**3. Report of the Standing Committee on Finance on the Taxation Laws Amendment Bill [B38 - 2018] (National Assembly- section 77), dated 14 November 2018**

The Standing Committee on Finance, having considered and examined the ***Taxation Laws Amendment Bill [B38 - 2018]* (**National Assembly- section 77), referred to it, and classified by the JTM as a Money Bill, reports as follows:

1. **INTRODUCTION**
   1. The 2018 draft Taxation Laws Amendment Bill (TLAB) and the 2018 Draft Tax Administration Laws Amendment Bill (TALAB) were published by the National Treasury (NT) and South African Revenue Service (SARS) on 16 July 2017 for public comments. NT and SARS briefed the Standing Committee on Finance (Committee) on the draft bills on 16 August 2018. On 21 August 2018 the Committee held public hearings on the draft bill. On 12 and 13 September 2018, NT and SARS replied to key proposals on the draft bills made by stakeholders during the public hearings. On 2 October 2018, NT and SARS gave an update to the SCoF sub-committee meeting on the steps taken in addressing the key issues raised during consultation process in the draft bills. On 17 October 2018, NT and SARS updated the SCoF on the proposed changes to the key issues raised during consultation process in the draft bills.
2. **KEY ISSUES ON 2018 TLAB** 
   1. This report on TLAB will deal with three most contested issues. The first issue deals with the introduction of specific criteria for determining the doubtful debt allowance in respect of non-bank lenders as follow:
3. If a taxpayer is applying IFRS 9 for financial reporting purposes to determine a loss allowance relating to impairment in respect of debt, the tax allowance is:

* 40 per cent of the IFRS 9 loss allowance relating to impairment that is measured at an amount equal to the lifetime expected credit loss; and
* 25 per cent of the difference between the IFRS 9 loss allowances relating to impairment and the IFRS 9 loss allowance in respect of which the 40 per cent tax allowance is determined.

1. If a taxpayer is not applying IFRS 9 for financial reporting purposes an age analysis of debt should be done and the tax allowance is:

* 40 per cent of the face value of doubtful debts that are at least 120 days past due date, and
* 25 per cent of the face value of doubtful debts that are at least 60 days past due date, but excluding doubtful debts that are at least 120 days past due date.

1. In addition, in order to ensure that non-bank taxpayers also have the ability to obtain a tax deduction for a third category of doubtful debts that is broadly comparable to amounts that are in default for banks under section 11(jA) the following changes have been made in the 2018 TLAB. Provision has been made for a taxpayer to apply to SARS for a higher percentage in respect of doubtful debts falling in the first categories (40 per cent) as described above. SARS may then issue a section 11(j) directive to that particular taxpayer that the above-mentioned 40 per cent be increased to a percentage not exceeding 85 per cent after taking into account the following proposed set of criteria:

* the history of a debt owed to that taxpayer, including the number of repayments not met, and the duration of the debt;
* steps taken to enforce repayment of the debt;
* the likelihood of the debt being recovered;
* any security available in respect of that debt;
* the criteria applied by the taxpayer in classifying debt as bad; and
* such other considerations as the Commissioner may deem relevant.
  1. The second issue relates to the TLAB amendments aimed at closing abusive tax structures using the Venture Capital Company (VCC) regime. These amendments include the following:

1. Limitation of the issue of different classes of shares by a VCC or a qualifying company:

* No shareholder (together with connected persons) in a VCC may hold, directly or indirectly, more than 20 per cent of the shares of any class in a VCC;
* The test regarding the maximum holding in a class of shares will be applied after a period of 36 months from the date that that class of shares is first issued by the VCC;
* The test regarding the class of shares will not apply to shares issued before 24 October 2018 and will only apply to shares issued on or after 24 October 2018;
* Shares issued by the VCC solely for services rendered in respect of the incorporation, marketing, management or administration of the VCC or any qualifying company held by the VCC will not qualify as venture capital shares (no VCC deduction obtained in this regard).

1. Limitation of the abuse of trading between an investor that invested in a VCC and a qualifying company in which the VCC takes up shares:

* The aggregate amount received by or accrued by the qualifying company from the carrying on of any trade with an investor in a VCC (together with connected persons) be limited to 50 per cent of the total amount received or accrued;
* The above-mentioned changes come into effect on 24 October 2018 and will be applied after a period of 36 month from the first date on which that qualifying company issued any share to the VCC.

1. In order for a company to qualify as a qualifying company:

* An investor in a VCC that holds shares in that company will not be allowed to hold more than 50 per cent of participation rights in the company. This applies to participation rights acquired on or after 1 January 2019.
* The company may not carry on any trade through a business acquired from an investor (or its connected person) in the VCC. This will apply in respect of a trade that commenced on or after 1 January 2019.
  1. During the Committee meeting on 17 October 2018, Bluefields Capital made representations on the impact of the proposed limitation of abusive measures in the VCC regime. National Treasury reiterated the policy rationale for VCC regime - that it was meant to create a pooling mechanism for investors to collectively channel funds into SMMEs and junior mining companies, and it was never meant for the so called targeted mechanism. Any issues arising in relation to the so called targeted mechanism will be considered during the review of the current VCC regime, which is set to expire in 2021.
  2. Lastly, the TLAB contains amendments to the Mineral and Petroleum Resources Royalty Act, 2008. These amendments seek to remove confusion and provide clarity to both taxpayers and SARS regarding the meaning of the tax base for purposes of calculating the royalty (tax base is defined as gross sales excluding the costs of transportation, insurance and handling of the final product or mineral between the seller and the buyer).

The Democratic Alliance (DA) reserve their position on the Bill

Report to be considered.