

26 August 2019

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RE: DRAFT TAXATION LAWS AMENDMENT BILL, 2019 (draft TLAB)

We have attached the comments from SAIT Personal Income and Employment Tax Work Group on the draft Taxation Laws Amendment Bill (draft TLAB) pertaining to personal income tax and employment-related taxes and incentives. 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

The SAIT Personal Income and Employment Tax Work Group

All references are to the Income Tax Act, No. 58 of 1962 (the ITA), unless otherwise indicated.

1. Variable remuneration

[Applicable provision: Section 7B of Act 58 of 1962]

Proposed amendment

The listed types of variable remuneration that is subject to the deemed accrual upon actual payment, has been found to be too limited. As a result, it is proposed that a set of principles in the form of requirements be established that should govern the determination of whether a type of income should be fall within the ambit of section 7B.

Problem identified and suggested solution

Mismatch between the draft TLAB and the Explanatory Memorandum(EM)

According to the EM, the provision should cater for remuneration that bears the following general characteristics:

- a. The employee is only entitled to the amount once services have been rendered;
- b. The amount the employees is entitled to cannot be determined in advance;
- c. The employees entitled to these amounts cannot be determined in advance;
- d. The payment of said amount is subject to some sort of approval process prior to its payment;
- e. The amount due to the employee varies from month to month.

However, according to the draft TLAB, in certain instances, more than one of the characteristic's should be present for a certain income to qualify in terms of section 7B. It is requested that this matter be clarified.

Policy intent

There is a level of complexity inherent in certain types of remuneration, e.g. where a suspensive condition may exist and as a result, where (outside of the ambit of section 7B), accrual may be postponed until there is an unconditional entitlement. Since the majority of employment income is guaranteed and recurring as part of a set employment contract, such remuneration is not considered as 'variable' from a practical point of view.

Section 7B was initially introduced in order to ease the interpretive and timing burden for payroll administrators and managers in respect of such ‘variable’ remuneration, since interpretational issues regarding the timing of accrual often require a high degree of speciality that is outside the scope of most employers.

By proposing a set of requirements/criteria that (in certain instances) mimic circumstances where accrual may ordinarily be postponed, the complexity that section 7B was initially intended to limit is reintroduced. Furthermore, because the provisions create an exception to the ordinary rules of accrual, the case law and practical experience around the determination of accrual becomes irrelevant. In our view, there is also a strong possibility that the proposal may allow the structuring of remuneration in such a way that it may be to the disadvantage of the fiscus.

It is recommended that this proposal be subjected to further scrutiny, if possible, in the form of a workshop with affected taxpayers. It is also requested that specific examples be provided in the EM in respect of the types of scenarios that the proposal is aimed at drawing into the section 7B ambit.

2. Section 10(1)(o)(ii) and the application of tax credits in terms of section 6quat

[Applicable provision: Section 10(1)(o)(ii) and section 6quat]

The general interaction between section 10(1)(o)(ii) and section 6quat remains unclear. Considering the far-reaching effect of the legislation, and the fact that multi-nationals are in the process of renegotiating contracts with their employees to address the 1 March 2020 change, it is requested that legislative clarity be provided as a matter of urgency.

End.