

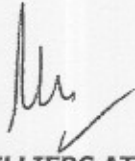
MEMORANDUM

Representations by the Bible Society of South Africa to the National Council of Provinces' Select Committee on Education and Recreation, Arts and Culture, Science and Technology on 12 November 2008

1. Submissions on proposed amendments to Bill 70B-2008 were made to the Select Committee on behalf of the Bible Society of South Africa in a letter dated 25 September 2008 addressed by attorneys Jan S de Villiers to the Chairperson and Secretary of the Committee. The suggested amendments were incorporated in an attachment to that letter which has been made available to all Select Committee Members – see annexure "A".
2. We were informed telephonically on Monday 10 November by the Committee's Secretary of the Committee's resolution at its meeting in Lady Frere last week that the comment of SARS should be obtained in regard to the amendments we have proposed, i.e. the proposed insertion of further sub-sections 2(3) and 2(4) in Bill 70B-2008.
3. We approached the Tax Exemption Unit of SARS by e-mail immediately the same day and attach hereto e-mail exchanges with them:
 - 3.1 The writer's e-mail at 4:30 pm on 10 November 2008 to Mrs E van Zyl of the Tax Exemption Unit, being the person who had been responsible for the issue of SARS' approval of the new section 21 company Bible Society of South Africa, registration number 2008/007505/08, as a public benefit organization - see annexure "B";
 - 3.2 Mrs Van Zyl's e-mail at 12:20 pm in which she conveyed that the proposed amendments do not affect the approval as a public benefit organisation in terms of section 30 of the Income Tax Act granted to the section 21 Company on 12 September 2008 - see annexure "C".
4. We asked her, however, to refer us to the appropriate person at SARS' head office who would be able to comment on issues of taxation other than section 30 tax exemption, and the writer was put into contact with Mr M Milner at the SARS head office. After my telephone discussion with him further e-mail exchanges followed with that office, as evidenced by the following e-mails hereto attached:
 - 4.1 The writer's e-mail to Mr Milner at at 1:10 pm on 11 November 2008, pursuant whereto I had a telephone discussion with him - see annexure "D";

- 4.2 The writer's follow-up e-mail to Mr Milner at 3:02 pm on 11 November 2008 - see annexure "E";
- 4.3 The two e-mails that we thereupon received from Mr De la Rey of SARS late yesterday afternoon, i.e:
- 4.3.1 the e-mail at 4:43 pm (see annexure "F") in which:
- 4.3.1.1 we were informed that SARS had no problem with the proposed new sub-section 2(3);
- 4.3.1.2 we were informed that there appeared to be no need for an exemption from transfer duty;
- 4.3.1.3 we were alerted to the principles applicable to capital gains tax;
- 4.3.1.4 SARs commented on the possible benefit that the proposed sub-section 2(4) could have;
- 4.3.2 the further e-mail at 5:36 pm (see annexure "G") in which:
- 4.3.2.1 SARS pointed out that the inclusion of tax measures in the Bill would result in it being a "money bill" contrary to certain sections of the Constitution, and that SARS accordingly do not support the regulation of tax treatment of the transfer of assets and liabilities in the Bill;
- 4.3.2.2 SARS however, as far as the second half of the proposed sub-section 2(4) was concerned, did not express any further view.
5. We accept the comment of SARS and have amended our proposals for changes to the Bill accordingly. Section 2(3) remains, the portions of section 2(4) that had dealt with the of tax treatment of the transfer of assets and liabilities have been deleted, and only the second half of section 2(4) now remains.
6. The amendments now proposed in the final instance, which are not objected to by SARS, are contained in the proposed revised draft Bill hereto attached - see annexure "H".

CP PAUW



JAN S DE VILLIERS ATTORNEYS

FOR AND ON BEHALF OF THE BIBLE SOCIETY OF SOUTH AFRICA

DATE: 12 November 2008

N10269.Select Committee.12.11.08

A

BIBLE SOCIETY OF SOUTH AFRICA ACT REPEAL BILL

Repeal of laws

1. The Bible Society of South Africa Act, 1970 (Act No. 15 of 1970), is hereby repealed.

Savings

2. (1) The Bible Society of South Africa (Association incorporated under Section 21) Registration number 2008/007505/08 is designated the legal successor to the Bible Society incorporated in terms of the repealed Act on the date of repeal.

(2) The business of the Bible Society is transferred as a going concern to the Bible Society of South Africa (Association incorporated under section 21) Registration number 2008/007505/08 upon the date of repeal notwithstanding any prohibition against the transfer of any asset or obligation.

(3) The expectance of the receipt by the Bible Society of donations and bequests pursuant to the provisions of any written instrument is transferred to the Bible Society of South Africa (Association incorporated under Section 21) Registration number 2008/007505/08 which is designated as the authorised recipient of all donations and bequests which would, but for the repeal of the Bible Society of South Africa Act, have accrued to the Bible Society by virtue of any written instrument unless a contrary intention appears from the instrument.

(4) The vesting and transfer into the name of the Bible Society of South Africa (Association incorporated under Section 21) Registration number 2008/007505/08 of the assets and liabilities of the business of the Bible Society shall take place without payment of transfer duty or stamp duty or fees of office or any other duty, levy or tax imposed by any statutory authority and without attracting any liability for capital gains tax, and in the case of any immovable property the transfer shall take place by an endorsement on the title deed thereof without the need for a formal transfer or on the registered deed of lease without the need for a formal cession, and in the case of a bond by an endorsement on the bond without the need for a formal cession and in the case of any right or obligation appearing from any unregistered document, by operation of law without the need for a written cession or delegation.

Short title

- 3 This Act is called the Bible Society of South Africa Act Repeal Act, 2008.

B

Christoff Pauw

From: Christoff Pauw
Sent: 10 November 2008 04:30 PM
To: 'Estelle van Zyl'
Subject: Bible Society of SA
Attachments: E-pos SARS.10.11.08.pdf



JAN S. DE VILLIERS
PROKUREURS

Geagte Mev Van Zyl

Aangeheg vir gerief van verwysing is:

- u brief gedateer 12 September 2008 aan ons ter bevestiging dat Openbare Weldaadsorganisasie-status aan die nuwe art 21 maatskappy Bybelgenootskap van SA verleen is.

Die wetsontwerp vir die herroeping van die bestaande Bible Society of South Africa Act, 15 van 1970, is nou in sy heel laaste fase in die Parlement - dit dien voor die Nasionale Raad van Provinsies se Gekose Komitee op Woensdag 12 November, en ek gaan om 10 vm voor hulle verskyn.

Verder aangeheg hierby is:

- Bill 70B in die vorm wat dit deur die Nasionale Vergadering goedgekeur is;
- My brief gedateer 25 September 2008 aan die Voorsitter en Sekretaris van die Gekose Komitee van die NCOP, om uit te wys dat essensiële oorgangsbepalings ontbreek, en waarin ek vra dat die voorgestelde sub-artikels 2(3) en 2(4) ingevoeg word.

Die parlementêre regsadviseurs het geen probleem daarmee nie, maar die Gekose Komitee het blykbaar gevra dat ek net bevestiging kry dat dit in orde is met SARS. 'n Een sin brief van u af is blykbaar al wat hulle soek.

Ek sal u môre bel om te bespreek.

Die uwe

Christoff Pauw

Christoff Pauw
Vennoot
Korporatiewe en Kommerciële/Litigasie Eenheid

Tel: [Redacted]
Faks: [Redacted]
E- [Redacted]
Pos: [Redacted]

Regards

Christoff Pauw

C

From: Estelle van Zyl [mailto:Estelle.vanZyl@sars.gov.za]
Sent: 11 November 2008 12:20 PM
To: Christoff Pauw
Subject: RE: Bible Society of SA

We acknowledge receipt of your e-mail dated 10 November 2008. This does not affect the approval as a public benefit organisation in terms of section 30 of the Income Tax Act (the Act) granted to the section 21 Company namely Bible Society of South African on 12 September 2008.

Sincerely
Estelle van Zyl (Mrs)
Tax Exemption Analyst
SARS: Tax Exemption Unit (TEU)
PO Box 11955 Pro Equity Court
HATFIELD First Floor Room M11
0028 1250 Pretorius Street
HATFIELD
0083

Switchboard (011) 410 1111
Fax (011) 410 1112
E-mail: Estelle.vanZyl@sars.gov.za
SARS website: www.sars.gov.za

-----Original Message-----

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Sent: 10 November 2008 04:30 PM
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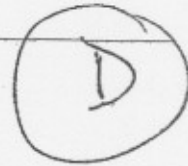
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Die parlementêre regsadviseurs het geen probleem daarmee nie, maar die Gekose Komitee het blykbaar gevra dat ek net bevestiging kry dat dit in orde is met SARS. 'n Een sin brief van u af is blykbaar al wat hulle soek.

Christoff Pauw

From: Christoff Pauw
Sent: 11 November 2008 01:10 PM
To: JanS@villiers.com
Subject: FW: Bible Society of SA



Dear Mr Milner

I refer to our telephone discussion a few minutes ago. I forward to you herewith:

- 1 My e-mail to Estelle van Zyl of the SARS Tax Exemption Unit at 4:30pm yesterday (see below) as well as her e-mail reply to me this morning at 7:20am, and my reply thereto at 10: 39 am. (the words "This does effect ..." in her e-mail appeared to be obviously wrong);
- 2 The documents that were attached to my e-mail to her yesterday.

I forward to you also independently her follow-up e-mail to me to correct her earlier e-mail (now stating correctly "This does not affect ..."), after the telephone discussion that I had with her an hour or so ago.

The draft repeal Bill 70B-2008 and the amendments thereto that we seek from the Select Committee of Parliament's NCOP form part of the documents mentioned under paragraph 2 above.

I shall phone you again early this afternoon to discuss.

Thank you for your attention hereto.

Yours sincerely

Christoff Pauw

Jan S de Villiers Attorneys

021 405-5130

083-631-8651

Christoff Pauw

E

From: Christoff Pauw
Sent: 11 November 2008 03:02 PM
To: 'm.milner@sars.gov.za'
Cc: 'R.Pfister (Personal Assistant to the CEO of the Bible Society of SA)'
Subject: FW: Bible Society of SA
Attachments: E-pos SARS.10.11.08.pdf

Dear Mr Milner

Thank you very much for getting your internal group at SARS together to resolve the matter this afternoon.

I may just state for the record that it was expressly confirmed by:

- 1 Parliament's Standing Committee for Private Members Legislative Proposals (the Repeal Bill was introduced by member of Parliament P-J Gerber as a private member's bill) before whom we appeared in November 2007 when they had to consider whether to recommend that the repeal of the Bible Society Act be proceeded with; and
- 2 The National Assembly's Portfolio Committee for Arts and Culture before whom we appeared early in September 2008 to make representations concerning the Bill

that it was not the intention of anyone:

- (a) to take away any existing rights or privileges of the statutory Bible Society; or
- (b) that the Bible Society should suffer any adverse consequences through taxes or levies arising by reason of the transfer of the assets and business of the statutory Bible Society to an entity such as a section 21 Company which will step into the shoes of the Bible Society and act as its successor upon the repeal of the Bible Society Act.

You will appreciate that unless these issues are catered for in the Repeal Bill itself, as we suggest should be done, the Bible Society may well be financially prejudiced by reason of an act of State totally beyond its control, and indeed contrary to these stated intentions of the organs of Parliament. This is, with respect, an unusual situation not of the Bible Society's making, and it should be able to rely on the assurances it has received from Parliament.

We trust that you will be able to give the Bible Society the comfort it seeks in that regard.

Yours sincerely

Christoff Pauw



Christoff Pauw

From: Johan de la Rey [delarey@sars.gov.za]
Sent: 11 November 2008 04:43 PM
To: Christoff Pauw
Subject: FW: Bible Society of SA

Christoff,

If the Bible Society (transferor) is exempt from income tax there is from a tax point of view not a problem with the proposed clause 2(3).

For tax purposes there is no need for an exemption from transfer duty or securities transfer tax (stamp duties are no longer imposed on the transfer of shares or any other asset) as the Bible Society of South Africa (transferee) has been approved by the Commissioner as a public benefit organisation in terms of section 30 of the Income Tax Act..

If the assets of the Bible Society (transferor) have not been used in carrying on any business activity or trading activity and the society is exempt from income tax no capital gains tax liability would arise on the transfer of its assets.

The only benefit of the proposed clause 2(4) would be to limit fees and legal costs in respect of the transfer of assets and liabilities.

Regards
Johan

Christoff Pauw

From: Johan de la Rey [jdelarey@sars.gov.za]
Sent: 11 November 2008 05:36 PM
To: Christoff Pauw
Cc: Franz Tomasek
Subject: FW: Bible Society of SA

Christoff

further to my previous e-mail, the inclusion of tax measures in the Bible Society of South Africa Repeal Bill (the Bill) would result in it being a money bill. Sections 73(2) and 77 of the Constitution would not allow for the inclusion of tax measures in the Bill. Therefore, SARS do not support the regulation of the tax treatment of the transfer of assets and liabilities to the section 21 Bible Society of South Africa in the Bill.

We do not express any view on the second half of the proposed clause 2(4), which deals with the transfer of immovable property, bonds and rights and obligations appearing from any unregistered document.

Regards
Johan

From: Johan de la Rey
Sent: 11 November 2008 04:43 PM
To: 'Christoff@jans.co.za'
Subject: FW: Bible Society of SA

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If the Bible Society (transferor) is exempt from income tax there is from a tax point of view not a problem with the proposed clause 2(3).

For tax purposes there is no need for an exemption from transfer duty or securities transfer tax (stamp duties are no longer imposed on the transfer of shares or any other asset) as the Bible Society of South Africa (transferee) has been approved by the Commissioner as a public benefit organisation in terms of section 30 of the Income Tax Act.

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