**PER E-MAIL:**

Mr. Allen Wicomb

Secretary of Standing Committee on Finance

National Assembly

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| --- | --- | --- |
| Our Ref.: | Your Ref.: | Date: |
|  |  | 01 November 2016 |

**WRITTEN SUBMISSIONS ON THE 2016 TAXATION LAWS AMENDMENT BILL (SECOND BATCH)**

Dear Sir,

**BACKGROUND AND FRAMEWORK:**

1. The Witzenberg PALS (“PALS”) is a non-profit initiative that strives to attain successful land reform, economic growth, job creation and social cohesion. The initiative is accepted and supported by various Ministers in different departments of Agriculture, Land Reform as well as Water and Sanitation. One of the most crucial goals that PALS seeks to attain is the establishment of successful black farmers in the community.
2. The main point of departure that underlies the PALS initiative is the National Development Plan proposals for land reform and job creation, the municipal Integrated Development Plan and the socio-economic realities that confront the community in which PALS operates.
3. It is of paramount importance that the PALS framework is understood as it represents a radical departure from past land reform projects in South Africa. For your convenience, we have attached an executive summary (“A1”) that explains how PALS operates to ensure the growth and prosperity of previously disadvantaged black farmers.
4. As PALS is based on the transfer of property and the transfer of shares from participating commercial farmers to black beneficiaries, we requested an exemption from having to pay Capital Gains Tax and/or Donations Tax, since this benefit should be passed on to land reform beneficiaries by way of capital investment to develop the farm to expedite growth and job creation.

**LIAISON WITH SARS OFFICIALS**

1. On 26 June 2015 we contacted Dr. Louis Kuyler, a Senior Specialist of Interpretation and Rulings at SARS, to gain clarity on the tax implications and possible exemptions. In this regard, we relied on Section 56(1)(o) or Section 56(1)(r) of the Income Tax Act 58 of 1962 for such exemption.
2. Section 56(1)(o) provides that donations tax shall not be payable in respect of the value of any property which is disposed of under donation where such property consists of the **full ownership** in immovable property if such immovable property was acquired by any beneficiary entitled to any grant or services in terms of the Land Reform Programme, as contemplated in the White Paper on South African Land Policy, 1997.
3. When one considers the framework in which PALS operates, it is clear that the words “full ownership” creates a problem for PALS projects. In most instances, PALS commercial farmers transfer a minimum of 30% of shares to black farmers which eventually leads to a transfer of 70% - 100% over a longer period of time. This section, therefore, does not cater for a transfer of an interest that is less than 100% resulting in PALS producers being liable for Capital Gains Tax and/or Donations Tax.

**LEGISLATIVE AMENDMENTS**

1. On 17 August 2015, we were informed by Ms. Lizette Hart, a SARS Specialist in Interpretation and Rulings, that the issues and policy implications of the various projects relating to PALS were carefully considered and referred to National Treasury.
2. Dr. Kuyler subsequently informed us that National Treasury was considering a possible legislative amendment.
3. On 18 July 2016, Dr. Kuyler forwarded us the suggested amendment to Section 56(1)(o) as published in the draft Taxation Laws Amendment Bill of 2016. A copy of the suggested amendment (“A2”) is annexed hereto for your convenience.
4. Although the willingness of the National Treasury to amend the legislation is greatly appreciated by PALS and its beneficiaries, it still does not benefit their initiatives as the proposed amendment still stipulates that PALS only qualifies for tax exemptions if full ownership of a property is transferred to beneficiaries.
5. On 22 July 2016, our comments on the proposed amendments were forwarded to the National Treasury. These comments are also annexed hereto for your convenience (“A3”).

**RESPONSE FROM NATIONAL TREASURY**

1. On 06 October 2016, we received a telephone call from Ms. Yanga Mputa who informed us of the following:
   1. National Treasury has received our commentary, however, the 2016 budget and policy decisions only makes provision for full ownership;
   2. Our suggestions with regards to partial ownership/co-ownership of property cannot be accommodated in the 2016 budget and therefore national treasury cannot consider it as it is apparently a new policy decision that needs to be taken.
   3. We will only be able to submit the PALS background, contracts and structure in November for possible consideration in the 2017 budget.

**APPEAL TO THE STANDING COMMITTEE ON FINANCE**

1. The requirement of full ownership as provided in the Income Tax Act, unfortunately, has a detrimental effect on current PALS projects as well as other similar initiatives. It jeopardizes PALS projects as it will be extremely difficult, if not impossible, to find commercial farmers who are willing to transfer shares/property and then have to pay tax on such transfers. PALS producers are willing to transfer land to black beneficiaries and mentor these beneficiaries to ensure the viability of the project. If they were to get tax relief, they would have more funds to invest in the project.
2. It also has an adverse effect on national joint shareholding projects between commercial farmers and black farmers as launched by the Ministers such as the so-called 50/50 Farming Pilot Projects.
3. Minister Pravin Gordhan stated in his 2016 budget speech that the budget for 2016 is a budget for inclusive growth that prioritizes infrastructure investments and emphasises partnerships amongst the role players in our economy. He also stated that employment creation has to be accelerated if growth is to be inclusive. PALS projects redistribute land, invests in infrastructure, stimulate growth and creates jobs. PALS ultimately addresses all the key focus points mentioned by Minister Gordhan.
4. In light of the above, it must be emphasized that commercial farmers in PALS projects are fully dedicated to the cause and the available funds in the project will be invested in the project to facilitate the creation of more jobs and accelerate economic growth as a whole. The payment of Capital Gains Tax or donations tax will ultimately diminish the working capital in a particular PALS project and delay economic growth. Instead of PALS producers having to pay tax on their good work, these funds can be used to benefit black beneficiaries and facilitate the creation of more jobs which is something our economy desperately needs in these trying times.
5. It is submitted that even though a tax exemption on PALS projects will mean that National Treasury will have a little less capital to work with, it is, in fact, a small exchange for a far more beneficial and long-term solution to the crippling problem of unemployment.
6. As indicated in the PALS framework, commercial farmers in a PALS project are initially co-owners of property together with the black beneficiaries. Accordingly, these commercial farmers have a vested interest in the project’s success and will do all they possibly can to ensure the prosperity and sustainability of the project.
7. Thus, we humbly request that the position is reconsidered in order for PALS projects to qualify for the aforementioned tax exemption for the current tax year. We further request that our suggestions with regards to the proposed amendments be taken into account before the Taxation Laws Amendment Bill is passed.
8. Should you required any additional information, you are welcome to contact the writer hereof.

Kind regards

**JOUBERT VAN VUUREN ING**

per:

**R VAN STADEN**