service* (830/2012) [2012] ZASCA 17; 2012 JDR 2281 (SCA).

Tags: additional assessments; statement of grounds of appeal.

TRANSFER PRICING CHALLENGES IN THE MINING SECTOR

The mining sector operates in a dynamic environment characterised by fluctuating commodity prices, complex value chains, and unique operational challenges. Transfer pricing in mining involves allocating profits among entities within multinational enterprise (MNE) groups engaged in the exploration, extraction, processing, and sales of mineral resources. Due to the unique nature of these operations, the mining industry faces specific transfer pricing challenges.

Owing to the high value of mineral resources, transfer pricing practices in the mining sector are closely monitored by tax authorities around the world. In recent years, international taxation of mining companies has come under intense scrutiny, giving rise to several prominent disputes within the industry.

KEY TRANSFER PRICING CHALLENGES IN MINING

Key issues include the establishment of marketing hubs in low-tax jurisdictions, difficulties in comparing different commodities for pricing purposes, and managing complex value chains within MNE groups. These challenges are central to many global dispute resolutions in the mining sector where tax authorities aim to ensure fair profit allocation and compliance with international tax standards.

MARKETING HUBS

Invariably, a local mining company finds itself under scrutiny from tax authorities for its marketing and sales operations managed by an offshore subsidiary typically situated in a low-tax jurisdiction. The tax authority asserts that the offshore subsidiary's establishment is primarily to evade taxes in the host country, alleging that profits are being redirected through marketing hubs located in jurisdictions with favourable tax regimes. This example highlights the financial and reputational risks that mining companies face regarding their transfer pricing strategies, particularly when involving entities in low-tax jurisdictions. Such strategies are closely scrutinised by tax authorities, as they may perceive these arrangements as attempts to shift profits and minimise tax liabilities in the host countries where substantial economic activities take place.

As evidenced in the cases of BHP and Rio Tinto, transfer pricing issues related to marketing services often become contentious owing to entities formed in low-tax jurisdictions. These cases underscore the importance of ensuring that these entities have substantial operational activities and genuine economic substance.

The Base Erosion and Profit Shifting (BEPS) initiative of the Organisation for Economic Co-operation and Development (OECD), particularly Actions 7 and 9 of BEPS, addresses these concerns by ensuring that profits are aligned with economic activities and that entities assuming risks have the capacity to control these risks and are financially capable of doing so. In several marketing arrangements, ownership of goods is transferred to the marketing entity, thereby transferring associated risks. However, there are instances where the marketing entity lacks the capacity to independently assume or manage such risks, potentially leading to an overstatement of profit allocated to the marketing entity.

Tax authorities closely scrutinise these operations to verify that their activities align with economic realities and contribute genuine value, rather than merely serving as vehicles for tax avoidance. To ensure that a marketing entity in a low-tax jurisdiction is compliant from a transfer pricing perspective, several key actions must be considered:

- The marketing entity must engage in substantial and meaningful business activities with local employees who perform significant people functions. It should not merely function as a conduit for transactions but should contribute to the overall business strategy and profitability of the MNE group.

- The marketing entity must have the capacity to manage and control the risks associated with its operations. This means that the entity should have the authority to make critical business decisions and have the financial capability to bear the consequences of those decisions.
- The profits allocated to the marketing entity must be proportionate to the value it creates within the group.

COMPARABILITY ISSUES

Determining an arm's length price for mineral resources poses significant challenges due to the difficulty of pricing and measuring minerals accurately. Mineral resources vary widely in quality and composition and this directly impacts their market value. For instance, the purity of gold or the grade of copper significantly influences their pricing, making it difficult to find identical or similar transactions for comparison purposes.

Mining operations involve intricate extraction processes that differ based on geological conditions, technological advancements, and environmental considerations. The efficiency and cost-effectiveness of these processes vary, influencing the profitability and pricing strategies of mining companies.

Commodity prices are highly volatile due to global supply and demand, geopolitical events, and economic factors, making comparability challenging over time. Unquoted commodities present greater risks of mispricing. Even for commodities with quoted prices, ensuring arm's length evaluations requires careful consideration of contract terms such as treatment charges, transportation costs and applicable discounts. Therefore, finding exact comparables for commodity transactions is difficult, making the comparable uncontrolled price (CUP) method challenging to apply accurately.

The 2023 OECD and Intergovernmental Forum (IGF) practice note, "*Determining the Price of Minerals*", provides guidelines for pricing mineral sales on an arm's length basis, emphasising key economic factors from the OECD *Transfer Pricing Guidelines*, 2022. Applying the CUP method requires considering product characteristics, economic circumstances, and contractual terms, thereby providing essential assistance in pricing commodities.

Nevertheless, due to the inherent challenges in accurately pricing and measuring minerals, MNEs must apply alternative methodologies and conduct comprehensive market analyses to robustly support their transfer pricing strategies.

DETAILED VALUE CHAIN MAPPING

Mining entities encounter significant challenges owing to their intricate and multifaceted value chains. The complexities arise from the diverse stages involved in mineral exploration, extraction, processing, and sales, each contributing distinct economic value and carrying specific operational risks. These value chains can span multiple jurisdictions with varying tax regimes and regulatory frameworks, further complicating the determination of arm's length prices. The functions performed, assets utilised, and risks assumed by entities at different stages of the value chain must be accurately delineated to allocate profits appropriately.

Moreover, identifying where significant people functions reside within the value chain and integrating high-value fixed assets in mining operations add layers of complexity to profit allocations and pricing strategies. Consequently, mining companies must adopt sophisticated transfer pricing methodologies and conduct comprehensive functional analyses to determine the relative contributions made by each entity to the overall business.

CONCLUSION

In South Africa, mining entities face challenges similar to global trends in dispute resolution. It is crucial to align profits with value creation under the arm's length principle, resolve comparability issues, conduct thorough functional analyses, and ensure that commodity prices accurately reflect market conditions. Utilising advance pricing agreements, enhancing transfer pricing documentation and optimising value chains are essential strategies for mining entities to effectively navigate transfer pricing challenges and maintain compliance with tax regulations.

"Utilising advance pricing agreements, enhancing transfer pricing documentation and optimising value chains are essential strategies for mining entities to effectively navigate transfer pricing challenges and maintain compliance with tax regulations."

Robyn Kantor

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Other documents

- Base Erosion and Profit Shifting (BEPS) initiative (of the OECD): Particularly Actions 7 & 9;
- 2023 OECD and Intergovernmental Forum (IGF) practice note "*Determining the Price of Minerals*";
- OECD *Transfer Pricing Guidelines*, 2022;
- Settlements in transfer pricing disputes between the Australian Taxation Office (ATO) and BHP (2018) and between the ATO and Rio Tinto (2022).

Tags: multinational enterprise (MNE) groups; low-tax jurisdictions; favourable tax regimes; comparable uncontrolled price (CUP) method; arm's length principle; advance pricing agreements.

TRANSFER DUTY AND VAT

The acquisition of an immovable property triggers the payment of either VAT or transfer duty.

Whether VAT or transfer duty is payable is determined by a seller's status. If a seller is a VAT vendor and the disposal of the vendor's asset forms part of its VAT-registered enterprise, then VAT is payable at 15% of the purchase price.

If a seller is not a VAT vendor, transfer duty is payable. This is on an escalation basis and it really depends on the market value or the purchase price of the property, whichever is greater.

If a seller sells a rental enterprise (property which generates income with tenants) and it is a VAT vendor and it sells the rental enterprise to a purchaser who is also a VAT vendor, VAT is still payable calculated at 0% rate. In order for a transaction to be zero-rated, the following requirements must be met:

- The seller must be a registered vendor.
- The purchaser must be a registered vendor. If the purchaser of the supply of an enterprise as a going concern is not a registered vendor, the zero rate cannot apply.
- The parties must agree in writing that the enterprise is disposed of as a going concern. If the parties have not agreed about this aspect in writing, the zero rate cannot apply, even if the enterprise is indeed transferred as a going concern. Further, the contracting parties must, at the conclusion of the contract, agree in writing that the enterprise will be an income-earning activity on the date the ownership of the enterprise is transferred.
- Where a leasing activity is conducted by the seller in respect of fixed property, the contract must provide for the leasing activity to be disposed of together with such fixed property in order to constitute an income-earning activity. If the agreement does not provide for a tenanted property to be transferred, an asset is merely sold. The question then arises as to the agreed occupancy level which will give rise to the supply of a going concern. Currently, an occupancy level of more than 50% is accepted.
- SARS will also look closely at whether the past VAT payments / returns submitted by the seller to SARS demonstrate and confirm that the seller is indeed conducting a rental enterprise. This means that VAT returns must be in order.

A question which crops up now and again is whether sale and lease back agreements would qualify for VAT zero-rating? SARS' Interpretation Note 57 (*Sale of an enterprise or part thereof as a going concern*) makes it abundantly clear that the answer to this question is a big no. Accordingly, there is no agreement to sell an income-earning activity if the seller being the occupier / user of an asset will lease it back from the purchaser.

Another question which arises is: "how does one get the sale of a farm zero-rated?" SARS' Interpretation Note 57 is instructive in this regard. It provides that

> "the mere sale of a farm property constitutes the supply of a capital asset of a business and not the farming enterprise. In order to supply a farming enterprise as a going concern, the seller and the purchaser must agree that the income-earning activities of the farm, its equipment, crops and assets necessary for carrying on the farming activities, will be transferred."

Care must be taken to structure transactions to comply with SARS' Interpretation Note 57.

"If a seller sells a rental enterprise (property which generates income with tenants) and it is a VAT vendor and it sells the rental enterprise to a purchaser who is also a VAT vendor, VAT is still payable calculated at 0% rate."

Sifiso Msomi

Shepstone & Wylie

Other documents

- Interpretation Note 57 (*Sale of an enterprise or part thereof as a going concern*) (31 March 2010).

Tags: immovable property; VAT-registered enterprise; income-earning activity; zero rating.

TRANSFER PRICING ADJUSTMENT AND VAT BGR 68

On 1 December 2023, the South African Revenue Service (SARS) issued Binding General Ruling 68 (BGR 68), which provides guidance on the acceptable documentation which may be used to substantiate input tax deductions on upward price adjustments on imports.

Building on insights on the implications of customs value adjustments, this article outlines the documentation required for an input tax deduction for upward pricing adjustments on goods previously imported into South Africa and the potential implications for multinational entities (MNEs).

UPWARD PRICE ADJUSTMENTS AND HOW THEY WORK

Vendors importing goods may be required to make adjustments to the customs duty value of goods that they have previously imported, resulting in additional customs duties and import VAT being payable. Importers who need to make an adjustment in respect of goods previously imported, are required to submit a Voucher of Correction (VOC) to correct any incorrect particulars declared on import. According to BGR 68, some vendors submit a Customs and Excise Billing Declaration (CEB01) form to rectify any mistakes or invalid entries. However, the CEB01 form alone is not sufficient to allow vendors an input tax deduction on the upward pricing adjustment.

At the time of making the input tax deduction, the vendor is required to be in possession of the customs release notification, and, in terms of section 16(2)*(d)* of the Value-Added Tax Act, 1991 (the VAT Act), hold a bill of entry or other prescribed documents under the Customs and Excise Act, 1964, such as a VOC, as well as the receipt for the payment of VAT, in order to substantiate the deduction. The CEB01 form does not fall within the ambit of "prescribed documentary proof".

Vendors would therefore frequently apply for rulings requesting that SARS agree to the submission of the CEB01 form under section 16(2)*(g)*, which allows SARS to confirm the acceptance of alternative documentation to substantiate the input tax deduction, in certain circumstances.

SO, WHAT IS NEEDED?

BGR 68 states that it is evident, given the construct of the VAT Act, that the legislator intended to allow the vendor a deduction of the "input tax" on VAT declared under section 7(1)*(b)* at the time goods are imported and on any subsequent adjustments based on the wording of section 16(2)*(d)*.

The legislator did not, however, envisage that vendors may experience difficulties regarding the required documentation and be rendered unable to obtain the necessary documentary proof to substantiate the input tax deduction for purposes of section 16(2)*(d)*.

The BGR, which constitutes an arrangement made under section 72 of the VAT Act, was therefore issued, stating that a vendor is not required to apply for a specific ruling as required under section 16(2)*(g)* in relation to transactions to which the BGR applies.

In terms of the ruling, the Commissioner exercises his discretion under section 16(2)*(g)* to allow a vendor a deduction of the "input tax" in respect of the upward pricing adjustments of goods acquired by it from a supplier and imported into the Republic based on the vendor being in possession of the following documentation when the VAT return containing such a deduction is submitted to SARS:

- Single Administration document 500 form (SAD 500 form);
- Electronic Data Interchange (EDI) form;
- Invoices received by the vendor for the price adjustments;
- A letter to SARS disclosing the upward pricing adjustment and the application to bring VAT and duties to account;
- A letter of demand and a letter issued by SARS granting permission to make adjustments
- CEB01 form;
- Proof of payment of the import VAT in respect of the upward pricing adjustment paid to SARS.

"BGR 68 states that it is evident, given the construct of the VAT Act, that the legislator intended to allow the vendor a deduction of the 'input tax' on VAT declared under section 7(1)*(b)* at the time goods are imported and on any subsequent adjustments based on the wording of section 16(2)*(d)*."

The deduction must be made within the five-year prescription period provided for in proviso (i)*(bb)* to section 16(3) and may only be made in the tax period during which the ruling was issued or any subsequent tax period.

RELEVANCE FOR MNEs

Businesses engaging in related-party transactions may adjust prices of goods imported from other group companies to reflect arm's length prices. The adjustment may impact customs duties as well as VAT, and result in additional amounts of VAT being payable. BRG 68 clarifies the documentation required to substantiate an input tax deduction in respect of the additional amount of VAT payable.

CONCLUSION

BGR 68 applies to all vendors, including those transacting with related parties and may be relied on to support input tax deductions, where the relevant conditions are met, without seeking a private ruling.

Anita Mchunu & Di Hurworth

Regan van Rooy

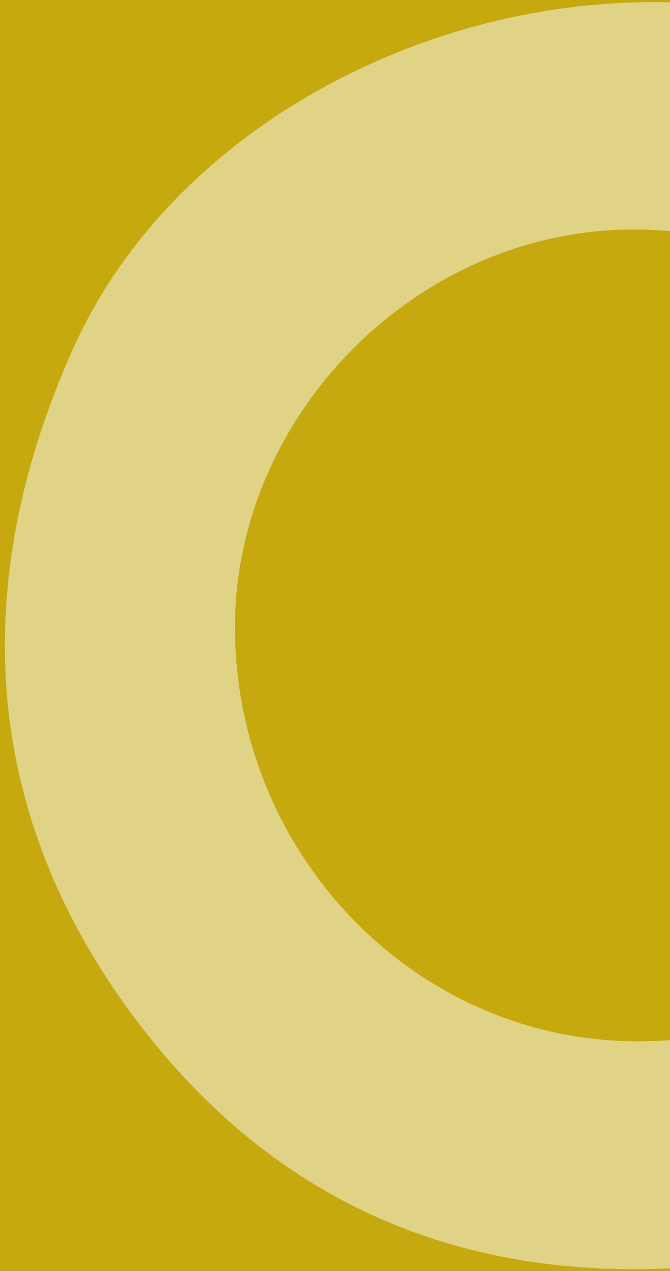
Acts and Bills

- Value-Added Tax Act 89 of 1991: Sections 7(1)*(b)*, 16(2)*(d)* & *(g)* and 16(3) (specific reference to proviso (i)*(bb)* to section 16(3)) & 72;
- Customs and Excise Act 91 of 1964.

Other documents

- Binding General Ruling 68 (*Acceptable documentation for input tax on upward adjustments on imports*) (Sections 16(2)*(g)* & 72 of the VAT Act);
- Voucher of Correction (VOC);
- Customs and Excise Billing Declaration (CEB01) form;
- Single Administration Document 500 form.

Tags: customs value adjustments; Voucher of Correction (VOC); customs release notification; upward pricing adjustments; related-party transactions; arm's length prices.



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