

Ref: # 303290  
Submission File

23 February 2010

Mr. Bradley Viljoen  
Committee Secretary  
Standing Committee on Finance  
3rd Floor  
90 Plein Street  
Cape Town  
8000

BY E-MAIL: [bviljoen@parliament.gov.za](mailto:bviljoen@parliament.gov.za)

Dear Sir

## **CALL FOR COMMENT: 2010 TAX RELATED BUDGET PROPOSALS**

We refer to your letter dated 8 February 2010.

We would like to firstly thank you for the written invitation to present both written and/or oral comments to the Standing Committee on Finance (“SCoF”) on the fiscal framework and revenue proposals as was announced by the Minister of Finance on 17 February 2010.

It is difficult to provide meaningful feedback on the tax amendments proposed in the budget review, because the budget review merely advises of the areas identified for amendment, but does not provide details on how the amendments will be implemented. For this reason we will limit our comment to the written comments contained in this submission and think it would be more appropriate to make oral presentations to the SCoF once the technical details become available in the draft Bill.

### **GENERAL COMMENTS**

We are of the opinion that the Budget was well balanced. In particular we compliment the Minister for not increasing tax rates as this would have slowed down the economy. However, we caution that the budget deficit may become of concern in the future if it continues to grow.

#### **1. RELIEF FOR INDIVIDUALS**

##### **1.1 Personal income tax relief**

The Budget 2010 provides tax relief to individuals amounting to R6.5 billion, which partially compensates for the effects of inflation. We are of the opinion that this creates a false sentiment that all individuals will pay lower taxes as from 1 March 2010. This is not so specifically for individuals receiving travel allowances as these



travel allowances will be subject to PAYE at 80% (previously 60%) from 1 March 2010.

## **2. SAVINGS**

The problem that we foresee relates to the proposal that the interest exemption for individuals will only be available to savings through widely available interest-bearing instruments, such as bank deposits, government retail bonds and collective investment money market funds. It often happens that individuals agree on loans between them at a mutually beneficial rate. Say for example a retired father lends money to his son at the prime interest rate. This is beneficial to the father as he is receiving a rate in excess of the bank savings rate. It is also beneficial to the son as he is borrowing at a rate lower than the rate at which the bank will give him. According to the proposals, the retired father will not benefit from the interest exemption. This does not seem equitable.

## **3. DISCONTINUATION OF THE SITE SYSTEM**

SITE is to be abolished with effect from 1 March 2011. The reason cited for this is due to the fact that the tax threshold for taxpayers younger than 65 years is approaching R60 000.

In this regard we welcome any administrative relief measures that will be considered for low-income earning taxpayers with multiple sources of income.

## **4. LIMITING SALARY-STRUCTURING OPPORTUNITIES**

### **4.1 Employee deferred compensation and insurance schemes**

The proposed clarity around group life insurance and other employee insurance schemes is welcomed as there is wide spread confusion.

## **5. CLOSURE OF SOPHISTICATED TAX LOOPHOLES**

Many of the proposals relate to anti-avoidance provisions. In our opinion these avoidance schemes should be tackled in terms of the general anti avoidance rules.

In relation to the proposed anti-avoidance provisions relating to cross-border insurance payments our comment is that these payments will not be deductible in terms of section 11(a) as they are arguably not an expense actually incurred and are of a capital nature.

Proposed restrictions in the following areas could be a strong disincentive for foreign investors:

- foreign dividends exemption; and
- the interest exemption available to non-resident taxpayers.



We understand that the original purpose for introducing the interest exemption was to attract foreign investment and, in our experience, the exemption is one of the factors that foreign investors take into consideration, when deciding to invest in South Africa. In particular, the restriction of the interest exemption together with the application of thin-capitalisation rules could result in the disallowance of interest as a deduction in the hands of the payer, while the same interest could be fully taxed in the hands of the non-resident recipient.

Two comments in the tax proposals address the taxation of **financial instruments**. One relates to “financial instruments and aggressive financial transactions” and proposes an extensive review of the taxation of financial instruments such as derivatives and measures that deal with debt/equity arbitrage with a view to bringing South Africa in line with global best practice. It appears that global best practice may well be to tax financial instruments (such as derivatives) according to accounting principles as opposed to an accrual or entitlement basis (see for instance UK and Australian legislation in this regard). The financial services industry welcomes this initiative.

However, if the taxation of derivatives in accordance with their accounting is being considered, it is in conflict with the comment regarding “financial instruments held as trading stock”. In terms of the latter comment, it is proposed that the exclusion of shares from trading stock, which may be re-valued to reflect its reduced value, be extended to other financial instruments. This would have the result that any revaluation of financial instruments for accounting purposes would need to be adjusted for purposes of tax, thus ensuring that the taxation of financial instruments would not be in accordance with their accounting. There is a direct conflict between these two statements/initiatives.

We strongly disagree with the proposal to amend section 22 (which proposes to move away from the taxation of financial instruments in line with their accounting) and recommend that this matter be reconsidered once the proposed review of the taxation of financial instruments, including derivatives, has been finalised.

## **6. PROMOTING SOUTH AFRICA AS A GATEWAY INTO AFRICA**

### **6.1 Headquarter companies**

We welcome the consideration of exchange control relief for various types of international headquarter companies located in South Africa. We look forward to the technical details and would assume that this will also incorporate tax relief to a certain extent. This will assist with foreign direct investments into South Africa and contribute towards job creation.

## **7. GAMBLING TAXES**

The intention is to tax gambling. We seek clarity on deducting losses. We put forward the following questions:

- How will the Lotto be managed?



- Will it be a withholding tax (final tax) at the vendor selling the ticket?
- How will the administration be removed i.e. declaration in tracking all minor insignificant winnings?
- Is this not fortuitous and capital in nature?

## **8. MEASURES TO ENHANCE TAX ADMINISTRATION**

### **8.1 Voluntary disclosure**

We welcome the introduction of the proposed voluntary disclosure programme which will be instituted from 1 November 2010 to 31 October 2011.

We however, object to the proposal to do away with the discretion of the South African Revenue Services (SARS) to waive interest charged on unpaid provisional taxes.

There are certain circumstances for example where a taxpayer is of the opinion that certain amounts for inclusion and or deductions are capital in nature and the nature of such amounts are only confirmed upon assessment by SARS. In some cases this matter is referred to the courts to decide. It can therefore be appreciated that certain inclusions and or deductions are not clear i.e. the capital vs. revenue nature of items. For this reason we are of the opinion the SARS discretionary powers must be retained to waive interest charged on unpaid provisional taxes.

## **9. MISCELLANEOUS TAX AMENDMENTS**

### **9.1 Business measures: further refinement of the proposed dividends tax**

No further clarity has been provided as to the proposed implementation date of the new dividends withholding tax, save to confirm that a number of “smaller issues” are still being finalised, including:

- Adding a new definition for foreign dividends;
- Remedying certain defects within the current definition applying to STC;
- Transitional issues between the current and proposed regimes;
- Practical problems relating to in specie dividends, and
- Further refinements to the proposed withholding system.

No mention was made of the double tax treaties which had to be re-negotiated. Possibly, one must presume that these have now been re-negotiated. However, we would prefer to have specific feedback in this regard.

The issues mentioned above appear to be items that cannot be resolved in the short term or without significant public comment. However, there is no mention of a time frame. The only certainty is that the new dividend tax legislation is in the Income Tax Act. The Minister of Finance can issue a government gazette at any time, advising of the start of the new legislation, which will then be 60 days after the date of such



government gazette. We require an undertaking that a reasonable period of time will be granted before this matter is published in a government gazette, e.g. 3 months.

## **9.2 Indirect tax measures**

We welcome the number of proposals to the VAT legislation. In this regard a number of the proposals were put forward to National Treasury by SAICA's VAT sub-committee (this is a sub-committee established by the SAICA National Tax Committee).

## **10 GENERAL ADMINISTRATION**

### **10.1 Advance tax rulings for compliant taxpayers**

In a further effort to enforce tax compliance, it is proposed that the advance tax ruling system is to be amended to extend only to compliant taxpayers, i.e. in order to use this facility offered by SARS, the taxpayer's returns must be up to date and all outstanding taxes must be paid.

It is noted that this may prejudice taxpayers who wish to dispute an assessment from SARS, since they will need to pay such tax in order to access the advance tax ruling system. In addition, the tax affairs of a 'class' of taxpayers may not be known to the applicant in the case of a binding class ruling. This requirement may unduly prejudice a class of taxpayers.

### **10.2 Sharing of information among Ministry of Finance-related agencies**

In an effort to improve enforcement in South Africa, it has been proposed that the secrecy provisions applicable to each of the regulatory and enforcement agencies, which operate under the umbrella of the Minister of Finance, be revised in order to allow the disclosure of information from one agency to another.

The constitutionality of such a provision needs to be established and discussed before such a provision should be promulgated.

## **11 TAX POLICY RESEARCH AGENDA**

### **11.1 Taxes upon death**

SAICA will be forming a sub-committee to specifically comment on the proposals to review taxes upon death.

### **11.2 Environmental fiscal reform and the pricing of carbon**

We note that National Treasury favors a carbon tax for South Africa. SAICA has established a carbon tax sub-committee (this is a sub-committee of the SAICA



National Tax Committee) to research the advantages and disadvantages of a carbon tax and a cap and trade model. Where possible we are happy to assist with research.

Please do not hesitate to contact me should you wish to discuss the above.

Yours faithfully

M Hassan CA(SA)

**PROJECT DIRECTOR: TAX**

*The South African Institute of Chartered Accountants*

cc: [Keith.Engel@Treasury.gov.za](mailto:Keith.Engel@Treasury.gov.za)  
[klouw@sars.gov.za](mailto:klouw@sars.gov.za)  
[ftomasek@sars.gov.za](mailto:ftomasek@sars.gov.za)