Sizwe
Ntsaluba
Gobodo

AUDIT · ADVISORY · FORENSICS

Mr T Mafumadi
MP: ST on Finance
Parliament of RSA
PO Box 15
Cape Town
8000
Attention: Mr A Wicomb

Dear Sir

SUBMISSION BY SIZWENTSALUBAGOBODO ("SNG")

Please find our submission below as requested.

Comments to the "Rates and Monetary Amounts and Amendment of Revenue Laws Amendment Bill"

Introduction

Our comments are generally based on the premise that fiscal policy should not operate in a vacuum but should be in tandem with the general government objectives that are geared towards addressing the country's prevailing challenges. Further, an assumption is made that fiscal legislation is still subject to the provisions of the constitution which is the supreme law of any country.

Amendment of definition of "small business" for purposes of paragraph 57 of the Eighth Schedule to the Income Tax Act.

Whilst the increase from R5 million to R10 million is welcome, the 100% increase is overshadowed by the fact that the increase itself is coming from a low base. We therefore believe this should be re-looked at again in the near future.

Earlier effective date of proposed legislation prior to its finalisation and promulgation

The effective dates for most proposals are deemed to have been either 1 March 2012 or 1 April 2012. The legal anomaly about this is that effectively a proposal which is not law repeals an effective law which has been duly enacted and promulgated. The only way in which these proposals could be effective prior to the date of promulgation of the intended law is when the final legislation is promulgated with retrospective effect.

HEAD OFFICE
20 Morris Street East, Woodmead, 2191
P.O. Box 2939, Saxonwold, 2132
Tel: +27 (0) 11 231 0600
Fax: +27 (0) 11 234 0933
www.sizwentsalubagobodo.za.com

Nonkululeko Gobodo (Chairman), Victor Sekese (CEO), Natalie Arendse, Rakesh Bhika, Vonani Chauke, Aaron Mthimunye, Donovan Simpson, Mike Terheyden, Hale Qangule
A comprehensive list of all Partners, Directors and Associate Directors is available at the company offices or registered office.
SizweNtsalubaGobodo Advisory (PTY) Ltd. Registration Number: 2005/012995/07

It is trite law that any amendment with retrospective effect is bad in law as it destroys certainty of law and undermines the characteristics of the Rule of Law and natural justice. In the recent United Kingdom case of **Huitson v HMRC** it was stated that retrospective legislation is not in itself prohibited but its ultimate effect should not result in an unreasonable burden on the individual taxpayer.

This case also confirms the principle against retrospective legislation as all arguments against retrospective legislation is that it should never be made to suffer a taxpayer in law for an act which was not wrongful when it was committed. Or put differently, it should not retrospectively take away rights which were enjoyed by the taxpayer before the promulgation of the Act.

There is no doubt that most of the sections that have retrospective effect will create an unreasonable burden on the taxpayer. For instance, companies with June 2012 year-end will be adversely affected as there is uncertainty about which law is applicable to them in respect of capital gains tax. The same applies to entities who declare a dividend after 1 April 2012. This uncertainty and ambiguity also invokes the *contra fiscum* rule, which stipulates that any ambiguous legislation especially if it creates unnecessary burden to the taxpayer, should be interpreted in favour of the taxpayer. There have been numerous calls and submissions in the past that retrospective legislation should always be avoided.

Individual tax rates

Although the proposed rates for individuals in respect of the year of assessment ending February 2013 have already been effected, it is proposed that in future the more creative model should be created for taxpayers falling under the highest marginal 40% tax rate. Most taxpayers falling under this tax bracket are "rain makers" for the South African economy. The successful operation of South African Businesses is dependent on them. Without the successful running of these businesses by this "special" class of taxpayers there will be no effective poverty alleviation and employment creation. Although the taxation of individuals is based on "Pay As You Earn", the model should not be seen to be punitive and thus discouraging hard work but should be designed in such a manner that would reward "rainmakers".

Yours faithfully

SizweNtsalubaGobodo