14 September 2015

Mr Allan Wicomb
Parliamentary Standing Committee on Finance
3rd Floor
90 Plein Street
Cape Town
8001

By e-mail : Allan Wicomb, SCOF (awicomb@parliament.gov.za)

Dear Sir

Comments on the Draft Taxation Laws Amendment Bill 2015 (TLAB) and Draft Tax Administration Laws Amendment Bill 2015 (TALAB)

We present herewith our main written submissions on the above-mentioned bills.

In this set of submissions, we include only what we consider to be the most critical matters. We comprehensively covered the bulk of our representations in our submissions directly to National Treasury and SARS.

We have deliberately tried to keep the discussion of our submissions as concise as possible, which does mean that you might require further clarification. In this respect, we have requested the opportunity to present oral submissions at the hearings scheduled for 16 September 2015.

Our initial representations relate to the following areas:

A. Withdrawal of special foreign tax credits for services fees sourced in South Africa
B. Amendments to treatment on taxation of directors and employees on vesting of equity instruments
C. Appointment of third parties to collect tax debt
D. Reduced assessments

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Reg. no. 1983/008289/07.

E. Withdrawal of assessments
F. Extension of prescription periods

Yours sincerely,

Kyle Mandy
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Attached:

- Detailed Submissions

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A. Withdrawal of special foreign tax credits for services fees sourced in South Africa

1. Before the introduction of section 6*quin*, South Africa had no mechanism in place to allow for relief in the form of a foreign tax credit on taxes paid in a foreign jurisdiction on South African sourced income. This was the case even where South Africa had the taxing rights in terms of agreements between South Africa and several of the African countries for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital ("treaties"). In essence, a number of African countries levy a withholding tax even when the treaties suggest that the practice should be otherwise, leaving the taxpayer aggrieved with double taxation and no relief. This position created adverse effects for South Africa's objective to become a regional financial centre.[1]

2. This foreign tax credit has its origin in the interpretation of source adopted by SARS in the context of section 6*quat* where SARS takes the position that source in the context of that section has the same meaning that it has in the context of the gross income definition, i.e. the location of the originating cause of the income (being where the services are rendered in the context of service fees) rather than the quarter from which it is received as was put forward as another possible meaning by the Appellate Division in the *Lever Brothers* case. The concern that taxpayers faced was with respect to service fees derived from non-treaty countries in addition to those countries incorrectly levying tax in contravention of a treaty.

3. In many instances withholding taxes are levied on the recipient of the service fees by the non-treaty country. Based on the interpretation applied by SARS for purposes of section 6*quat*, no foreign tax credit is available and this resulted in double taxation. Making matters worse was that SA resident companies could not choose to not charge such fees to connected persons given the transfer pricing rules, notwithstanding that in many cases the foreign taxes exceed the profits made on the services. This made South Africa unattractive as a headquarter location and was the primary motivation behind the introduction of section 6*quin*. Prior to this, taxpayers could only claim a deduction of the foreign tax in the determination of taxable

[1] Explanatory Memorandum on The Taxation Laws Amendment Bill, 2011 as published on 27 January 2012

income in accordance with section 6*quat*(1C). However, this deduction only gives partial relief and is therefore insufficient to fully alleviate double taxation.

4. The issue related to the incorrect application of a treaty by a treaty country is a secondary concern where certain countries are incorrectly applying or ignoring the treaty and levying tax on SA residents in circumstances where they are not entitled to do so. Added to this was that SA residents had little success in challenging these matters with the tax authorities of the other countries and it was considered that SARS, as the competent authority and guardian of South Africa's tax treaties, should take a more active role in enforcing the treaties. The rationale for providing a foreign tax credit in such circumstances was, however, the same, i.e. in order to make South Africa more attractive as a regional headquarter location by eliminating double taxation.

5. The issue is succinctly summarised in the 2012 EM which states as follows:

   "This limited credit is outside the standard theoretical paradigm. This limited credit effectively operates as a concession to facilitate international competitiveness. ***South African multinationals (and headquarter companies) require some form of relief or effectively face international double taxation*** due to potential dual taxation of cross-border service fees. ***Alternatively, entities in this circumstance will move their management services offshore*** into low-tax (or no-tax) jurisdictions so as to effectively eliminate this form of double taxation through pragmatic means. ***It makes little sense to force entities offshore solely to maintain purist tax norms.***

   It should be noted that foreign taxes in respect of South African sourced income typically arise in two circumstances. Sometimes, these charges come in the form of withholding taxes arising in violation of double tax treaties**.** Other times, these taxes arise when South Africa has no tax treaty with the country at issue. It should further be noted that these charges could be eliminated through bilateral negotiation and discussion between South Africa and the country at issue." (our emphasis)

6. It is for the above reasons that section 6*quin* consists of two components, the first applying to foreign taxes levied by treaty countries and the second applying to non-treaty countries.

7. While the comments made by National Treasury in relation to section 6*quin* are noted and have some merit insofar as the application to treaty countries is concerned, the draft EM does not contain the full picture relating to the foreign tax rebate for SA-sourced service fees.

8. We consider that the rationale behind the introduction of section 6*quin* remains valid. In order to make South Africa attractive as a headquarter location the provision should be retained. SARS should be encouraged to actively engage with those few countries which are incorrectly applying the treaties with the objective of reaching agreement on the correct interpretation and application of the treaties. However, South African taxpayers should not be subjected to double taxation simply because SARS is not able to enforce binding international agreements with other countries.

9. It was evident from the workshops held with National Treasury on 2 September 2015 that taxpayers are of the view that this provision should not be repealed.

10. National Treasury wishes to use the Mutual Agreement Procedure ("MAP") process to resolve disputes around the taxing rights in the treaties. However, this will not relieve SARS of the administrative burden as it will, as the competent authority, have the obligation to resolve the treaty dispute on behalf of the taxpayer.

11. Removing this relief will leave taxpayers with little choice but to move their regional operations to a low-tax or no-tax jurisdiction to avoid double taxation. This will therefore have a negative impact on South Africa's objective of being a regional finance centre and the gateway to Africa.

12. Submission: S6*quin* should not be withdrawn. Alternatively, as a second best compromise, it should continue to operate in the context of non-treaty countries.

B. Amendments to treatment on taxation of directors and employees on vesting of equity instruments

13. Various amendments are proposed to provisions relating to the taxation of directors and employees on vesting of equity instruments in terms of s8C.

14. These include the deletion of para 11(2)*(j)* of the Eighth Schedule, an amendment to para 13 of the Eighth Schedule and an amendment to para 80 of the Eighth Schedule.

Deletion of para 11(2)(j) of the Eighth Schedule

15. It is not clear what is intended to be achieved by the deletion of this provision. The draft EM merely states that the amendment clarifies the interaction between section 8C and para 80.

16. There appears to be great uncertainty as to the application of this provision in practice. The purpose of the provision is to ensure that there is no CGT event for an employee where an equity instrument that is subject to income tax is disposed of prior to it being subject to income tax.

17. In this regard, National Treasury and SARS are referred to the commentary on pages 80 to 82 of the draft SARS Comprehensive Guide to CGT Issue 5.

18. We agree with SARS's interpretation to the effect that this provision applies only to the employee and not the person disposing of the equity instrument to the employee. Contrary to what is implied in the draft EM, the provision has nothing to do with vesting in the context of trusts.

19. To this end, the proposed deletion of the provision is problematic. It will result in the situation an employee disposes of a restricted equity instrument for s8C purposes on a tax neutral rollover basis being subject to CGT on such disposal despite there being no vesting for s8C purposes, e.g. in terms of s8C(4) or (5). This would result in double taxation for the employee in the form of CGT on disposal and a potential s8C gain at a later date.

Amendment to para 13 of the Eighth Schedule

20. It is proposed that para 13 be amended by the insertion in para13(1)(a) of a provision regulating the timing of the granting by a trust to a beneficiary of an equity instrument as contemplated in s8C.

21. As with the proposed deletion of para11(2)*(j)*, it is not entirely clear what is sought to be achieved. Again, the draft EM merely states that the amendment clarifies the interaction between section 8C and para 80.

22. Para 13(1)*(a)* applies to disposals by way of a change of ownership. However, the award by a trust of an equity instrument to a beneficiary does not constitute a change of ownership as the mere vesting by a trust of an asset in a beneficiary does not result in a change of ownership of the asset. It is only when the asset is distributed that there is a change in ownership. As such, it does not fit within the paradigm of para 13(1)*(a)*.

23. What is sought to be achieved is not clear. Para 13 merely regulates the time of disposal, not the disposal event itself. As such, where a trust vests an equity instrument in an employee beneficiary, this will give rise to a disposal by the trust of the equity instrument. All this provision would do is defer the time of that disposal to the time of vesting for s8C purposes, i.e. when the equity instrument becomes unrestricted.

Amendment to para 80 of the Eighth Schedule

24. It is proposed that para 80 be amended by the exclusion of persons who acquire assets as equity instruments as contemplated in s8C(1) from the operation thereof.

25. As with the related amendments, it is not clear what is intended to be achieved with this amendment. The draft EM merely states that the amendment clarifies the interrelationship between s8C and the attribution of capital gains to beneficiaries.

26. Ordinarily, para 80 has the effect that any capital gain arising on the vesting by a trust of an asset in a beneficiary would be attributed to and taxed in the hands of the beneficiary rather than the trust. The only effect of the proposed amendment is that any gain will remain taxable in the trust and will not be attributed to the employee beneficiary.

27. However, where an employee becomes entitled to a cash amount rather than shares, the employee will have a s8C gain (on the basis that the beneficial interest in the trust is a s8C equity instrument). Where the trust then disposes of shares and vests the profit in the hands of the employee, the capital gain will be attributed to the employee in terms of para 80(2).

28. Submission: it is impossible to ascertain what is intended to be achieved with the above proposed amendments. In addition, various other anomalies will be created if the amendments as proposed are proceeded with.

29. Furthermore, various additional issues arise in relation to the application of s8C and related provisions in the context of share schemes operated through trusts.

30. These matters require substantial discussion and consultation for all stakeholders to understand the application of the law, the concerns and the policy objectives.

31. We propose that the currently proposed amendments be withdrawn and that an extensive review be undertaken of all these issues to resolve them once and for all.

C. Appointment of third parties to collect tax debt

32. In SARS's Strategic Plan 2015/16 – 2019/20 (refer page 19) it is evident that SARS has as one of its key objectives to ensure optimal tax compliance with the laws that it administrates. This must be achieved in the most efficient and cost-effective manner and should build institutional respectability for SARS. SARS has a targeted debt book as a percentage of tax revenue of 7% for 2016/17 year of assessment and 6% for years thereafter. The baseline for the actual collections for 2014/15 year of assessment is at 10.79%. As a result it is obvious that SARS is target driven to increase collection of its debt book.

33. While we agree that the debt book is unacceptably high and steps need to be taken to address this, it is crucial that such steps comply with the principles of fairness, equity and proportionality.

34. One of the debt collection tools that SARS has at its disposal is the ability to appoint a third party, essentially as a collection agent, and to require the third party to pay over money held on behalf of or owing to a taxpayer. Most commonly, these appointed third parties comprise banks, pension funds and employers. In essence, the instrument is akin to a garnishee or emolument attachment order.

35. When section 179 was first introduced into the Tax Administration Act the EM of 2011 specifically stated as follows:

"…under this clause any third party who holds or owes or will hold or owe monies to the taxpayer, may by notice by a senior SARS official be required to pay the amounts to SARS. If that person is unable to comply with a requirement of the notice the person must advise the senior SARS official of the reasons for not complying within the period specified in the notice, and SARS may withdraw or amend the notice as is appropriate under the circumstance.

A person receiving a notice must pay the money in accordance with the notice and, if the person parts with the money contrary to the notice, the person is personally liable for the money.

If SARS under this recovery power requires a third party, for example, an employer to pay amounts to SARS in satisfaction of the taxpayer's tax debt, provision is made that SARS may, on request by a person affected, extend the period over which the amount must be paid to SARS to allow the taxpayer to cover his or her and legitimate dependant's basic living expenses."

36. At the time, SARS was adamant that this tool would (and was historically) only used as a last resort once a taxpayer had been notified of the tax debt and a final demand had been issued to the taxpayer.

37. However, in our experience, this collection mechanism is being abused and, rather than being used as a last resort, it is frequently being used as a first resort to collect tax debts. Not infrequently, this includes the collection of debts shortly after the issue of an assessment and debts in respect of which a dispute has or is to be instituted and where a request for suspension of payment has been lodged by the taxpayer. .

38. An illustration that SARS is not using the third party appointment as a last resort to collect tax debt outstanding can be found in the background facts of the case of *Oceanic Trust Co Ltd NO v Commissioner, South African Revenue Service*[2]:

[2] (2012) JOL 28880 (WCC)

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*"… on **20 July 2009**, **SARS issued an assessment letter** (the letter of assessment) wherein it raised an assessment of income tax, additional tax and interest for the tax years 2000 to 2007 for R1 506 900 973,10 ("the R1,5 billion"). One of the bases for the assessment was that SISM was a "resident" in the Republic because it had its "place of effective management in the Republic" and that it derived income from a South African source which was not exempt from tax.*

*Soon after the date of the assessment, on **23 July 2009 SARS appointed Standard Bank of South Africa Ltd ("Standard Bank"), the South African bankers of SISM, as SISM's agent in terms of section 99 of the Act and required Standard Bank to remit the R1,5 billion to SARS.** Pursuant to the appointment and request, Standard Bank paid an amount of R20 655 150, 00 ("the R20 million") out of SISM's account to SARS on 23 and/or 24 July 2009, leaving R739,11 in the account."* (our emphasis)

39. This is not an isolated case and is experienced relatively often in practice. In other instances, it is not uncommon that the taxpayer has never been notified of an outstanding tax debt, there is factually no tax debt owing to SARS or the tax debt in question is disputed and a request for suspension of payment has been lodged with SARS (with the effect that SARS is statutorily debarred from collecting the debt), yet a third party is appointed and a taxpayer's money paid over to SARS.

40. In a recent Moneyweb[3] article, retired judge Bernard Ngoepe, the Tax Ombud, was quoted as saying the following when discussing the importance of his office having structural or institutional independence:

    "If you had to sit in that office for one week and see men and women coming in genuinely seeking help – crying – their bank accounts frozen, their businesses' bank accounts frozen and they are put in a position where they have no cash at all, only to find that perhaps Sars was wrong, you will realise the importance of what I am talking about".

41. What is more, serious questions can be raised with respect to the constitutionality of this section (which the proposed automation of the process will potentially make even worse) in

[3] Moneyweb, Tax Ombud 'pestering' Sars about Service Charter, 8 September 2015

light of the recent case of *University of Stellenbosch Legal Aid Clinic and Others v Minister of Justice and Correctional Services and Others*[4]. In that case it was held that certain provisions of the Magistrates Court Act relating to emolument attachment orders were held to be unconstitutional on the grounds that they failed to provide for judicial oversight. S179 contains no safeguards whatsoever and the issue of a notice in terms of this section is simply left to the whim of a senior SARS official.

42. We note that the constitutionality of s179 may also be questioned in light of the above judgment and the lack of judicial oversight over the operation of that power.

43. During the workshop held with SARS on 4 September 2015 it was stated that the request for procedures to be in place to have judicial oversight before requesting a third party to collect the tax debt will be wholly impractical to implement and will make South Africa exceptional from the OECD countries. SARS is of the view that it is a power that a revenue authority should have as collecting tax debt is different from collecting normal debt.

44. SARS was adamant that the appointment of a third party to collect outstanding tax debt is used at the end of the collection process. However, based on numerous cases and experiences of both ourselves and our clients, it is clearly apparent this is not the case.

45. SARS reassured that in automating the notice process, their IT system will contain parameters to ensure the entire collection process has been followed and that this expedited power is only used when the taxpayer does not respond to the warnings sent by SARS. It is not clear what the nature of these parameters will be, whether the process will be fair and whether it can be easily overridden by a SARS official. However, we have significant doubts in this regard given that SARS's system is seemingly riddled with errors insofar as its debt book is concerned.

46. Furthermore, we are aware that SARS's system does not keep track of requests for suspension of payment of disputed tax debts and it would accordingly be impossible for this to be taken into account in any system parameters at present. This issue is fundamental as the ability for taxpayers to request suspension of payment in relation to disputed tax debts was a key aspect of the pay now argue later rule being held to be constitutional in the *Metcash* case on the basis that the decision of the Commissioner would be reviewable in the High Court. The collection of

[4] (16703/14) [2015] ZAWCHC 99

disputed tax debts contrary to the statutory bar where a request for suspension of payment has been made would undermine the very constitutionality of SARS's right to collect disputed tax debts.

47. SARS has suggested that where the notice has been given in error, a refund can be requested. Frankly, this is not a solution. Once the money has been taken out of a taxpayers bank account, the damage is done. In many cases, obtaining a refund of the money will not alleviate the damage. We are aware of cases where the bank accounts of businesses and a pension fund would cleaned out the day before salaries and wages and pensions, respectively, were due to be paid. The potential damages are far-reaching and impact not only on the taxpayer, but potentially on other stakeholders.

48. Submission: appropriate safeguards should be introduced into s179, including the exhaustion of other collection measures and judicial oversight.

D. Reduced assessments

49. Section 93(1)*(d)* of the Tax Administration Act allows SARS to make a reduced assessment where there is an undisputed error by either SARS or the taxpayer. The purpose of section 93(1)*(d)* was to allow taxpayers a less formal mechanism to request corrections to their returns and to enable SARS to issue reduced assessments as a result without having to resort to the dispute resolution process.

50. We are extremely concerned with the proposed amendment to restrict the issue of reduced assessments in accordance with this section. In this regard, it is proposed that corrections must be requested by the taxpayer within 6 months of the assessment. Currently, the time limit is the same as the prescription periods, i.e. 3 years in the case of a SARS assessment and 5 years in the case of self-assessment.

51. SARS is of the view that the majority of taxpayers request a correction to their returns within six months of assessment. SARS further stated that taxpayers attempted to use requests for correction to raise substantive issues that would more properly be the subject of an objection under s104 in order to bypass the timeframes and procedures for an objection.

52. We disagree with both these assertions as reasons supporting the proposed amendment. A reduced assessment can only be issued in terms of s93(1)*(d)* if SARS is satisfied that there is an undisputed error by SARS or the taxpayer in a return. If SARS is not so satisfied a reduced assessment may not be issued in terms of this section. It is therefore difficult to see where the risk arises in relation to issues that would more appropriately be dealt with through the objection and appeal process. If the matter is disputed then SARS would be within its rights to refuse to issue the reduced assessment in terms of s93. This would force the taxpayer into the dispute resolution process.

53. On the question of the proposed timeframes, the provisions of s99, dealing with the period of limitations for issuance of assessments, would prevent SARS from issuing a reduced assessment after 3 years. This is the same period as the outer limit for objections under s104. The very nature of errors is that they go undetected for extended periods of time and in our experience the majority of taxpayers will not request a correction to their returns within six months of assessment. Frequently, errors on returns on returns are only identified at a later date when a fresh look is taken at the return. Commonly, this would be when a return for a subsequent tax period is filed and the error is detected or when an auditor or advisor points out the error.

54. To add fuel to the fire, an objection can only be lodged beyond a period of 51 business days from the date of assessment in exceptional circumstances. We have experienced SARS applying the term "exceptional circumstances" exceedingly strictly and it is highly unlikely that a SARS official would regard an error in a return as an exceptional circumstance. As such, the likelihood is that taxpayers will be regarded by SARS officials as not qualifying for the extended period contemplated in s93(3) and, by definition, for the extended period to lodge an objection in terms of s104.

55. As such, particularly when considered in light of the proposed amendment to s98 dealing with the withdrawal of assessments, this proposed limitation is considered to be draconian and would potentially result in taxpayers being subjected to unjust and inequitable taxes.

56. Submission: the proposed s93(3) should be withdrawn.

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E. Withdrawal of assessments

57. Section 98 of the Tax Administration Act empowers SARS to withdraw an assessment in certain circumstances, despite no objection having been lodged. The original purpose of s98(1)*(d)* was to address erroneous assessments which are often only discovered after all prescription periods and remedies have expired and it becomes apparent that it would be inequitable to recover the tax due under such assessments. The section aimed to address this problem by allowing for the withdrawal of assessments in specified narrow circumstances. One of the circumstances listed is where an assessment was based on an undisputed factual error by the taxpayer in a return.

58. According to SARS it has become apparent that taxpayers interpreted the section as a general mechanism to address their "old mistakes" in assessments that were final and SARS stated that s98(1)*(d)* was not intended to be a "post-appeal remedy". SARS further explained that the true intention of the section was to address adverse assessments resulting from factors beyond the control of the taxpayer.

59. While the concerns raised by SARS are acknowledged and we are supportive of most of the changes made to s98(1)*(d)*, we are concerned with the removal of the circumstance relating to undisputed factual error by the taxpayer in a return. This scenario was specifically cited as an example related to the insertion of this provision in the Memorandum on the objects of the Tax Administration Laws Amendment Bill, 2013 ("MOO"). In other words, one of the clear purposes of the provision was to allow a taxpayer to correct an error in a return where it would otherwise face an inequitable result.

60. It is now proposed that this provision would only apply in the case of a failure to submit a return or the submission of an incorrect return by a third party (e.g. an IRP 5 or IT3 certificate), a processing error by SARS or the submission of a fraudulent return. Accordingly, it is proposed to no longer apply in the case of an error by the taxpayer in a return.

61. When the proposed amendments to s93 and s98 are considered together, there is seemingly a concerted attack by SARS in relation to errors made by taxpayers in their returns that result in an overpayment of tax. In effect, the message is that SARS will give taxpayers 6 months to correct the error, failing which they will simply be liable for the overpaid tax.

62. The message sent to taxpayers is that SARS is not concerned with collecting only tax that is legally payable by the taxpayer and principles of fairness and equity, but is concerned only with maximising revenue collections. This is unfortunate as it significantly reduces the balance between the powers of SARS and the rights of taxpayers and is likely to negatively impact on taxpayer perceptions of SARS and, ultimately, tax morality.

63. Submission: the provision should continue to apply to undisputed factual errors by a taxpayer in a return.

F. Extension of prescription periods

64. As a general matter, a SARS assessment prescribes after a period of 3 years and a self-assessment after a period of 5 years from the date of the assessment. Once prescription applies, no further assessments can be issued and this applies in favour of both SARS and the taxpayer. The rationale behind prescription is to bring finality to tax matters.

65. SARS indicated that they are concerned that too many SARS resources are currently spent on information entitlement disputes rather than conducting audits within the period that additional assessments may be issued. SARS contended that failures by taxpayers to provide information within the period within which SARS must finalise the audit, and issue additional assessments, were often tactical. In addition, certain matters subject to audit may be so complex that it is impossible for SARS to meet the prescription deadline.

66. SARS therefore proposes that prescription be extended for a period appropriate to cater for a failure to provide information within a reasonable period, the time required to resolve a dispute as to SARS' entitlement to information or for up to three years if the application of a General Anti-Avoidance Rules ("GAAR"), transfer pricing or similarly complex matter is involved.

67. While we have much sympathy for SARS insofar as access to taxpayer information is concerned we have consistently held the view that SARS is entitled only to factual and contextual information (and all such information) relating to the taxpayer and its affairs. By

contrast we are firmly of the view that SARS is not entitled to documents that express a view on the tax implications or risks associated with a given set of facts on the grounds that such views are irrelevant for purposes of administration of a tax Act and we advise our clients accordingly. To the extent that taxpayers dispute SARS's right to factual and contextual information we understand the cause for concern and the rationale behind the proposed provisions.

68. However, we have some concerns with the proposed provision as set out below.

69. The provision gives SARS the power to extend prescription by an "appropriate period". There is no indication of what an appropriate period is, leaving this entirely to the subjective discretion of SARS officials and is therefore open to abuse. The period of extension should be limited to the period of the delay in SARS obtaining the required information or resolving the dispute over entitlement to the information requested.

70. While we acknowledge the concern of SARS related to complex matters and that this clearly relates to the GAAR and transfer pricing audits, we are concerned with the potential for misuse on the part of SARS officials.

71. Firstly, as currently formulated, it is possible for a SARS official to extend prescription on the basis that, for example, SARS is merely considering the application of the GAAR. In our view, this is too low a threshold to be applied. Before prescription can be extended it must be readily apparent that the audit is a complex matter. To this end, SARS should be required to provide the taxpayer with reasons as to why it intends to extend prescription, why an audit is regarded as complex and give the taxpayer an opportunity to make representations prior to prescription being extended.

72. In addition to the above, SARS should not be permitted to commence an audit shortly before the expiry of prescription and then be able to extend prescription on the basis that the matter is complex. Taxpayer's rights should not be adversely affected where SARS has been lax in fulfilling its duties timeously within the prescribed prescription period. To this end, it is submitted that it should be a prerequisite for the extension of prescription that SARS has commenced its audit at least 6 months prior to prescription.

73. Secondly, we are concerned with the term "matter of analogous complexity". Complexity is a subjective matter of opinion and what is a complex matter for one person is a simple matter for another. This term raises the risk of abuse by SARS officials simply alleging that a matter is complex. To this end, it is suggested that the application of this provision should be reserved for a published list of matters and that any decision to extend prescription should be subject to objection and appeal (in addition to the right of review under PAJA).

74. Finally, we consider that the ability to extend prescription for a period of up to 3 years is excessive. This amounts to a doubling of the prescription period in the case of SARS assessment from 3 years to 6 years and for self-assessment will result in a prescription period of up to 8 years. This undermines the very principle behind prescription of bringing finality to matters. We submit that prescription for complex matters should be extended by no more than 18 months which, even in the most complex of matters, should provide SARS with sufficient time to complete its audit and raise an assessment.

75. Submission: the provisions require substantial amendment as set out above in order to provide greater clarity as to the circumstances in which prescription may be extended, the period thereof and to provide safeguards against abuse.