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Honourable Mr. Yunus Carrim
Chairperson,
Standing Committee on Finance
National Assembly
Parliament of the Republic of South Africa
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SUBMISSION ON THE 2015 TAX BILLS: Draft Tax Administration Laws Amendment Bill (DTALAB) and the Draft Tax Laws Amendment Bill (DTLAB)

Dear Chairperson Carrim,

I have pleasure in submitting the Banking Association of South Africa's (BASA) submission for the 2015 Tax Bills, in particular the Draft Tax Administration Laws Amendment Bill (DTALAB) and the Draft Tax Laws Amendment Bill (DTLAB).

The banking sector is a critical stakeholder in the annual iterative process for review and amendment of the tax laws. This is due to the fact that the banking industry is the "oil that lubricates the economy" and it is thus critical for us to continually engage government to maintain ranking as the 5th most stable banking sector in the world world according to 2014/15 Global Competitive Report – a true National Asset.

It is for this reason that the Banking Association's Direct Tax Committee maintains constructive working relations with National Treasury to:

- Enable proposed legislation, by being a trusted advisor;
- Explain the impact on the economy, financial markets and the industry when tax changes are announced;
- Lobby for tax changes, where the tax law has not kept up with developments in financial markets and products, as well as where the proposed tax law results in unintended consequences;

- To contribute to an enabling tax legislative environment, with potentially fewer technical amendments and more tax certainty for the industry and investors.

A great deal of the content of the submissions by BASA is very technical in nature. However, most of the technical aspects were covered with National Treasury (and SARS) in the public workshops which were held in the first week of September 2015.

Therefore, we would like to address some issues of **principle**, rather than focus on technical corrections or suggestions.

In summary, our submission covers the following principles –

1. **The need for tax legislation to progress in sync with the overwhelming amount of regulatory change which the banking industry is experiencing**

   The banking industry is very well regulated and the level of regulation is ever increasing. In this regard, it is vitally important for tax legislation to keep pace with the regulatory environment in order for it to be an enabler for business, rather than an unnecessary cost. We appreciate the concerns of National Treasury when contemplating changes to any tax legislation in that there are those taxpayers who only seek to abuse any concessions which may be granted. However, we remain committed to working with National Treasury in order to find a path that is acceptable to both the regulator and industry and which addresses any potential anti-avoidance upfront, if possible.

   Recent examples are the proposed dispensation to allow the outright transfer of collateral on a tax neutral basis (i.e. exempt from Securities Transfer Tax and Capital Gains Tax). However, the dispensation has been limited to the transfer of listed equities where the period is limited to 12 months (which matches the term of a securities lending arrangement only but not necessarily any other types of underlying principal obligations), i.e. the collateral has to be returned within 12 months without the option to re-post the returned collateral immediately where the underlying obligation is still in place.

   Whilst we are really appreciative of this dispensation, in order for it to assist the banking industry, we really need it to be extended to all types of collateral (especially bonds) and for the collateral to be allowed to match the underlying principal obligation where it exceeds 12 months (alternatively be allowed to re-post the collateral at the end of a 12 month period), so that the assets subject to this type of collateral will qualify for purposes of the Basel III Liquidity Coverage

Ratio (relating to High Quality Liquid Assets) and Net Stable Funding Ratio requirements.

In addition, collateral which is required to be posted to a pension fund in terms of Regulation 28 would also not benefit from this new regime, whilst the 12 month limitation is in place.

We re-iterate that this dispensation will not detract from the amount of tax currently being collected, since collateral in the form of pledge is currently being used (which is tax neutral) but collateral in the form of an outright transfer of the assets involved is required (since the assets can then be on-posted as collateral, which is not allowed under a pledge) which assists in creating liquidity in the market.

National Treasury has acknowledged the regulatory landscape of the banking industry in the past, e.g. when sections 8FA and 8F were enacted on 1 April 2014, instruments which constitute a tier 1 or tier 2 capital instrument for banks were excluded from the scope of the sections, since they would necessarily have been caught due to the conversionary elements in such instruments. Since these new capital instruments which were hybrid instruments, were designed to cater for times of hardship for all banks (following the global crisis), it was acknowledged that it would be inappropriate to include such instruments within the scope of such an anti-avoidance section, since banks were required to enter into them as part of their capital base.

Another example of tax legislation which is going to require amendment going forward due to a change in international accounting standards is section 24JB (which is specific to banks and stockbrokers), since it is based on the provisions of IAS 39, which is to be replaced by IFRS 9 from 1 January 2018.

2. Information relating to the rendering of services by foreign service providers

We welcome the deferral of the proposed withholding tax (WHT) on services regime (at 15%) from 1 January 2016 to 1 January 2017, in the hope that this regime will be repealed altogether, since it will simply make it unnecessarily expensive for SA businesses to obtain the necessary expertise from foreign service providers (and the regime will result in WHT being collected rather than the information SARS seeks pertaining to foreign service providers).

However, we have to re-iterate that the proposed (alternative) manner in which SARS seeks to obtain information in relation to foreign service providers, who are present in SA whilst rendering their services, which has been proposed as a reportable arrangement, with attendant stringent penalties for non-compliance (whether wilful or inadvertent), is an unacceptable burden to place on taxpayers.

The reasons that this is unacceptable are because:

a) the RA regime is aimed at providing SARS with an 'early warning system' for transactions with a tax benefit, and routine services provided by a foreign service provider simply do not fall within that ambit;

b) the South African Reserve Bank (SARB) already has the information sought by SARS, since every payment by a corporate to a foreign service provider requires the approval of the SARB on written application/notification; and

c) the proposed RA has so many flaws in its construction that it will be almost impossible for taxpayers to comply due to uncertainties in its application and the sheer extent of the information that would have to be provided (whether useful to SARS or not).

We respectfully request that SARS rather obtain the requisite information from the SARB (and engage at an inter-departmental level within government to ensure that the information, which is already required by the SARB, accords with what is required by SARS) and refrain from placing an unduly burdensome (and additional) reporting requirement on taxpayers.

3. Lack of oversight and taxpayers rights

There is, once again, no oversight of the changes to the Tax Administration Act (TAA) by National Treasury. In addition, there is a need for the office of the Tax Ombud to be independent in order for the relationship between SARS and taxpayers to be effective.

It appears that the balance between the powers and duties of SARS and the rights and obligations of taxpayers has tipped in favour of SARS and the rights of taxpayers are being eroded. Autocratic decisions are made by SARS and comments from Industry appear to be mostly disregarded. This shift in balance in favour of tax authorities and away from the rights of taxpayers is a matter of global dialogue and discourse.

During his opening address to the International Fiscal Association (IFA) 69th Congress in Basel, Switzerland (30 August – 3 September 2015), IFA's President, Mr. Porus Kaka (India), remarked during his opening address along the lines that:

It is an opportune time for there to be a global topic/discussion on taxpayer's rights, in particular the need for a Taxpayer's Charter of Rights. The pendulum appears to have swung too far in favour of the Tax Authorities, and in order for the system to stabilise, there needs to be balance between the rights of taxpayers' and those of the Tax Authorities, i.e. the system is unsustainable at this stage.

In this regard, it is therefore probably time for a discussion to commence regarding the necessity of a Taxpayer's Charter of Rights, since the Tax Administration Act (TAA) appears to be providing SARS with more and more powers, in the absence of any balancing mechanism for taxpayers.

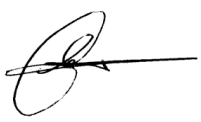
In addition, given that certain of the changes to the TAA, as proposed by SARS (and referred to in our submissions to National Treasury and our formal presentation), unduly erode all taxpayers' rights, we respectfully request that such changes are deleted from the DTALAB and are not accepted into law.

We thus welcome an opportunity to constructively address and engage with the Standing Committee on Finance during the forthcoming public hearings on the 2015 Tax Bills, in order for improving and strengthening the manner in which the provisions of the Bill are applied to banks and its customers. This is imperative in order for banks to continue to play a meaningful role in our economy.

I trust the Committee will afford our submissions your due consideration in this regard. We look forward to your and the Committee's considered feedback and engagement regarding our submissions.

Thanking you in advance.

Yours sincerely,



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