



Grant Thornton

An instinct for growth™

E-TAXLINE FEBRUARY 2015

e-taxline

Warning: Ignore 1 January 2015 tax changes at your peril



Three important changes came into effect on 1 January 2015, and will come into effect on 1 March 2015 which businesses should take note of, so that the consequences of these amendments for taxpayers are clearly understood.

The biggest challenge at the moment is that a lack of documentation/forms from SARS which is doing little to ease corporate concerns around compliance.

The amendments relate to:

1. Interest Withholding Tax (Interest WHT) – 1 March 2015
2. Deemed dividend / donation in terms of Transfer Pricing – 1 January 2015 and
3. Increase in Royalties Withholding tax rate – 1 January 2015

These amendments are set to increase the administrative burden and, while these changes are not overly technical or complicated, corporate accountants are advised to ensure they fully understand the implications and their new obligations.

The three amendments are outlined to provide further detail and clarity.



Interest WHT

On 1 March 2015, the withholding tax on interest (interest WHT) provisions of the Income Tax Act will come into effect and this will apply to all South African-sourced interest that is paid or that becomes due and payable to non-residents on or after that date.

The main purpose of this provision is to prevent group companies in tax haven territories from avoiding tax on interest income generated through loans to South African entities.

The revised interest WHT provisions require South African companies to levy and deduct 15% on interest paid to non-residents.

A reduced rate may however be applicable where there is a double-tax agreement (DTA) between South Africa and the other country in question. In these situations, before the interest has been paid, the foreign person must provide the payer of the interest with:

- a declaration in such form as prescribed by the Commissioner that the reduced rate of tax will apply as a result of a DTA; and
- a written undertaking in such form as prescribed by the Commissioner to inform the person making the payment that should their circumstances affecting the application of the DTA change, they will advise such person.

In such cases, only the applicable reduced interest WHT should be withheld. As DTA's with each country differ, the relevant DTA will need to be consulted on a case to case basis.

Practical issues

To date no forms as required by the legislation have been provided by SARS. SARS does of course still have some time to provide such documents to the public.

Paid and Due and Payable

As stated, the interest WHT is levied when the interest is "paid" which includes "when the interest is due and payable".

Unfortunately, the term "due and payable" is not defined by the Income Tax Act. It would appear that the intention of the legislation is that an amount will be seen to be "due and payable" on the date when the agreement between the parties stipulates that the interest must be paid.

It must be noted that for taxation purposes, interest income generally accrues on a yield to maturity basis. Therefore the timing of interest for taxation purposes and for interest withholding tax purposes may not match.

Exemptions from interest WHT

Broadly speaking, exemptions extend to interest amounts paid to foreign residents by South African banks, the South African government and in respect of listed debt instruments.

In addition, a foreign person will specifically be exempt from interest WHT if:

- that person is a natural person who was physically present in South Africa for an aggregate period exceeding 183 days during the 12 month period preceding the date on which the interest is paid; or
- the debt i.r.o. which the interest was earned is effectively connected with a permanent establishment of that foreign person in South Africa, if that foreign person is registered as a taxpayer in South Africa.

If either of the above two requirements apply the foreign person should be taxed on the interest like a South African tax resident.



Liability for the interest WHT

The person paying the interest to the foreign person must withhold the interest WHT and pay it over to SARS. No tax must be withheld if the interest is exempt from interest WHT or if that foreign person has, before payment of the interest, provided the person paying the interest with a declaration in such form as prescribed by the Commissioner to show that the interest is exempt from interest WHT in terms of a DTA. Where the rate is reduced due to a DTA and the necessary documentation has been submitted to the payer of the interest, only the applicable reduced interest WHT should be withheld.

When must the interest WHT be paid?

The interest WHT must be paid over to the Commissioner by the last day of the month following the month in which the interest is paid.

Possible implications of the interest WHT imposition

The interest WHT will place an additional burden on foreign lenders who previously would have been earning interest from South Africa tax free due to a previous tax exemption. These lenders may have to increase interest rates to obtain the same margins, or cease lending to South African customers. Either way, this may prove to have a negative economic effect as South African residents will find it more costly/ difficult to borrow from abroad.

Against this, many DTAs exist between South Africa and other countries (especially the major trading partners) which reduce the interest WHT to 0%.

The imposition of interest WHT will also have an increased administrative burden on South Africans borrowing from abroad, who will now have the responsibility of withholding interest WHT and paying it over to SARS.

The administrative burden remains even if a DTA is in place, as the necessary interest WHT returns will still have to be submitted to SARS. In addition, the prescribed declaration will still be required and such declaration must be received prior to payment of any interest.

Refunds for overpayment of Interest WHT

Interest WHT levied and paid to the Commissioner in excess of what the interest WHT liability should have been, may be recovered from the Commissioner by the foreign lender if the prescribed forms are submitted to SARS within three years of the payment of the interest. This being said, administratively this may be an onerous and lengthy process.



Deemed dividend/donation in terms of Transfer Pricing

The second tax amendment which came into effect on 1 January this year relates to the way in which transfer pricing is handled. This provision aims to prevent global companies from charging South African firms higher prices on goods - thereby reducing the tax paid by local companies given the lower profit margin.

Prior to 1 January 2015, a transfer pricing adjustment created a deemed loan between the connected persons involved. Such deemed loan was in theory also subject to possible further transfer pricing adjustments in terms of deemed interest charges on such deemed loans.

The effect of the new legislation applicable from 1 January 2015 is that instead of raising a deemed loan (which was a strange animal) between the connected persons:

- if the resident is a company, the transfer pricing adjustment will be deemed to be a dividend consisting of a distribution of an asset in specie that was declared and paid by the resident to that other person; or
- if the resident is a person other than a company, the transfer pricing adjustment will be deemed to be a donation made by that resident to that other person.

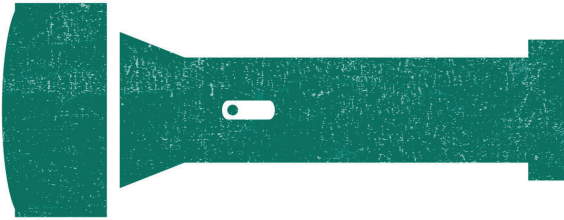
For resident companies therefore, Dividends tax will be levied on the transfer pricing adjustment dividend, and for persons other than companies, donations tax will be levied on the transfer pricing adjustment. The deemed dividend/donation will only be deemed to be paid six months after year end. The SA taxpayer will therefore pay additional tax due to the transfer pricing adjustment, plus, the SA taxpayer will be required to pay Dividends tax or Donations tax as the case may be. While such practice seems punitive, globally it is not unusual.

It is important to note that if there were transfer pricing adjustments prior to 1 January 2015, which would have resulted in a deemed loan, if such deemed loan has not been re-paid (and it was never clear how the foreign party would repay a deemed loan, hence the change in law), such deemed loan will be deemed to be a dividend/donation as the case may be on 1 January 2015. Dividends tax/Donations tax will therefore be due on such amounts on or before 28 February 2015.



Increase in Royalties Withholding Tax Rate

In line with the legislature’s intention to align withholding tax rates, the third amendment relates to royalties withholding tax rate, which was changed from 12% to 15% as of 1 January 2015 and applies to all applicable royalties paid or due and payable on or after that date.



Bloemfontein

Terry Ramabulana

Director
Suite 6 The Park,
14 Reid Street,
Westdene,
Bloemfontein, 9300
T +27 (0)51 430-5368
E terry.ramabulana@za.gt.com

Cape Town

Ian Scott

Managing Partner
6th Floor, 119 Hertzog Boulevard,
Foreshore
Cape Town, 8001
P O Box 2275
Cape Town, 8000
T +27 (0)21 417-8800
E cape@za.gt.com

Durban

Deepak Nagar

National Chairman & Managing Partner
2nd Floor, 4 Pencarrow Crescent
Pencarrow Park
La Lucia Ridge Office Estate, 4019
P O Box 950
Umhlanga Rocks, 4320
T +27 (0)31 576-5500
E mail@gtdbn.co.za

George

Charles Minie

Managing Partner
124 Cradock Street
George, 6529
Private Bag X6544
George, 6530
T +27 (0)44 874-2320
E info.george@za.gt.com

Johannesburg

Andrew Hannington

CEO
137 Daisy Street,
Sandown, 2196
Private Bag X28
Benmore, 2010
T +27 (0)11 322-4500
E info@za.gt.com

42 Wierda Road West
Wierda Valley, 2196
Private Bag X10046
Sandton, 2146
T +27 (0)11 384-8000
E info@za.gt.com

Nelspruit

Billy de Jager

Director
No 2 Cherato Place
36 Murray Street
Nelspruit, 1201
T +27 (0)13 752-8084
E info@za.gt.com

Polokwane

Yugen Pillay

Director
130 Marshall Street,
Marshall Chambers Office 16A
Polokwane, 0699
T +27 (0)15 297-3541
E yugen.pillay@za.gt.com

Port Elizabeth

David Honeyball

Partner
125 Cape Road, Mount Croix
Port Elizabeth, 6001
P O Box 63814
Greenacres, 6057
T +27 (0)41 374-3222
E pe@za.gt.com

Pretoria

Johan Blignaut

Managing Partner
Building A, Summit Place
Garsfontein Road
Menlyn, 0181
P O Box 1470
Pretoria, 0001
T +27 (0)12 346-1430
E infopta@za.gt.com

Rustenburg

Seth Radebe

Director
234-2 Beyers Naude Drive,
Rustenburg, 0300
T +27 (0)14 592-1028
E seth.radebe@za.gt.com

National marketing

Pamela Grayman

Partner and Head of National Marketing
and Business Development
137 Daisy Street
Sandown, 2196
Private Bag X28
Benmore, 2010
T +27 (0)860-GTLINE
E info@za.gt.com



Grant Thornton

An instinct for growth™

www.gt.co.za

©2015 Grant Thornton South Africa. All rights reserved.
Grant Thornton South Africa is a member firm of Grant Thornton International Ltd (GTIL).
GTIL and the member firms are not a worldwide partnership. Services are delivered by
the member firms. GTIL and its member firms are not agents of, and do not obligate,
one another and are not liable for one another's acts or omissions.