

STANDING COMMITTEE ON FINANCE PUBLIC HEARINGS



DRAFT TAX BILLS 2018

21 AUGUST 2018

Presented by:
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Pieter Faber

2016

DRAFT BILLS OVERVIEW

DISCUSSION POINTS TODAY

Tax Administration Laws Amendment 2018

Diesel rebate set-off against VAT

Tax Practitioner tax non-compliance

Taxation Laws Amendment 2018

Section 7C extension

Collective Investment Schemes – Deemed income

Dividend stripping



01

Diesel Rebate and VAT set-off

Applying the law

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DIESEL REBATE AND VAT SET-OFF

SARS PRACTICE

Diesel rebates are set-off against VAT payment liability (i.e. difference between output and input VAT) on VAT 201 return

The diesel rebate is a customs matter and not a VAT tax and is manually transferred for set-off

The requirements for VAT are in VAT Act and TAA and for diesel rebate in the Customs Act (including Schedule 6)

DIESEL REBATE AND VAT SET-OFF CONCERNS

- Long outstanding SARS matter since 2014
- Diesel rebates not set-off against VAT payment liability within 30 days due to customs audit etc. creates VAT underpayment for rebate amount
- Vendor has no ability to pay gross as payment generated by SARS system on net basis
- Diesel rebate is not a “tax” as defined in the TAA and is not subject to section 191 TAA set-off provisions, thus not legally allowed
- The diesel rebate delay invariably creates 2 disputes, one for customs on any audit and another for VAT for underpayment

DIESEL REBATE AND VAT SET-OFF RECOMMENDATIONS

- Diesel rebates as set-off should be incorporated into TAA and SARS systems to avoid automatic VAT underpayments due to rebate claim delays
- Alternatively, VAT 201 should be amended to remove diesel rebate as set-off item but separately claimable



02

Tax Practitioner Regulation

Addressing tax non-compliance

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TAX PRACTITIONER REGULATION

NT POSITION AND PROPOSAL

Current position is that tax compliance not a statutory Tax Practitioner regulatory matter

Tax compliance is indirectly enforced on only non-statutory RCB members as **ethics** requirements

The current dispensation is administratively onerous and inefficient as it requires RCB to confirm tax compliance via members from SARS to manually submit again to SARS

Welcome SARS holding 2 day RCB workshop on 27 & 28 August to address strategic matters

TAX PRACTITIONER REGULATION

CONCERNS

SAICA welcomes proposal that SARS will enforce tax compliance and that it will apply equally to all RCB's

However, concern that:

- Should not be a prohibition to register for whole of section 240(1) (i.e. RCB and SARS), just para (ii) with SARS otherwise administration retained with RCB
- Concerns with no specific review process to address SARS compliance monitoring system anomalies
- There is no prescribed notice period for refusal to register or deregister
- There is no obligation on SARS to inform RCB of deregistration or refusal to register
- There is no mechanism to on-bulk transfer high volumes of taxpayers or inform taxpayers of TP deregistration
- No relief or time line extensions afforded for taxpayers whose TP was deregistered



TAX PRACTITIONER REGULATION RECOMMENDATIONS

- Proposal should be withdrawn and postponed until after RCB/SARS workshop **27-28 August 2018**
- Compliance notice and review of compliance transgression should be aligned to a fair procedure, including alignment of debt suspension provisions
- Impact on affected taxpayers should be accommodated



03

Section 7C extension

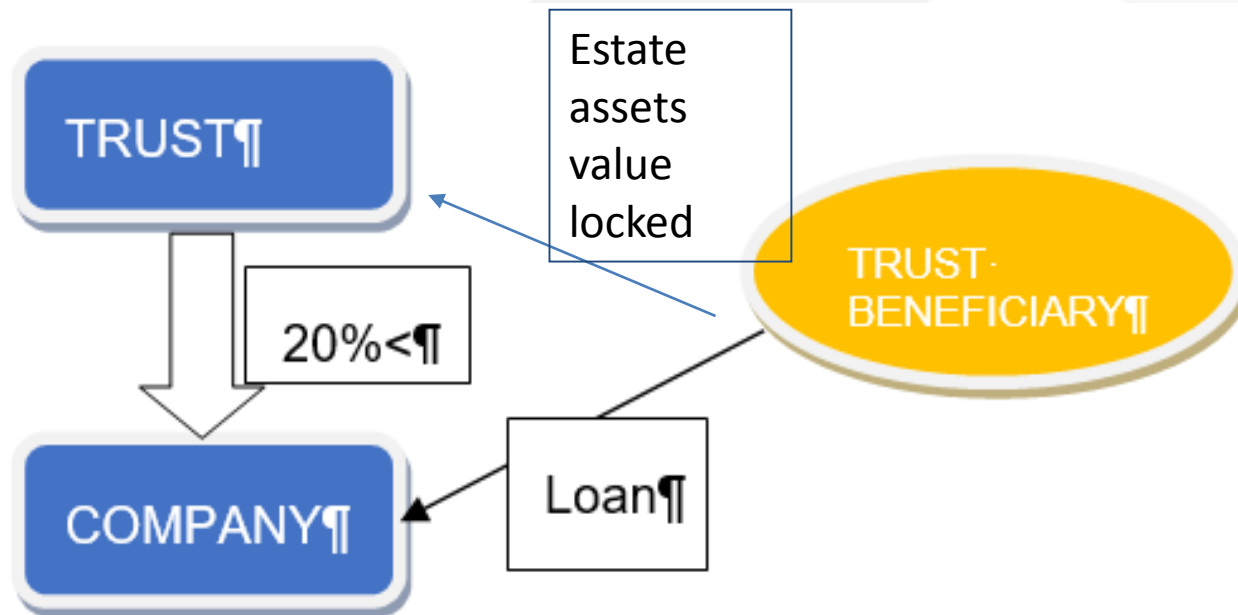
Going beyond avoidance

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Help Desk Support: IT

SECTION 7C EXTENSION

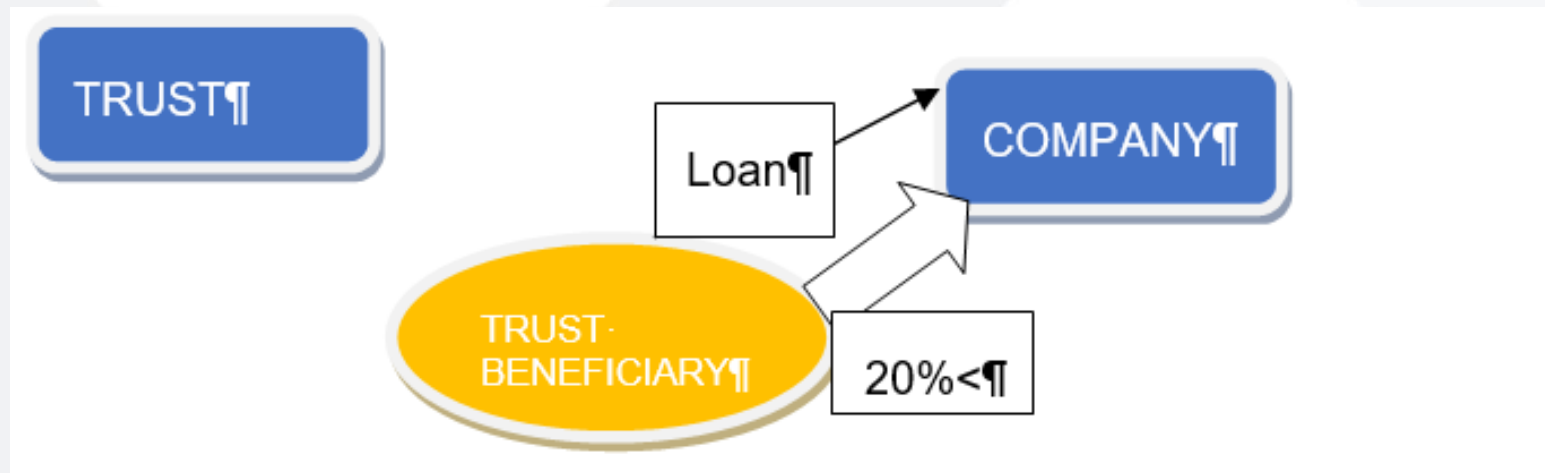
POLICY RATIONALE

- Scope of the avoidance – Estate value manipulation



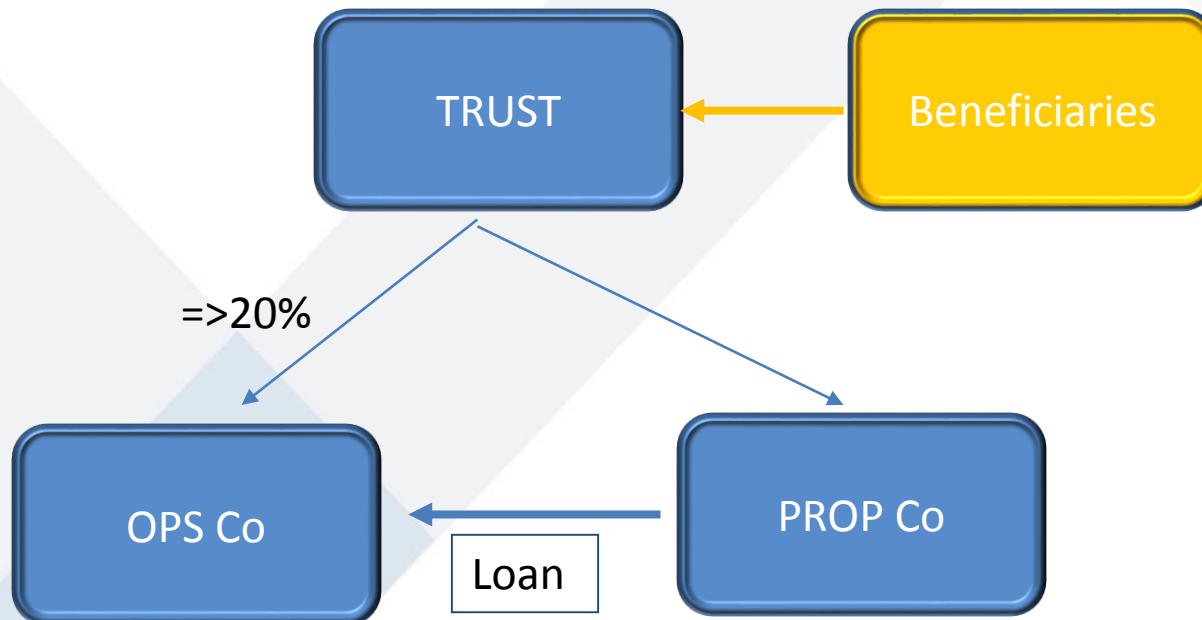
SECTION 7C EXTENSION ANOMALIES

- Exceeding avoidance scope – No asset connection



SECTION 7C EXTENSION ANOMALIES

- Exceeding avoidance scope – Inter-company loans



SECTION 7C EXTENSION

CONCERN AND PROPOSAL

- Addressing overly broad scope
 - Proposal should explicitly require a shareholding by the trust in the company
 - Further, the shareholding of the trust in the company together with the shareholding of a trust beneficiary (not the shareholding of a connected person in relation to the trust) should have to exceed the required 20% threshold
 - Guidance should be provided on the interpretation of the provision, including interpretation of the terms ‘at the instance of’ and ‘directly or indirectly’

04

Collective Investment Schemes (CIS)

Deemed income



COLLECTIVE INVESTMENT SCHEMES

CURRENT POLICY PRINCIPLE

- **Section 25BA – Conduit principle**
 - The CIS is mainly an investment vehicle for long term savers who have a capital investment
 - CIS portfolio manager manages on behalf of investors
 - Normal capital vs revenue nature rules should apply



COLLECTIVE INVESTMENT SCHEMES

NT POLICY AND PROPOSAL

- **Section 25BA – deemed income**
 - Deem all receipts from disposals as **income** if disposed of within 12 months, irrespective of intention of CIS or investor
 - NT **intention** to treat all CIS' equally by having the same tax treatment on disposals
 - NT **rejects** notion that investor capital intention the same as CIS intention if shares are frequently traded by the CIS, notwithstanding that CIS is a mere conduit

COLLECTIVE INVESTMENT SCHEMES

ANOMOLIES

- Many disposals are triggered not by trade intent but other factors
- Disposals can also occur due to short term instruments that are used to hedge longer positions on a continuously renewed basis
- Globally there does not seem to be a similar tax practice in other markets

COLLECTIVE INVESTMENT SCHEMES PROPOSALS

- **Proposals**
 - Amendment should be reconsidered especially as it changes standard tax principles of capital vs revenue without a clear rationale
 - The actual concern of single or small group investor trade abuse should be addressed rather than creating inequity for broad *bona fide* capital savings investor groups

05

Dividend Stripping

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DIVIDEND STRIPPING CONCERNS

- The override of the corporate restructuring rules has been hugely problematic for legitimate transactions
- The use of an 18 month test for subsequent corporate rollovers lengthens the effect of the test to 36 months which is too long



DIVIDEND STRIPPING RECOMMENDATIONS

- The rectification of the override should therefore take effect on 18 December 2017 (the date of promulgation of the TLAA of 2017) and not prospectively
- The current proposal should be simplified: the high-value company “scheme” mentioned in the Explanatory Memorandum would in any event not make commercial sense for taxpayers to implement



THANK YOU