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Tax and Legal News

August 2020

Taxation of foreign dividends and gains by REITs

Draft Income Tax Amendments impacting REITS

The recently released Draft Taxation Laws Amendment Bill for 2020, includes a proposal by National Treasury to exclude REITs from participation exemptions. The Income Tax Act currently provides for a participation exemption for taxpayers in respect of the receipt of a foreign dividend or the recognition of a capital gain arising from the sale of shares in a foreign entity. The participation exemption exempts foreign dividends and capital gains from tax in South Africa provided that the South African taxpayer holds at least 10% of the total equity shares and voting rights in the foreign company declaring the foreign dividend or at least 10% of the total equity shares in the foreign company subject to the disposal.

The specific provisions in section 25BB of the Income Tax Act which are applicable to REITs and controlled companies, allows a REIT or controlled company to claim, as a deduction in determining its taxable income, distributions made to its shareholders provided all the requirements of the section are met. A REIT that receives a foreign dividend or realises a capital gain from the sale of shares in a foreign entity, may deduct these amounts from its taxable income to the extent that these amounts are distributed to its shareholders. This may result in a tax deduction in respect of a foreign dividend or foreign capital gain which was subject to the participation exemption.

Proposed amendment

In order to avoid the situation where the REIT or controlled company receives a benefit of claiming a deduction in respect of an amount that is not included in taxable income, National Treasury has proposed removing the benefit which a REIT or controlled company would be entitled to under the participation exemption. The proposed amendment would result in a tax neutral position where the foreign dividends and capital gains will be included in taxable income with a corresponding tax deduction to the extent that these amounts are included in the distribution made to shareholders.

The proposed amendment is anticipated to be effective as from 1 January 2021 and would be applicable for years of assessment commencing on or after that date.

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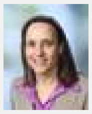

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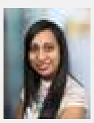

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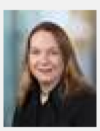

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