THE SOUTH AFRICAN INSTITUTE
OF CHARTERED ACCOUNTANTS
develop.influence.lead.

Ref#:386064
Submission File

27 February 2012

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

BY E-MAIL: awicomb@parliament.gov.za

Dear Sir

CALL FOR COMMENT: 2012/13 TAX RELATED BUDGET PROPOSALS

We would like to firstly thank you for the invitation to present both written and 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 22 February 2012. It is always 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. In view of this we understand that you are seeking to obtain our general overall comments in relation to the tax proposals.

GENERAL COMMENTS
We are of the opinion that the Budget was well balanced. We specifically welcome the following direct submission proposals made by SAICA:

Small business corporations
It is proposal to provide further tax relief in adjusting the tax table. The R14 million threshold for the taxation of SBC's at a more favourable rate than other corporations has last been altered in 2007, so an inflation-related adjustment was clearly necessary.

Value-added tax: Clarification of the date of liability for VAT registration
A person that becomes liable to register for VAT (on account of reaching the compulsory threshold of R1 million) must apply to SARS for registration as a vendor within 21 days. That person cannot charge VAT on supplies until they have been registered as a vendor by SARS. There are no transitionary rules in the VAT Act that address this issue. It is proposed that the liability date for VAT be clarified to streamline the transition from a non-vendor to a vendor.

Learnership allowances

Employers are eligible for an additional allowance for each registered learnership (in addition to the general deduction for employee expenses). Employers, however, do not qualify for this allowance if the learner did not complete a prior registered learnership. It is proposed that this prohibition will be re-examined. A further problem arises when registration is delayed owing to reasons outside the employer's control, but the allowance begins only upon official registration. It is proposed that the commencement date will be adjusted so that these delays do not undermine the benefit of the additional allowance.

Contingent liabilities associated with the sale of business operations
In 2011, concerns were raised about the tax effect of the sale of a business subject to potential contingent liabilities. These liabilities were giving rise to concerns of potential double taxation or double non-taxation. After much debate, the proposed legislation was withdrawn in favour of an interpretative approach. The budget confirms that interpretative guidance, with legislative refinements, is expected later in the year.

PROPOSALS AFFECTING INDIVIDUALS
Personal income tax relief
SAICA welcomes the Minister's R9.5 billion in tax cuts to individuals which will partially assist consumers for the current inflationary pressure, including increased rates and taxes, electricity costs etc. However this benefit is eroded when one takes into account:

- increases in fuel taxes;
- increases in sin taxes;
- medical deductions converted to medical credits.

Increase in effective capital gains tax rates
The capital gains tax inclusion rate for companies is currently 50%. The budget proposed a change to increase this inclusion rate to 66,6% with effect from 1 March 2012, which is this week. However, there is no signed law to support this change. The budget speech is raising this as a proposal and the proposed change will come into effect for the disposal of assets from 1 March 2012.

This means that entities that have March, June, September and December year ends could have two different inclusion rates in one tax year – i.e. one for assets sold before 1 March 2012 and the other for assets sold on or after 1 March 2012. This proposal has the following limitations:

- There is no signed law to support the change and taxpayers who have March year ends may underpay their provisional tax;
- The accounting systems of the taxpayers may not be able to accommodate two different rates in one tax year;
- The transactions that are currently in progress that have factored the existing rate could be negatively impacted by this change if these transactions are not finalised by 1 March 2012.

We propose that the change in rate is deferred until next year to allow for certainty in the tax system.

National health insurance (NHI)

We are concerned as to the funding proposals. Although this is planned to be phased in over 14 years, the 3 methods of proposed funding will create severe hardship on taxpayers, employers and consumers. The proposal of National Health Insurance refers to payroll tax, an increase in VAT rate and a surcharge on individual's taxable income as possible funding options. Consideration should be given for alternative funding. We recommend that a Public Private Partnership is also considered as means of funding NHI, in particular on infrastructure. The NHI must be implemented with strict controls over expenditure.

Medical deductions converted to medical tax credits

Whilst we fully understand the rationale behind this change i.e. that credits are a more equitable form of relief than medical deductions because the relative value of the relief does not increase with higher income levels it is hoped that medical aids would reconsider their contribution models as most medical aid schemes base their premium contributions on the members earnings.

Encouraging household savings

New investment vehicles

It is clear that the proposals to encourage household savings envisage a new or special investment product. What is not clear is who will be providing these savings vehicles. It is welcomed that the returns in these savings vehicles will be free from tax and that any capital growth in respect of these investments will similarly be disregarded. We welcome the fact that these proposals will only take effect in 2014 and that a discussion document will be published which will facilitate consultation and refine these proposals. It is not clear why the R30 000 annual limit is necessary if the life time limit is set at R500 000.

Impact of proposals on current investment

We are concerned that the amounts of the general interest exemption for both taxpayers over and under the age of 65 have not been adjusted to take account of the effect of inflation. This, coupled with the increase in the rate at which dividends will be taxed from 1 April 2012 will have a big impact on the after tax income of investors. It will negatively impact on retired persons.

It is welcomed that the annual exclusion in respect of capital gains has increased.

Retirement reforms

Lump sum withdrawals upon retirement from pension and retirement annuity funds are restricted to a maximum of one-third of accumulated savings. The budget proposes that consultations will be held with interested parties on a uniform approach to retirement fund withdrawals, taking into account vested rights and appropriate transitional arrangements.

Whilst investors of provident funds do not receive any tax deduction for contributions presently they are not restricted to the one-third draw down on retirement from the fund.

BUSINESS TAXES

Turnover tax for micro businesses

We welcome the the proposals to grant micro businesses the option of making payments for turnover tax, VAT and employees' tax twice a year from 1 March 2012. This assists in simplifying this regime even further.

Debt used to fund share acquisitions

We welcome the proposed changes. However, we would also like to recommend that the proposed changes should apply even to acquisition of less than 70% interest where the transaction is intended to empower previously disadvantaged individuals.

Collateral amendments stemming from the introduction of the new dividend withholding tax

Increase in dividend withholding tax rate

Whilst we understand the rationale for increasing the dividend withholding tax rate from 10% to 15% i.e. to ensure that interest income, dividends or capital gains are taxed more equitably thereby removing arbitrage, we are of the view that business should have been informed sooner of the proposal which take effect on 1 April 2012. Taxpayers have been working closely with their advisors on matters affecting this legislation and systems have been tailored for 10% dividend withholding tax. This change to 15% is a short notice and is likely to upset the processes that have been set up.

Shortened period for transitional credits

The dividends tax contains transitional credit relief stemming from the pre-existing secondary tax on companies. These credits are set to last for up to five years into the new regime. However, given the delayed implementation of the dividends tax (and the fact that the new regime has a higher rate), the transitional credit period will be reduced to three years.

We of the view that business should have been informed sooner of this proposal, which will also take effect on 1 April 2012.

Effective date on various changes

The effective date of the following provisions is not clarified and is also not part of the legislation.

- Removal of the 33% rate for personal service providers
- Removal of higher gold formula rate
- Removal of the 33% rate for foreign companies

Mark to market taxation of financial instruments

We understand that National Treasury plans to review the tax treatment of these instruments in order to ensure that they are in line with accounting standards. We would also recommend that as part of this project, the provisions of section 24J are also re-looked as this section is closely linked to other financial instruments.

Section 23H proposed changes

There are certain circumstances where the provisions of section 23H of the Income Tax Act will not apply. These include instances where the aggregate of all amounts to be limited by section 23H do not exceed R80 000. It is proposed that the amount or aggregate amount be increased to R100 000. The effective date of this provision is not clear.

MISCELLANEOUS TAX AMENDMENTS

Employment, individuals and savings

With regard to the following proposals:

- Employee share schemes;
- False job terminations
- Employer-owned insurance, and
- Taxation of payouts from South African or foreign retirement funds

We wish to comment that the effective dates for implementation of these proposals will need to be effective from the beginning of a tax year and not retrospective. Making adjustments for these amendments on a payroll system would require significant system changes and software development.

Determination of value of fringe benefits

Most payroll systems would be able to implement this from an effective date or even retrospectively to 1 March 2012 if they had the required information. Payrolls submit IRP5's bi-annually (end of August and February). Changes made after 31 August, with an effective date prior to 31 August 2012 will result in resubmissions of all reconciliations by all employers in SA. This should be avoided.

TAX ADMINISTRATION

Tax Administration Bill

We welcome the extended consultative approach adopted by SARS with this Bill.

Tax Ombud

We welcome the proposal to establish a dedicated Ombud for tax matters during 2012. The first draft Bill released for public comment did not contain any reference to a Tax Ombud.

INDIRECT TAXES

Climate change: carbon emissions tax

We welcome the further engagements proposed in the design of a carbon emissions tax to help global climate change.

Revised gambling tax
The tax in the form of an additional 1% national levy on a uniform provincial gambling tax base is a more practical approach to the proposal tabled last year.

BUDGET SPEECH
Tax practitioners
The Minister made the following statement in the budget speech:
"Poor tax compliance is also apparent in respect of trusts and in parts of the construction sector, and the role of tax practitioners and other intermediaries will come under scrutiny. Analysis of compliance among the country's 34 000 tax advisors shows practitioners owe over R260 million in outstanding taxes and have more than 18 000 income tax returns outstanding in their personal capacity. If that is their attitude to their own tax compliance, one shudders to think what advice they are giving to their clients!"

We take exception to these comments which taints' all tax practitioners badly. Chartered accountants undergo an extensive training qualification. Once admitted to the profession they have to ensure that their skills are up-to-date. CAs(SA) are required to complete at least 120 hours of continuing professional development over three years as a requirement to be a CA(SA).

SAICA's Code of Profession Conduct aligns with compliance not only with regard to his/her own tax affairs but he/she cannot be associated with reports, returns, communications or other information where he/she believes that the information:

- Contains a materially false or misleading statement;
- Contains statements or information furnished recklessly; or
- Omits or obscures information required to be included where such omission or obscurity would be misleading.

Charted accountants that do not comply with the Code of Professional Conduct are subject to disciplinary rules.

Tax clearance certificates
The Minister made the following statement in the budget speech:
"The tax clearance system will be strengthened to ensure that those who have defrauded the state cannot do business with the state."

In this regard we refer you to our detailed submission proposals made to SARS and National Treasury regarding the current practical difficulties being experienced with the tax clearance process (refer attached submission).

Please do not hesitate to contact us, should you have any questions regarding the above.

Yours faithfully

Muneer Hassan CA(SA)
PROJECT DIRECTOR: TAX
The South African Institute of Chartered Accountants

cc: Keith.Engel@Treasury.gov.za
Greg.Smith@Treasury.gov.za
klouw@sars.gov.za
ftomasek@sars.gov.za