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

Ref: #775977

31 August 2024

National Treasury Policy Department and Ms Adele Collins
National Treasury / South African Revenue Service

Per email: 2024AnnexCProp@treasury.gov.za
acollins@sars.gov.za

Dear National Treasury and Ms Collins

SAICA COMMENTS ON THE DRAFT 2024 TAXATION LAWS AMENDMENT BILL

The National Tax Committee, on behalf of the South African Institute of Chartered Accountants (SAICA), welcomes the opportunity to make a submission to the National Treasury (NT) and the South African Revenue Service (SARS) on the 2024 Draft Taxation Laws Amendment Bill (DTLAB).

Our submission has addressed amendments to the following tax Acts –

- The Income Tax Act, 58 of 1962, as amended (the Income Tax Act);
- The Value Added Tax Act, 89 of 1991, as amended (the VAT Act); and
- The Employment Tax Incentive,26 of 2013, as amended (the ETI)

We have set out our comments on the above in detail in **Annexure A**.

On a more general note, we wish to raise the following points:

1. There does not appear to be a public record that confirms those matters, submitted by stakeholders, have all been considered by NT and the Minister for inclusion in/exclusion from the Budget Review. As is self-evident, this results in stakeholders having no sense as to whether matters not included in the Budget Review are not a current policy or legislative imperative or whether its not within the relevant policy at all.

2. Without this certainty of outcome, stakeholders repeat submissions in the hope of an eventual clear position or outcome from NT. As Parliament noted, if stakeholders take the time to make submissions, they can expect a short explanation as to why matters were considered or not. NT did accommodate a follow-up engagement for the first time on 3 November 2022 (“Recurring Tax Proposals") following our concerns expressed to ScoF on this matter.

3. However, we submit that this engagement on the matters that will not be addressed in the bills should occur before the bills are released to ensure that the Minister has properly applied his mind as to what should or should not have been included in the Bills. It also does not explain why technical errors, including spelling mistakes, are not corrected.

Please do not hesitate to contact us should you have any queries in relation to our submission.

Yours sincerely

David Warneke

Chairperson: National Tax Committee

Pieter Faber

Executive: Tax

Lesedi Seforo

Project Director: Tax Advocacy

The South African Institute of Chartered Accountants

International Federation of Accountants

NPO-020-050 VAT No. 4570104366
17 Fricker Road, Illovo, Sandton, Johannesburg, 2196 POSTAL ADDRESS Private Bag X32, Northlands, 2116
TEL +27 11 621 6600 FAX +27 11 622 3321 CALL CENTRE 08610 SAICA (72422) EMAIL saica@saica.co.za
WEB saica.co.za | accountancysa.org.za
Member of the International Federation of Accountants (IFAC), Pan African Federation of Accountants (PAFA), Global Accounting Alliance (GAA), Chartered Accountants Worldwide (CAW) and Investors in People.
Proudly South African

Chartered Accountants Worldwide Member

Table of Contents

ANNEXURE A:

DRAFT TAXATION LAWS AMENDMENT BILL 2024 ... **5**

INCOME TAX ACT ... 5

Section 1 – Definition of “REIT” – extension to unlisted structures (Clause 1(*d*)) ... 5

Section 1 – Definition of “trust” (Clause 1(*h*)) ... 5

Section 6*quat* – Rebate or deduction in respect of foreign taxes (Clause 2(1)(a)) ... 6

Section 6*quat* – Rebate or deduction in respect of foreign taxes (Clause 2(1)(*b*)) ... 6

Section 8EA – Dividends on third-party backed shares (Clause 6(b)) ... 7

Sections 12C, 13 & 13*quat* – Unavailability of s12C, 13(1) and 13quat allowances where an asset once qualified for the s12V allowance (Clauses 10, 13 and 15) ... 7

Section 12V – Deduction in respect of investment allowance in respect of the production of electric and hydrogen-powered vehicles (Clause 12) ... 8

Section 20 – Set-off of assessed losses (Clause 16(1)(b)) ... 10

Section 23N – Limitation of interest deductions in respect of reorganisation and acquisition transactions (Clause 19) ... 11

Section 24I – Foreign exchange transactions – definition of ‘exchange item’ (Clause 20(1)(*b*)) ... 12

Sections 24I – The interaction of the set-off of assessed loss rules and rules on exchange differences on foreign exchange transactions (Clause 20(1)(c)) ... 12

Section 25E – Determination of contributed tax capital in foreign currency (Clause 23) 14

Paragraphs 2(1)(c) and 6A of the Second Schedule – transfers between retirement funds (Clause 31) ... 15

Paragraph 64B – Eighth Schedule – Disposal of equity shares in foreign companies (Clause 35(1)(a)) ... 16

VALUE ADDED TAX ACT ... 16

Section 8(2)(vi) – Rentals by foreign entities of ships, aircraft or rolling stock (clause 46) ... 16

Section 12(h)(ii) – Supplies made by schools, universities, technikons or colleges (clause 48), read with proposed new section 8(2G) (clause 46) ... 17

Section 16(3) proviso (i) – Prescription period for input tax claims (Clause 48) ... 18

EMPLOYMENT TAX INCENTIVE ACT ... 22

Section 1 – Monthly remuneration (Clause 58) ... 22

MATTERS NOT ADDRESSED IN DRAFT TAX BILLS 2024 ... **24**

Section 8F – Interest on hybrid debt instruments deemed to be dividend in specie ... 24

International Federation of Accountants

NPO-020-050 VAT No. 4570104366
17 Fricker Road, Illovo, Sandton, Johannesburg, 2196 POSTAL ADDRESS Private Bag X32, Northlands, 2116
TEL +27 11 621 6600 FAX +27 11 622 3321 CALL CENTRE 08610 SAICA (72422) EMAIL saica@saica.co.za
WEB saica.co.za | accountancysa.org.za

Member of the International Federation of Accountants (IFAC), Pan African Federation of Accountants (PAFA), Global Accounting Alliance (GAA), Chartered Accountants Worldwide (CAW) and Investors in People.
Proudly South African

Chartered Accountants Worldwide Member

Home office allowances 25
Penalty for exceeding assigned carbon budget 27

ANNEXURE A

DRAFT TAXATION LAWS AMENDMENT BILL 2024

INCOME TAX ACT

Section 1 – Definition of "REIT" – extension to unlisted structures (Clause 1(*d*))

1. To provide a basis for the tax treatment of unlisted property companies and to ensure monitoring by the Financial Sector Conduct Authority ("FSCA"), it is proposed that the "REIT" definition in section 1 of the ITA be extended to cater for a South African companies that are not listed on the South African Stock Exchange but are regulated by the FSCA (through the published requirements approved in consultation with the Director-General of the NT).

2. The proposed paragraph (b) of the definition of REIT is problematic in that it does not state what the requirements and conditions to be set by the FSCA relate to. Presumably, what is intended is that the requirements and conditions set by the FSCA will relate to approval as a company 'as a REIT', and this should be stated in paragraph (b).

3. Submission: Clarity is requested in this regard.

4. Furthermore, although the proposed change is welcomed; there is no effective date nor deadline by which the FSCA is required to publish the approved regulations, which renders the legislation ineffective until the FSCA publishes the relevant regulatory framework.

5. Until such time the unfair and disparate treatment between the unlisted and listed REIT sector remains.

6. Also, the draft legislation does not expressly make any reference to Infrastructure Funds (mainly immovable property holding including renewable energy assets), Development Impact Funds and/or Social Impact Funds (e.g. schools, healthcare, etc).

7. Submission: Whilst we note that NT has delinked the tax treatment of unlisted property companies from the Conduct of Financial Institutions ('COFI') Bill, it is recommended that NT consider introducing the following interim measure, subject to the publication of the regulatory requirements by the FSCA:

8. Extend the exclusion in section 23M(6) by removing reference to 'linked units' (i.e. a debenture and share linked and traded together as a single unit) and replace it with all forms of funding not limited to linked units (e.g. loans, debentures, bonds, etc)

Section 1 – Definition of "trust" (Clause 1(*h*))

9. NT proposes to amend the definition of 'trust' to include both a portfolio of a collective investment scheme ('CIS') and a 'hedge fund collective investment scheme'.

International Federation of Accountants
NPO-020-050 VAT No. 4570104366
17 Fricker Road, Illovo, Sandton, Johannesburg, 2196 POSTAL ADDRESS Private Bag X32, Northlands, 2116
TEL +27 11 621 6600 FAX +27 11 622 3321 CALL CENTRE 08610 SAICA (72422) EMAIL saica@saica.co.za
WEB saica.co.za | accountancysa.org.za
Member of the International Federation of Accountants (IFAC), Pan African Federation of Accountants (PAFA), Global Accounting Alliance (GAA), Chartered Accountants Worldwide (CAW) and Investors in People.
Proudly South African
Chartered Accountants Worldwide Member

10. The extension of this definition to these schemes will result in all the income tax provisions that apply to trusts applying to such collective investment schemes (for example, section 25B and paragraph 80 of the Eighth Schedule).

11. With regard to hedge funds specifically, the majority of them are constituted as *en commandite* partnerships, and this is recognised in section 25BA(2). Section 24H would ordinarily apply to these hedge funds, but the proposed amendment will result in the application of all income tax provisions pertaining to trusts, therefore applying to hedge funds as well.

12. Submission: It is therefore not clear whether the sections of the Act dealing specifically with trusts, including section 25B and paragraph 80 of the Eight Schedule, will take precedence over sections 25BA and 24H in the case of portfolio of collective investment schemes and portfolios of hedge fund collective investment schemes respectively.

13. Clarity is required in this regard.

Section 6*quat* – Rebate or deduction in respect of foreign taxes (Clause 2(1)(a))

14. The proposed amendment is welcomed.

15. Submission: However, it is submitted that the effective date for the proposed amendment should be 1 March 2024 in order to immediately address the double-taxation currently prejudicing taxpayers.

Section 6*quat* – Rebate or deduction in respect of foreign taxes (Clause 2(1)(*b*))

16. The 2024 DTLAB proposes to align the translation date in relation to the resident and the foreign tax credit under section 6*quat* with the translation period for the inclusion of the controlled foreign company ('CFC') income in section 9D, so that both the foreign tax credit and the CFC income are translated to Rand on the last day of the *foreign tax year of the CFC*.

17. The draft Explanatory Memorandum ('draft EM') stipulates that the proposed amendments will come into operation on 1 January 2025 and apply in respect of foreign tax years of CFCs ending on or after that date. However, the 2024 DTLAB stipulates that the proposed amendment comes into operation on 31 December 2024 and applies in respect of foreign tax years of CFCs ending on or after that date.

18. Submission: It is submitted that clarity be provided on the effective date as the 2024 DTLAB and draft EM have two different dates.

19. In addition, the proposed amendment to section 6*quat*(4)(*b*) does not specify the exchange rate (i.e. average rate or spot rate) to be used for the translation of the foreign tax credit to Rand, which creates uncertainty as to the rate to be used for the translation.

International Federation of Accountants

NPO-020-050 VAT No. 4570104366
17 Fricker Road, Illovo, Sandton, Johannesburg, 2196 POSTAL ADDRESS Private Bag X32, Northlands, 2116
TEL +27 11 621 6600 FAX +27 11 622 3321 CALL CENTRE 08610 SAICA (72422) EMAIL saica@saica.co.za
WEB saica.co.za | accountancysa.org.za
Member of the International Federation of Accountants (IFAC), Pan African Federation of Accountants (PAFA), Global Accounting Alliance (GAA), Chartered Accountants Worldwide (CAW) and Investors in People.
Proudly South African

Chartered Accountants Worldwide Member

20. Submission: Clarification should be provided as to the translation rate to be used for purposes of translating the foreign tax credit amount to Rand.

21. In this regard, we propose that the translation rate be aligned to the translation rate used to translate the CFC income into Rand for purposes of section 9D(6) as well as the principle in section 6*quat*(4)(*a*) (i.e. the average exchange rate for the foreign tax year of the CFC) as follows:

"(4) For the purpose of this section the amount of any foreign tax proved to be payable as contemplated in—…

(b) subsection (1A)(b) in respect of any amount which is included in the taxable income of any resident during any year of assessment, shall be translated to the currency of the Republic on the last day of the foreign tax year of the controlled foreign company in respect of which the proportional amount referred to in that subsection is determined by applying the average exchange rate for that foreign tax year."

Section 8EA – Dividends on third-party backed shares (Clause 6(b))

22. The proposed amendment seeks to provide clarity on the exclusions to the ownership requirements which were introduced in 2023.

23. While the draft EM notes that these exclusions should also apply to the settlement of accrued interest, the actual proposed wording in the 2024 DTLAB refers only to the settlement of any amount of dividends or foreign dividends.

24. Submission: We submit, therefore, that the proposed wording to paragraph (a) of subsection (3) of section 8EA be amended to include the words 'or accrued interest' to align with the intention as set out in the Explanatory Memorandum.

25. We further submit that since the proposed amendment to paragraph (a) is intended to clarify the ambit of the existing exclusion, the effective date of this amendment should be 1 January 2024, and applicable in respect of all dividends, foreign dividends or accrued interest received by or accrued during years of assessment commencing on or after that date.

Sections 12C, 13 & 13*quat* – Unavailability of s12C, 13(1) and 13quat allowances where an asset once qualified for the s12V allowance (Clauses 10, 13 and 15)

26. The Draft EM states that the intent is that no double deduction should be available where a section 12V allowance is claimed.

27. However, the proposal whereby no other allowances would be available where a taxpayer has ever claimed a section 12V allowance in respect of the asset will act as a major deterrent to investment.

International Federation of Accountants

NPO-020-050 VAT No. 4570104366
17 Fricker Road, Illovo, Sandton, Johannesburg, 2196 POSTAL ADDRESS Private Bag X32, Northlands, 2116
TEL +27 11 621 6600 FAX +27 11 622 3321 CALL CENTRE 08610 SAICA (72422) EMAIL saica@saica.co.za
WEB saica.co.za | accountancysa.org.za
Member of the International Federation of Accountants (IFAC), Pan African Federation of Accountants (PAFA), Global Accounting Alliance (GAA), Chartered Accountants Worldwide (CAW) and Investors in People.
Proudly South African

Chartered Accountants Worldwide Member

28. For example, if a taxpayer risks its capital by constructing such a facility which later proves economically unsustainable and the assets are put to another use in the taxpayer's trade, the taxpayer will be prohibited from claiming any allowances going forward in terms of sections 12C, 13(1) or 13quat in respect of the assets simply because the assets once qualified for the section 12V allowance.

29. Surely the aim is simply to prohibit more than one allowance being claimed simultaneously and the total allowances exceeding the cost of the asset.

30. The problem of double deductions is already adequately addressed in section 23B(1) and there is no need to repeat this wording in every section of the Act prohibiting amounts being claimed under more than one provision of the Act.

31. Submission: Section 23B(1) should be expanded to state that the total deductions or allowances claimed under various specific sections (section 12V, s12C, s13 and 13*quat*) and any other sections where this treatment is sought, not in aggregate exceed the cost of the asset in respect of which deductions or allowances are claimed.

32. The wording of the proposed subsections 12C(3)(f), 13(2A) and 13*quat*(5)(d) should, at the same time, be amended to state that where in respect of the cost of an asset a deduction has been made under any other section of the Act, a deduction may not also be made under that provision <u>in the same year of assessment.</u>

33. Section 13*quin*(5) also presents a problem in this regard. It should be reworded in the same manner as set out immediately above.

<u>Section 12V – Deduction in respect of investment allowance in respect of the production of electric and hydrogen-powered vehicles (Clause 12)</u>

Hybrid vehicles

34. It is noted in the draft EM on the reasons for change that the *Electric Vehicles White Paper* "*outlining its plan to transition the automotive industry from primarily producing internal combustion engine vehicles to a dual platform that includes the production of electric vehicles*" does not fully address the issue of the so-called "hybrid vehicle" which is a combination between an electric vehicle and an internal combustion engine.

35. Many of the more modern choices are those of dual hybrid vehicles.

36. In our opinion, the tax incentives should also take into account the need for such hybrid vehicles and that this enhanced allowance should clearly cover the manufacture of such hybrid vehicles.

37. <u>Submission:</u> Whilst we do note that there is inherently a delay in a decision to enter a new market and therefore a delay on the implementation of acquisition of plant and machinery

NPO-020-050 VAT No. 4570104366
17 Fricker Road, Illovo, Sandton, Johannesburg, 2196 POSTAL ADDRESS Private Bag X32, Northlands, 2116
TEL +27 11 621 6600 FAX +27 11 622 3321 CALL CENTRE 08610 SAICA (72422) EMAIL saica@saica.co.za
WEB saica.co.za | accountancysa.org.za
International Federation of Accountants
Member of the International Federation of Accountants (IFAC), Pan African Federation of Accountants (PAFA), Global Accounting Alliance (GAA), Chartered Accountants Worldwide (CAW) and Investors in People.
Proudly South African
Chartered Accountants Worldwide Member

in this regard, it is noted that we do already have local vehicle manufacturers who may wish to commence the process earlier than 1 March 2026.

38. In this regard, we raise the question as to whether or not it is more in the interest of the fiscus to have this effective date being 1 March 2025.

39. Whilst we are going to raise this here, we do understand that it is probably more correctly a proposal for matters going forward. We are including here within the special allowances to accelerate investment in the motor industry as it is directly relevant to that industry.

40. The ad valorem tax on motor vehicles currently distorts the composition of tax on the medium to lower end vehicles. Historically, this tax was imposed on the higher valued vehicles but has now crept to cover lower and medium cost vehicles.

41. A review of the ad valorem tax on motor vehicles to ensure that there is sufficient gap in the pricing between a locally manufactured vehicle and an imported vehicle of a similar value needs to be undertaken.

Foundations and supporting structures

42. Unlike sections 11(*e*), 12C and 12BA, the proposed section 12V does not deal with foundations or supporting structures.

43. Submission: It is submitted that the cost of foundations or supporting structures should also qualify for the allowance along similar lines to the other sections mentioned above.

44. Furthermore, the word ‘any’ in subsection 12V(1) should be ‘an’, so as to read: “an amount equal to 150 per cent…”

Meaning of ‘motor vehicle manufacturer’

45. In terms of the proposed provision – section 12V(1) – the investment allowance will apply to, or made available to a person that is a “motor vehicle manufacturer”.

46. The ITA currently does not have a definition of a ‘motor vehicle manufacturer’. The process of manufacturing vehicles involves various steps, including assembling parts.

47. Submission: To avoid confusion on who will be entitled to this allowance, it is submitted that a definition of a ‘motor vehicle manufacturer’ be provided.

Extension of allowance to vehicle parts

48. We understand that the purpose of the introduction of proposed investment allowance is encourage investment in the production of electric and hydrogen-powered vehicles in South Africa. We believe that the attraction of this type of investment will go a long way in

NPO-020-050 VAT No. 4570104366
17 Fricker Road, Illovo, Sandton, Johannesburg, 2196 POSTAL ADDRESS Private Bag X32, Northlands, 2116
TEL +27 11 621 6600 FAX +27 11 622 3321 CALL CENTRE 08610 SAICA (72422) EMAIL saica@saica.co.za
WEB saica.co.za | accountancysa.org.za
International Federation of Accountants
Member of the International Federation of Accountants (IFAC), Pan African Federation of Accountants (PAFA), Global Accounting Alliance (GAA), Chartered Accountants Worldwide (CAW) and Investors in People.
Proudly South African
Chartered Accountants Worldwide Member

combating the high unemployment rate (particularly youth unemployment) that this country currently faces.

49. The process of manufacturing of vehicles requires the assembling of parts. For the country to benefits extensively from the electric and hydrogen-powered vehicles industry, incentives must be made available to encourage the local production of parts that will be used in the process of manufacturing electric and hydrogen-powered vehicles. This, in our view, will assist in addressing the joblessness in our country.

50. Submission: It is therefore submitted that the provisions of the proposed section 12V be extended to include the manufacturers of parts that are used in the manufacturing of electric and hydrogen-powered vehicles.

Section 20 – Set-off of assessed losses (Clause 16(1)(b))

51. The 2024 DTLAB includes a proposed amendment to the limitation of the extent to which any balance of an assessed loss may be set-off against the taxable income of companies that are in the process of liquidation, deregistration or winding-up.

52. The relaxation and practical approach proposed is certainly to be welcomed.

53. Companies that are in the process of liquidation, deregistration or winding-up often generate taxable income during their 'wind-up' phase. Such income is usually in the form of loan write-offs, recoupments, interest income and foreign exchange gains.

54. Frequently these components of taxable income will not be considered to originate from active trading but rather from passive/incidental activities.

55. In terms of practical application therefore, it will often be the case that a company in the process of liquidation, etc, and which has carried forward a "balance of assessed loss", will not generate taxable income "from carrying on any trade" in later years, as is required by section 20(1), in order for any set-off to be permitted.

56. This may therefore result in the balance of assessed loss effectively (and frequently) being forfeited entirely before consideration of the (proposed, relaxed) loss limitation rules.

57. Taxpayers seeking access to the relaxation of the 'loss-limiting rule' would need to ensure that all "taxable events" are effectively wrapped up during the tax year in which the relevant company still trades, and has also initiated the process of liquidation, deregistration or wind-up.

58. Commercially, this will often not be possible because liquidation/deregistration, etc often spans several years due to these companies' roles or location within a corporate structure or for other commercial reasons.

59. Submission: Companies undergoing liquidation, de-registration or winding-up often forfeit a balance of assessed loss due to the trade requirement not being met, and thus have to pay tax on interest income, foreign exchange gains, etc.

60. It is therefore submitted that the proposed amendment include an override of the “trade requirement” for companies in the process of liquidation, deregistration or winding-up.

61. Without such an override, it is difficult to envisage the proposed amendment being achieving the NT’s intention.

Section 23N – Limitation of interest deductions in respect of reorganisation and acquisition transactions (Clause 19)

62. The 2024 DTLAB proposes that the definition of ‘adjusted taxable income’ and the methodology applied to limit an interest deduction in section 23N of the ITA, be reviewed and amended for closer alignment to the provisions of section 23M of the ITA.

63. However, it must be noted that the overriding principle of section 23M is that it relates to debts owing to persons who are not subject to tax. The concerns addressed by NT through the implementation of section 23M related to a loss to the fiscus resulting from the disparity between the non-taxation of interest in the lender’s hands while the borrower claims a deduction thereof.

64. This contrasts with the provisions of section 23N where the underlying debt arrangements are entered into between parties who are usually all subject to tax.

65. Further to this, the commentary on the introduction of section 23N provided in the 2013 Explanatory Memorandum on the Tax Laws Amendment Bill noted that there was a special rule on upward adjustments for periods of high interest rates. NT had noted that the 40 per cent deduction limitation assumed relatively low national interest rates.

66. The proposed amendment in the 2024 DTLAB would effectively contradict this view in a market with high interest rates. It would also effectively reduce the interest limitation cap from 49% of Earnings Before Interest, Tax and Amortisation (‘EBITA’) plus interest received to 30% of EBITA plus interest received.

67. In addition, the limitation in section 23N is of a permanent nature whereas the deduction which is limited in section 23M is effectively deferred.

68. Furthermore, as the proposed amendments are effective from 01 January 2025, the proposal results in a significant increase in the amount of interest that would be limited in terms of section 23N which would have a negative impact on the economics of transactions that have already been concluded.

69. Submission: If NT wishes to proceed with the amendment, consideration should be given to grandfathering existing transactions and for the amendment to only apply to new transactions. The effective date should thus be applicable to transactions entered into after 1 January 2025 rather than interest incurred on or after 1 January 2025.

70. It is also submitted that the interest limitation be increased in the formula to 40% EBITA due to the current high interest-rate environment. To the extent that the legislation is aligned to section 23M, NT should consider introducing a deferral of the deduction similarly to what is provided in section 23M.

71. Lastly, there is a grammatical error in the proposed proviso to the definition of 'adjusted taxable income'. The word 'more' should be 'less', so as to read:

72. "Provided that the result of the calculation may not be less than zero".

Section 24I – Foreign exchange transactions – definition of 'exchange item' (Clause 20(1)(*b*))

73. The 2024 DTLAB proposes to amend the definition of "exchange item" by including *"an amount in a foreign currency…. that constitutes a share in a foreign company that is disclosed as a financial asset in accordance with IFRS".*

74. According to the draft EM, the amendment seeks to address tax leakages associated with certain complex financial arrangements which involve cross-currency swaps and preference shares held by a resident company in a non-resident subsidiary.

75. The definition of "financial asset" in terms of International Accounting Standard 32 includes "any asset that is an equity instrument of another entity" and is not limited to preference shares.

76. The proposed wording is therefore too wide as it seems to target all transactions involving equity shares. The mere holding, for investment purposes, of foreign listed equity shares would result in unintended tax and cash flow consequences due to increases in taxable income where the Rand depreciates relative to a foreign currency.

77. Submission: To achieve the objective of the proposed amendment without causing any unintended tax consequences, it is submitted that the proposed wording should specifically refer to "a preference share" instead of "a share".

78. The proposed amendment should read as follows:

"(e) that constitutes a preference share, as defined in section 8EA(1), in a foreign company that is disclosed as a financial asset in accordance with IFRS;"

Sections 24I – The interaction of the set-off of assessed loss rules and rules on exchange differences on foreign exchange transactions (Clause 20(1)(c))

79. The 2024 DTLAB proposes to amend the foreign exchange rules to allow for the ring-fencing of foreign exchange losses incurred by a company during any year of assessment

NPO-020-050 VAT No. 4570104366
17 Fricker Road, Illovo, Sandton, Johannesburg, 2196 POSTAL ADDRESS Private Bag X32, Northlands, 2116
TEL +27 11 621 6600 FAX +27 11 622 3321 CALL CENTRE 08610 SAICA (72422) EMAIL saica@saica.co.za
WEB saica.co.za | accountancysa.org.za
IFAC International Federation of Accountants
Member of the International Federation of Accountants (IFAC), Pan African Federation of Accountants (PAFA), Global Accounting Alliance (GAA), Chartered Accountants Worldwide (CAW) and Investors in People.
Proudly South African
Chartered Accountants Worldwide Member

where it is not trading and for offsetting against foreign exchange gains in the current and future years of assessment.

80. According to the draft EM, the amendment seeks to address the forfeiting of foreign exchange losses of previous years of assessment that form part of the assessed loss of a company where it suspends its business activities and ceases trading but continues to incur and/or accrue foreign exchange differences.

81. In our view the proposed changes to the wording of section 24I do not achieve the objectives as set out in the draft EM. Rather, the current proposed wording has the far-reaching result of all foreign exchange losses (i.e. in all circumstances) only being deductible to the extent that a taxpayer has foreign exchange gains. In particular:

82. The proposed amendment only allows for a net foreign exchange gain to be included in the income of the taxpayer (whether the taxpayer is trading or not). While the proposed proviso to subsection 3 includes the words ‘may be carried forward’, which seems to allow the taxpayer the choice of deducting ‘net’ foreign exchange losses, the taxpayer would be prohibited from doing so because the opening words of subsection 3 only envisage an inclusion in income.

83. This creates an anomaly as the taxpayer is not allowed to deduct a net foreign exchange loss from its income (including (i) where such a taxpayer is trading; or (ii) where such a taxpayer is not in an assessed loss position).

84. The wording also creates uncertainty as to the position where there are no foreign exchange gains at all during a year of assessment.

85. Furthermore, the proposed amendment allows for the excess foreign exchange loss to be carried forward to the “immediately succeeding year of assessment” and to be “deemed to be an exchange loss during that year of assessment”.

86. This creates uncertainty as to whether a foreign exchange loss so carried forward, but not utilised during the “immediately succeeding year of assessment” may be carried forward to subsequent years of assessment.

87. Submission: To achieve the objective of the proposed amendment, it is submitted that the proposed amendment should only apply with respect to foreign exchange losses where the relevant taxpayer either (i) is or goes into an assessed loss position, or (ii) has ceased or ceases trading.

88. However that may be, the wording must allow for the deduction from income of net foreign exchange losses and not only the inclusion in income of net foreign exchange gains and also not lead to uncertainty where there are no foreign exchange gains at all during a year of assessment.

89. Clarification is requested on circumstances when an excess foreign exchange loss "may be carried forward" or when it may not be carried forward. Alternatively, the term "may" should be replaced with the term "shall".

90. Clarification is also sought as to whether an excess foreign exchange loss may be carried forward to years of assessment succeeding the immediately succeeding year of assessment.

Section 25E – Determination of contributed tax capital in foreign currency (Clause 23)

91. The proposed wording only deals with the translation to the South African Rand ('ZAR') of increases of contributed tax capital ('CTC') in the case where the ZAR is the company's functional currency and reductions of CTC in the case where a foreign currency is the company's functional currency.

92. The draft proposal section 25E(a) relates to situations where the functional currency is ZAR. Paragraphs (a) and (b) (i), (ii), (iii) of the definition of CTC specifically refer to increases of CTC.

93. Therefore, the scenario of CTC increasing and is translated into ZAR which is the functional currency is covered. The draft proposal section 25E(b) relates to situations where the functional currency is a foreign currency. Paragraphs (a) and (b) (aa), (bb), (cc) of the definition of CTC specifically refer to reductions of CTC. Therefore, the scenario of CTC decreasing and is translated into a foreign currency which is the functional currency is covered.

94. The proposed amendment, however, does not deal with the translation of reductions of CTC that occur in currencies other than ZAR where ZAR is the functional currency and increases of CTC where a foreign currency is the company's functional currency.

95. Submission: It is thus unclear which exchange rate should be used in the latter cases.

96. Furthermore, the words '*the date on which that amount must be taken into account for purposes of the determination of CTC'* are ambiguous. This phrase could either mean:

   (a) the date of receipt, accrual or incurral of the amount by the company, or

   (b) the date one has to prepare a subsequent calculation to determine what the CTC of the company is. For example, where, subsequent to a receipt of CTC, the company reduces its CTC and is therefore required to determine how much of the distribution comprises a return of CTC.

97. Submission: Clarity is required in this regard.

98. In addition, the proposed amendment does not deal with a situation where the functional currency of the company and currency in which CTC is increased/reduced are

denominated in different foreign currencies. For example, where the functional currency of a company is in US Dollars but the 'CTC currency' is in Euros.

99. Submission: The treatment of such amounts prior to the effective date of the provision *viz.* 1 January 2025, is unclear. SARS should issue a Binding General Ruling in this regard.

100. The word 'or' where it appears in the proposed section 25E(b) should be replaced with 'and', since in the definition of CTC, paragraph (a)(aa), (bb) and (cc) and (b)(aa), (bb) and (cc) are set conjunctively.

101. It should thus read: *'… and any amount referred to in paragraph (a)(aa), (bb)* ***and*** *(cc) or (b)(aa), (bb)* ***and*** *(cc) of the definition of 'contributed tax capital'…'*

Paragraphs 2(1)(c) and 6A of the Second Schedule – transfers between retirement funds (Clause 31)

102. With effect from 1 March 2024, paragraph 6A of the Second Schedule to the ITA added to the list of deductions, tax-neutral transfers between pension or provident funds to another pension or provident fund for members who have reached normal retirement age (as contained in the fund's rules) but have not yet elected to retire, provided the transfer was involuntary.

103. The proposed amendment seeks to allow similar transfers from one retirement annuity fund to another retirement annuity fund on a tax-free basis, provided the transfers are also involuntary. Furthermore, the amendment, according to the Draft EM, seeks to prevent such members from being able to make a pre-retirement withdrawal from the receiving RAF in respect of the amount so transferred.

104. Retirement annuity fund ("RAF") members may have investments in more than one retirement annuity fund, and when those members reach retirement age, they may wish to consolidate their RAF investments into one retirement annuity fund to earn better returns and to reduce fees charged against their retirement investments until they decide to retire from that fund.

105. Such transfers can only take place at the election of the RAF member. We do not understand the rationale behind limiting the proposed tax-free transfer to involuntary transfers. We do not understand the rationale behind limiting the proposed tax-free transfer to involuntary transfers.

106. Furthermore, the rationale for the following comment in the Draft EM is unclear and requires clarification:

107. *"that the value of the retirement interest, including any growth thereon, will remain ring-fenced and preserved in the receiving retirement annuity fund until the member elects to retire from that fund subject to fund rules. This means that these members will not be entitled to the payment of a withdrawal benefit in respect of the amount transferred."*

108. There does not seem to be a corresponding clause in the Draft TLAB that gives rise to this limitation. In our view, there is no need for this limitation as a RAF member is currently

NPO-020-050 VAT No. 4570104366
17 Fricker Road, Illovo, Sandton, Johannesburg, 2196 POSTAL ADDRESS Private Bag X32, Northlands, 2116
TEL +27 11 621 6600 FAX +27 11 622 3321 CALL CENTRE 08610 SAICA (72422) EMAIL saica@saica.co.za
WEB saica.co.za | accountancysa.org.za
International Federation of Accountants
Member of the International Federation of Accountants (IFAC), Pan African Federation of Accountants (PAFA), Global Accounting Alliance (GAA), Chartered Accountants Worldwide (CAW) and Investors in People.
Proudly South African
Chartered Accountants Worldwide Member

unable to make a pre-retirement withdrawal from a RAF, unless the total member's interest in the RAF is less than R15 000.

109. Submission: We respectfully request NT to reconsider the requirement that RAF to RAF transfers in terms of paragraph 2(1)(c) of the Second Schedule to the ITA can only be tax-free if the transfer was involuntary and that these transfers should instead be allowed tax-free where the transfer is at the election of the RAF member.

110. Involuntary transfers of member benefits from a RAF to another RAF hardly occur in practice; this is a more common occurrence in occupational funds.

111. We further request alignment of the Draft Explanatory Memorandum wording with the draft legislation.

Paragraph 64B – Eighth Schedule – Disposal of equity shares in foreign companies (Clause 35(1)(a))

112. The 2024 DTLAB proposes a further amendment to the wording of the exclusions to the Participation Exemption, by substitution item (iii) in paragraph 64B(1)*(b),* with the following:

"(*iii) a non-resident company, of which the shareholders* ***[of which]*** *and their shareholding, immediately after the disposal, are substantially the same as the shareholders of and their shareholding in any company in the same group of companies as the company in the group of companies disposing of the shares"*

113. It is unclear what is meant by the addition of the phrase "and their shareholding".

114. Does this refer to the type of shareholding (i.e. class of shares, participation interest etc) by the shareholders in the non-resident entity, or does it refer to the second line of shareholders, i.e. the shareholders of the shareholders in the non-resident entity?

115. Submission: It is submitted that the below underlined wording be added to clarify the meaning of the proposed insertion:

116. *a non-resident company, of which the shareholders and their shareholding in the non-resident company immediately after the disposal, are substantially the same as the shareholding in any company in the same group of companies as the company in the group of companies disposing the shares.*

VALUE ADDED TAX ACT

Section 8(2)(vi) – Rentals by foreign entities of ships, aircraft or rolling stock (clause 46)

117. The purpose of this proposed amendment from the explanation in the draft EM is that the consequences of amendments made in 2021 and 2023 required these persons to de-register as VAT vendors.

118. The draft EM explains that this category of vendors would not have been entitled to deduct the VAT on importation as input tax (as, in terms of paragraph (cc) of proviso (xiii) to the

definition of "enterprise" in section 1(1) of the VAT Act, not having incurred the import VAT), it would be incorrect to require the payment of output tax on the ceasing of an enterprise solely caused by the change in legislation.

119. Submission: This proposed amendment is only effective from 1 January 2025 but seeks to offer VAT relief in relation to earlier amendments made in 2021 and 2023.

120. It is submitted that the amendment should have a retrospective with effect to 2021. It would not sensibly achieve its purpose otherwise and would offer very little relief to affected vendors.

Section 12(h)(ii) – Supplies made by schools, universities, technikons or colleges (clause 48), read with proposed new section 8(2G) (clause 46)

121. It is unclear what the purpose of this amendment is, since it is not fully stated in the draft EM. The purpose may be to simplify the VAT consequences visited upon schools and universities or it may be to limit perceived abuse (or both) and a blanket exemption seems to be the identified solution.

122. The widening of the exemption to include all supplies regardless of recipients mainly being learners or students will have a negative impact; inevitably exempting supplies far removed from educational services.

123. This represents a significant departure from the original purpose, which was for educational services to be exempt because these institutions are financed by the State and an increase through VAT increases the cost of financing them (VATCOM Report). This may itself cause abuse and have institutions purposely route enterprises through these institutions solely for the exemption. However, we welcome the broadening of the basket of supplies that will qualify for exemption if the supplies are solely or mainly for the benefit of learners or students by the proposed relaxation of the requirement that the supplies be necessary for or subordinate or incidental to the supply of education services.

124. It is noted that the proposed new section 8(2G) is intended to ease the financial impact of 'exit VAT' which will result from the proposed amendment to section 12(h)(ii), by requiring the affected vendors to account for such VAT in 12 equal monthly instalments. The financial impact of such 'exit VAT' could be substantial and could make education unaffordable where the VAT is passed on as a final cost to the end-consumers, being the parents/guardians of the learners and/or students.

125. Submission: It is submitted that the words "*solely or mainly for the benefit of its learners or students*" in the proposed amendment to section 12(h)(ii) should be retained and not deleted.

126. Additionally, the proposed new section 8(2G) should rather provide for an exemption from exit VAT under section 8(2).

Section 16(3) proviso (i) – Prescription period for input tax claims (Clause 48)

Entitlement to input tax deductions

127. We are informed in the draft EM that the purpose of this amendment is to ease the difficulty of tracking which tax invoices were deducted in a previous tax period, and it serves to limit the risk of double input tax deductions for both SARS and taxpayer.

128. However as has been set out in our comments below, nothing in this amendment serves to make things less difficult for taxpayers, whether SME or large corporate taxpayers.

129. It appears that this proposal seeks to address SARS' concerns with "input smoothing" which is a cash flow practice seemingly done by only very few vendors that have high VAT payment and refund cycles in different periods.

130. Should this practice be the main reason for the proposed change by SARS, it becomes even more unreasonable for it to impact all vendors. Furthermore, this practice seems to have arisen mainly due to SARS' practice of delaying VAT refunds (as smoothing actually costs vendors money) causing significant cash flow challenges for these types of vendors.

131. Submission: Should there be another more rational reason for this proposal than what is disclosed in the draft EM, we submit that SARS should disclose it so that the matter can be properly ventilated and solutions found.

132. The proposed amendment seeks to state that a vendor's input tax entitlement only arises in the tax period when it is in possession of the relevant documentary proof as required under section 16(2) (e.g., for a section 16(3)(a)(i) deduction, a vendor would need to be in possession of a valid tax invoice as required by section 16(2)(a)).

133. However, the wording of the current proviso (i) to section 16(3) states that "*where any vendor is entitled under the preceding provisions of this subsection [i.e., subsection (3) of section 16, not subsection (2)]*" (our underlining); whereas the proposed amendment inserts wording referencing an entitlement arising under section 16(2).

134. Submission: We recommend that this be amended to make it more precise what exactly *entitles* a vendor to a deduction, and how the date thereof is determined.

135. Fundamentally, this proposed amendment makes it difficult for taxpayers to determine the tax period in which they become entitled to the deduction. It is also contradictory to paragraph (ee) to proviso (i) which provides that "*in any other case, the vendor for the first time became entitled to such deduction, notwithstanding the documentary proof that the vendor must be in possession of in terms of subsection (2) of this section [16]*" (our underlining).

NPO-020-050 VAT No. 4570104366
17 Fricker Road, Illovo, Sandton, Johannesburg, 2196 POSTAL ADDRESS Private Bag X32, Northlands, 2116
TEL +27 11 621 6600 FAX +27 11 622 3321 CALL CENTRE 08610 SAICA (72422) EMAIL saica@saica.co.za
WEB saica.co.za | accountancysa.org.za
International Federation of Accountants
Member of the International Federation of Accountants (IFAC), Pan African Federation of Accountants (PAFA), Global Accounting Alliance (GAA), Chartered Accountants Worldwide (CAW) and Investors in People.
Proudly South African
Chartered Accountants Worldwide Member

136. Submission: The current wording of the proposed amendment directs that section 16(2) is the basis for the entitlement and the tax period when this first arises is the only tax period in which a vendor may make the deduction.

137. If the correct interpretation of the proposed amendment is that the entitlement to the deduction is when an invoice has been provided and is held, regardless of the date on the invoice, the following challenges may arise:

137.1. Suppliers may raise invoices on a certain date, and only issue them during the first week of the next month (e.g., a few days after month-end, depending on when month-end billing cycles close). Do vendor now have the burden of proving when invoices were first provided?

137.2. A vendor may receive a tax invoice before the end of a tax period but after the last business day. The month in which it is actually/physically received would differ from the tax period in which it is claimed.

137.3. SARS officials would inevitably disallow any input tax deductions where the date differs from the tax period, and this may increase the number of disputes.

137.4. A vendor seeking to deduct the VAT imposed on importation as input tax, may hold the customs documentation and the payment reference number for the tax paid to SARS as required in terms of section 16(2)(d) but the goods may not yet have been released (being a requirement found in terms of section 16(3)(a)(iii) before a vendor may deduct the input tax in its VAT returns). This is an example where the taxpayer is entitled in terms of section 16(2) but not (yet) entitled in terms of section 16(3)(a)(iii) of the VAT Act.

137.5. How is this to be reconciled with section 20(1B) which permits invoices to be corrected (without necessarily being credited and reissued)?

137.6. What is the position where a tax period is subject to a dispute which is finalised, but the taxpayer later discovers unclaimed input tax deductions which relate to that period?

137.7. Section 100 of the TAA informs us that assessments become final at the conclusion of a dispute, whether it be at the objection, appeal, settlement, or by determination in court. It is only SARS who may issue additional assessments of certain amounts in respect of disputed assessments (see section 100(2) of the TAA). Is the proper interpretation of this that the amended proviso to section 16(3) will allow vendors to amend disputed assessments despite what section 100 of the TAA states? Section 4(3) of the TAA states that any inconsistency with a tax Act means that the other tax Act (the VAT Act in this case) prevails. The amended section 16(3) may be inconsistent with the TAA.

137.8. When this amendment becomes effective on 1 April 2025, will there be a transitional period? Will vendors be allowed to amend tax returns prior to 1 April 2025 in respect of

unclaimed input tax deductions on that date? Must taxpayers ensure that all unclaimed input tax deductions are already claimed by 1 April 2025?

138. A simple alternative solution may be to include a new field in VAT returns which is appropriately labelled. Vendors would be required to have proper workings in support of past input tax claims specified in this field and SARS could request relevant material in respect of these deductions.

Difficulties with accounting systems and software

139. Most taxpayers make use of sophisticated and reliable financial and accounting software for accounting and VAT purposes which provides detailed VAT reports and audit trails of transactions.

140. An accounting document is given a unique code by the system that makes it possible to identify any document across tax periods. This is not only done for VAT purposes but to ensure that proper internal controls exist to ensure that invoices are not double accounted for in the accounting records or VAT returns and not paid twice. It ensures that the expense is accounted for in the correct accounting period based on accounting principles and input tax deductions are only claimed when eligible.

141. The monthly VAT systems reports may include, for several reasons, tax invoices dated in prior tax periods, but the input tax deductions in any tax period would reconcile to the detailed VAT general ledger entries for the period.

142. By excluding certain VAT entries from a VAT report manually to include these in prior tax periods for VAT purposes, would mean that the VAT reports will no longer monthly agree with the VAT returns and lead to manual adjustments to the VAT return process.

143. Some accounting systems will not allow any changes to or deviations from the VAT accounting principles and VAT report specifications to account for the input tax deductions in an earlier tax period and hence manual adjustments are required.

144. This could lead to hundreds or thousands of transactions being accounted for VAT purposes in a different tax period than what the accounting system requires.

145. It is thus submitted that the proposed amendment would rather bring complexities into the VAT accounting done by business which would increase the risk of incorrect input tax deductions. All major taxpayers most probably place heavy reliance on their sophisticated accounting software and its internal controls to ensure compliance with the law as it currently stands.

146. As indicated this proposed amendment will therefore result in a deviation from the current accounting procedures and to adhere to these amendments, it will require manual adjustment to be made (outside the accounting system) which will then result in significant reconciling differences between the accounting information and that submitted to SARS

given the volume of transactions that may be processed. It is considered that this process will be more prone to human error and misappropriation and result in a lack of an appropriate audit trail by the system.

147. It should be noted that tax invoices dated in the last couple of days of a calendar month may for instance only be received and / or captured and / or processed in the following accounting month due to cut off procedures, late issue or receipt or internal processing of tax invoices, vendor onboarding processes or internal approvals outstanding. There could be various other reasons such as disputes over invoices, inability to obtain tax info, master data corrections relating to the VAT code assigned to material items, suppliers or activities, that are constantly reviewed and corrected.

148. There are proper control procedures in place which will now be impacted. This means taxpayers will have to make corrections to every tax period. This also means that a VAT return for a particular tax period might have to be amended numerous times to comply with this requirement.

149. This could also result in the correction of multiple VAT returns for prior tax periods in a particular month in addition to that month's VAT return. Given multiple corrections over various periods, it is considered that this amendment would increase the risk of mistakes or oversights being made as well as possible double deductions as it is not supported by the accounting system and VAT reports.

150. It should further be noted that foreign VAT legislation (such as New Zealand and Australia, but not limited to these countries) does not seem to be as restrictive as the proposed amendments. These jurisdictions still allow for the input tax deductions to be included in a later tax period subject to the time limit of the number of years allowed.

151. It seems that all vendors are now penalised for those vendors that do not seem to have proper internal VAT control procedures in place. The focus should rather be on penalising vendors that 'double-claim' input tax deductions and to ensure that their claims are supported by proper working papers, audit trails and reconciliations.

152. VAT is a self-assessment tax, and vendors should be able to have proper internal controls in place to substantiate input tax deductions in a later tax period, whether it relates to entitlement in prior periods or not. It is submitted that the SARS VAT modernisation project will also go a long way towards obtaining more detailed information from vendors, including sight of input tax deductions claimed in later tax periods and thus no need for the proposed amendment.

Changes to e-Filing

153. The proposed amendment will require changes to the current eFiling system insofar it relates to the amendments of input tax credits of past returns which needs to be considered and addressed. In particular, the following should be considered and addressed:

a. Currently, the eFiling system does not allow the increase of input tax credits of past tax returns and forces an adjustment to be made in future returns.

b. If a tax period requires an adjustment and is subject to an audit or verification such period may not be allowed to be amended.

c. The possibility of the system allowing multiple corrections of the same tax period.

154. Submission: Great effort has gone into ensuring current systems and processes are in line with the current wording of the section and the proposed amendment would be challenging from a systems perspective.

155. It is submitted that SARS consider alternative approaches that achieve its objectives without imposing undue burdens on taxpayers.

156. Strengthening audit mechanisms and imposing penalties for non-compliance, rather than changing the deduction period, could be more effective. Targeted audits and penalties would deter vendors from double deductions while maintaining the flexibility of the current system.

157. As indicated above, in our view, the proposed amendment will increase, rather than decrease, the administrative burden on taxpayers.

158. It is consequently proposed that no change is made to the current wording of the section.

EMPLOYMENT TAX INCENTIVE ACT

Section 1 – Monthly remuneration (Clause 58)

159. The abuse of these incentives that seek to benefit at the expense of vulnerable unemployed youths should be sanctioned and eradicated and the proposals are welcomed.

160. To ensure that the only real cash amount that flows amongst the parties is the ETI (split between employer and promotor), these schemes in principle seek to avoid having to pay "youth employees" any or small cash amounts by either relying on the "taxable benefits" descriptors in the Seventh and Fourth Schedule as "remuneration" (usually some form of training or debt payment) or by deducting off "accrued" cash salary, "training debt or fees".

161. We do however note that the provisions merely seek to sanction employers who may have unwittingly been sold these abusive schemes, many which are underpinned by legal and other professional opinions and confirmations.

162. Submission: It is submitted that the sanctions in the Employment Tax Incentive Act be extended to promotors of these schemes and that employers be offered relief (e.g. penalty and interest) should they collaborate with SARS if SARS successfully sanctions and recovers monies from the promotor.

International Federation of Accountants

NPO-020-050 VAT No. 4570104366
17 Fricker Road, Illovo, Sandton, Johannesburg, 2196 POSTAL ADDRESS Private Bag X32, Northlands, 2116
TEL +27 11 621 6600 FAX +27 11 622 3321 CALL CENTRE 08610 SAICA (72422) EMAIL saica@saica.co.za
WEB saica.co.za | accountancysa.org.za
Member of the International Federation of Accountants (IFAC), Pan African Federation of Accountants (PAFA), Global Accounting Alliance (GAA), Chartered Accountants Worldwide (CAW) and Investors in People.
Proudly South African

Chartered Accountants Worldwide Member

163. The anti-abuse provisions have mainly been inserted in the definition of "monthly remuneration".

164. Section 4 addresses wage regulation compliance to disqualify an employer from claiming the incentive in certain circumstances.

165. Section 4(1)(b) refers to "paid remuneration" and section 1(2) specifically limits the application of "remuneration" as defined in the Fourth Schedule to the definition of "Monthly remuneration".

166. Submission: To clarify that the anti-abuse "monthly remuneration" definition applies to section 4, it is submitted that "remuneration paid" be replaced with "monthly remuneration paid".

International Federation of Accountants

NPO-020-050 VAT No. 4570104366
17 Fricker Road, Illovo, Sandton, Johannesburg, 2196 POSTAL ADDRESS Private Bag X32, Northlands, 2116
TEL +27 11 621 6600 FAX +27 11 622 3321 CALL CENTRE 08610 SAICA (72422) EMAIL saica@saica.co.za
WEB saica.co.za | accountancysa.org.za
Member of the International Federation of Accountants (IFAC), Pan African Federation of Accountants (PAFA), Global Accounting Alliance (GAA), Chartered Accountants Worldwide (CAW) and Investors in People.
Proudly South African

Chartered Accountants Worldwide Member

MATTERS NOT ADDRESSED IN DRAFT TAX BILLS 2024

167. In addition to the various matters mentioned above, there are other areas of importance that we feel should have been considered in the 2024 DTLAB and the DTALAB. These include the following and are briefly discussed below:

    a. Section 8F – Interest on hybrid debt instruments deemed to be dividend in specie
    b. Home office allowances
    c. Penalty for exceeding assigned carbon budget

Section 8F – Interest on hybrid debt instruments deemed to be dividend in specie

168. Section 8F the Income Tax Act deems interest in respect of a hybrid debt instrument or hybrid interest to be treated in a similar manner to the yields of an equity instrument. These rules disallow the deduction of interest paid and deem this interest to be an in specie dividend for the issuer of the instrument and an in specie dividend for the recipient.

169. Section 8F(3)(f) stipulates that an exclusion is triggered to the deeming rule when a registered auditor has certified the payment by a company of an amount owed in respect of that instrument that had been or was to be deferred by reason of the market value of assets being less than the amount of the liabilities.

170. In a prior submission, we requested that National Treasury engage with IRBA on the proposed wording of the exclusion so that it aligns with the auditing standards framework and also as to what a registered auditor can do in such capacity as opposed to what is expected from management to do and verify which remains exclusive to them.

171. Unfortunately, there has been no progress in this regard.

172. Given the challenges of using a Registered Auditor to perform this function and at the same time providing SARS with sufficient comfort by an independent person, we make the below proposal.

173. Submission: Our proposal inserts an "Independent Registered Tax Practitioner" (as envisaged in section 223(3)(b) TAA) as the functionary to affirm the proposed objective criteria as SARS would be able to exercise regulatory control over him or her.

174. The legislation should be reworded as follows:

175. Insertion of a definition under section 8F(1) for "subordination agreement" as follows:

176. '**subordination agreement'** means an agreement that is entered into in relation to an instrument which agreement defers the obligation to pay an amount so owed by a company on a date or dates falling within that year of assessment by reason of, inter alia but

including, that obligation being conditional upon the market value of the assets of that company not being less than the amount of the liabilities of that company.

177. The proposed rewording of the carve out for section 8F(3)(f) is as follows:

(f) that constitutes a hybrid debt instrument –

(i) solely in terms of paragraph (b) of the definition of hybrid debt instrument;

(ii) is subject to or will be subject to a subordination agreement; and

(ii) where the taxpayer was in possession of a confirmation issued by an independent registered tax practitioner as envisaged in section 223(3)(b) of the Tax Administration Act 2011, that –

(aa) was issued by no later than the date the annual financial statements in respect of that year of assessment were signed;

(bb) confirms the existence of the subordination agreement in relation to that year of assessment; and

(cc) confirms that the subordination agreement came into existence subsequent to the end of that year of assessment or the end of any prior year of assessment.

Home office allowances

178. In the 2021 National Budget, NT announced an initiative to explore the new ways of working which were accelerated by the COVID-19 pandemic. This was to incorporate a review of home office deductions, travelling, the gig economy etc. It was clearly indicated that this was not a quick process and would likely span multiple years.

179. Despite one informal request for input into the home office deduction, and SARS inviting comments on the interpretation note relating thereto (see SAICA's comments on this in 2021 and 2022), there has seemingly been no further progress on this initiative. No proposals were announced in the 2022 Budget and no draft amendments were proposed in either the 2021 legislative cycle or the current cycle on which comments have been invited.

180. Submission: SAICA is very supportive of this initiative and would like to actively participate in this process, however, clarity is needed on the policy direction that NT is considering in order for consultation to be valuable as well as estimated timing of implementation.

181. NT noted that it would issue a discussion paper on the matter to start the review of policy and legislation on home offices, however after 2 years nothing has been forthcoming and

NPO-020-050 VAT No. 4570104366
17 Fricker Road, Illovo, Sandton, Johannesburg, 2196 POSTAL ADDRESS Private Bag X32, Northlands, 2116
TEL +27 11 621 6600 FAX +27 11 622 3321 CALL CENTRE 08610 SAICA (72422) EMAIL saica@saica.co.za
WEB saica.co.za | accountancysa.org.za
International Federation of Accountants
Member of the International Federation of Accountants (IFAC), Pan African Federation of Accountants (PAFA), Global Accounting Alliance (GAA), Chartered Accountants Worldwide (CAW) and Investors in People.
Proudly South African
Chartered Accountants Worldwide Member

it is submitted that NT should commit to a date for this paper given the current significant change in how people work.

182. In the interim, our comments have not been considered and the strict requirements of section 23(b) still stand with no amendments/relaxations. We have also engaged with SARS on this matter, but their hands are tied as they need to comply with the requirements of the law, even if the legislation as they interpret it, leads to inequitable treatment (such as the denial of the interest deduction on a bond used to finance a home office – discussed in more detail below). We understand that this concern has been raised by SARS with NT, yet despite this, there are still no legislative amendments in the 2022 DTLAB in this regard.

183. Of most concern, is the disallowance of a tax deduction for the interest on a bond as this is usually the largest deduction for taxpayers that have a home office. The reason for disallowing this deduction, according to SARS, is that section 23(m) – a section that prohibits the deduction of certain expenses for salaried earners (other than a few expenses, such as those allowed in terms of **section 11(a)**, for example, the rent, repairs or other expenses incurred in respect of a home office that is allowed under section 23(b)) – does not allow the deduction of interest on a bond on a home office because the interest is deductible under **section 24J** and not section 11(a) as required in terms of section 23(m).

184. Section 23(m) only applies to expenditure, losses or allowances **contemplated in section 11** and which relate to any employment in respect of which the taxpayer derives any remuneration. This begs the question whether section 24J is a section 'contemplated' under section 11. If it is, then section 24J interest will be prohibited by section 23(m) as section 23(m) only allows interest deductible in terms of section 11(a) as a deduction (section 23(m)(iv)). If it is not, then section 24J interest will remain deductible as it is not prohibited by section 23(m)(iv) as it is not an expense contemplated in section 11 and thus the section 11(a) argument no longer applies.

185. SARS argues that section 24J is '**contemplated in section 11'** by means of section 11(x). Section 11(x) states that there shall be <u>allowed as a deduction</u> from the income of a person '*any amounts which in terms of any other provision in this Part (encompassing section 5 to 37G), are <u>allowed to be deducted</u> from the income of the taxpayer'*. This section, according to SARS thus includes section 24J, as it is 'contemplated in section 11', even though it is not deductible under section 11.

186. However, it is our understanding that section 24J is a standalone deduction provision under Part I of Chapter II and is not reliant on section 11(x) as the 'deduction' section. Should this not be the case, then interest would be deductible under both section 24J and section 11(x), which clearly cannot be.

187. In addition to the above, it seems inequitable from a policy perspective, that a person renting a house with a home office, would be entitled to deduct the rental paid (allowed in terms of section 23(m)(iv)), yet a person who owns the house would not be able to deduct the interest on the bond.

IFAC International Federation of Accountants
NPO-020-050 VAT No. 4570104366
17 Fricker Road, Illovo, Sandton, Johannesburg, 2196 POSTAL ADDRESS Private Bag X32, Northlands, 2116
TEL +27 11 621 6600 FAX +27 11 622 3321 CALL CENTRE 08610 SAICA (72422) EMAIL saica@saica.co.za
WEB saica.co.za | accountancysa.org.za
Member of the International Federation of Accountants (IFAC), Pan African Federation of Accountants (PAFA), Global Accounting Alliance (GAA), Chartered Accountants Worldwide (CAW) and Investors in People.
Proudly South African
Chartered Accountants Worldwide Member

188. Submission: We are of the view that section 11(x) does not include section 24J and thus this interest in respect of a home office should be allowed as a deduction and not be prohibited by section 23(m)(iv). Legislative clarity is urgently required in this regard as the legislative interpretation concerns would impact various other section in the Income Tax Act as well.

189. We have also highlighted, in our previous submissions mentioned above, various other legislative concerns regarding the home office deduction and will not repeat them here, but we do urge NT to consider these as a matter of urgency.

Penalty for exceeding assigned carbon budget

190. In the February 2022 Budget documentation it was stated that in order to address concerns about double penalties from companies under the carbon tax and carbon budgets, a higher carbon tax rate of R640 per tonne of carbon dioxide equivalent will apply to greenhouse gas emissions exceeding the carbon budget. These amendments will be legislated once the Climate Change Bill is enacted.

191. NT indicated in Parliament that because the Climate Change Bill has not yet been enacted, the proposed penalty was not included in the DTLAB.

192. Submission: As the mandatory carbon budgeting system comes into effect on 1 January 2023, at which time the carbon budget allowance of 5% will fall away, the penalty should have aligned with this date and the provision should have been made for this penalty in the current DTLAB. Furthermore, we note that the penalty cannot be included in the Climate Change Bill as it is not a money bill.

193. Thus, should the intention be that the Climate Change Bill and the mandatory carbon budgeting process will be implemented the same time (which will be after 1 January 2023), then the current carbon budgeting process should be extended, as it expires at the end of 2022.