

2018 TAXATION LAWS AMENDMENT BILL (TLAB) & 2018 TAX ADMINISTRATION LAWS AMENDMENT BILL (TALAB)

Select Committee on Finance

Presenters: National Treasury and SARS | 27 November 2018



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

Consultation process

- The 2018 Draft Taxation Laws Amendment Bill (TLAB) and 2018 Draft Tax Administration Laws Amendment Bill (TALAB) were published for public comment on 16 July 2018.
- National Treasury and SARS received written comments from 95 organisations and individuals by deadline of 16 August 2018.
- National Treasury and SARS briefed the Standing Committee on Finance (SCoF) on the draft bills on 16 August 2018.
- Oral presentations by taxpayers and tax advisors on the draft bills were made at hearings by the SCoF on 21 August 2018.
- Workshops with stakeholders to discuss their comments on the 2018 Draft TLAB & TALAB were held on 4 and 5 September 2018.
- On 12 and 13 September 2018, National Treasury and SARS presented to the SCoF a draft response document containing a summary of draft responses to public comments received on the draft bills.
- On 2 October 2018, National Treasury and SARS gave an update to the SCoF sub-committee meeting on the steps taken in addressing the key issues raised during consultation process on the 2018 Draft TLAB and TALAB.
- On 17 October 2018, National Treasury and SARS update the SCoF on the proposed changes to the key issues raised during consultation process on the 2018 Draft TLAB and TALAB.
- The 2018 TLAB and TALAB were tabled by the Minister in Parliament on 24 October 2018
- The SCoF voted on the 2018 TLAB & TALAB on 14 November 2018
- The 2018 TLAB & TALAB were debated in Parliament on 20 November 2018

Main tax proposals contained in the TLAB & TALAB

The main tax proposals contained in the draft TLAB are:

- Providing more flexibility for the treatment of retirement fund transfers and withdrawals;
- Introducing a fringe benefit exemption for lower-income employees who receive a loan from their employer for low-cost housing;
- Reviewing the International Shipping exemption for purposes of accommodating the use of replacement ships;
- Review of Venture Capital Company Rules
- Refinements and clarification for the conversion of debt to equity;
- The refinement of the interaction between the anti-avoidance rules for dividend stripping with corporate re-organisation rules;
- Clarification of the tax treatment of doubtful debts
- Tax treatment of amounts received by or accrued to portfolios of Collective Investment Schemes
- Inserting rules addressing the use of trusts to defer tax or recharacterise the nature of income;
- Amendments to Mineral and Petroleum Resources Royalty Act, 2008

The main tax administration proposals contained in the draft TALAB relate to:

- A removal of the requirement to submit tax returns for individuals receiving a tax-exempt dividend;
- Anti-forestalling amendments for excise duties;
- Clarifications on handling incorrect invoices for value-added tax refunds; and
- Allowing the collection of value-added tax payments to apply across branches and divisions.

2018 DRAFT TAXATION LAWS AMENDMENT BILL

KEY ISSUES

Key tax proposals raised during consultation process: TLAB

The proposed amendments included in the draft TLAB that received most comments are:

1. Tax treatment of amounts received by or accrued to portfolios of Collective Investment Schemes
2. Review of Venture Capital Company Rules
3. Amendments to Mineral and Petroleum Resources Royalty Act, 2008
4. Clarification of the tax treatment of doubtful debts

Further meetings with different stakeholders on key tax proposals in the TLAB

- Since NT and SARS briefed the SCoF and held public workshops, the following meetings have taken place with stakeholders:
 - 7 September 2018: Tax treatment of amounts received by or accrued to portfolios of Collective Investment Schemes;
 - 14 September 2018: Review of Venture Capital Company Rules;
 - 26 September 2018: Amendments to Mineral and Petroleum Resources Royalty Act;
 - 28 September 2018: Clarification of the tax treatment of doubtful debts;

1. Tax treatments of amounts received by or accrued to portfolios of Collective Investment Schemes (CIS)

- On 7 September 2018, NT and SARS held a meeting with ASISA members to discuss the proposed changes in the 2018 Draft TLAB based on the comments submitted during public comment process.

Revised proposed options

- As indicated in the 2018 Budget Review, Government has noted concerns regarding the frequent trading by some collective investment schemes and the argument that despite frequent trading, the profits are of a capital nature and should be taxable as such. In view of the fact that CISs are regulated by the Financial Sector Conduct Authority ("FSCA"), in order to avoid negative impact and unintended consequences as a result of the current proposed amendment in the 2018 Draft TLAB, the following is proposed:
 - Government and industry be given more time to investigate and find solutions that may have less negative impact on the industry and holders of participatory interest before changes are made in the tax legislation and that the legislative changes in this regard be considered in the 2019 legislative cycle;
 - Government continues to find ways to mitigate tax avoidance risks through regulation by the FSCA.

2. Review of Venture Capital Company Rules

- On 14 September 2018, NT and SARS held a meeting with stakeholders to discuss the limitation of abusive measures proposed in the 2018 Draft TLAB based on the comments submitted during public comment process.

Revised proposed options

- Limitation of the issue of different classes of shares by a VCC or a qualifying company
 - No shareholder 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 a 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;
 - The test regarding the class of shares will not apply to shares issued by the VCC for the carried interest purposes of VCC management (no VCC deduction obtained in this regard);
- 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 total amount received or accrued;
 - The proposed change will come into effect on 24 October 2018 and will be applied after a period of 36 months from the first date on which that qualifying company issued any share to the VCC.
- For a company to qualify as a qualifying company:
 - Investors are not allowed to hold more than 50 percent 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.

3. Amendments to the Mineral and Petroleum Resources Royalty Act

- On 26 September 2018, NT and SARS held a meeting with stakeholders to discuss the changes to the Mineral and Petroleum Resources Royalty Act, 2008 proposed in the 2018 Draft TLAB based on the comments submitted during public comment process.

Revised proposed options

- In order to remove confusion and to provide clarity to both taxpayers and SARS regarding the meaning of the tax base for purposes of calculating 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), it is proposed that :
 - the following words [***“without regard to expenditure incurred ”***] in section 6 of the Mineral and Petroleum Resources Royalty Act, 2008 be removed and be replaced with the following words **“after deducting expenditure actually incurred”** .

4. Clarification of the tax treatment of doubtful debts

On 28 September 2018, NT and SARS held a meeting with stakeholders to discuss the proposed changes in the 2018 Draft TLAB based on the comments submitted during public comment process.

Revised proposed options

If a taxpayer is applying IFRS 9 for financial reporting purposes to determine a loss allowance relating to impairment in respect of debt:

- 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 plus bad debt written off that does meet the tax write off requirements; and
- 25 per cent of the difference between the IFRS 9 loss allowance relating to impairment and the IFRS 9 loss allowance in respect of which the 40 per cent tax allowance is determined.

If a taxpayer is not applying IFRS 9 for financial reporting purposes, an age analysis of debt should be used :

- 40 per cent of the face value of doubtful debts that are at least 120 days past due date be allowed as a deduction; 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 be allowed as a deduction.

Further, it is proposed that on application by a taxpayer, SARS may issue a directive to that 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 the 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;

2018 DRAFT TAX ADMINISTRATION LAWS AMENDMENT BILL

KEY ISSUES

Key tax proposals raised during consultation process: TLAB

The proposed amendments included in the draft TALAB that received most comments are:

1. Clarifications on handling incorrect invoices for value-added tax refunds
2. Deregistration of tax non-compliant tax practitioners

1. Clarifications on handling incorrect invoices for value-added tax refunds

Following on from the public comment process and the workshop with stakeholders on 6 September 2018 the original proposal was revised as follows.

Revised proposal

Where a supplier is informed by a recipient that a tax invoice includes an error that means it does not qualify as a tax invoice, as defined:

- the tax invoice must be corrected within 21 days of the request to correct it;
- the correction does not affect the original time of supply of the goods or services; and
- the supplier must maintain sufficient information to establish an audit trail between the original tax invoice and the corrected tax invoice.

2. Deregistration of tax non-compliant tax practitioners

Following on from the public comment process and the workshop with stakeholders on 6 September 2018 the original proposal was revised as follows.

Revised proposal

A tax practitioner will be deregistered if he or she has outstanding debts or tax returns for an aggregate period of at least six months during a period of twelve months and does not either

- demonstrate that he or she has in fact been compliant; or
- remedy the non-compliance

within the period specified in a notice delivered by SARS.

The tax practitioner may be reregistered once he or she remedies the tax non-compliance and the above conditions are no longer met.



Thank you

QUESTIONS ?