SOUTH AFRICAN INSTITUTE OF PROFESSIONAL ACCOUNTANTS™

YOUR WEALTH

For Attention: Allen Wicomb 14 September 2015

Email: awicomb@parliament.gov.za

SAIPA'S COMMENTS ON DRAFT TAXATION LAWS AMENDMENT BILL AND THE DRAFT TAX ADMINISTRATION LAWS AMENDMENT BILL.

The South African Institute of Professional Accountants (SAIPA) would like to thank the Parliament standing committee on finance for the opportunity to provide comments on Draft Taxation Laws Amendment Bill and the Draft Tax Administration Laws Amendment Bill. We trust that our submission will receive your favourable consideration.

SAIPA is the leading accountancy institute representing qualified professional accountants in practice, industry, commerce, government, academia and the public sector. The Institute's focus is on the advancement of Professional Accountants in South Africa to assist in meeting the changing needs of the accountancy profession in all facets of business and finance. Through innovative services and solutions, SAIPA responds effectively to emerging trends and positively impacts on our economy.

Should you require any further information or wish to discuss our comments in more detail, the writer can be contacted on:

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Kind regards,

Faith Ngwenya

Technical Executive

1. Section 6*quin* to the Income Tax Act

First and foremost we do understand the motivation for the removal of a tax credit with regards South African sourced income. This results in greater administrative burden on SARS and loss to the fiscus when the tax cannot be recovered from the foreign jurisdiction.

However, the reality is that a South African taxpayer has little to no hope of avoiding or recovering a withholding tax applied by another jurisdiction. This means that the South African taxpayer will be taxed on the full value of the income, even though the full income will not be received due to the withholding taxes. It is our proposal that the tax credit be deleted, but a deduction should be allowed. This means that the taxpayer will be taxed on what was received.

If a deduction is not allowed, this would result in a double tax, as tax would be applied against the portion of income that was not received due to a withholding tax applied by another jurisdiction. A tax on a tax cost. Furthermore we are of the view that if a deduction is not allowed, it would result to a taxpayer being unfairly taxed on income that will never be received.

Recommendation

With the above said we wish to bring to your attention the need for South African government to engage with other African countries to ensure that the Treaties are being applied and that SA source income not be incorrectly subject to withholding taxes. Also, accessing Treaty relieve in other countries can be very complex and difficult to get.

2. Section 9D to the Income Tax Act

We are of the view that the proposed changes on Section 9D, it is going to make this section of the Act very complex and difficult to interpret, that was the reason why it was excluded in the first place. We however wish to advice that the focus should rather be towards fixing the 'transfer pricing rules in order to reduce the potential for abuse'. It is understandable that with the proposed changes treasury is aiming at closing the potential tax avoidance gap, we are however of the view that such overly mechanical rules might not achieve this, and may in fact cause adversely impact for the legitimate commercial activities.

We therefore believe that the proposed amendments are not in line with an effective tax system that should be easy to understand and also be effective. These amendments may also have an adverse effect on the South African cross-border trading, specifically outbound multi-national groups from competing with inbound groups in global operations.

3. Section 99 to the Tax Administration Act

The proposed amendment to section 99 of the Tax Administration Act will allow SARS to unilaterally extend the prescription period by a further 3 years, based on a subjective determination of the complexity by a SARS official. The taxpayer has no recourse or objection within the Tax Administration Act and the taxpayer's only remedy would be to request reasons in terms of PAJA, and then could take the decision on review under PAJA in the Courts.

The prescription period can be extended by an additional 3 year period. A current or pending audit should not take 3 years to complete, and assessments issued. When SARS issues notice of audit a few months prior to prescription, and did not address the risk identified nearer the original assessment date, this provision could be abused by SARS.

Companies already struggle to manage document retention when considering various legislative requirements. This proposed amendment could further frustrate proper document retention by taxpayers. In most cases the document retention period from transaction date could be 9 years, or more.

Also, the proposed amendment do not apply only to years of assessment commencing on or after the date of promulgation, and as such is effectively applicable to tax years already assessed.

A good tax system required certainty and consistency. The possibility that an assessment can be kept open for an additional 3 years at SARS discretion not only adds to business risk, it diminishes certainty and further limits taxpayer rights.

Recommendation

The taxpayer must be given notice of SARS intention to extend the prescription, and allow the taxpayer to understand the reasons for the extension. The taxpayer must be given the opportunity to make representation.

The period of extended prescription should match the case, and not be an automatic additional 3 years. An extension, where justified, should be for 30 days, and not 3 years. However, SARS already has the authority to set prescription aside in specific circumstances.

The proposed amendment should apply to years of assessment commencing on or after the date of promulgation.