

www.pwc.co.za

SUBMISSION

2017 Draft Tax Administration Laws Amendment Bill



Dear Allan and Teboho

**Representation on the Draft Tax Administration Laws Amendment Bill, 2017
("TALAB 17")**

We present herewith our written submissions on the above-mentioned draft Bill.

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 might require further clarification. You are more than welcome to contact us in this regard.

Yours sincerely

Kyle Mandy
South Africa Tax Policy Leader
Director
Tax Practitioner: PR – 0011393

Attached:
• Detailed submissions

PricewaterhouseCoopers Tax Services (Pty) Ltd

2 Eglin Road, Sunninghill 2157
Private Bag X36, Sunninghill 2157
T: +27 (11) 797 4000
F: +27 (11) 797 5800

Contents

1	Clauses	Slides 4-10
2	Other Matters	11 -12



CLAUSES

Comment

The TALAB proposes an amendment to the Income Tax Act under s7D relating to the accrual of interest payable by SARS. However at the same time the TLAB proposes a new s7D to the Income Tax Act dealing with the interaction between the “*in duplum*” rule and the statutory tax legislation.

Furthermore, the proposed provision makes a substantive change to the timing of a tax event. As such, it should preferably be included in the TLAB rather than in the TALAB.

Recommendation

We recommend that the proposed amendment to the TALAB, dealing with the timing of interest accrual, be incorporated in the TLAB in order to provide clarity.

Comment

While we welcome the amendments to alleviate the compliance burden on exempt recipients of dividends, we note that there is still no relief from such persons having to provide the necessary declaration in order for no withholding to be made.

Recommendation

Relief should also be provided to such persons from having to make a declaration for no withholding of dividends tax.

Clause 2.10: Amendment to paragraph 2 of the Fourth Schedule of the Income Tax Act

Comment

The proposed amendment to paragraph 2 (in terms of the Draft TALAB) refers to section 11(k). Section 11(k) is proposed to be deleted and replaced by section 11F.

Recommendation

The reference to section 11(k) should be updated to reflect section 11F.

Comment

Recommendation

It is noted that the existing para (jj) of the proviso to section 10(1)(k)(i) is proposed to be split and includes a proposed new para (kk).

Subject to our comments made in relation to the TLAB, the definition of remuneration and para 11A should be updated for the proposed para (kk) of the proviso.

It is noted that the equivalent non-exempt foreign dividends in section 10B are not included as remuneration and, accordingly, not covered by para 11A. It is questioned what the policy rationale is for distinguishing between dividends and foreign dividends in this regard.

Consideration should be given to aligning the employees' tax treatment of dividends and foreign dividends.

Comment

It appears from the Memorandum on the Objects of the TALAB that it is SARS' intention to extend the internal remedy available in section 9 to all decisions that are not subject to objection or appeal under the TAA. The wording of the exclusion is a little clumsy.

In terms of section 104(1), any assessment is subject to objection and appeal. This would include any decision that informs the basis of an assessment. Furthermore, section 104(2) then sets out what decisions are subject to objection and appeal.

Recommendation

We recommend that the proposed wording in section 9 be amended to exclude any decision that forms the basis of an assessment that is subject to objection and appeal in terms of section 104(1) or any decision that is subject to objection and appeal in terms of section 104(2) of the TAA.

Comment

The proposed amendment goes a lot further than “enabling” a bank to automatically place a hold on the taxpayer's account where a tax offence is suspected. It actually requires the bank to place a hold the account. As currently drafted, the provision places taxpayers in an invidious position as they could see their bank accounts frozen on the mere suspicion of a tax offence without SARS having applied its mind to the case. This position is potentially ruinous for any business.

Recommendation

The obligation to place a hold on the account should not be automatic but on instruction of SARS (as is currently the case) or at the discretion of the bank after having taken into account all factors, including representations of the taxpayer..

***MATTERS NOT
ADDRESSED IN THE
DRAFT BILL***

Comment

Historically section 10(1)(nB)(ii) provided for such costs as the Commissioner may allow which have been incurred by the employee in respect of the sale of the previous residence and in settling in permanent residential accommodation at the new place of residence. Practically, in terms of the Guide for Employees in respect of Employees' Tax, a tax free allowance could be paid provided it was equal to or less than one month's basic salary.

Section 10(1)(nB)(ii) was amended to remove the words "*as the Commissioner may allow*". This change in the legislation lead to SARS (albeit at a later stage) changing their guide (mid tax year and no version number change) and no longer allowing the one month's basic salary to be paid tax free. Instead the employee must be reimbursed for actual costs incurred.

This has caused a major problem for employers with regard to the additional administration burden and the way that the change in practice was not adequately communicated.

Recommendation

Given that, when section 10(1)(nB)(ii) was initially amended, Treasury advised that there was no change in current intention/practice, we recommend that section 10(1)(nB)(ii) be amended to allow for one month's basic salary to be paid as a tax free relocation allowance to ease the administration burden placed on employers.