Tax Management Solutions

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A look at issues addressed by the first Davis Tax Committee report

MAY AND COMPANY SPOKESPERSON

ON July 17, 2013, the minister of finance appointed The Davis Tax Committee (TDTC) to address pertinent issues relating to tax base erosion as a result of profit shifting in South Africa. Base erosion and profit shifting (BEPS) is a global issue and is being addressed by both the OECD and G20 countries.

According to the OECD BEPS report "what is at stake is the integrity of the corporate income tax". South Africa has observer status in the OECD. Globalisation is the main cause of BEPS. As much as globalisation reinforces increased trade and free flow of capital and labour, it also provides room for shifting manufacturing bases from high- to low-cost jurisdictions by multinational entities. This results in the erosion of a tax base in a country where costs are high. As a result, most countries, including South Africa, are searching for ways and means of addressing BEPS.

The main purpose of anti-BEPS legislation is to ensure that multinational entities which invest in a country pay their fair share of tax on amounts that are economically attributable to their activities in that local country.

According to the TDTC report, it is difficult to assess to what extent BEPS occurs in South Africa.

TDTC noted that in the process of combating BEPS, South Africa has to maintain a balance between the protection of its tax base and sustaining a competitive economy. Secondly the county has to have a tax system that is equitable, efficient, certain and simple. The committee further noted that BEPS cannot be addressed without considering the role of exchange controls.

The committee has recommended seven South African, customised OECD BEPS action plans. These are:

- Tax challenges of the digital economy;
- Hybrid mismatch arrangements;
- Harmful tax practices;
- Double tax treaty abuse;
- Transfer pricing documentation;
- Multilateral instruments development; and
- Transfer pricing on intangibles.

TDTC calls for, as its primary driver, the efficient policing of all the above action plans. Current rules surrounding these issues are complicated and should receive specialist professional advice. May and Company is well equipped to assist clients in most areas of international tax.

Direct any questions you may have in respect to these or any other international taxation issues to Carl May on the number in the advertisement on this page or email carl@mayandcompany.co.za.

'As much as globalisation reinforces increased trade and free flow of capital and labour, it also provides room for shifting manufacturing bases from high- to low-cost jurisdictions by multinational entities'

PROFESSIONAL TEAM: The May and Company team is celebrating 25 years of offering their professional services. (Back) Mogammad Abdullatief, Roshan Davids, Bahdia Jattiem, Lucy Mutengwe and David Pattullo. (Front) Beverley May, Carl May, Graeme Schkolne and Naomi Chirwa.

Tax alert: STC credits to expire on March 31, this year

DAVID WARNEKE
Head of Corporate Tax, BDO

COMPANIES should take note of the fact that secondary tax on Companies (STC) credits that they have accumulated up to March 31 this year will expire on that date. The implication is that companies with STC credits should take advantage of the credits by paying dividends on or before March 31. The benefit of STC credits is enjoyed at the point where dividends are distributed to shareholders who are not exempt from the dividends tax – for example where dividends are paid to shareholders who are natural persons. Therefore multi-tier groups of companies will have to pay dividends all of the way up and out of the group on or before March 31 for the non-exempt shareholders to experience a benefit. The benefit derived by a non-exempt shareholder from an STC credit is that the effective rate of dividends tax payable is reduced.

For example, say South African resident company A has two shareholders who each hold 50% of the shares. The one shareholder is a South African resident individual and the other is a South African resident company B. Company A has an STC credit of R100 and pays a dividend of R100 in total.

No dividends tax need be withheld by company A from the dividend paid of R100 as the STC credit is sufficient to shield the entire dividend paid from dividends tax. Although the dividend paid to company B would in any event have qualified for exemption from dividends tax as it is paid to a South African resident company, a benefit arises for the shareholders of company B as the pro-rata STC credit of R50 is transferred to company B. If the shares in company B are held entirely by non-exempt persons such as South African resident individuals, the R50 pro-rata STC credit that was transferred to company B can be used to shield dividends paid by company B to its shareholders from dividends tax. The potential saving in dividends tax therefore occurs at the level where the dividends are paid to non-exempt persons. In this example the monetary benefit of the STC credit is therefore a total of 15 percent of the R100 available STC credit, in other words R15.

The utilisation of STC credits is subject to the notification by the company declaring the dividend of the amount by which the dividend reduces the STC credit of the company. This declaration needs to be made by the date of payment of the dividend and, in terms of the wording of section 64J(1) of the Income Tax Act, has to be made to all recipients of the company's dividend, without regard to whether or not such recipients are exempt from the dividends tax.

SARS has recently issued a draft binding general ruling confirming that a dividend has to be paid by March 31 in order to apply STC credits against it. The mere declaration of a dividend on or before March 31 without the payment thereof by that date will not result in the application of STC credits against the dividend.

Our BDO tax services team is equipped to deal with business and personal tax planning, as well as shareholder and owner issues and employment solutions.

We have partners and directors who lead specialist areas with a team committed to ensuring you receive the most up-to-date information relating to your tax needs. Whether you are a business or an individual, our teams give practical and direct advice, delivering solutions which suit your needs.

With a local presence in the four major centres wherever you are we are close to your business.

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