2019 Draft Tax Administration Laws Amendment Bill

Submission
September 2019

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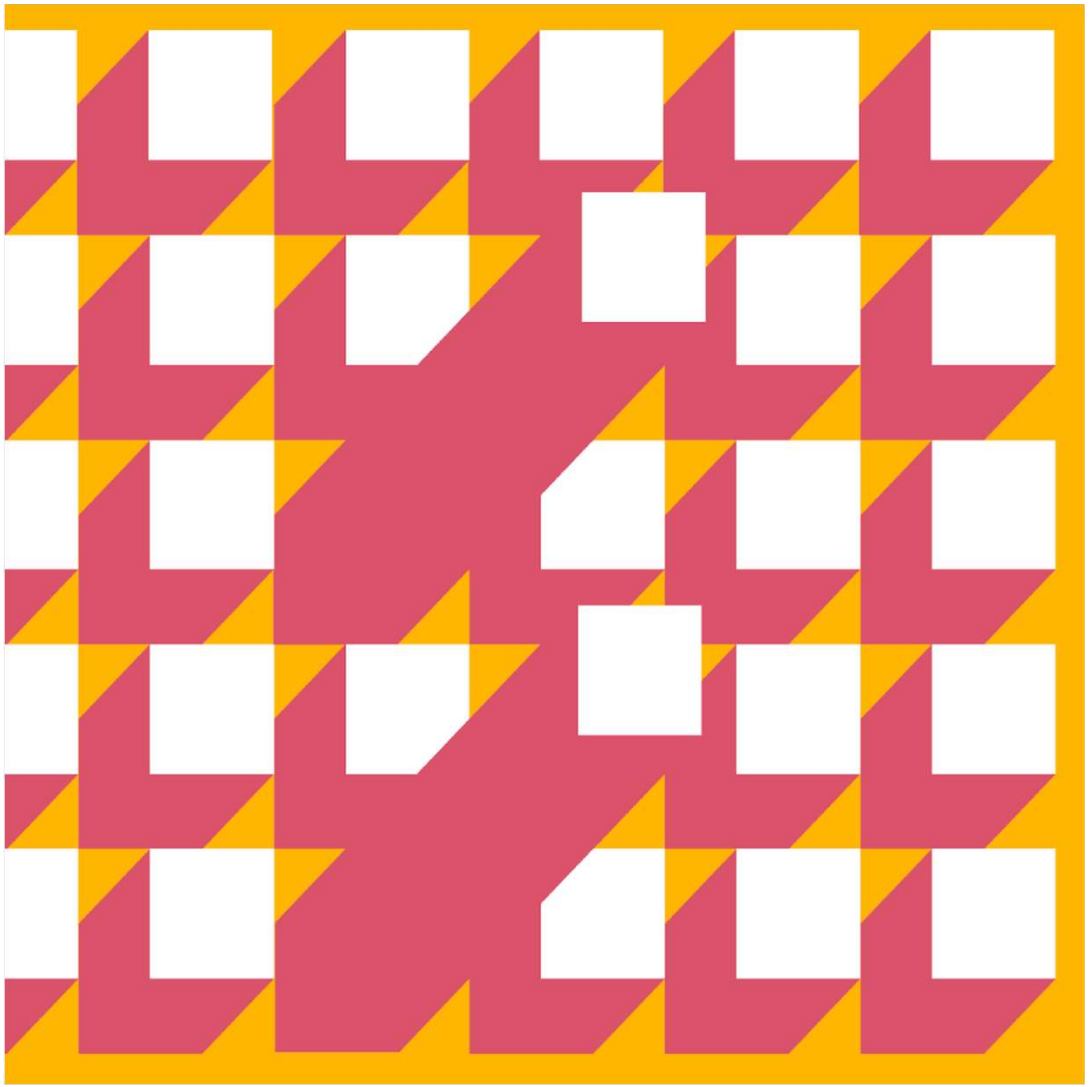

Dear Allen and Arico

Representation on the Draft Tax Administration Laws Amendment Bill, 2019 ("TALAB 19")

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

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Attached:
• Detailed submissions

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Proposed Amendments

Clauses 2, 3, 5 and 6

Comment	Recommendation
The Memorandum on the Objects of the TALAB states that the proposed amendment aims to alleviate the administrative burden for local persons in respect of multiple transactions with a single foreign person where declarations will have to be obtained for each and every transaction entered into. This statement is entirely misplaced. There is no requirement for taxpayers to obtain a declaration and a written undertaking in respect of each transaction. It is clear from the law and from the SARS forms (WTRD, WTID) that the declaration includes a written undertaking to inform the withholding agent of a change in circumstances affecting the treaty relief. As such, it is apparent that the declaration is valid for all payments of royalties, interest and dividends until such time as the recipient informs the withholding agent otherwise. The proposed amendments will not alleviate, but rather add to the administrative burden on taxpayers and withholding agents.	We recommend that SARS reconsider the proposed amendment and that the 2 year period in respect of the validity of a declaration and a written undertaking be removed. Alternatively, it should be extended to 5 years.

Clause 25

Comment	Recommendation
Section 11 - amendment - No legal proceedings may be instituted in the High Court against the Commissioner unless the applicant has given the Commissioner written notice of the applicant's intention to do so. The proposed extension of this notice period from one week to 21 business days seems excessive as taxpayers will generally use this as a last resort.	SARS should consider shortening the notice period from the suggested 21 business days to a lesser period e.g. 10 business days.

Clause 36

Comment	Recommendation
The wording of the proposed amendment to section 190(4) is still unclear and it could still be questioned whether the payment failure requirement applies to both the non-submission and where a return is not required.	It is recommended that the provision should rather read as follows: "(4) If a taxpayer: (a) is required to submit a return and fails to do so; or (b) is not required to submit a return and fails to pay the tax required under a tax Act, SARS may make an assessment based on an estimate under section 95."

Clause 38

Comment	Recommendation
It is not clear how the introduction of a penalty for non-disclosure under the mandatory disclosure rules will address the concern set out in the memorandum on the objects, which seemingly relates to structures and arrangements that are designed to circumvent such disclosure requirements. If a structure is successful at doing so by falling outside of the requirements then a penalty cannot apply.	It should be clarified what the purpose of the proposed penalty is.
It is not clear whether the penalty will apply separately in relation to each account that is not reported or whether it will apply in aggregate for each reporting period.	The legislation should clearly stipulate on what basis the penalty is proposed to be levied.

Clause 39

Comment	Recommendation
This requirement has further interpretive difficulties which require clarification. Firstly, it is not clear what is meant by "made full disclosure". This could be interpreted to mean all the information that is required to be provided to SARS has been provided or it could mean that all information related to the arrangement has been provided to SARS, whether there is a requirement (or a mechanism) to do so or not . It is submitted that it is the former which should apply. Secondly, both the disclosure requirement and the opinion requirement require these to be in place by "the date that the relevant return was due". This is problematic for two reasons: 1. Some taxes do not require the submission of a return and therefore there is no due date; and 2. In some cases the return may be filed later in order to obtain the opinion that supports the filing position It is submitted that the key consideration here is whether the disclosure or opinion was in place at the time that the return is submitted or the tax is paid, if not return is required to be submitted.	The further issues identified should also be clarified.

MATTERS NOT ADDRESSED IN THE DRAFT BILL

Comment	Recommendation
Section 42 prescribes that a letter of audit findings be issued to the taxpayer with a right of response within 21 days before adjustments are potentially made to the assessments. The section does not differentiate between the verification process versus an audit process and in many cases SARS does not issue letters of findings during the verification process.	It is suggested that Section 42 be amplified to differentiate between verification and audit processes (and or any potential scenario where assessments could be raised, i.e. investigations) and that a letter of findings is made compulsory in both instances to ensure parity in both processes.
Section 93 and the test being "readily apparent undisputed error" which has not been clarified in the suggested amendments to the act and which are continually very narrowly interpreted by SARS	Suggested amendment to Section 93 to the wording in the previous act being that SARS may issue a reduced assessment if satisfied that an assessment contains an **undisputed error** by SARS or the taxpayer. The additional requirement of readily apparent is not only confusing to all parties but ensures that the provision is not properly applied.
Chapter 16 Part B of the TAA (VDP): no suggested amendment to provide clarity on limitation of period for disclosure.	It is suggested that Part B be amended in line with Section 29, 32 and 99 of the TAA being maximum 5 years.

Comment	Recommendation
Section 227*(e)* of the TAA: not result in a refund due to SARS.	It is suggested that this section be amended to include a holistic view of the full disclosure of the default and not per tax period. Also that the refund section be amplified to also include reduction of future benefit, i.e. reduction of assessed loss.
Section 226 read with 227(a) of the TAA: VDP must be voluntary which is extremely narrowly interpreted by SARS and applications are more often than not rejected on this basis	It is submitted that "voluntary" be defined in the TAA as SARS has a very narrow interpretation in this regard. We also suggest that "commencement of audit or criminal investigation" be amended/refined in line with the interpretation of "voluntary" to ensure clarity to taxpayers.
Section 232(2) of the TAA: VDP not subject to objection or appeal	It is submitted that this section be amended to grant taxpayers the right to validly oppose the decision of the VDP Unit via the objection/appeal channels insofar as decisions made pursuant to a VDP application are concerned, such as the denial of VDP relief.