



October 2018

New doubtful debts regime

The provisions of section 11(j) of the Income Tax Act (“the Act”) allow for taxpayers to claim tax relief in respect of doubtful debts. In its current form, and based on practice allowed by SARS, a taxpayer could claim a 25% allowance on its doubtful debt provision, but as the allowance was at the discretion of SARS, many taxpayers were able to motivate for a higher allowance.

With effect from 1 January 2018, taxpayers in the banking industry were able to place reliance on the IFRS based doubtful debt regime provided for in section 11(jA) of the Act.

The proposal

Effectively, the 2018 **Draft** Taxation Laws Amendment Bill (“D-TLAB”), issued during July 2018, proposed to revoke all of the Commissioner’s discretion and provided for an allowance of 25% of so-called IFRS 9 loss allowances or 25% of other debt older than 90 days before considering specific provisos. Most non-moneylenders (not in possession of a specific ruling) would stand to benefit from the proposed amendment, owing to the 25% to be allowed on all IFRS 9 impairments, not limited to specific impairments as was the case previously.

However, considering the special dispensation the banks were provided under section 11(jA), significant concern was raised that non-banking moneylenders were at a distinct commercial disadvantage.

The new

In terms of the 2018 Taxation Laws Amendment Bill (“TLAB”), section 11(j), applicable to non-banking taxpayers, will be repealed and replaced in its entirety with effect from years of assessment commencing on or after 1 January 2019 and will be applied as follows:

Where IFRS is applied by taxpayers

Taxpayers will be able to claim:

- a deduction of 40% of the IFRS impairment at an amount equal to the lifetime expected credit loss in respect of debts other than lease receivables (these would generally be

classified as stage 2 and stage 3 debts in terms of IFRS). Taxpayers may however obtain a directive from SARS allowing for a deduction of up to 85% of such debts;

- a deduction of 40% of all debts disclosed as bad debts written off for financial reporting purposes that have not been claimed as a bad debt under section 11(i) of the Income Tax Act, provided that the debt has been included in the taxpayers income in the current or prior tax years. Taxpayers may obtain a directive from SARS allowing for a deduction of up to 85% of such debts; and
- a deduction of 25% of the remaining IFRS impairment in respect of debts other than lease receivables.

Where IFRS is not applied by taxpayers

Taxpayers will be able to claim:

- A deduction of 40% of debts due to the taxpayer which are 120 days or more in arrears. Taxpayers may obtain a directive from SARS allowing for a deduction of up to 85% of such debts; and
- A deduction of 25% of debts due to the taxpayer which are 60 days or more in arrears.

SARS directives

As indicated above, the new provisions allow SARS to issue a directive enabling the taxpayer to claim a doubtful debt allowance of up to 85%, taking the following factors into account:

- the history of the debt owed to the taxpayer including the number of repayments not met and the duration of the loan;
- steps taken by the taxpayer to enforce repayment of the debt;
- the likelihood of the debt being recovered;
- any security available in respect of the debt;
- the criteria applied by the taxpayer in classifying the debt as bad; and
- any other criteria that SARS deems relevant.

In closing

Considering comments on the D-TLAB were only due during August 2018, this is testament to an effective and successful, albeit sometimes aggressive, commentary process. Through this process, National Treasury effectively acknowledged the importance of considering similar dispensations for commercial competitive taxpayers.

In conclusion, by allowing the issuing of taxpayer specific directives, an equitable outcome for all non-banking taxpayers could be reached. In particular, non-banking moneylenders should be satisfied, given the dispensation allowed for their banking counterparts.

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