DRAFT RESPONSE DOCUMENT

2018 DRAFT TAXATION LAWS AMENDMENT BILL (TLAB) AND DRAFT TAX ADMINISTRATION LAWS AMENDMENT BILL (TALAB)

Standing Committee on Finance

Presenters: National Treasury and SARS | 12 September 2018

national treasury
Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

Consultation process

- The 2018 Draft Taxation Laws Amendment Bill (TLAB) and 2018 Draft Tax Administration Laws Amendment Bill (TALAB) were published for public comment on 16 July 2018.
- National Treasury and SARS received written comments from 92 organisations and individuals by deadline of 16 August 2018.
- National Treasury and SARS briefed the Standing Committee on Finance (SCoF) on the draft bills on 16 August 2018.
- Oral presentations by taxpayers and tax advisors on the draft bills were made at hearings by the SCoF on 21 August 2018.
- Workshops with stakeholders to discuss their comments on the 2017 Draft TLAB & TALAB were held on 4 and 5 September 2018.
- Today,12 September 2018, National Treasury and SARS present to the SCoF a draft response document containing a summary of draft responses to public comments received on the draft bills.

Key issues raised during consultation process

The proposed amendments included in the draft bills that received most comments that may require changes to the 2018 Draft TLAB are:

2018 Draft TLAB

1. Removing taxable benefit in relation to low or interest free loans granted to low income earning employees for low cost housing
2. Tax treatment of transfers to pension preservation or provident preservation funds after reaching normal retirement age but before retirement date
3. Tax treatment of transfer of actuarial surpluses between retirement funds
4. Extension of employment tax incentive
5. Consequential amendments resulting from application of debt relief rules
6. Refining anti avoidance rules dealing with share buy backs and dividend stripping
7. Tax treatment of amounts received by or accrued to portfolios of collective investment schemes (CIS)
8. Clarification of the tax treatment of doubtful debts
9. Review of Venture Capital Company (VCC) rules
10. Rules addressing the use of trusts to avoid tax in respect of controlled foreign company
11. VAT treatment of cryptocurrency transactions

Key issues raised during consultation process

The proposed amendments included in the draft bills that received most comments that may require changes to the 2018 Draft TALAB are:

2018 Draft TALAB

1. Income Tax Act: Amendment to definition of 'provisional taxpayer'
2. Value-Added Tax Act: Correction of tax invoices
3. Value-Added Tax Act: Prescription on erroneous overpayments
4. Value-Added Tax Act: Treatment of branches/divisions of juristic person for debt collection
5. Value-Added Tax Act: Extension of joint and several liability for VAT to members of a joint venture
6. Tax Administration Act: Notification of commencement of an audit
7. Tax Administration Act: Understatement penalties
8. Tax Administration Act: Deregistration of tax non-compliant tax practitioners

2018 DRAFT TAXATION LAWS AMENDMENT BILL

KEY ISSUES

1. Removing taxable benefit in relation to low or interest free loans granted to low income earning employees for low cost housing

- In 2014, changes were made in the Income Tax Act to remove the taxable fringe benefit in respect of employer provided housing for the benefit of low income earning employees, provided that the employees' remuneration does not exceed R250 000 per annum and the low cost housing has a market value not exceeding R450 000.
- However, the 2014 changes do not apply in cases where a low income earning employee receives a loan from the employer to fund the acquisition of low cost housing.
- The 2018 Draft TLAB proposes to remove the taxable fringe benefit in respect of low/ interest free loans not exceeding R450 000 provided by an employer to a low income earning employee with remuneration not exceeding R250 000 per annum, provided that the loan is granted solely for the acquisition of housing.

***Comment*:**

- The requirement that the market value of the immovable property acquired does not exceed R450,000 should be removed as the other monetary limit (remuneration proxy of R250 000) should suffice. Further to the above, it is often found that houses in remote areas such as mining town are valued higher due to scarcity of houses.

Response:

- Not accepted. When the legislation was first introduced in 2014, the policy intent was to afford low income earning employees the ability to acquire low-cost housing. Removing the limitation on the market value of the property deviates from the Government's initial policy intention as it would make it possible for all low income earning employees to acquire housing other than low-cost housing.
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1. Removing taxable benefit in relation to low or interest free loans granted to low income earning employees for low cost housing

***Comment*:**

- As the draft legislation currently reads, there is a loophole as there is no requirement that the employee actually occupy the property.

***Response*:**

- Accepted. In order to close this loophole, the requirement with regards to whether the accommodation is required to be the employee's primary residence or whether it is sufficient for it to be occupied by the employee's relative(s) is being considered.

***Comment*:**

- Unlike with current paragraph 5(3A) of the Seventh Schedule dealing with zero taxable fringe benefit in respect of employer provided low cost housing for the benefit of low income earning employees, , there is no connected person exclusion in the proposed amendments in the 2018 Draft TLAB.

***Response*:**

- Accepted. The connected person exclusion similar to the current paragraph 5(3A) of the Seventh Schedule will be included so as to avoid abuse.

2. Tax treatment of transfers to pension preservation or provident preservation funds after reaching normal retirement age but before retirement date

- In 2017, changes were made in the Income Tax Act to allow employees (who are members of the fund) to transfer their benefits from a pension or provident fund into a retirement annuity fund on or after reaching normal retirement age, as defined in the rules of the fund, but before an election to retire is made by such employee (member of the fund).
- Transfers to pension preservation and provident preservation funds were excluded as it was considered that it would be administratively burdensome.
- In order to address these aspects, it is proposed that amendments be made to allow for transfers from a pension or provident fund to a pension preservation or provident preservation fund on or after reaching normal retirement date as defined in the rules of the fund, but before an election to retire.

***Comment*:**

- Due to the fact that amounts transferred cannot be withdrawn as single a lump sum, fund members must be allowed to transfer from pension funds to provident preservation funds.

***Response*:**

- Not accepted. The NEDLAC discussions regarding annuitisation for provident fund members are still ongoing. The prospect of considering transfers from pension funds to provident preservation funds can only be considered once the NEDLAC process is completed.

***Comment*:**

- Clarity is requested as to whether or not the restriction on the ability to make a once-off withdrawal once retirement benefits have been transferred applies to both the capital and interest component as well.

Response:

- Noted. The restriction applies to both interest and capital.

2. Tax treatment of transfers to pension preservation or provident preservation funds after reaching normal retirement age but before retirement date

Comment:

- Members must be afforded the ability to make multiple tax free transfers between preservation funds, provided they have not yet made the election to retire.

Response:

- Not accepted. It will be difficult to afford members the ability to make multiple tax free transfers between preservation funds as the ability to efficiently track multiple transfers remains a concern for Government.

Comment:

- Members must be afforded the ability to make tax-free transfers from a retirement annuity into an occupational retirement fund.

Response:

- Not accepted. The Government's policy intention of disallowing tax-free transfers from a retirement annuity fund into an occupational retirement fund has not changed.

Comment:

- Clarity requested as to when the provisions governing the annuatisation of provident funds are likely to come into effect. In the event that the effective date of 1 March 2019 still stands, further deferral is requested so as to provide industry ample time to make system changes as well as changes to fund rules.

Response:

- Noted. The 2018 Draft TLAB does not contain amendments related to annuitisation for provident fund members. The process of consultation with NEDLAC is still ongoing, and an interim agreement on an approach to retirement reform with timelines is expected shortly. Government will introduce further legislative amendments shifting the effective date of 1 March 2019 by one or two years, in line with the NEDLAC constituencies' recommendation. An agreement on this recommendation is expected to be reached before the end October 2018

3. Tax treatment of transfer of actuarial surpluses between retirement funds

- Currently, the provisions of the Income Tax Act inadvertently create a taxable fringe benefit in the hands of employees in respect of any transfers of actuarial surpluses between or within retirement funds of the same employer on behalf of employees.
- In principle, there should be no additional tax consequences for employees (who are members of the fund) if the transfers between or within retirement funds of the same employer refer to amounts that have already been contributed to a retirement fund.
- In order to address these unintended anomalies, it is proposed that retrospective amendments with effect from 1 March 2017, be made to allow for transfers of amounts as contemplated in section 15E(1)(b) of the Pension Funds Act, 1956, between or within retirement funds of the same employer not to create a taxable fringe benefit in the hands of the employees.

***Comment*:**

- It is requested that the proposed amendment be extended to apply to other paragraphs within section 15E(1) of the Pension Funds Act.

***Response*:**

- Partially accepted. The proposal will be extended to section 15E(1)(d) and 15E(1)(e) of the Pension Funds Act which deal with improvement of benefits payable to all members and transfers between employer-owned surplus funds.

4. Extension of Employment Tax Incentive

- The Employment Tax Incentive (ETI) scheme was introduced in January 2014 to promote employment, particularly of young workers. After the initial 3 years of the programme, it was extended for a further two years. This period is set to lapse on 28 February 2019.
- The first extension was based on a process of review and a consultation process with the National Economic Development and Labour Council ("NEDLAC"), which indicated (i) modest positive effects on growth rates of youth employment in claiming firms; and (ii) that significant negative effects did not materialize. As part of the ongoing monitoring and evaluation of this programme, another round of inputs will be collected from social partners through Nedlac this year.
- An extension is proposed in light of the need to support youth employment, as indicated in the State of the Nation Address ("SONA") delivered on 15 February 2018. The ongoing review process may result in further proposals for amendments, which can be processed subsequently. As a result, it is proposed that the ETI end date should be extended for a further 5 years, from 28 February 2019 to 28 February 2024, with an interim report on its performance to be published after 3 years. Consultations on the extension of the ETI and on its impact on employment are currently taking place in NEDLAC.

Comment:

- It is suggested that the administration of the ETI is simplified so as to improve take-up of the initiative.

Response:

- Noted. Discussions with social partners at NEDLAC are in their final stages. A general consensus has been reached that the ETI be extended for at least 5 years –perhaps even a longer period. Issues including the administration of the incentive will be considered as a separate policy proposal for the coming budget.

5.Consequential amendments resulting from application of debt relief rules

- The Income Tax Act contains debt relief rules that give rise to tax implications for the debtor when a debt that is owed is waived, cancelled, reduced or discharged for less than the face value of the debt.
- In 2017, changes were made in the debt relief rules including the introduction of definitive rules dealing with the tax treatment of conversions of debt into equity. The 2017 changes resulted in unintended anomalies.
- In order to address these anomalies, changes were made in the 2018 Draft TLAB to apply retrospectively from 1 January 2018 (which is the date on which the 2017 changes came into effect), in order to ensure that the unintended consequences of the 2017 amendments do not negatively affect taxpayers.
- In addition, the 2018 Draft TLAB proposed further amendments to close the donations tax and capital gains tax loopholes on the application of debt relief rules that have been identified during public consultation with taxpayers.

<u>Comment:</u>

- Paragraph (*a*)(*i*) of the definition of "concession or compromise" provides that cancellation, waiver or the remittance of a debt is a "concession or compromise". The term remit in the definition of a "concession or compromise" can mean the setting aside or cancellation of a debt but the term can also refer to payment. Given that the terms cancellation and waiver are already included in the legislation, it is not necessary to use the word remit. For clarity, the word "remit" should be removed as payment of a debt should not trigger negative tax consequences.

<u>Response:</u>

- <u>Accepted.</u> The word "remit" will be removed from paragraph (a)(i) of the definition of "concession or compromise".

5.Consequential amendments resulting from application of debt relief rules

Comment:

- Paragraph (*a*)(*ii*) of the definition of "concession or compromise" triggers the debt relief rules when a debt is redeemed or merger occurs as a result of the debtor or a connected person in relation to the debtor acquires the claim relating to the debt that the debtor holds. However, for merger to occur, the same person needs to hold the claim and owe the debt. It should be made clear in the definition of "concession or compromise" that the connected person element in para (*a*)(*ii*) of this definition applies only in respect of the redemption of a debt and not in respect of merger by acquisition.

Response:

- Accepted. Paragraph (*a*)(*ii*) of the definition of "concession or compromise" will be rephrased so that the connected person element can only be applied in respect of debt redemptions.

Comment:

- The policy around paragraph (*b*) of the definition of the "concession or compromise" that provides that interest bearing debt that is converted into equity should fall under the ambit of the debt relief rules is not clear. In this regard, it is not clear why the principal portion of a debt (whether interest bearing or not) that is converted into shares should result in negative tax consequences. Had a company been capitalised with equity from the beginning, the deductible expenses that that capitalisation funded would still be deductible.

Response:

- Accepted. Paragraph (*b*) of the definition of "concession or compromise" will be amended to only include any interest that was deducted but not paid by the debtor that is subsequently converted or exchanged for shares.

5.Consequential amendments resulting from application of debt relief rules

Comment:

- The redetermination of income tax recoupments, capital losses and/or capital gains which were determined and accounted for on the disposal of assets in a prior to when a "debt benefit" arises is not clear. It should be clarified as to whether the proposed provision will apply to all capital assets or only allowance assets. In addition, it should be clarified whether a redetermination should be made if the asset is disposed of in the year that the "debt benefit" arises.

Response:

- Accepted. Amendments will be made to paragraph 12A of the Eighth Schedule to the Act to clarify that the redetermination rules apply to both capital and allowance assets.

Comment:

- The proposed amendment to close the donations tax loophole meant to ensure that donations tax is paid in order for a debt to be excluded, adds unnecessary complexity for individuals as it can lead to partial application in the instance that a donation exceeds the annual exclusion of R100 000. In addition, a similar amendment in the Estate Duty Act No. 45 of 1955 that require estate duty should be actually payable on a forgiven debt has not been included. This results in lack of symmetry.

Response:

- Not accepted. The requirement that donations tax should be paid on a donated debt for such a donated debt claim to be excluded from the debt relief rules will remain. Failure to put in this requirement will mean that no tax is levied on a donated debt claim. A similar amendment has not been made in the Estate Duty Act. To make such amendment in the Estate Duty Act requires much more intensive changes. As such, amendments in the Estate Duty Act will be considered in the 2019 legislative cycle.

6. Refining anti-avoidance rules dealing with share buy backs and dividend stripping

- In 2017, changes were made in the Income Tax Act to strengthen the anti-avoidance rules dealing with share buy backs and dividend stripping.
- As part of the 2017 amendments, (A) a specific rule was included in the legislation defining what constitutes an extraordinary dividend in the case of preference shares and (B) a provision was included in the legislation in order to ensure that these anti-avoidance rules override the corporate re-organisation rules. This was to ensure that taxpayers do not use the corporate re-organisation rules in order to avoid these anti-avoidance rules in respect of dividends stripped out of a target company.
- It has come to Government's attention that the above-mentioned two rules may affect some legitimate transactions and arrangements. In order to address these concerns, amendments were proposed in the 2018 Draft TLAB that (A) a new definition of "preference shares" be introduced for purposes of the anti-dividend stripping rules and (B) the anti-dividend stripping rules should override corporate re-organisation rules only in cases where the corporate re-organisation rules are abused by taxpayers.

***Comment*:**

- The 2018 proposed amendments which cater for the interaction between the dividend stripping rules and the corporate reorganisation rules should be effective from 18 July 2017 (i.e. the commencement date of the 2017 rules that currently override the corporate re-organisation rules) and not 1 January 2019 as proposed in the 2018 Draft TLAB as the current rules were overly harsh.

***Response*:**

- Not accepted. At the time when these rules were proposed in 2017, it was intended that the dividend stripping rules should override the corporate re-organisation rules. The 2018 proposed amendments are a change to the 2017 policy position and as such will have a future effective date of 1 January 2019.

6. Refining anti-avoidance rules dealing with share buy backs and dividend stripping

***Comment*:**

- The 2018 amendments introduced a definition of a preference share for purposes of anti-dividend stripping rules and the definition of "extraordinary dividend" was also expanded to include what is an "extraordinary dividend" in the case of preference shares. In terms of this amendment, an "extraordinary dividend" in respect of a preference share is the amount of any dividend received or accrued exceeding the amount that would have otherwise accrued with respect to that preference share if it was determined with respect to the considerations for which that share was issued by applying an interest rate of 15 per cent per annum. However it is not clear whether the 15 per cent rate used to determine the extraordinary dividend should be applied on a simple or compounding basis.

***Response*:**

- Accepted. It will be specified in the legislation that a simple basis of determination is applicable when determining an extraordinary dividend for preference shares.

***Comment*:**

- The proposed amendments to anti-dividend stripping rules are overly complex and cannot be easily understood. Therefore the proposed amendments to should be redrafted to make readable and understandable.

***Response*:**

- Noted. In order to ensure that the anti-avoidance rules dealing with dividend stripping do not affect legitimate corporate re-organisation transactions, various different scenarios are covered by the 2018 proposals and these scenarios involve complex multi-step transactions. The 2018 draft proposals are the reflection of that complexity.

6. Refining anti-avoidance rules dealing with share buy backs and dividend stripping

***Comment*:**

- When a resident company disposes of shares it holds in another company in terms of a deferral transaction, the anti-avoidance dealing with dividend stripping rules will not be immediately triggered. However, it is proposed that specific claw-back rules should apply to exempt dividends received or accrued in respect of those shares or other shares acquired in exchange for those shares in respect of which such exempt dividends were received or accrued within 18 months of their acquisition. These claw back rules should be applied at the time when such shares are subsequently disposed of in terms of a transaction that is not a deferral transaction within 18 months of their acquisition. The proposed amendments consider dividends declared 18 months prior to a deferral transaction and the disposal of shares within a period of 18 months after the deferral transaction and therefore introduces an effective 36-month period. A 36-month period is not acceptable.

***Response*:**

- Not accepted. In determining what constitutes an extraordinary dividend, the legislation requires that you look at the exempt dividends received over a period of 18 months before a deferral transaction in respect of which shares are disposed of. It is only after a deferral transaction that taxpayers will be required to observe the claw back requirement of the rules for 18 months after that deferral transaction. It is therefore inaccurate, that the rules apply for an effective 36 months period as the 18 months prior to a deferral transaction is only referred to for purposes of determining the amount of the extraordinary dividend. It is only during the 18-month period following the deferral transaction, that the rules can apply to trigger a claw back of extraordinary dividends.

7. Tax treatment of amounts received by or accrued to portfolios of collective investment schemes (CIS)

- In terms of section 25BA of the Income Tax Act, distributions that are not of a capital nature from a CIS to unit holders within 12 months after that income accrued or in the case of interest, is received by a CIS, follow the flow through principle and are deemed to accrue to unit holders on the date of distribution and are subject to tax in the hands of the unit holders.
- The Act does not provide a definition of what constitutes a capital nature and the concept depends on facts and circumstances as well as the tests available in case law. It has come to Government's attention that some CIS are in effect generating profits from the active frequent trading of shares and other financial instruments and argue that the profits are of a capital nature, therefore, not subject to tax. They base this argument on the intention of long term investors in the CIS.
- The fact that the determination of capital or revenue distinction is not explicitly stated in the Act has led to different applications of the law and this has resulted in an uneven playing field regarding the taxation of CIS. In order to provide clarity and certainty with regard to the tax treatment of CIS, the following is proposed in 2018 Draft TLAB:

One year holding period rule

- It is proposed that distributions from CIS to unit holders derived from the disposal of financial instruments within 12 months of their acquisition should be deemed to be income of a revenue nature and be taxable as such in the hands of the unit holders if distributed to them under current tax rules.

First in first out method

- Where a CIS acquired financial instruments at various dates, the CIS will be deemed to have disposed of financial instruments acquired first. The first in first out method will be used to determine the period the financial instruments were held for the purposes of the one year holding period rule.

Treatment of losses

- Deductions and allowances do not flow through to unit holders and amounts deemed to have accrued to unit holders are limited to amounts of gross income reduced by deductions allowable under section 11.

7. Tax treatment of amounts received by or accrued to portfolios of collective investment schemes (CIS)

***Comment*:**

The industry requests that this proposed amendment be withdrawn based on the following reasons:

- the proposed amendment will cause unfairness between unit holders within a portfolio when a large unit holder decides to redeem units thereby triggering the sale of portfolio assets that have been held for less than 12 months resulting in a tax liability on distribution to all unit holders.
- the proposed time based rule affects all manner of transactions, including unit holder withdrawals, portfolio rebalancing, index tracking, hedging and transactions directed at efficient portfolio management (for example purchasing a derivative to gain economic exposure to a share in lieu of holding the physical).
- currently the industry has employed the services of an independent actuarial consulting firm to model transactions for the CIS industry to attempt a quantitative impact assessment which cannot be completed within the submission deadline. In addition, this study is crucial in the light of the economic climate and the objectives of attracting foreign investments.

Response:

Partially accepted. As indicated in the 2018 Budget Review, Government has noted concerns regarding the frequent trading by some collective investment schemes and the argument that despite frequent trading, the profits are of a capital nature and should be taxable as such. In view of the fact that CISs are regulated by the Financial Sector Conduct Authority ("FSCA'), in order to avoid negative impact and unintended consequences as a result of the current proposed amendment in the 2018 Draft TLAB, the following is proposed:

- Government and industry be given more time to investigate and find solutions that may have less negative impact on the industry and holders of participatory interest before changes are made in the tax legislation and that the legislative changes in this regard be considered in the 2019 legislative cycle;
- Government continues to find ways to mitigate tax avoidance risks through regulation by the FSCA.

8. Clarification of the tax treatment of doubtful debts

- In 2015, amendments were made in the Income Tax Act to provide for the change to an income tax self-assessment system. As a result, the discretions given to the SARS Commissioner in administering some of the provisions of the Act, were amended, some were removed and others reformulated.
- Consequently, the discretion in section 11(j) dealing with tax treatment of doubtful debts was deleted with effect from a date to be announced by the Minister of Finance. A new provision was introduced for the allowance for doubtful debts to be claimed according to the criteria set out in a public notice issued by the Commissioner. However, the effective date for the removal of the Commissioner's discretion on allowance for doubtful debts has not yet been announced and a public notice setting out the criteria for claiming the allowance for doubtful debts has not yet been formulated.
- In order to provide certainty, it is proposed that the following criteria for determining the doubtful debt allowance be specifically included in the provisions of the Income Tax:

Companies using IFRS 9 accounting standard for financial reporting purposes:

- It is proposed that 25 per cent of the loss allowance relating to impairment as contemplated in IFRS 9 excluding lease receivables contemplated in IFRS 9 be allowed as deduction. The allowances allowed in a year of assessment must be added back to income in the following year of assessment.

Companies not using IFRS 9 accounting standard for financial reporting purposes:

- It is proposed that an age analysis of debt be used in this regard. As a result, it is proposed that 25 per cent of the face value of doubtful debts that are at least 90 days past due date be allowed as deduction. The allowances allowed in a year of assessment must be added back to income in the following year of assessment.
- For example, debtor fails to make full payment for 90 days after due date of an amount that is payable. The debtor is 90 days in arrears and the full debt becomes doubtful then 25% of the debt is allowed as a doubtful debt in terms of the proposed section 11(j) of the Act.
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8. Clarification of the tax treatment of doubtful debts

Comment:

- The proposed amendment is overly prescriptive and it is recommended that the current discretionary legislation should be retained.

Response:

- Not accepted. Government took a decision in 2015 to move to self-assessment system and remove all discretions that were given to the SARS Commissioner through the tax legislation.

Comment:

- The proposed amendment should not differentiate between banks and non-bank lenders because these taxpayers use the same accounting standards and may use substantially the same methodologies to determine their doubtful debts provisions. The proposed amendment is anti-competitive because larger non-bank lenders must compete with bank lenders in a commercial space and yet bank lenders are receiving significantly higher tax allowances. It is therefore proposed that non-bank lenders be afforded the same tax treatment given to banks through section 11(jA) of the Income Tax Act.

Response:

- Partially accepted. Banks that are registered in terms of the Banks Act are regulated prudentially more intensively and intrusively than other financial service providers, including that they are subject to stringent capital, liquidity and reporting requirements. These regulations are formulated with the principal objective of protecting depositor's funds and ensuring the continued operating of critical economic functions including transaction and payment services. These regulations therefore seek to ensure the continued prudent operation (solvency) of banks through significantly intensive, intrusive and effective supervision. No such framework currently exists for non-bank lenders, which are regulated only by the Non Credit Regulator in terms of the National Credit Act,2005 currently not supervised by the Prudential Authority for safety and soundness nor the FSCA for market conduct.

8. Clarification of the tax treatment of doubtful debts

Response continued:

With regard to the banking sector, there is also integration between IFRS 9 impairment allowance calculation process with existing capital calculation and reporting requirements under Basel III standards. In the case of a bank, the expected credit loss is to be covered by provisions and unexpected loss is to be covered by capital. Therefore, at some point the doubtful debts provisions may have a result that lead to a reduction of the equity and retained earnings available for Tier 1 capital which in turn may reduce the Tier 1 capital ratio. Whilst Government is in the process of introducing appropriate prudential regulations for non-bank credit providers, and for tougher market conduct regulations for both bank and non-bank financial sector providers, in terms of the Financial Services Regulation Act, these will only be progressively implemented, and will require review as to their effectiveness.

- In order to mitigate the impact of the proposals on non-bank lenders, who are not intensively and intrusively regulated prudentially, the following is proposed:
  - If a taxpayer is applying IFRS 9 for financial reporting purposes to determine a loss allowance relating to impairment in respect of debt:
    - 40 per cent of the IFRS 9 loss allowance relating to impairment that is measured at an amount equal to the lifetime expected credit loss; and
    - 25 per cent of the difference between the IFRS 9 loss allowances relating to impairment and the IFRS 9 loss allowance in respect of which the 40 per cent tax allowance is determined.
  - If a taxpayer is not applying IFRS 9 for financial reporting purposes, an age analysis of debt should be used :
    - 40 per cent of the face value of doubtful debts that are at least 120 days past due date be allowed as a deduction; and
    - 25 per cent of the face value of doubtful debts that are at least 60 days past due, but excluding doubtful debts that are at least 120 days past due date be allowed as a deduction.

8. Clarification of the tax treatment of doubtful debts

Comment:

- Many taxpayers had more favourable past rulings from SARS and this proposal will result in a material cost to the affected taxpayers due to the reduction of the allowance percentage to 25 per cent. It is proposed that a transition rule be considered in this regard.

Response:

- Partially Accepted. It is understood that the rulings were given to these taxpayers based on the commercial realities at the time which may still exist even now. At issue is that these rulings were giving these taxpayers higher allowances rates (of up to 100 per cent of the doubtful debts for accounting purposes) which will disadvantage these taxpayers because the allowance will now be a lower percentage. In order to mitigate the impact of the proposed amendments with respect to those taxpayers who received rulings from SARS, it is proposed that transitional measures, for example, a phase-in period be introduced in the tax legislation.

Comment:

- In order to address some concerns submitted by taxpayers and the oral presentations made on the Draft 2018 TLAB workshop held on 4 September 2018, the non-bank lenders requested a separate meeting to discuss these issues in detail.

Response:

- Accepted. A follow-up meeting will be arranged with all organisations that submitted comments on this issue before the tabling of the bill to ensure that we come to an amicable solution. Over and above the issues raised above, taxpayers should also state the cash tax impact (by using last year's financial statement figures) after taking into account the proposed allowance so as to determine an appropriate phasing-in period.

9. Review of Venture Capital Companies

- Since the introduction of the Venture Capital Company (VCC) tax incentive regime in 2008, its uptake has grown significantly over the past two years leading to a meaningful investment into the economy. Currently, there are 124 approved VCCs of which 2 were withdrawn. In terms of the VCC regime, taxpayers investing in a VCC are allowed an upfront deduction equivalent to the expenses incurred by a taxpayer in acquiring shares issued to that taxpayer by a VCC. However, the deduction is reversed and included as a recoupment in a taxpayer's income should that taxpayer dispose of those shares in a VCC within 5 years after acquiring them.

Administrative and technical issues

- It has come to Government's attention that there are some administrative and technical issues in the tax legislation that are an impediment to further uptake of the VCC tax incentive. As a result, it is proposed that amendments be made in the Income Tax Act to address these administrative and technical issues.

Closure of abusive schemes

- In addition, concerns have been raised including reports in the public domain regarding alleged abusive tax structures using the VCC regime. For example, immediately before the 2018 Budget, some companies were advertising tax structures in the media using the current VCC regime. In an attempt to close these abusive schemes, it is proposed that the following amendments be made in the Income Tax Act:
  - Limit the abuse of trading between an investor that invested in a VCC and a qualifying company in which the VCC takes up shares.
  - Either a VCC or a qualifying company may not issue more than one class of shares from the year of assessment during which that company started trading and any time after that.

9. Review of Venture Capital Companies

ADMINISTRATIVE ISSUES

***Comment*:**

- The proposed amendment to the controlled company test does still not adequately address all the uncertainty in current legislation, because based on the new proposed wording, the legislation is still ambiguous whether the controlled company test only applies between VCC's and the target QC or if any other interest in the QC (directly or indirectly outside the VCC investment) will influence the outcome of the relevant test.

Response:

- Accepted. Proposed wording to the controlled company test will be amended to further clarify policy intent.

***Comment*:**

- The new proposed expansion of the investment income test for start-up companies is welcomed. However, the measurement of the investment income test from the point of commencement of trade could unintentionally exclude certain qualifying companies from the intended investment benefit of the VCC system if they had been trading before the VCC investment.

Response:

- Accepted. Proposed wording to the investment income test for start-up companies will be amended to further clarify policy intent.

9. Review of Venture Capital Companies

CLOSURE OF ABUSIVE SCHEMES

***Comment*:**

- To limit the abuse of trading between an investor that invested in a VCC and a qualifying company in which the VCC takes up shares it was proposed that the definition of qualifying company be amended. It is submitted that the proposed amendment is too wide in its impact and might unintentionally limit legitimate business transactions, including but not limited to:
  - essential BEE-related supplier development;
  - scaling ability of current qualifying companies' businesses;
  - administrative burden of unintentional and unbeknownst trading with a tainted party.

Response:

- Partially Accepted. The risk of abuse of allowing trading between a VCC investor and a qualifying company in which the VCC takes up shares remains a concern. In order to limit the impact of the proposed 2018 amendments on legitimate transactions and target the mischief in question, it is proposed that changes be made in the 2018 Draft TLAB so that the amount received or accrued by the qualifying company from any transactions between a VCC shareholder (together with connected persons) be limited to less than 50 per cent of the aggregate amount received or accrued from the carrying of a trade. In addition, it is proposed that this limitation only be applied after a period of 36 months from the date that the VCC acquires an interest in a qualifying company. The 36 month waiting period is proposed to specifically assist enterprise supply chain development.

9. Review of Venture Capital Companies

CLOSURE OF ABUSIVE SCHEMES

***<u>Comment</u>*:**

The proposed limit on the ability of both the VCC and a qualifying company to issue a single class of share is overly restrictive and would guarantee the premature-end of the VCC incentive. Several paramount and internationally accepted reasons exist to justify the use of more than one class of share within the venture capital industry, including but not limited to:

- Different classes of shares being used within the VCC for the carried interest purposes of VCC management (no VCC deduction obtained for it) after receiving a pre-determined return of investment for VCC shareholders;
- Different classes of shares being used for different rounds of capital raising by the VCC to ensure a cash flow waterfall for qualifying companies; and
- Different classes of shares being used to channel investments into different industrial sectors within a single VCC.

- Qualifying company
  - Different classes of shares being used to ensure a preferent right to recovery for the VCC;
  - Different classes of share for assurance of governance control in the qualifying company;
  - Different classes of shares that existed before the VCC investment;
  - Different classes of shares being used to avoid the dilution of the original entrepreneur's shareholding.

- As such, it would not be appropriate to prohibit the accepted practice of using different classes of shares on both levels to either invest in VCC's or target qualifying companies.

9. Review of Venture Capital Companies

CLOSURE OF ABUSIVE SCHEMES

Response:

- Partially accepted. The risk of abuse in allowing VCC's and target qualifying companies in which the VCC takes up shares remains a significant concern. However, government recognises the unintended consequences that the proposed changes could have on industry standard practices and as such it is proposed that changes be made in the 2018 Draft TLAB so that no shareholder (together with connected persons) in a VCC may hold, directly or indirectly, more than 20 per cent of the shares of any class in a VCC. In addition, it is proposed that the test regarding the class of shares be applied after a period of 36 months from the date those classes of shares are first issued by the VCC.

***Comment*:**

- The retrospective nature of the proposed closure of abusive schemes will abruptly end most if not the entire Section 12J VCC industry. The proposed amendment has created great uncertainty within the industry, including VCC investors and targeted qualifying companies. Many legitimate VCC's were setup based on current legislation and the proposed amendments would ensure that VCC's are heavily penalised in addition to adverse consequences for both VCC investors and target qualifying companies without a fair timeframe to restructure.

Response:

- Accepted. Government recognises the unintended consequences of the proposed effective date of the amendments on the Section 12J VCC industry and the effective date will be changed to apply to any trading that commences or classes of shares issued during years of assessment commencing on or after 1 March 2019.

10. Rules addressing the use of trusts to avoid tax in respect of controlled foreign companies

- In 2017, amendments were made to the Income Tax Act to extend the application of the Controlled Foreign Company (CFC) rules to foreign companies held through foreign trusts if the financial statements of those companies form part of the consolidated financial statements of a group company of which the parent company is resident in South Africa. The above-mentioned 2017 changes did not address the issue of South African resident individuals indirectly holding shares in a foreign company through foreign trusts. The 2017 Draft TLAB that was published for public comments on 19 July 2017 contained rules addressing the issue of South African resident individuals indirectly holding shares in a foreign company through foreign trusts. However, following oral presentations on the 2017 Draft TLAB at hearings held by the Parliament Standing Committee on Finance on 29 August 2017 and meetings held with stakeholders on 18 September 2017, the above-mentioned proposed rules were withdrawn due to the wide nature and complexity and were postponed to the 2018 legislative cycle. In order to address this issue, it is proposed that the following amendments be made in the Income Tax Act:
  – Disregarding the participation exemption in respect of foreign dividends for purposes of income inclusion in terms of section 7(8) of the Income Tax Act,
  – Disregarding the participation exemption in respect of foreign dividends for purposes of income inclusion in terms of section 25B of the Income Tax Act,
  – Disregarding the participation exemption in respect of capital gains derived from the sale of foreign shares for purposes of attribution of capital gain in terms of paragraph 72 of the Eighth Schedule to the Income Tax Act, and
  – Disregarding the participation exemption in respect of capital gains derived from the sale of foreign shares for purposes of attribution of capital gains in terms of paragraph 80 of the Eighth Schedule to the Income Tax Act

10. Rules addressing the use of trusts to avoid tax in respect of controlled foreign companies

***<u>Comment</u>*:**

- It is recognised that the purpose behind these amendments is as an alternative to attempting to bring the underlying subsidiaries of offshore trusts into the CFC net. This is achieved by removing the participation exemption. Had it been possible to bring these companies within the ambit of the CFC legislation, then the exemptions contained in section 9D of the Act (for example, high tax exemption and foreign business establishment exemption) would have applied. If the exemptions apply, there would be no objection to the shareholder of a CFC enjoying a participation exemption in terms of section 10B(2)(a) of the Act. It is the taxpayers' view that the proposed amendments should be targeted at situations where the above-mentioned exemptions contained in section 9D would not have applied. However, in cases where those exemptions would have applied, there is no reason to deny the participation exemption.

***<u>Response</u>*:**

- <u>Not Accepted.</u> CFC rules make provision for South African residents that have more than 50% participation or voting rights in a CFC to tax an amount equal to the net income of the CFC as if the net income of the CFC was immediately repatriated to South Africa when that income is earned by the CFC. In order to promote international competitiveness, CFC rules make provision for high tax exemption and foreign business establishment exemption. The proposed amendments in the 2018 draft TLAB do not seek to tax the net income of the CFC as if the net income of the CFC was immediately repatriated in South Africa, but seek to remove the participation exemption in respect of foreign dividends and foreign gains in the given circumstances.

10. Rules addressing the use of trusts to avoid tax in respect of controlled foreign companies

Comment:

- The proposed amendment in paragraphs 72 and 80 of the Eighth Schedule to the Act should correspondingly include the 50 per cent participation requirement in the proposed in sections 7(8) and 25B of the 2018 Draft TLAB.

Response:

- Accepted. The 50 per cent participation requirement in the proposed section 7(8) and 25B of the 2018 Draft TLAB will be extended to the proposed sections as to align the proposed amendments to section 7(8) and 25(2A).

Comment:

- In the proposed section 7(8)(aA)(i)(aa) the test is whether the participation rights are held by that person or by any one or more connected persons. For example, if the offshore trust held 30 per cent and a beneficiary held 25 per cent, the requirement of more than 50 per cent would not be met. As a result, it is proposed that, where it states “by that person or any one or more persons…”, it should rather be read “by that person alone or together with any one or more persons…” or “by that non-resident or a connected person in relation to that non-resident”.

Response:

- Noted. The suggested wording to the proposed amendments will be taken into consideration in order to refine the provisions of this section.

11. VAT Treatment of cryptocurrency transactions

The proposed amendment in the 2018 Draft TLAB seeks to clarify the existing provisions dealing cryptocurrencies in the South African tax law and add cryptocurrencies under the provisions of section 2 of the VAT Act, dealing with Financial Services.

Comment:

- The proposal to include the following activities "*the issue, acquisition, collection, buying or selling or transfer of ownership of any cryptocurrency*" under exempt financial services is welcome. However, a definition of "cryptocurrency" needs to be added to the VAT and Income Tax Acts to avoid any possible confusion with loyalty schemes.

Response:

- Not accepted: There cannot be any confusion between cryptocurrency and loyalty schemes as these two have different features. Adding a definition of "cryptocurrency" in both the VAT and Income Tax Acts is not necessary since there is a general understanding of the meaning of cryptocurrencies.

Comment:

- Remove the word "collection" from the proposed new wording of exempt financial services in section 2 of the VAT Act so that the fees that may be charged by 3rd parties (for example debt collectors) may be taxable.

Response:

- Partially accepted: Section 2(1) of the VAT Act currently contains a proviso that excludes fees, commissions, merchant's discounts or similar charges from exempt financial services in section 2. An amendment will be made to this proviso to add a reference to such charges on cryptocurrencies.

11. VAT Treatment of cryptocurrency transactions

Comment:

- If "the issue, acquisition, collection, buying or selling or transfer of ownership of any cryptocurrency" is exempt, then a vendor making 100 per cent taxable supplies who chooses to accept cryptocurrencies as a form of payment and then on-sells such cryptocurrency, will now no longer be making 100 per cent taxable supplies and will no longer be entitled to full input tax credits. The vendor will now also be making exempt supplies and will need to apportion input tax credits. National Treasury should re-consider the proposed inclusion of cryptocurrencies into "financial services" contained in the 2018 Draft TLAB and should rather treat cryptocurrencies as or deem it to be "money".

Response:

- Not accepted: South Africa has taken a policy position and the South African Reserve Bank has issued a policy document stating that cryptocurrencies is not considered to be legal tender in South Africa. As such, National Treasury cannot treat cryptocurrencies as money for tax purposes. That said, the proposed amendment to the VAT Act seeks to treat "the issue, acquisition, collection, buying or selling or transfer of ownership of any cryptocurrency" as an exempt financial services. If a 100 per cent vendor opts to accept cryptocurrency as payment and then needs to sell them later on, then such vendor must accept the fact that the nature of its business has fundamentally changed from one making only taxable supplies to one making mixed supplies and the usual provisions of the VAT Act relating to mixed supplies and apportionment will apply.

2018 DRAFT TAX ADMINISTRATION LAWS AMENDMENT BILL

KEY ISSUES

1. Amendment of definition of 'provisional taxpayer'

The opening words of paragraph *(a)* of the definition of "provisional taxpayer" provide that any person who derives any income by way of any remuneration from an unregistered employer and an amount that does not constitute remuneration or an allowance, is automatically a provisional taxpayer. "Income" means income as defined in section 1 of the Act. Capital gains are a direct inclusion in taxable income, and are currently not included in income. The proposed amendment changed the reference to "income" to "taxable income" which includes taxable capital gains.

Comment

- The proposed amendment will draw in relatively unsophisticated taxpayer such as salary earners with moderate equity portfolios into the provisional tax system. The proposed amendment should be reconsidered in view of the additional administrative burden it will create for taxpayers.

Response

- Accepted. The proposed amendment will be reconsidered for the 2019 legislative cycle.

2. Correction of tax invoices (1)

It happens in practice that after a vendor, being a supplier, issues a tax invoice, the supplier is informed by the recipient that certain information (other than the information pertaining to the VAT, value or consideration of the supply), on that document is incorrect. Technically the document issued by the supplier then does not qualify as a tax invoice. Hence, the recipient is unable to use that document for purposes of deducting input tax and has to request the supplier to issue a document with the correct information such that it qualifies as a tax invoice as defined.

This creates uncertainty by vendors whether the issuing of a new document with the correct information will result in two tax invoices being issued for the same supply and, consequently, result in the vendor committing an offence.

The proposed amendment makes provision for the circumstances described above and permits the supplier to correct the invoice within 21 days from the date of the request to correct it.

2. Correction of tax invoices (2)

Comment

- The amendment proposes that the supplier or recipient must "cancel the original tax invoice and issue a tax invoice with the correct information". In most cases, the accounting systems are designed such that, once the invoice is created, the invoice can only be cancelled by a credit note.

Response

- Partially accepted. The proposed amendment has been reworded to substitute the term "correct" for "cancel". Each vendor's accounting system is unique to its business needs. Each vendor should, therefore, ascertain the manner in which the original tax invoice should be corrected.

2. Correction of tax invoices (3)

Comment

- It must be clarified how the valid (corrected) tax invoices will be treated in the VAT returns for past periods.

Response

- Accepted. The new wording of the proposed amendment, reflected below, makes it clear that there is no change in the time of supply.

> "(1B) Where a tax invoice contains an error in the particulars listed in subsection (4) or (5) and the circumstances contemplated in section 21(1)(a) to (e) of this Act are not applicable, the supplier must—
>
> (i) correct that invoice with the correct particulars, within 21 days from the date of the request to correct it: Provided that the time of supply contemplated in section 9 of this Act remains unaltered; and
>
> (ii) obtain and retain information sufficient to identify the transaction to which that invoice and the corrected invoice refers."

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2. Correction of tax invoices (4)

Comment

- It is proposed that the reference to 'material' error be reconsidered in this context, as any incorrect information may render the document to be an invalid tax invoice, whether the error is subjectively considered to be material or not.

Response

- Partially accepted. The proposed amendment has been reworded to reference the provisions of the VAT Act that deal with the particulars to be included in a tax invoice.

Comment

- The proviso pegs the time of supply to the date of the original tax invoice. There is a concern on what the position is where the time of supply was originally triggered by an event other than the invoice such as the receipt of consideration, or in accordance with some other event in terms of section 9. It is proposed that this proviso be amended to ensure that the original time of supply remains, notwithstanding the cancellation and issuance of a new tax invoice.

Response:

- Accepted. The new wording of the proposed amendment will address this comment.

3. Prescription on erroneous overpayments

The policy position for VAT, being a self-assessment tax, is that the erroneous overpayment prescribes if the vendor does not claim the overpayment within a period of 5 years from the date it was paid to SARS. The proposed amendment aims to ensure that this prescription rule applies and that claims will not be considered valid if the enterprise's banking details for the payment of the refund have not been provided.

Comment

- The position that the claim will not be considered merely because of invalid bank details is unfair and unjust but rather the claim should be considered on its merits and if incorrect bank details were provided, the refund can be withheld pending the provision and validation of correct bank details.

Response

- Partially accepted. As a refund claim cannot be held open indefinitely, the new wording of the proposed amendments will provide for an additional 90 days to provide the banking details if not provided with the claim.

4. Treatment of branches/divisions of juristic person for debt collection

To clarify SARS' set-off and recovery provisions in respect of branches or divisions regarded as separate vendors by the Act, albeit that they are carried on by one and the same legal entity, it is proposed to clarify that set-off and recovery provisions will apply across such separately registered branches and divisions.

Comment

- The reason behind the proposed amendment is clear. However, it is submitted that the administrative burden coupled with the proposed amendment as well as the practical implications thereof has not been taken into account. It is proposed that this amendment be withdrawn. As an alternative, it is recommended that the alternative proposal regarding the wording of the new proposed section 50(7) be included as the wording of the alternative proposal is more precise.

Response

- Partially accepted. The alternative proposal regarding the wording will be used. Measures will be put in place that the branch whose refund is set-off, is notified of the set-off and in respect of which other branch.

5. Extension of joint and several liability for VAT to members of a joint venture

To provide legal certainty that all the members of a joint venture may be jointly and severally liable for the VAT debts of the joint venture, it is proposed that such members be placed in the same situation as partners in a partnership.

Comment

- A joint venture is not recognised in law as having a legal persona. It is often only identifiable based on the contractual arrangement among contracting parties. In practice it can take many shapes and forms and varies from very formal arrangements to informal collaborative arrangements. Due to the critical impact that this proposed amendment might have on the parties involved in joint ventures and similar contractual arrangements, it is recommended that a definition of a joint venture be inserted in the VAT Act.

Response

- Not accepted. The proposed amendment only applies to joint ventures, other than joint ventures carried on through companies, that specifically register for value-added tax purposes as vendors. To avoid joint liability for VAT purposes, the joint venture can register as a company to do business.

6. Notification of commencement of an audit (1)

To ensure that a taxpayer is notified at the start of an audit, as part of efforts to keep all parties informed, and to distinguish between a verification and an audit, it is proposed that the provision of an audit engagement letter by SARS is made mandatory.

Comment

- The proposed amendment is welcomed as a step in the right direction. However it is limited to the audit process. In order to enhance this provision it is recommended that the proposed amendment be extended to apply to all SARS actions that may result in an assessment including verification or inspection processes.

Response

- Not accepted. For purposes of an inspection SARS may without prior notice arrive at premises to determine the identity of the person occupying the premises, whether the person occupying the premises is conducting a trade or an enterprise and is registered for tax and keeps the required records. These inspections are typically used for tax base broadening purposes or verification, for example, of the existence of an enterprise for purposes of VAT registration. Advance notification would defeat this objective.

6. Notification of commencement of an audit (2)

Response (cont.)

- Verification, in turn, is intended to be a short process and introducing additional steps in the process would simply delay the finalisation of such matters, including the payment of refunds where due. If pursuant to a verification the assessment is adverse, the taxpayer is entitled to grounds for the assessment and should be in a position to understand why the outcome is adverse
- An audit is generally a more detailed and protracted process which is why it involves audit progress reports, letters of audit findings and a pre-assessment opportunity to respond to the audit findings.

6. Notification of commencement of an audit (3)

Comment

- It is recommended that the legislation should stipulate that SARS is obliged to issue the audit engagement letter within a specified time period before the commencement of the audit and that the subsequent progress reports are issued at 90 day intervals without any request from the taxpayer.

Response

- <u>Not accepted.</u> Notice of commencement of audit simply means SARS will use its information gathering powers, within the limits thereof including time periods where prescribed, under the Tax Administration Act. Attempting to prescribe time periods in the audit context is problematic given differences between the types of audits, manner in which an audit is conducted (e.g. request for information vs field audit) and complexity. In the case of a field audit, given its more intrusive nature, advance notice of at least ten business days must be given by SARS, unless the taxpayer waives the notice. An audit progress report must be provided by SARS in the prescribed manner and intervals and is not request driven.

7. Understatement penalties (1)

The Tax Administration Act, in the definition of “understatement”, uses the phrase “default in rendering a return” which is old wording from the Income Tax Act that may cause confusion as the Tax Administration Act otherwise refers to “submit a return required under a tax Act or by the Commissioner”. The proposed amendment aims to align the wording used in the Tax Administration Act. Failure to submit a return is subject to either an administrative non-compliance penalty or an understatement penalty under the Act.

Comment

- The administrative non-compliance penalty and not the more severe understatement penalty is the appropriate penalty provision which is designed for and suitable for purposes of dealing with or penalising the non-submission of a tax return and as a result of the proposal an artificial situation is created whereby ‘tax’ must be deemed to be nil.
- It is proposed that the non-submission of a return is only made subject to an administrative non-compliance penalty. If SARS is of the view that the non-compliance penalty is insufficient, the law provides for appropriate remedies in the form of estimated assessments and jeopardy assessments which are for this exact purpose, namely failure to submit a return.

7. Understatement penalties (2)

Response

- Not accepted. The overlap between an administrative non-compliance penalty and an understatement penalty is a long standing one. It is necessary to ensure that cases where no return is submitted and cases where a return is submitted but with an omission or incorrect statement are subject to the same penalty. It would be incongruent if a person who did not submit a return at all is treated more leniently than a person who did submit a return. An estimated or jeopardy assessment without an understatement penalty would not address this incongruity. The behavioural requirements for the imposition of an understatement penalty are such that it is unlikely to find application in less serious cases. If an understatement penalty is imposed, current law provides that no administrative non-compliance penalty may be imposed to prevent duplication of administrative penalties.

8. Deregistration of tax non-compliant tax practitioners (1)

To ensure that registered tax practitioners are tax compliant, it is proposed that, if a tax practitioner has during the preceding 12 months for an aggregate period of at least six months been tax non-compliant (i.e. had outstanding debts or tax returns) and has failed to demonstrate that he or she has been compliant for that period or remedy the non-compliance within the period specified by SARS, the tax practitioner will be deregistered. The tax practitioner may be reregistered once he or she remedied the tax non-compliance and the above conditions are no longer met.

Comment

- The principle that tax practitioners should have their own house in order before they provide tax services to the public is welcomed. However, the express concern is that the mere proposal to identify non-compliance with a specified time period does not appropriately address the matter.

Response

- Not accepted. What is intended is a clear and proactive mechanism to determine non-compliance by a tax practitioner.

8. Deregistration of tax non-compliant tax practitioners (2)

Comment

- The meaning of 'repetitive' which is in the context of an alternative test to 'for a continuous period of at least six months' is entirely unclear and therefore open to interpretation and should be defined.

Response

- Accepted. The new wording of the proposed amendment is as follows:

"*(d)* during the preceding 12 months has for an aggregate period of at least six months not been tax compliant to the extent referred to in section 256(3)*(a)* and *(b)* and has failed to—

(i) demonstrate that he or she has been compliant for that period; or

(ii) remedy the non-compliance,

within the period specified in a notice by SARS.".

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8. Deregistration of tax non-compliant tax practitioners (3)

Comment

- The time period of the continuous non-compliance is not aligned to the period of non-compliance with respect to submission of tax returns in terms of which an administrative non-compliance penalty is imposed. In this regard, the penalty is imposed only on the second incidence of non-compliance. It is proposed that the non-submission of returns should be aligned to section 210 of TAA.

Response

- Not accepted. Non-compliance in this context may involve other tax types such as employees' tax or VAT.

Comment

- Tax practitioners' tax compliance as a requirement for Recognised Controlling Bodies affiliation and membership is done on an annual basis. There seems to be a mismatch to deregister a practitioner who has been non-compliant for three months during any six months period.

Response

- Partially accepted. See new wording of proposed amendment.

8. Deregistration of tax non-compliant tax practitioners (4)

Comment

- It is submitted that the 6-month period is too short and should be extended to a year in order to cater for extraordinary circumstances.

Response

- Accepted. See new wording of proposed amendment.

Comment

- There is a significant risk that tax practitioners may be disadvantaged as a result of the systemic SARS issues rendering such tax practitioner as being ‘non-compliant’ with no clear indication as to how the non-compliance arose or how the matter will be resolved, unless a fair procedure exists in relation to these contested positions.

Response

- Accepted. Under the new wording of the proposed amendment, tax practitioners will be given the opportunity to show that they are in fact compliant.

Thank you

QUESTIONS ?