16 August 2018

The National Treasury

240 Madiba Street

PRETORIA

0001

The South African Revenue Service

Lehae La SARS, 299 Bronkhorst Street

PRETORIA

0181

BY EMAIL: Nombasa Langeni (Nombasa.Langeni@treasury.gov.za)

Adele Collins (acollins@sars.gov.za)

RE: DRAFT TAXATION LAWS AMENDMENT BILL, 2018: COMMENTS PERTAINING TO KEY PERSONAL TAX ISSUES

We have attached the comments from the SAIT Personal Tax Work Group on the draft Taxation Laws Amendment Bill (draft TLAB) pertaining to key personal tax 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

Jaco La Grange

Chair of the Personal Tax Work Group

PERSONAL TAX SUBMISSION

A. ADDRESSING ANOMALIES IN RESPECT OF MEDICAL TAX CREDITS

1. Treasury Proposal

Section 6A of the Act provides for a medical tax credit in respect of contributions made to a medical aid. In some cases, more than one taxpayer funds the contribution for a single person, for instance two siblings contributing equally towards their parent's medical aid. Due to an unintended anomaly, the Act allows both siblings to claim the medical tax credit for the one contribution. It is proposed that, where taxpayers carry a share of the medical scheme contributions of dependants, medical tax credits should be proportionately allocated between taxpayers who made the payment of medical scheme contributions.

2. Comment

The basic principle of the proposal is simple, namely that one contribution should give rise to one medical tax credit. Whether the credit is to be shared between two or more individuals is not critical, as long as the combined credit does not exceed the credit available in respect of a single person (the medical aid member). The practical implementation of the principle can, however, be challenging. We think that the issuing of accurate medical aid tax certificates by the medical aid schemes will be key to the success of this proposal. The medical aid schemes will have to identify the taxpayer/s to whom the credit should be allocated to and in which percentage. The information on the medical aid tax certificates should also be pre-populated on the individual contributors' tax returns.

Naturally, this will likely result in an increased administrative burden on medical aids. To alleviate this, it is proposed that a member of a medical aid fund in respect of whom contributions are made, may elect in advance which of the contributors are entitled to claim the related medical tax credit and in which percentage. This elective approach will simplify the process because the medical aid does not have to check proportions on an annual basis. The election should stay in force unless changed. If no election is made, the relief should simply be denied.

Since the limit placed on the medical tax credit would not lead to a lower average tax rate in the hands of the person(s) utilising the full credit (even if not having made the full contribution), which would have been the case under the previous tax deduction system, it is suggested that this proposal will not be contrary to the policy intent with the medical tax credit system.

B. REMOVING TAXABLE BENEFIT ON LOW OR INTEREST FREE LOANS GRANTED TO LOW-INCOME EMPLOYEES FOR LOW-COST HOUSING

1. Treasury Proposal

It is proposed that the relief from triggering a taxable benefit be extended from employer provided housing to low or interest free loans with a value not exceeding R450,000 provided by an employer to a low-earning employee (with a remuneration proxy not exceeding R250,000) provided the loan is granted solely for the acquisition of residential housing with a market value of not more than R450,000.

2. Comment

The proposed change is welcomed. However, we recommend that the requirement that the market value of the immovable property acquired does not exceed R450,000 be removed as the other two monetary limits (on the amount of the loan and the remuneration proxy) should suffice. The main focus should be the income of the employee. Any deviations on the size of the house will ultimately be small because the low-income nature of the employee will operate as a practical barrier to significantly higher value homes.

A focus on value will result in practical anomalies, especially given that the R450 000 operates as a hard cut-off. Often, due to the specific area where the immovable property is situated, the market value is high due to supply and demand amongst other factors. It is often found that houses and similar immovable property in remote areas, such as mining towns, are valued higher due to the scarcity of houses and immovable property. This requirement will negatively impact employees in remote areas that seek to acquire a property that is valued at higher than R450,000. Furthermore, if the market value exceeds the R450,000 by a small amount (for example R10 000) the relief of this proposed amendment will not apply at all, notwithstanding that the other requirements are met. Finally, it would also not serve as in incentive to individuals who wish to save with a view to afford a property with a higher market value with only the difference between R450 000 and the acquisition price covered by a loan from their employer.

C. COLLECTIVE INVESTMENT SCHEMES

1. Treasury Proposal

The proposed amendment to section 25BA of the Income Tax Act, No. 58 of 1962 (the ITA), relates to the tax treatment of amounts received by, or accrued to portfolios of Collective Investment Schemes (CISs). It is proposed that the disposal of financial instruments by CIS within 12 months should be deemed to be income of a revenue nature. Such income would be subject to normal tax at marginal rates in the hands of investors if distributed to them.

2. Comment

Currently, the regulated environment and tax framework causes CIS investors to pay tax on investment returns at their normal marginal tax rate and all capital gains and losses are included in their taxable income upon withdrawing their savings.

From the Explanatory Memorandum it appears that the proposed amendment stems from Government's concern around the current tax consequences of vigorous trading within the CISs space. Specifically, that through use of a CIS structure, investors may benefit from a lower (CGT) tax rate rather than income tax on profits generated, despite the investor having a revenue intention.

It is trite that the question around the determination of capital or revenue distinction can only be determined on a case by case basis. Therefore, broad assumptions around capital versus revenue intention based on composite data, is not possible.

Furthermore, the following items all contribute to delinking the investor and their intention from the trades being conducted in the CIS vehicle: The nature of the CIS structure as a pooled vehicle (no trade-to-individual identification); the regulated framework in which the CIS functions; and the mandate under which the portfolio managers operate (manage money in a prudential manner).

South African Institute of Tax Professionals

It is our view that the proposed amendment will result in inequity between investors in CIS and financial products, and create severe distortion in the trade conduct of portfolio managers.

We view the proposed amendment as significant and request that the proposal only be considered for implementation after extensive consultation and analyses of the impact on the broader economy, and the CIS and related industries.