December 2017

Davis Report: Impact on TAA

1. Creation of a supervisory board

The Davis Tax Committee ("DTC") has recommended that the minister of finance create a board to supervise the operations of the South African Revenue Service ("SARS"). According to the recommendations, this board would be the endowed with the authority to investigate SARS's actions in order to make meaningful recommendations regarding the accountability of SARS and whether it complies with its statutory obligation and strategic vision and mandate. The DTC is, however, silent as to whether this new watch-dog may be called upon by aggrieved taxpayers to lodge complaints against SARS and, effectively, act as an alternative mediator between SARS and taxpayers.

2. A warning to large corporate and multinational enterprises

According to the DTC report, Chapter 5 of the Tax Administrations Act, which sets out the information gathering powers of SARS, already caters for the administration of Base Erosion and Profit Shifting ("BEPS"). It is important to note that, in order to meet its BEPS compliance, SARS undertook to roll out various activities, including, 300 targeted audit interventions of Large Corporates, leverage the assistance of foreign revenue agencies offered to enhance the audit capability, enhance 2016 corporate income tax returns to obtain a clear view on all multinational enterprises, obtain information on BEPS related transactions and improve transfer pricing reporting for large corporates to list a few. In addition to the above, the DTC has recommended that tax specialist be appointed to investigate complex group transactions in order to enhance its cash collections. SARS can request for access of these complex transactions in terms of section 46 of the TAA. Large corporates and multinationals should be on the look-out for investigations by SARS.

3. High Net-Worth Individuals ("HNWI") be on the look-out

The DTC recommends that SARS establish a HNWI tax unit to act as a watch dog for South Africa's high earners (Individuals earning more than ZAR 3 000 000 or have an assets exceeding USD1 000 000). The DTC is of the view that the collection of the taxes from HNWI will far outweigh the cost associated with structuring such a unit. In addition, the DTC has recommended that the ITR12 be amplified to take into to account the various streams of income received by or accruing to HNWI. This will thus add an extra layer of tax administration in accurate completion of the ITR12. HNWI should thus keep a cautious eye on their tax affairs, as they may have SARS knocking on their bank accounts sooner rather than later.

4. Taxpayers' Bill of Rights

Most of the rights and obligations of taxpayers are set of in the Tax Administration Act ("TAA"). The TAA could thus be seen as a BOR of Taxpayers, subject to the provision of the Constitution. The DTC, however, recommends that a more formal and clear Taxpayer's BOR be established for taxpayers which is legally enforceable. In addition, the DTC recommends that the Tax Ombud acts as an administrator and an enforcer of the taxpayer's BOR rights and obligations.

Furthermore, the DTC has recommends that more should be done to improve the powers and role of the Tax Ombud.
The improved role and powers of the Tax Ombud will include, among other, to propose amendments to tax norms, to act as a mediator and ADR matters and the power to adjudicate tax disputes, subject to review and appeal by the courts. It is recommended that the limitation that the Tax Ombud may not deal with matters that are subject to legal processes (*sub judice*) be retained.

For dispute resolution matters, kindly contact our experienced team.

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