

58a Stewart Place
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8 November 2015

Mr Y Carrim MP
Chairman
Standing Committee on Finance
Parliament of South Africa

awicomb@parliament.gov.za

Dear Sir,

Taxation Laws Amendment Act, 2013

It is my considered view the Government may be open to a Constitutional challenge if Parliament allows certain tax changes to go ahead on 1 March 2016.

I am privy to the perspectives of various parties e.g. BUSA and The Financial Planning Institute of Southern Africa, and I do not attempt to cover their unanimous support for Option 1 here (albeit they are not in agreement on whether to implement on 1 March 2016 or 2017).

The purpose of this submission is to highlight fatally flawed process.

Background

Most of the Taxation Laws Amendment Act, 2013 (TLAA) changes were not implemented, and the changes relating to retirement tax harmonisation that took effect on 1 March 2015 (the original date for all these changes) related to deferred retirement and the taxation of income disability premiums.

National Treasury issued an announcement dated 16 October 2014 which explicitly said there would be an attempt to reach agreement at NEDLAC by June 2015, or Government may consider deferring the implementation until 1 March 2017. However the legislation passed through Parliament to defer the 1 March 2015 implementation date made the implementation date 1 March 2016.

During July this year there was a request for a NEDLAC engagement, which took place on 7 August 2015. At a subsequent 25 August 2015 NEDLAC engagement on comprehensive social security reform, statements by National Treasury's Ismail Momoniat indicated that National Treasury intended persevering with an implementation of the remaining substantial changes on 1 March 2016 (contrary to the attached communication) because that is how the legislation had already been corrected in 2014.

On 3 September 2015 I, as a BUSA representative at the NEDLAC meetings, wrote to several National Treasury officials asking for clarity. A response was only received recently on 30 October 2015 and indicated that National Treasury was no longer contemplating a 1 March 2017 implementation date.

National Treasury has stated that there has been extensive consultation, including at NEDLAC. This is not true. NEDLAC is an act of Parliament and it was clarified at the NEDLAC engagement on 7 August 2015 that the presentation received from National Treasury was not a consultation.

The NEDLAC records will reflect BUSA raised 3 issues with National Treasury for the purposes of beginning the required and expected consultation and discussion.

Bodies such as ASISA have formally registered their concerns over the process, or lack thereof.

NEDLAC Engagement

I reminded National Treasury at their presentation on 30 October 2015 that business concluded with three points at the end of the 7 August 2015 at NEDLAC. Namely: -

1. Organised Business raised the level of the R350 000 per annum cap on contribution deductions,
2. The need for certainty (significant costs had been borne by business through the late postponement of the 2013 amendments in 2014), and
3. The principle of the statutory public sector funds being treated the same as private sector retirement funds.

National Treasury undertook at NEDLAC that all statutory funds except the Government Employees Pension Fund (GEPF) will be treated the same as private sector funds. This raises a Constitutional question on how public sector staff can escape the proposed deduction cap for defined benefit funds?

To date there has been no response to BUSA's 7 August NEDLAC inputs.

It is trite that the GEPF is a defined benefit fund and these tax changes will (besides the R350 000 pa cap) also place an individual contribution deductability limit on every defined benefit fund member. How is it possible to contemplate or justify a position where apparently in the interests of retirement fund harmonisation, over a million public servants can be allowed to escape their tax obligations that are imposed on all other citizens? There is no national solidarity in this approach and it appears to specifically be designed to favour a select group i.e. public servants such as those within National Treasury.

Parliament having now been made aware of this aspect of the tax laws already passed, should carefully consider whether the members have been properly briefed. It does not require legal opinion to appreciate this form of discrimination will not pass muster if challenged.

Conclusion

Government should compel National Treasury to conclude the process they undertook and respond to the valid questions they have been posed since as early as 8 August 2015.

The formulation and implementation of sound policy proposals requires certainty and sufficient timing. National Treasury promised to give sufficient time to proper consultation in 2014 and because of the lateness and chaotic approach taken in 2015, Parliament should now consider changing the current implementation date of 1 March 2016 to 1 March 2017 to allow proper process and consultation (to iron out the patent flaws in the current Act).

Thanking you in anticipation.

Yours sincerely

A handwritten signature in black ink that reads "Andrew". The signature is written in a cursive style with a large, sweeping initial 'A'.

ANDREW CRAWFORD