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SAIPA'S COMMENT ON THE TAXATION LAWS AMENDMENT BILL, 2012

The South African Institute of Professional Accountants (SAIPA) would like to thank the Minister of Finance for the opportunity to provide comments on the Taxation Laws Amendment Bill, 2012

We trust that our submission will receive your favourable consideration, and we would appreciate an opportunity to come and present our submission to the portfolio committee when necessary

SAIPA is the leading accountancy institute representing qualified professional accountants in practice, industry, commerce, government, academia and the public sector, and its focus is on the advancement of Professional Accountants in South Africa to assist in meeting the changing needs of the accountancy profession in all facets of business and finance. Through innovative services and solutions, SAIPA responds effectively to emerging trends and positively impacts on our economy.

Should you require any further information or wish to discuss this matter in more detail the writer can be contacted on:

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Regards

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Technical Executive





1.1 Definition of equity share [page 6]

We are in agreement with the change of the definition of equity share as we are also of the opinion that the previous definition was linked to the Companies Act 61 of 1973 and the new Companies Act 71 of 2008 does not define equity shares. However the proposed amendment to the definition is now too limiting as it may lead to unintended consequences in Section 45 where shares are sold as redeemable preference shares that do specify the redemption period, but has a fixed dividend rate to their BEE partners. The proposed definition may lead to these entities regrouping their instruments to fit into this definition.

1.2 Definition of IFRS

It is suggested that the definition be: IFRS means the International Financial Reporting Standards as issued by the International Accounting Standards Board.

2. ADDITIONAL MEDICAL EXPENSES CONVERTED TO MEDICAL TAX CREDITS

Substitution of the term “person” instead of “taxpayer”, in Section 6A; it is our view that the use of the term “taxpayer” was more fitting and appropriate on the relevant sections.

We recommend that the term is left in the sections as “taxpayer” rather than “person”

Amendment to section 6B (3) (c) Medical credits for taxpayers below 65 years of age [page 16]

25 percent of the amount of qualifying medical expenses paid or incurred and paid by the person.

We request a review of the 25% as it is fairly low and we recommend that this be increased to 33.33%

3. Dividends on certain shares deemed to be interest in relation to recipients thereof. [Page 21]

Section 8E: (1) for the purposes of this section ‘Date of issue’ means: [page 21-23]

(a) The date on which the share is issued by the company



- (b) The date on which the company at any time after the share has been issued undertakes the obligation to redeem that share in whole or in part; and
- (c) The date on which the holder of the share at any time after the share has been issued obtains the right to require that share to be redeemed in whole or in part, otherwise than as a result of the acquisition of that share by that holder

We are in agreement with (a) however (b) and (c) creates confusion as the same instrument will now have two different periods as date of issue.

It is not clear from the proposed amendment whether the new sections relating to preference shares in section 8EA(1) applies to the preference shares already in issue especially since the amendment comes into operation on 1 October 2012.

4. Section 8F(1)(d) [page 27]

We appreciate the Small business relief on the hybrid recharacterization rules. However the total gross asset value not in excess of R10million is very low. There are more small entities that have total assets greater than R10m but are still small entities.

We request that this threshold be reviewed upwards.

5. Amendment of section 12H Learnership agreements is welcomed as it removes the uncertainty and limits the prohibition of failed learnerships

6. Fair value taxation in respect of financial instruments [page 77]

(2) Subject to subsection (4), included must be "...financial assets and financial liabilities of that covered person that are recognised through profit or loss and financial assets measured at fair value through other comprehensive income of that covered person for that year of assessment to the extent that those financial assets and financial liabilities are in terms of IFRS"

It is recommended that the above be used throughout section 24JB.

7. Mark-to-market taxation in respect of long-term insurers

It is recommended that where 29 February is used this be changed to last day of February

8. Section 159 Draft Tax Laws Amendments Bill 2012 to amend section 21 of the Value-Added Tax Act.

We agree that debit note and credit note should be used to correct a previously issued tax invoice and the amendments are necessary. However, the addition of (f) allowing for when



error or omission has occurred in respect of the particulars required under section 20(4) or (5) to be contained in a tax invoice is too broad.

The debit note or credit note is intended to record the altering of a supply or consideration related to the supply (discount, consideration amount, return of goods, and cancellation of supply). Section 21 should not detract from the vendor's requirement to issue a tax invoice as required in terms of section 20. A document issued as a 'tax invoice' should have at least a minimum requirement, and the credit or debit note must refer to such tax invoice, and as such the original tax invoice as issued in terms of section 20 should be at least in the currency of the republic, express "tax invoice" in a prominent place, have an individual serialized invoice number (important for auditing and referencing purposes) and the suppliers address and vat registration number. If these are not present, then the document issued is merely an 'invoice' as defined, and should not be regarded as a 'tax invoice' issued in terms of section 20. If the 'tax invoice' has not been issued, the provisions of section 21 cannot apply.

Therefore, we propose that paragraph (f) be limited to read "*an error or omission has occurred in respect if the particulars required under section 20(4) (c), (4) (e), (4) (f), (4) (g), (5) (d), or (5) (e) to be contained in a tax invoice,*"