

Comments to the 2019 draft taxation laws amendment bill

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Reason for Comment

Section 4.1 and 4.2(II) of the 2019 Draft Explanatory Memorandum to the 2019 Draft TLAB comments the reason for the change is that some companies that had setup their operations after the SEZ tax regime in 2013 but before SEZ tax regime took effect in 2016. Our entity is one such affected entity prejudiced by this timing.

Section 4.1

Because of the wording of the provision, our operations would not qualify as we began in 2014, before the SEZ Act came into effect on 9 February 2016. Any operations we did since then would not be new or an expansion and hence will not qualify.

Proposal

We ask the dates in the act take into account businesses starting after the section 12R was promulgated in 2013 to allow our business to qualify.

Section 4.2

On reading section 4.2 of the 2019 draft explanatory memorandum to the 2019 draft TLAB our understanding is that the applicable taxable income on sales to related parties, and the apportionment of expenses to such, will be non-qualifying in terms of section 12R and be taxed at the normal 28%. Conversely, the applicable taxable income on other sales to non-related parties, and the apportionment of expenses to such, will receive the preferential tax rate of 15% in accordance with section 12R.

Our business model is structured in such a way that all domestic sales are through a related party sales company and only export revenue is to a non-related party.

This will have the following effect on our entity based on historical data:

	2017		2018	
	Domestic	Export	Domestic	Export
	Related	Non-related	Related	Non-related
Sales segments	75.70%	24.30%	79.60%	20.40%
Tax rates for segment	28%	15%	28%	15%
Effective tax rate per segment	21.2%	3.6%	22.3%	3.1%
Effective company tax rate	24.8%		25.3%	

Note that the above is simply for the purposes of commenting on the Draft TLAB and we are aware that an entity should use taxable income in determining their effective tax rate.

Our entity would only benefit by a 3% reduction in effective tax rate.

This is not an effective proposed tax incentive amendment for our entity considering 15% was available at the time of our operation setup in 2014 when the only rules were that the operations must be new and over 90% manufacturing.

How would SARS propose to allow this deduction on the income tax return? Is there guidance on apportionment of income and expenses for related and non-related party transactions? Our concern is that SARS may disagree with our apportionment method and further prejudice our incentive claim by disallowing our company policy apportionment used for reporting to benefit treasury.

Comment is made in the 2019 Draft Explanatory Memorandum to the 2019 TLAB section 4.2(l) that this unit-avoidance measure is important for South Africa to meet standards set by the OECD.

But our discussions with our SEZ facilitator, Dube Tradeport, leads us to understand that Transfer Pricing is the effective method set out by the OECD in policing anti-avoidance.

Proposal

Treasury should allow an entity operating in the zone to submit their tax liability and for SARS to use Transfer Pricing to ascertain whether or not this liability is correct or not.

Our proposal would be to not simply disqualify a portion of a company's operations in the zone by their business model. It seems Treasury is assuming our entity will definitely profit-shift without any such evidence to this.

This common business model was setup based on existing legislation at the time and also based on extended recommendations from Government, The Department of Trade and Industry and also Dube Tradeport. Our entity is being prejudiced by government changing legislation after we had already been in operation and exporting, securing new jobs and exporting out of the Republic.

Expansion on these issues

Competitors to our operation currently have an advantage over us should they enter the SEZ now that the rules have changed after we setup our operation and there is a risk that our entity could lose market share. This could result in a possible loss of current jobs due to rationalisation from our head office in Korea.

Another Samsung operation in Egypt gains significant incentives, including logistics incentives, and we cannot continue to export and remain competitive without effective incentives.

Our entity is aware that the current President is very supportive of investment in manufacturing in South Africa and we hope Treasury will amend the legislation according to our comments in order for us to expand our operations competitively and create jobs in the republic going forward.