



Tax & Legal – News Alert



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New foreign exchange loss rule for companies not carrying on a trade

The 2024 Taxation Laws Amendment Bill was tabled in Parliament on 30 October 2024. The Bill, once enacted, will introduce welcome changes to the provisions of section 24I of the Income Tax Act in relation to companies that are not carrying on a trade.

Section 24I of the Income Tax Act No 58 of 1962 (**the Income Tax Act**) regulates the taxation of foreign exchange gains and losses. Section 24I does not currently contain an explicit ‘trade’ requirement. However, where a company incurs foreign exchange losses which result in an assessed loss for a particular year of assessment, the provisions of section 20 of the Income Tax Act will prevent the company from carrying forward the resultant loss to the subsequent year of assessment if the company is not carrying on a trade. The current legislation results in the anomalous position whereby companies that are not trading are taxed on all foreign exchange gains but may not fully benefit from foreign exchange losses.

The 2024 Taxation Laws Amendment Bill proposes the inclusion of a new section 24I(3A). In terms of the new section, companies who are not carrying on a trade during the year of assessment will be required to determine the aggregate foreign exchange gains and premiums or like consideration received in terms of foreign currency option contracts (**FCOCs**) (collectively referred to as the “aggregate foreign exchange gains”) and the aggregate of all foreign exchange losses and premiums or like consideration paid in terms of FCOCs or consideration paid in terms of FCOCs (collectively referred to as the “aggregate foreign exchange losses”).

Where the aggregate foreign exchange gains exceed the aggregate foreign exchange losses, the company will (subject to the deferral rules in section 24I(10)) be required to include the net amount of the excess in income. Where the aggregate foreign exchange losses exceed the aggregate foreign exchange gains, the net amount of the excess will be deemed to be an exchange loss of the company incurred in the immediately succeeding year of assessment, thus allowing for it to be again considered in the aggregate foreign exchange differences calculation in that year.

The amendment will come into effect on 1 January 2025 and will apply in respect of years of assessment commencing on or after that date. This means that any company that is not carrying

on a trade, such as pure holding companies, would have to apply the “old rules” until the amendment is effective, meaning no carry forward of losses resulting from foreign exchange differences until the effective date.

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