South African Institute of Tax Professionals

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The South African Revenue Service
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**RE: DRAFT TAXATION LAWS AMENDMENT BILL (TLAB), 2017: COMMENTS PERTAINING TO KEY BUSINESS TAX INCENTIVES ISSUES**

We have attached the comments from the SAIT Business Tax Incentives Work Group on the draft Taxation Laws Amendment Bill pertaining to key business tax incentives issues. We appreciate the opportunity to participate in the process and would welcome further dialogue.

Please do not hesitate to contact us should you need further information.

Yours sincerely

**Duane Newman**
**Chair of the Business Tax Incentives Work Group**

BUSINESS TAX INCENTIVE ISSUES

## 1. INDUSTRIAL POLICY PROJECTS – WINDOW PERIOD EXTENSION

**Treasury Proposal**

It is proposed that the window period for section 12I applications be extended from 31 December 2017 to 31 March 2020. The purpose of the extension is to allow sufficient time for the review of the tax incentive, including its overall effectiveness.

According to the Explanatory Memorandum:

*"While the window period for the tax incentive will be extended, the <u>current approval threshold of R20 billion</u> in potential investment and training allowances <u>will not be increased at this stage.</u> <u>Tax revenues are under severe pressure in a fiscally constrained environment at present</u>. <u>As a result, no increase in the approval threshold for the 12I programme is currently being considered</u>."*

**Problem Identified**

The extension is supported. However, potential investors do not have the much-needed certainty that they require in order to make investment decisions because the funding required for the programme is in short supply. If the availability of an incentive is not certain at the time when the investment decision has to be made, its effectiveness as an incentive is doubtful.

In this regard, it is important to note that the Industrial Policy Projects tax incentive was introduced to support new Greenfield industrial projects as well as the expansion and upgrading of existing (Brownfield) industrial projects. Therefore, the tax incentive encourages new investment and expansion projects that stimulate economic growth and job creation. This should in turn lead to additional taxes such as PAYE, VAT and Corporate Income Tax being collected by SARS from the supported projects. The projects supported under section 12I will therefore over time have a positive impact on the fiscal revenue collection.

**Suggested Solution**

Additional budget is needed to create certainty regarding the availability of the incentive. The timelines for approval are also vital as a backlog in the processing of applications creates further uncertainty especially as approval is needed before assets are ordered. The need for certainty is greatest in terms of large projects that have the most opportunity of stimulating the economy.

Please note that the Budget allocation for these projects comes more in the form of future revenue foregone as opposed to an immediate cash outlay. This future notional cash outlay will stimulate upfront investment that should generate added receipts in terms of payroll and VAT in the short run. Stated differently, current economic difficulties should not be viewed as a barrier to allocating future budget.

## 2. INDUSTRY CONCERNS NOT ADDRESSED

While we appreciate that some of the concerns that we have raised in the past have been addressed, a number of issues remain unresolved. For example, we made the following Annexure C submissions for the 2017 Budget:

- Section 12L Energy Efficiency Savings - legislative clarity is required to make it clear that no pre-approval is required and to ensure that the implementation period lines up with the periods used by the South African National Energy Development Institute (SANEDI). We are concerned that there may be unnecessary disputes between SARS and taxpayers, resulting in the disallowance of relief that taxpayers should have been entitled to. This uncertainty is deterring future investment in this important area. [Point 7]

- Section 12R Special Economic Zones (SEZ) – the connected person rule acts as a detractor and/or trap for the unwary and we continue to recommend the use of an arms-length test instead. Investors do not come to these SEZ areas in isolation; the SEZ is only effective if seen as part of a supply chain. In the meantime, we do not expect that the SEZ regime will have a reasonable chance of success. [Point 3]

We would welcome further engagement regarding these unresolved concerns to prevent problems arising in future.