****

**ORAL SUBMISSIONS ON LEARNERSHIP TAX INCENTIVES**

**09 NOVEMBER 2016**

**Introduction**

1. The Witzenberg PALS initiative (“PALS”) was established in agreement between the agri-producers, local government and the community of the Witzenberg area.
2. The main objective of PALS is the expedition of land reform in unique ways that stimulate economic growth and job creation as well as build social harmony. This is in line with Chapter 6 of the National Development Plan (“NDP”), which speaks of “*an inclusive rural economy*.”
3. The NDP emphasises the “developing [of] strategies that give new entrants access to products and **support from better resourced players**.”
4. The goals of PALS include the following:
   1. the establishment of successful black farmers;
   2. the involvement of the whole community in an inclusive process;
   3. the extension of the initiative to other areas and agri-related industries;
   4. the establishment of the Witzenberg Centre as a “one stop shop”;
   5. **to place focus on mentorships and training programmes.**
5. The PALS mentorship programme is not a formal programme or learnership, as envisaged in the Skills Development Act 97 of 1998, but a practical guide facilitating the transfer of skills, leadership and the organisational ability of an entrepreneur to the emerging farmers in our projects.
6. We view this as a “simulator” approach, where the farming business and other related skills are learned through practice.
7. As part of any PALS project, a commercial farmer will enter into a mentorship agreement with a black farmer. A copy of the draft mentorship agreement is attached hereto as Annexure “A1”. The monitoring and implementation of the mentorship agreements are of paramount importance to PALS as emerging black farmers require the assistance and knowledge of the commercial farmers in order to successfully proceed with the farming activities on the farm.

**Learnership allowance**

1. Section 12H of the Income Tax Act No. 58 of 1962 provides that an employer may receive a tax deduction for any registered learnership agreement if all the requirements referred to in section 12H are met.
2. For brevity’s sake, the following is a summary of the requirements that must be met in order for an employer to qualify for the learnership allowance:
   1. A learnership agreement must have been **entered into** or **completed** during the year of assessment;
   2. The learnership agreement must be a **registered** learnership agreement;
   3. The learnership agreement must have been entered into on or after **01 October 2001**;
   4. The employer must be the **original employer** in terms of the learnership agreement;
   5. The learnership agreement must have been entered into in the **course of trade**;
3. Section 16 of the Skills Development Act sets out the criteria of a learnership and provides that it must:
4. consist of a structured learning component;
5. include a structured work experience;
6. lead to qualification registered by the South African Qualifications Authority associated with a trade, occupation or profession; and
7. be registered with the Director-General of the Department of Labour in the prescribed manner.
8. Section 17 further provides that a learnership agreement is an agreement entered into for a specified period of time between:
9. a learner;
10. an employer or group of employers; and
11. a skills development provider accredited by the Quality Council for Trades and Occupations.
12. In stark contrast, PALS mentorship agreements are *sui generis* and is essentially a special relationship between a successful commercial farmer and an emerging black farmer. In this relationship, a commercial farmer takes the black farmer under his wing and a “father-son” relationship is formed. The commercial farmer invests his time, money and other resources to expose the black farmer to and teach him the practicalities of running a successful farm. This is done in the most pragmatic manner possible so that black farmers are taught the essential skills that are required to manage and administer a farm successfully.
13. With that being said, it must be stressed that PALS mentorship agreements are practical in nature and does not prescribe to the formalised approach that is currently required by the abovementioned legislation. The commercial farmer imparts skills and knowledge that he acquired by experience in the field. Accordingly, commercial farmers are not accredited by the Quality Council for Trades and Occupations as prescribed by Section 17. Similarly, a PALS mentorship agreement will not lead to a qualification registered by the South African Qualifications Authority associated with a trade, occupation or profession.
14. Despite not falling into Section 16 or Section 17 of the Skills Development Act, PALS mentorship agreements still bring great value to those who benefit under it. Not only do the learners in this mentorship agreement get taught about aspects of financial responsibility and management, but they are also exposed to a wealth of knowledge and experience that can only be acquired if one follows a more pragmatic approach.
15. The second requirement in Section 12H of the Income Tax Act provides that the learnership agreement has to be registered with a SETA (Sector Education and Training Authority) in terms of the Skills Development Act. This presents another problem to PALS. This is because an employer that has entered into a learnership agreement with a learner which has not been registered with a SETA is not entitled to claim the learnership allowance as such learnership agreement does not constitute a “registered learnership agreement” as defined.
16. None of the PALS mentorship agreements have been registered with any SETA which means that it will not be considered as a “registered learnership agreement” in terms of the Act. This ultimately means that PALS will not qualify for the learnership allowance provided for in Section 12H of the Income Tax Act.
17. In the Learnership Tax Incentive Review of September 2016, the Economic Tax Analysis Chief Directorate points out a number of issues that comes with the requirement of “registered” learnership agreements. Respondents to a survey on SETAs felt that SETAs was a major barrier to the uptake and efficiency of the incentive. They also felt that SETAs were unable to efficiently assist with the administrative process and that the overall process was too cumbersome. Respondents also suggested that SETAs were unable to supply them with the correct information to get a learnership agreement registered (this may be because certain SETAs have different requirements for the registration process).
18. SETAs in sectors such as agriculture have shown a particularly low take-up of the incentive.

**Appeal to the Standing Committee on Finance**

1. The objectives behind the learnership tax initiative are as follows:
   1. To promote skills development;
   2. To encourage human capacity development;
   3. To encourage job creation by reducing the cost of hiring and training employees through formally recognised learnership.
2. It must be highlighted that PALS mentorship agreements fulfils all 3 of these objectives.
3. When one considers the duties placed on the commercial farmer in the PALS mentorship agreement, one can clearly see that the development of skills and human capacity is the main objective underlying the agreement. Job creation, economic upliftment, skills development, training and land reform are therefore the key focus in any PALS mentorship agreement. This is in line with the objectives that the legislature sought to achieve when enacting the learnership tax initiative.
4. In the Learnership Tax Incentive Review, it was held that the training available for some sectors may not be aligned with work-place needs. In order to create successful black farmers within the PALS framework, practical training and assistance with regards to the realistic and functional aspects of running a successful farming business are crucial. It must, therefore, be emphasized that the best person to teach an up-and-coming black farmer about any of the abovementioned aspects is a commercial farmer who has years of experience and knowledge to his name. PALS focuses on the partnership between commercial farmers and black farmers to ensure that the latter is in a position to one day run the farm independently.
5. The PALS Centre also oversees that the goals and objectives of the mentorship agreement are adhered to and achieved.
6. As it currently stands, PALS does not qualify for the learnership tax deduction. PALS producers are however still 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 in the form of this tax initiative, they would be even more committed to the cause.
7. PALS projects redistribute land, invest in infrastructure, stimulate growth, create jobs and ensure that previously disadvantaged farmers are trained and mentored so as to guarantee their commercial success. PALS ultimately speak to the core objective underlying the institution of learnership tax incentive. Therefore, even though a PALS mentorship agreement does not fall under the strictly formalised concept of a “registered learnership agreement”, it still caters for all the objectives on which the learnership tax initiative was based.
8. In light of the above, it must be emphasized that commercial farmers who partner with black emerging farmers in PALS projects are fully dedicated to ensuring the success of the projects. All available funds in the project will be invested in the project to impart important practical knowledge in black farmers, facilitate the creation of more jobs and accelerate economic growth as a whole.
9. The PALS framework dictates that 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. It should also be noted that black farmers have the option of buying the commercial farmer out and owning 100% of the shares of a farm.
10. We humbly request that the position be reconsidered in order for PALS mentorship projects to qualify for the learnership tax deduction. PALS mentorship agreements do not fulfil the requirements of the Income Tax Act yet it still provides an invaluable benefit to previously disadvantaged.
11. PALS do not have all the solutions to above problems but it has considered the possibility of the creation of a new category of agreement to cover PALS and similar initiatives. The Standing Committee’s input and consideration would, therefore, be greatly appreciated by PALS and its beneficiaries.