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National Treasury
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0001

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Dear Ms Bulisile and Ms Collins

SUBMISSION: REPRESENTATIONS ON THE DRAFT TAXATION LAWS AMENDMENT BILL 2015 (DTLAB15) – BUSINESS TAXES

We present herewith our written submissions on the above-mentioned draft Bill on behalf of the SAICA National Tax Committee (NTC) in respect of Business Tax matters.

Our submissions include a combination of representations, ranging from serious concerns about the impact or effect of certain provisions to simple clarification-suggestions for potentially ambiguous provisions. We have deliberately tried to keep the discussion of our submissions as concise as possible, which does mean that you may require further clarification. In this respect, you are more than welcome to contact us in this regard.

As always, we thank SARS and National Treasury for the on-going opportunity to participate in the development of the SA tax law.

Yours sincerely

Osman Mollagee
CHAIRMAN: SAICA NTC

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PROJECT DIRECTOR: TAX

DETAILED SUBMISSIONS

[Note: "ITA" means the SA Income Tax Act (No 58 of 1962)]

DRAFT TAXATION LAWS AMENDMENT BILL

2. INCOME TAX – BUSINESS (GENERAL)

2.1. SECTION 24O, ITA – DEBT-FINANCED ACQUISITIONS OF CONTROLLING SHARE INTERESTS

1. The current wording of para (b)(ii)(aa) is confusing and may lead to misapplication.

2. Submission: In order to make it more readable and easier to follow it is suggested that para *(b)*(ii)*(aa)* of the definition of acquisition transaction should read "that company is a controlling group company in relation to that **other company**". Similarly, para *(b)*(ii)*(aa)* should also refer that other company rather than that controlling group company.

3. The requirement for the operating company to generate income is misplaced, as the acquirer will always require tax base to deduct the interest expense.

4. Submission: We propose that the requirement that an operating company generates income be discarded, given that the acquirer will, in any event, be subject to the general principles as regards interest deductibility (whilst being cognisant of the deeming rules in s24O of the ITA).

5. The proposed provisions will operate with retrospective effect to transactions that have already been concluded.

6. This will necessitate taxpayers revisiting all transactions concluded since 1 January 2013 in respect of which s24O has been applied to re-determine the tax deductibility of any interest expenditure. This is exacerbated by the fact that for indirect acquisitions of operating companies the contribution of s41 group operating companies to the value of the shares would need to be determined. This information may not be readily available as in many cases there would have been no such breakdown of the transaction value.

7. Submission: Should the amendment remain, it should operate prospectively to new acquisition transactions and not to those that were entered into in previous years of assessment.

8. The qualifying share interest requirement may find unintended and non-commercial application. The indirect acquisition restrictions is likely to

negatively impact legitimate commercial transactions, for example, where the shares in a listed company are acquired (which listed company holds/owns an operating company).

9. Submission: The proposed restrictions around an indirect share acquisition should be expanded and acquiring companies should not be penalised for effecting indirect share acquisitions. The acquisition funding required should inherently link to the percentage shareholding acquired and thus no further pro-rating of the interest deduction is necessary.

10. S24O of the ITA should, instead of restricting local (indirect) application, be extended to apply to offshore acquisitions, which should stimulate growth for South African corporates looking to expand outside of South Africa.

11. The proposed subsection (4) relating to the re-determination of a qualifying interest would be exceedingly onerous and is too broad in its application. For example, it would apply where any company ceases to form part of the same group of companies as the acquiring company and the operating company, notwithstanding that such company may not have had any impact on the acquisition transaction at all, e.g. where it is another subsidiary of the acquiring company or a fellow subsidiary of the acquiring company. Similar concerns arise with regard to the provisions relating to controlling group companies and operating companies. Furthermore, every re-determination would necessitate the undertaking of a subjective and expensive valuation exercise. The result would be an inordinate compliance burden for taxpayers and an almost impossible burden on SARS to administer this.

12. Submission: The provisions relating to re-determination require limitation in order to reduce the excessive compliance and administrative burden.

13. Firstly, a time limit should be placed on any requirement to re-determine the qualifying interest. In this regard, a period of 2 years from the date of the transaction would be more than adequate to address any possible mischief.

14. Secondly, any re-determination should be limited to changes that have a direct impact on the qualifying interest, i.e. changes in acquiring companies, acquired operating companies, acquired controlling group companies and change in indirectly acquired operating companies.

2.2. SECTIONS 42, 44 AND 45, ITA – DEBTORS ALLOWANCES ON INSTALMENT SALE AGREEMENTS

15. We would question the accuracy of the statement made in the draft Explanatory Memorandum to the TLAB (EM) to the effect that a s24 allowance applies to trading stock and therefore does not qualify for rollover on the basis that it does

not relate to an allowance asset as contemplated in s41. It is our view that the allowance relates to the debt and not the item that was sold and that this is readily apparent from the provisions of s24(2) and the context thereof. As such, the s24(2) allowance and the debt to which it relates would fall squarely within the rollover provisions relating to allowance assets in terms of, for example, s42(3)*(a)*.

16. Notwithstanding the above, we agree with the suggested amendments on the basis that they will clarify the treatment of s24 allowances.

17. We note, however, that the amendments to s42(3)*(c)*(i), s44(3)*(b)*(i) and s45(3)*(b)*(i) to remove the reference to an obligation are insufficient and that subparagraph (ii) of those paragraphs also require amendment to replace the references to obligations.

18. We also note that no amendments have been made to s47 in respect of s24 allowances. There seems no reason why that section should not be aligned with the other sections in this respect.

19. Submission: Further amendments as set out above are required in order to fully address s24 allowances.

20. As a separate matter, we wish to point out that there are numerous deficiencies within the corporate rollover relief provisions and that these provisions need to be revisited in their entirety. For example, no relief is provided with respect to the transfer of liabilities, the transfer of s24J instruments is not catered for which could give rise to adverse tax implications and the transfer of s24I instruments is not catered for which could result in the inadvertent realisation of exchange differences. It is becoming more and more urgent that these provisions are overhauled to address their shortcomings and we would urge National Treasury to commence this process.

21. Submission: We recommend that the corporate rollover provisions be reconsidered and amended in light of the concerns noted above.

2.3. SECTION 42, ITA – ANTI-AVOIDANCE RULE IN RESPECT OF ASSET FOR SHARETRANSACTIONS

22. We welcome this amendment as clarification and note that we had always interpreted the provision as not deeming the shares to have been held as trading stock, but simply creating a fiction in relation to the disposal. We assume that this issue does not amount to a differing view on the part of SARS as to the correct interpretation of the existing provision. Should this be the case, we would ask that the amendment be made retrospective given that it is to the benefit of taxpayers.

2.4. SECTION 9C ITA – ADDRESSING THE PROBLEM OF RETURN OF CAPITAL AFTER A TAXPAYERHAS HELD A SHARE FOR THREE YEARS

23. As a general proposition, the proposed amendments are welcomed. However, we wish to point out some anomalies below.

24. We note that subsection (2) is proposed to no longer refer to a qualifying share, but rather to an equity share held for at least 3 years. This will have some implications elsewhere in the section. Subsection (2A) still refers to a qualifying share contemplated in subsection (2). As such, a consequential amendment is required to subsection (2A).

25. Subsection (4) also refers to a disposal. This subsection may also require amendment to provide that the share lent will be deemed to have been held by the lender.

26. The proposed amendments to subsection (7) would still result in a problem. This is because s22(8) applies when trading stock ceases to be held as trading stock and not on disposal of the asset. The proposed amended subsection (7) still indirectly refers to a disposal through the definition of qualifying share. It is suggested that this subsection rather be cross-referenced to subsection (2) than to a qualifying share.

27. Submission: Further amendments as set out above are required in order to fully address s9C.

2.5. PARAS 3, 4, 11, 20, 35, EIGHTH SCHEDULE ITA – REMOVING POTENTIAL ANOMALIES ARISING FROM CANCELLATION OFCONTRACTS

28. The proposed amendments to para 35 contain no effective date.

29. Submission: An effective date should be inserted to bring these amendments in line with the other related amendments.

2.6. SECTION 1, ITA – REVISION OF THE DEFINITION OF FOREIGN PARTNERSHIP

30. We welcome the proposal to address the anomaly in question. However, we are concerned that the amendment excluding local government taxes may not go far enough in certain instances. In particular, we are concerned that income taxes levied at a provincial or state level may also result in entities that are fiscally transparent at a national level not being foreign partnerships.

31. Submission: In light of the above, it is suggested that the exclusion should apply to all taxes levied at a sub-national level.

3. INCOME TAX: BUSINESS (FINANCIAL INSTITUTIONS AND PRODUCTS)

3.1. SECTION 24JA ITA – EXTENSION OF MURABAHA AND SUKUK TO LISTED ENTITIES

32. The proposed amendment will extend the scope of section 24JA and is therefore.

33. The EM indicates that the effective date for the proposed amendments to section 24JA will be 1 January 2016 and will apply to years of assessment commencing on or after that date. However, this effective date has not been included in clause 42 of the DTLAB15, i.e. the section is silent as to the effective date, which means that the amendment will be effective from the date of promulgation of the final 2015 Taxation Laws Amendment Act.

34. Submission: We recommend that the effective date, as stated in the EM, be specifically included in clause 42 of the DTLAB15.

3.2. SECTION 25 BB, ITA – ALLOWING REITS TO DEDUCT TAX DEDUCTIBLE DONATIONS

35. No specific comments re this amendment, however, see general submission relation to REITs below.

3.3. SECTION 25 BB, ITA – ALLOWING REITS TO DEDUCT FOREIGN TAX CREDITS

36. No specific comments re this amendment, however, see general submission relation to REITs below.

SECTION 25 BB, ITA –GENERAL

Unlisted property-owning companies

37. The Minister of Finance announced in the 2015 National Budget that a regulatory framework for unlisted property-owning companies will be developed to ensure that unlisted property-owning companies qualify for the same special tax dispensation as a listed REIT.

38. It is disappointing that the current special tax dispensation has not been extended to cover unlisted REITS, especially for the long-term insurance and pension fund industries.

39. It is submitted that the leakage of tax as a result of not expanding the regime to unlisted REITs held by long-term insurers is unfair, both from the policyholder and shareholder perspectives. In addition, unlisted REITS are currently exposed

in relation to the debenture portion of the linked unit in the context of sections 8F, 8FA and 23M.

Factual description of relevant transaction and nature of business and associated transactions that are impacted

40. Investment in unlisted property vehicles has a materially different investor value proposition than its listed counterpart. The investment value does not fluctuate to the same extent as listed property investments since it is not subject to market sentiment or debt in the case of life insurers as represented by supply and demand of shares. Unlisted property therefore generates a more stable, predictable and reliable return profile which is suitable for investors with a lower risk appetite.

41. REIT legislation has successfully addressed the key shortcomings of legacy listed property structures. This has increased the appeal of professionally managed property investments and improved South Africa's appeal as an investment destination for foreign investors. The same benefits have thus far not been made available to investors with a lower risk appetite since unlisted REIT's have not yet been legislated. As a consequence the solutions being made available to such investors are sub-optimal in that they suffer from one or more of the following shortcomings:

42. Untaxed investors, such as the untaxed policyholder funds ("the UPF") of life offices and pension funds, would be disadvantaged if the investment vehicle is tax-inefficient;

43. Selling interests in an unlisted property entity is facilitated by partaking in an internationally accepted construct such as a REIT.

44. The only sensible way in which unlisted property investments could be made available to the UPF or Pension Funds at present is to make use of other unlisted vehicles, which would not allow the same ownership rights as an unlisted company REIT and suffers from an increased regulatory burden. Furthermore, it exposes investors to the credit risk of an insurance company (if invested through a policy of insurance) and Regulation 28 imposes penal restrictions to the allocation that can be achieved.

45. Having unlisted REIT legislation in place, will also encourage smaller unlisted property businesses to formalise their activities through a REIT structure. Many of these firms do not wish to list since it would introduce undue costs and administrative burdens.

46. <u>Submission</u>: It is proposed that the current regime for listed REITS should be extended to unlisted REITS held by long-term insurers, Pension Funds and

other investment vehicles. It is also proposed that the various exclusions from the application of sections 8F, 8FA and 23M be extended to cover unlisted REITS.

3.4. SECTION 42, ITA – TRANSITIONAL TAX ISSUES RESULTING FROM THE REGULATION OF HEDGE FUNDS

47. The EM recognises that some hedge funds operate in a combined company and vesting trust structure. It is also recognised that these types of hedge fund structures must be contractually unwound after the investor in the hedge fund disposes of its assets to the portfolio of a hedge fund collective investment scheme.

48. In terms of these structures, a company issues debentures to investors, and the company funds the vesting trust (i.e. the hedge fund) with the debenture proceeds via a loan. The investors then obtain the right as beneficiaries with vested rights in the trust. Upon unwinding of the structure, the investor will have to redeem the debentures, and use the proceeds to repay the loan owing to the company. The investor will therefore trigger a disposal for CGT purposes.

49. In terms of the amendments in the DTLAB15, provision is made for the tax neutral transfer of the assets in the hedge fund trust to the portfolio of a hedge fund collective investment scheme in terms of section 42 'asset-for-share' transaction, in exchange for a participatory interest in the portfolio of a hedge fund collective investment scheme. In this regard, the hedge fund trust will incur no CGT liability on the disposal of the hedge fund assets. There is, however, no relief for the distribution of the participatory interest in the portfolio of a hedge fund collective investment scheme, by the hedge fund trust to its beneficiaries.

50. It is therefore noted that although the EM recognises hedge funds operating as vesting trusts, no provision is made for the tax neutral unwinding of such structures. From the above, it can be seen that the investor, the vesting trust or the company may incur a CGT liability upon unwinding and the subsequent distribution of participatory interest in the portfolio of a hedge fund collective investment scheme.

51. It is submitted that this could not have been the intention of legislature, i.e. that hedge funds which are structured as vesting trusts should be treated differently from hedge funds that are structured as partnerships. It also could not have been the intention of the legislature that investors in a hedge fund trust structure should be taxed (and not investors in a hedge fund partnership) upon unwinding of the structure or upon the distribution of participatory interest in the portfolio of **a hedge fund collective investment scheme. Investors in a hedge fund trust** structure is placed in a disadvantaged position, while the purpose of the

transactions is to merely transfer assets from an unregulated investment vehicle to a regulated investment vehicle.

52. Submission: It is proposed that provision must be made for the tax neutral unwinding of hedge funds structured as vesting trusts, i.e. that the redemption of the debentures and subsequent distribution of participatory interest in the new portfolio of a hedge fund collective investment scheme will not trigger any adverse tax consequences for either the investors, trust or company. This will place investors of the hedge fund vesting trust in a similar position as partners in a hedge fund partnership upon unwinding.

3.5. SECTIONS 1, 9C(4), 22(4B) and (9), PARAGRAPH 11(2)*(n)* OF THE EIGHTH SCHEDULE, SECTIONS 1 AND 8(1)*(u)* OF THE SECURITIES TRANSFER TAX ACT – SECURITIES TRANSFER TAX AND CAPITAL GAINS TAX IMPLICATIONS ONCOLLATERAL ARRANGEMENTS

53. No comments.

3.6. SECTIONS 1, 9C(4) AND 22(4A)] ITA – REFINEMENTS TO SECURITIES LENDING ARRANGEMENTS

54. No comments.

3.7. SECTION 28 (3), (7) TO (11), ITA – TAX ISSUES RESULTING FROM INTRODUCTION OF THE SAM BASIS FORSHORT TERM INSURERS

55. No comments.

3.8. SECTION 28, ITA – INCLUDING MICRO-INSURANCE BUSINESS IN THE TAXATION OF SHORTTERM INSURANCE BUSINESS

56. No comments.

3.9. SECTION 29A(1), ITA – TAX ISSUES RESULTING FROM THE INTRODUCTION OF THE SAM BASISFOR LONG TERM INSURERS

57. Changes were made to section 29A to allow for the introduction of the SAM basis for long-term insurers which will most likely commence during 2016 when the new Insurance Act becomes effective. Changes were also made in respect of the new Risk Policy Fund (RPF) provisions in section 29A.

58. The current legislation does not allow a deduction in the corporate fund (CF) in respect of the new risk business losses incurred in the RPF with effect from 1 January 2016. The stated intention of splitting risk and investment business was to limit the amount of deductible expenses in the individual policyholder fund (IPF) against income derived from investment business. The Industry agreed to

this principle and this was achieved with moving the risk business from the IPF (and other policyholder funds) to the RPF, but is now faced with the unfair consequence of not being able to set-off transfer losses made in the RPF against profits derived from other policyholder funds from in-force risk business.

59. A recent survey conducted by the SAM Tax Task Group amongst the 11 largest long-term insurers revealed the following significant financial constraints if a deduction in respect of the RPF losses is not allowed in the CF against existing profits in respect of in-force risk business:

60. New risk business losses amounting to R25,5bn will be suffered over the next three years in the new RPF, representing deferred tax assets amounting to R7.14bn. No investment return will be earned by the long-term insurers on this asset, leading to a significant dilution in its return on equity, with negative financial consequences;

61. Existing profits from in-force risk business is estimated at R41bn for the next three years. Long-term insurers will therefore be faced with the liquidity constraint of paying tax amounting to R11,5bn, with no tax relief in respect of tax losses incurred in the RPF. This will have a significant negative cash flow impact;

62. Estimations indicate that the new RPF will be loss-making for between 5 - 7 years (depending on the volume of new risk business written from 1 January 2016), with no tax relief. The losses referred to above will therefore be must bigger. This negative tax drag will have to be passed on to policyholders who will bear the ultimate costs as a result of increases in risk premiums of between 7% - 10% and even as high as 12% in the entry level market, which will have a negative impact on the insurability of policyholders.

63. The proposal to allow long-term insurers a once-off election to move all existing risk business to RPF and to group it with new risk business, effectively mean that long-term insurers will now be entitled to deduct the new risk business losses incurred in the RPF in respect of business underwritten with effect from 1 January 2016 against profits derived from existing risk business. It will consequently largely eliminate the negative financial impacts listed above and is welcomed.

64. However, National Treasury must appreciate that it will impact the existing policyholder benefits attributable to investment business, which is predominantly allocated and subject to tax in the IPF. This is mainly due to the fact that the existing business was priced based on the composition of the relevant policyholder fund (which includes the existing risk business on an ongoing basis) and the tax laws in operation at that point in time. It is estimated that the returns

in respect of investment business will reduce by approximately 2% if existing risk business is reallocated to the new RPF.

65. Submission: In order to ensure a balanced tax approach, protect the policyholder rights of existing policyholders and reduce the risk of significant increased risk premium rates from 1 January 2016, we propose that consideration be given to rather retain new risk business in the relevant policyholder fund, based on the owner of the policy, as envisaged in section 29A(4).

66. Corresponding amendments must be made to ensure that the expenditure allocated to such fund be disallowed to the extent that it is incurred in respect of, and attributed to any risk benefits attached to, any risk policy (as defined) and issued during any year of assessment of that insurer commencing on or after 1 January 2016. This is to ensure that the original intent of splitting risk and investment business is maintained and secured.

67. The alternative proposal will have the same desired impact as the once-off reallocation of existing risk business to the RPF, but without impacting existing policyholders.

68. We are of the view that it will largely eliminate the negative financial impacts listed above and will not deviate from Government's proposal that profits derived from the risk business of an insurer be subject to tax in the CF.

3.10. SECTION 29A(1) AND NEW SUBSECTION 13B – REFINEMENT TO RISK INSURANCE BUSINESS OF LONG-TERM INSURERS

69. No comments.

4. INCOME TAX: BUSINESS (INCENTIVES)

4.1. SECTION 13 QUAT, ITA – URBAN DEVELOPMENT ZONES - ALLOWING FOR THE DEMARCATION OFADDITIONAL UDZS PER QUALIFYING MUNICIPALITY

70. No comments.

4.2. SECTION 12I, ITA – EXTENDING THE WINDOW PERIOD AND INTRODUCING A COMPLIANCEPERIOD FOR THE INDUSTRIAL POLICY PROJECT TAX INCENTIVE REGIME

71. No comments.

4.3. SECTIONS 10(1)(*zl*) AND 12P, ITA – FURTHER ALIGNMENT OF THE TAX TREATMENT OF GOVERNMENT GRANTS

72. No comments.

4.4. SECTION 11, ITA –DEPRECIATION ALLOWANCE IN RESPECT OF TRANSMISSION LINES ORCABLES USED FOR ELECTRONIC COMMUNICATIONS OUTSIDE SOUTHAFRICA

73. No comments.

4.5. SECTION 12R, ITA – SPECIAL ECONOMIC ZONES ANTI-PROFIT SHIFTING PROVISION

74. No comments.

4.6. SECTIONS 12C, ITA – ACCELERATED CAPITAL ALLOWANCES FOR MANUFACTURING ASSETSGOVERNED BY SUPPLY AGREEMENTS

75. No comments.

4.7. SECTION 12B, ITA – DEPRECIATION ALLOWANCES FOR RENEWABLE ENERGY MACHINERY

76. No comments.

4.8. SECTION 12L, ITA – ADJUSTMENT OF ENERGY SAVINGS TAX INCENTIVE

77. No comments.

5. INCOME TAX: INTERNATIONAL

5.1. SECTION 9H, ITA PARAS 11(2)(*b*) AND 64B(1)(*b*) OF THE EIGHTH SCHEDULE, I – RELAXING CAPITAL GAINS TAX RULES APPLICABLE TO CROSS ISSUE OF SHARES AND INTRODUCING COUNTER MEASURES FOR TAX-FREE CORPORATE MIGRATIONS

78. The DTLAB15 has introduced clauses 12, 98 and 110 in order to amend section 9H of the ITA, together with paragraphs 11(2)(b) and 64B(1)(b) of the Eighth Schedule.

79. The effect of the proposed amendments to section 9H of the ITA is that any previously disregarded gain in terms of paragraph 64B (over the last three years) will become taxable in the current year when the company ceases to be a resident. This claw back provision applies even where previous sales were completely removed from the current transaction.

80. Further, any previously exempted dividends in terms of section 10B of the ITA (in the last three years) will become taxable in the year in which the tax residency is moved.

81. The proposed amendments pose a number of problems which are set out below.

82. The proposal represents anti-avoidance provisions that are aimed at prohibiting the abuse of relief granted on the disposal of foreign shares (in terms of paragraph 64B of the Eighth Schedule) to a non-resident and the dividend relief granted under section 10B of the ITA. Transactions that have been subject to this relief have already been subject to tax and disregarded / exempted in terms of this relief. By introducing these claw back provisions, outside of the original sections, the same transaction becomes subject to tax twice (initially, even though it was disregarded, and at the point of change in residency). Principally, the same transaction should not be subject to tax at two different points in time.

83. The amendments will come into effect on 5 June 2015. The claw back provisions in relation to paragraph 64B and section 10B will therefore be applied retrospectively to transactions that occurred within the three year period prior to the introduction of these amendments.

84. The introduction of these provisions will discourage foreign investment into South Africa and may affect transactions that broaden the base of the South African economy, as these provisions also apply to companies entering the Headquarter Company Regime.

85. The amendment to section 9H of the ITA will also affect ordinary transactions previously entered into that were not party to the change in residency transaction.

86. It will not be possible to complete liquidation transactions and amalgamation transactions without giving rise to the clawback provisions, as in both instances, a company ceases to exist and therefore ceases to be a resident or a controlled foreign company (CFC). Both of these relief sections provide specific relief to the disposal of assets but do not provide relief in terms of clawback provisions on the migration of residency.

87. The proposed amendments to section 9H of the ITA are very wide and would result in tax being levied on many ordinary transactions, which were not initiated with the intention of stripping resident companies.

88. Submission: We recommend that the amendments address unacceptable anti-avoidance scenarios by including wording which makes the provisions applicable only where a transaction has been entered into for the sole purpose of avoiding tax and not to all instances where section 10B and paragraph 64B were used by a company that ceased to be a resident. Alternatively, these provisions should be deleted, since they are far too broad and punitive in the manner in which they have currently been drafted.

89. In addition, any anti-avoidance provisions which involve the claw back of previous relief should be introduced to the specific sections that are affected, in order to avoid the potential problem of subjecting a transaction to tax twice i.e. if the claw back provision is aimed at addressing the abuse of paragraph 64B, the proposed amendment should be introduced in paragraph 64B.

5.2. SECTION 6 QUIN, ITA – WITHDRAWAL OF SPECIAL FOREIGN TAX CREDITS FOR SERVICES FEESSOURCED IN SOUTH AFRICA

90. Clause 5 of the DTLAB15 effectively repeals section 6quin of the ITA.

91. It is acknowledged that the section 6quin relief was only to be enacted as a temporary measure in order for the relevant governments to conclude on the interpretation issues as well as to ensure compliance by foreign governments to correctly apply the provisions of their DTAs with SA. Given that this has not yet been achieved, repealing s6quin will result (again) in SA resident service providers being subject to double tax with no immediate prospect of relief (albeit however minimal the relief is that section 6quin of the ITA provides).

92. Submission: We respectfully request National Treasury to provide assistance in resolving this matter and for section 6quin of the ITA to be retained until these issues have been resolved.

93. As urged previously, it is further recommended that the administratively burdensome compliance measures required by section 6quin of the ITA be aligned with those contained in section 6quat of the ITA, to alleviate the burden on both SARS and the SA taxpayer.

5.3. SECTION 9D – REINSTATEMENT OF THE CONTROLLED FOREIGN COMPANY DIVERSIONARY INCOME RULES

94. The amendments to section 9D of the ITA propose to re-introduce the diversionary income rules which were previously (prior to 1 April 2012) included in the legislation. The re-introduction of these rules may dictate that certain transactions which are completed on arms-length terms will be imputed back to South Africa even when a foreign business establishment exists.

95. These amendments may also negatively impact on South African outbound multi-national groups from competing with inbound groups in global operations.

96. Submission: We propose that the current legislation, as included in section 9D of the ITA, in relation to the sale of goods is retained, as the current legislation already requires arms-length treatment.

5.4. SECTION 35A AND PARAGRAPHS 2(2), 64B (1), (2) AND (4) OF THE EIGHTH SCHEDULE, ITA – REVISION OF THE DEFINITION OF IMMOVABLE PROPERTY

97. No comments.

5.5. SECTION 50A, ITA – DEFINITION OF INTEREST FOR WITHHOLDING TAX PURPOSES

98. It is proposed that "interest", for the purpose of the withholding tax on interest, must be defined as section 24J(1) interest.

99. The section 24J "interest" definition is very wide and includes discounting, premiums and other instruments such as interest rate swaps.

100. This proposal is contrary to previous indications by SARS that the common law meaning would be followed.

101. The "interest" definition in DTAs is also much narrower than section 24J interest and is generally in line with the common law definition of interest. This may cause potential problems with the application of such DTAs.

102. The withholding tax on interest regime generally works on a cash payment basis. The inclusion of section 24J interest could result in deemed agents having an obligation to withhold tax on interest when there has been no flow of funds. Failing an exclusion for deemed agents, the proposed legislative amendments will result in deemed agents not being able to fulfil their current withholding obligations.

103. The proposed amendment will be effective from 1 March 2015, when interest withholding tax was introduced. This will imply retrospective application of the provisions, which may lead to impracticalities in trying to recover amounts not withheld from non-resident taxpayers.

104. Submission: "Interest", as defined in section 50A of the ITA should rather be defined in line with the OECD Model Tax Convention.