

For Attention: Ms Teboho Sepanya and Mr. Allen Wicomb

24 August 2017

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SAIPA'S COMMENTS ON DRAFT TAXATION LAWS AMENDMENT BILL AND THE DRAFT TAX ADMINISTRATION LAWS AMENDMENT BILL.

The South African Institute of Professional Accountants (SAIPA) would like to thank the parliament of South Africa for the opportunity to provide comments on Draft Taxation Laws Amendment Bill and the Draft Tax Administration Laws Amendment Bill. We trust that our submission will receive your favourable consideration.

SAIPA is the leading accountancy institute representing qualified professional accountants in practice, industry, commerce, government, academia and the public sector. The Institute's focus is on the advancement of Professional Accountants in South Africa to assist in meeting the changing needs of the accountancy profession in all facets of business and finance. Through innovative services and solutions, SAIPA responds effectively to emerging trends and positively impact on our economy.

Should you require any further information or wish to discuss our comments in more detail, the writer can be contacted on:

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Kind regards,



Faith Ngwenya

Technical Executive

1. INCOME TAX: INDIVIDUALS, SAVINGS AND EMPLOYMENT

1.1. TAX RELIEF FOR BARGAINING COUNCILS REGARDING TAX NON-COMPLIANCE

The proposed changes have led to SAIPA to question why are we creating separate legislation for this relief instead of dealing with it via the normal VDP laws? We are of the view that dealing with this matter via the current VDP is the best fit and will achieve the same objective. In addition we are of the view that this relief appears like an amnesty of some sort based on the 10 % levied as a results of non-compliance.

We are also concerned that the relief does not make provision for full disclosure. Thus we are calling for the reasoning and or the rationale for arriving at 10%. This further does not encourage tax compliance to these councils, these are forum and or entities who should be setting the standard.

Lastly what about those who may have been tax compliant in that they have submitted their tax returns, but are currently subject to SARS audits in the affected period for which relief is accorded. A possibility exists that there may be those that may incur huge debts to SARS as a result of additional assessments issued in relation to the affected years for which relief is granted. Will this be taken into account?

1.2. REPEAL OF FOREIGN EMPLOYMENT INCOME EXEMPTION

We are of the view that the proposed changes have a potential of encouraging people to denounce the residence status in order to avoid being taxed in South Africa. In addition by removing this exemption, treasury and SARS are technically saying we can tax you, therefore we will do it, not that we should be taxing you.

This has the potential of having unfair taxing outcome. The reason advanced for repealing foreign employment income exemption failed to recognize the added costs of being abroad. The current exemption rules provide a certainty of how to deal with the income matters relating to foreign employment. However the repeal of this exemption will be likely to encourage people to come up with schemes in order to hide their foreign earnings, hence the high level of tax evasion. In conclusion the treasury must engage with various industries before removing this exemption and also conduct a study on the possible pitfalls of such decision.

1.3 REFINEMENT OF MEASURES TO PREVENT TAX AVOIDANCE THROUGH THE USE OF TRUSTS

SAIPA endorses this proposed amendment in support of its current intention as far as closing the current loopholes around estate duties and donations tax. However we suggest a concession rule that says the provision of Section 7C will not apply where there is a legitimate reason for business transaction as opposed to establishing the trust in order to avoid estate duties and possible donation tax. For example in Islamic law, interest is not allowed thus the intention of not charging tax may not be to avoid tax but a genuine reason for such in addition this proposed change will also ensure certainty not only to beneficiaries of the regime but to advisors when dealing with matters of estate planning.

1.4 EXCLUDING EMPLOYEE SHARE SCHEME TRUSTS FROM MEASURES TO PREVENT TAX AVOIDANCE THROUGH THE USE OF TRUSTS

We are in agreement with the exclusions of trusts that were not created to avoid tax but were created for specific purposes as it focuses the above proposed tax laws on tax avoidance alone.

1.5 CLARIFYING THE RULES RELATING TO THE TAXATION OF EMPLOYEE SHARE- BASED SCHEMES

We are in agreement with the proposed amendment.

1.6 INCREASE OF THRESHOLDS FOR EXEMPTION OF EMPLOYER PROVIDED BURSARIES TO LEARNERS WITH DISABILITIES

We are in support of the amendment however we would like to ascertain how has the proposed bursary amounts been determined? We are asking this based on the fact that the costs to cover for disable students is much higher than what the allowance is providing. In addition it is important for treasury to lift certain restrictions particularly for Masters (Research) students and Doctoral (Thesis) Candidates as a lot of money gets returned by bursary holders not used, not because they could not use it but because of the restrictions that are there. For example the bursary for Doctoral studies pays for tuition which may be around R18 000 registration fee only, so the whole R40 000 remain unused as the restriction is that it must be used for prescribed books and study materials while a Doctoral candidate does not buy prescribed books instead travels to gather information for research purpose. It is suggested that such funds should be tailored in line with the financial demands of the qualification to ensure that the funding becomes relevant

1.7. TRANSFERRING RETIREMENT FUND BENEFITS AFTER REACHING NORMAL RETIREMENT DATE

We are in agreement with the proposed amendment as it provides those who wish to carry on working with an ability to save for their retirement.

1.8 TAX EXEMPT STATUS OF PRE-MARCH 1998 BUILD UP IN PUBLIC SECTOR FUNDS

We are in agreement with this proposed amendment.

1.9 REMOVING THE 12-MONTH LIMITATION ON JOINING NEWLY ESTABLISHED PENSION OR PROVIDENT FUND

We are in agreement as previously those who did not join within 12 months were disadvantaged.

1.10. POSTPONEMENT OF ANNUITISATION REQUIREMENT FOR PROVIDENT FUNDS TO 1 MARCH 2019

SAIPA wishes to reserve comment on this matter.

1.11 DEDUCTION IN RESPECT OF CONTRIBUTIONS TO RETIREMENT FUNDS

We are in agreement with the introduction of Section 11F as assessed losses need to be limited however we are concerned about the effective date. This is a new section thus it should not apply retrospectively.

2. INCOME TAX: BUSINESS (GENERAL)

2.1 ADDRESSING THE TAX TREATMENT OF DEBT FORGONE FOR DORMANT GROUP COMPANIES

We are of the view that the proposed amendments to paragraph 12A will benefit the companies when they decide to wind up the dormant company on the basis that group exemption will now extend to section 19.

2.2. TAX TREATMENT OF CONVERSION OF DEBT INTO EQUITY AND ARTIFICIAL REPAYMENT OF DEBT

We are in agreement with this amendment. In addition we are of the view that this change will definitely assist companies that are considering the South African economic status. This further shows that the Tax legislation considers the wellbeing of its taxpayers. The recouping of the interest deducted by the debtor to the extent to which that interest was not subject to normal tax in the hands of the creditor/shareholder makes a lot of sense on the basis that a benefit cannot be provided twice to the debtor.

Lastly we all know that taxpayers might abuse this section therefore; we are further in agreement with the proposed anti- avoidance rules. Having recoupment of interest will reduce the likelihood of this section being abused.

2.3 ADDRESSING CIRCUMVENTION OF ANTI-AVOIDANCE RULES DEALING WITH SHARE BUY-BACKS AND DIVIDEND STRIPPING

This amendment will be very complicated thus the applicability of it might prove to be difficult to implement.

2.4. ADDRESSING ABUSE OF CONTRIBUTED TAX CAPITAL PROVISIONS

We are in agreement with this amendment, the proposed amendment to the Group company structure will have favorable benefit to our country.

2.5. INTERACTION BETWEEN THE “IN DUPLUM” RULE AND THE STATUTORY TAX LEGISLATION

We are in support of the proposed changes of making it clear to taxpayers that the anti-avoidance rule will apply in spite of the application of either the statutory “in duplum” rule or the common law “in duplum” rule. This will be useful information to taxpayers and will reduce cases wherein taxpayers use the in duplum rule to avoid tax and argue using this rule in their court cases.

3. INCOME TAX: BUSINESS (FINANCIAL INSTITUTIONS AND PRODUCTS)

3.1 REFINEMENT TO THE TAXATION OF FINANCIAL ASSETS AND LIABILITIES DUE TO CHANGES IN ACCOUNTING STANDARD

We are of the view that it is very important that all references to IAS 39 be changed to IFRS 9 as this shows that the legislation is not outdated. In addition, it is a good idea to take into account the changes that are coming with IFRS 9 into account in order to ensure consistency and overcome the divergence thereof.

3.2. APPLICATION OF HYBRID DEBT INSTRUMENTS RULES IN RESPECT OF COVERED PERSONS DEFINED IN SECTION 24JB

We are of the view that providing clarity on the interaction between the anti-avoidance rules in sections 8F and 8FA of the Income Tax Act and the provisions relating to the taxation of covered persons in section 24JB of the Income Tax Act will add value to taxpayers since they will know exactly that section 8F and 8FA override section 24JB. This will also save time for SARS since less people will now argue that they are entitled to claim a deduction of interest incurred due to the application of the provisions of section 24JB of the Income Tax Act due to the fact the Act will now be clear henceforth.

3.3 AMENDMENTS TO THE TAX VALUATION METHOD FOR LONG-TERM INSURERS DUE TO THE INTRODUCTION OF SOLVENCY ASSESSMENT AND MANAGEMENT FRAMEWORK

We are in agreement with the proposed changes, the amendment to the definition of “*adjusted IFRS value* and the definition of “*phasing in amount* will provide more clarity to taxpayers.

4. INCOME TAX: BUSINESS (INCENTIVES)

4.1. EXTENDING THE SCOPE OF NON-RECOUPMENT RULE FOR VENTURE CAPITAL COMPANIES

We are in agreement with the proposed change, having this legislation amended will provide clarity and remove the current inconsistent treatment of recoupments of tax deductions between the disposal of a VCC share and a return of capital by way of a reduction of CTC on a VCC share. Taxpayers who receive a return of

capital by way of a reduction of CTC on a VCC share should not be punished if they have held the shares for a period of at least five years. Therefore, amending the legislation will encourage the establishment and growth of Small, Medium and Micro-Enterprises (SMME).

4.2. CLARIFYING THE SCOPE OF TAX DEDUCTIBLE DONATION STATUS FOR INTERNATIONAL DONOR FUNDING ORGANISATIONS

We are in agreement with this proposed amendment, extending the definition of “specialized agencies” to include other UN Agencies operating in South Africa as this will encourage these agencies to carry on with their philanthropist work for the benefit of the country more so if we take into consideration the burden the government has and the corresponding relief such donations has over the government. Therefore donation of any kind should be welcomed.

5. INCOME TAX: INTERNATIONAL

5.1. REFINEMENTS OF RULES PROHIBITING DEDUCTION OF TAINTED INTELLECTUAL PROPERTY

We are in agreement with the fact that if the CFC is subject to high-tax exemption there is a clear indication that the intention of that particular person was never to avoid tax and therefore should not be taxed in both countries. In addition we are in agreement that development should not be given the interpretation of improvements as this could result in genuine transactions being subject to adverse tax consequences possibly resulting in adverse effects on businesses.

5.2. EXTENDING THE APPLICATION OF CONTROLLED FOREIGN COMPANY RULES TO FOREIGN TRUSTS AND FOUNDATIONS.

We are of the view that when expanding the nature of CFC, understanding of true beneficial owner became apparent. This amendment is complex it will not be easy to implement.

6. VALUE ADDED TAX

6.1. CLARIFYING THE VALUE ADDED TAX TREATMENT OF LEASEHOLD IMPROVEMENTS

The current proposed wording of the draft legislation is somewhat vague and will need to be neatened a bit, however the intention is very clear. In addition the completion time is not clear this might result in taxpayers abusing this provision. There is a potential of shifting the timing in order to avoid possible tax implication.

6.2. VAT VENDOR STATUS OF MUNICIPALITIES

We are of the view that this change is relevant and in line with the governmental changes that do happen. In addition there should be a guidance during this transitional period in order to ensure the consistencies of the VAT treatments followed.

7. TAX ADMINISTRATION LAWS

7.1. Timing of accrual of interest payable by SARS

7D. In determining the taxable income derived by any person during a year of assessment, any amount of interest to which a person becomes entitled that is

payable by SARS in terms of a tax Act is deemed to accrue to that person on the date on which that amount is paid to that person.”.

Comment

on the date on which the amount is paid to that person” the amendment is welcomed as opposed to “entitled to” However we can only hope that this was not included because of the delays that had been experienced from SARS, taking into consideration the tax implications that the delay of such payments would have on the taxpayers

7.2 Insertion of section 9C in Act 45 of 1955

1. The Estate Duty Act, 1955, is hereby amended by the insertion of the following section before section 10:

“9C. The duty payable under this Act shall be paid on such date as may be prescribed in the notice of assessment issued in terms of section 9(3).”.

Comment

The new section proposed is welcomed as it will provide clarity on the date for payment of Estate Duty (Notice of assessment) but there are certain issues which were a subject of discussion by the Davis Tax Committee (DTC) including but not limited to increasing the Section 4A Abatement and the Section 4q (Surviving spouse exemption) which has not been dealt with in the Drafts.