

23 August 2019

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VIA EMAIL: [National Treasury_\(2019AnnexCProp@treasury.gov.za\)](mailto:National_Treasury_(2019AnnexCProp@treasury.gov.za))
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RE: DRAFT TAXATION LAWS AMENDMENT BILL, 2019 and DRAFT TAX ADMINISTRATION LAWS AMENDMENT ACT, 2019.

We have attached the submissions from the SAIT Tax Administration Technical Work Group in respect of the Draft Taxation Laws Amendment Bill, 2019 and the Tax Administration Laws Amendment Bill, 2019.

We have considered the purpose and objects of the Bill, as well as the potential practical implications. We request that due consideration is paid to our recommendations as we experience the practical challenges of application of the tax administration act on a daily basis.

Yours sincerely

The SAIT Tax Administration Technical Work Group

PROPOSED AMENDMENTS TO THE INCOME TAX ACT, ACT 58 OF 1962

1. Declaration to permit a reduced rate of tax to be applied – royalties or interest

[Applicable provisions: section 49E and section 50E of the Income Tax Act]

[Clause 2 and clause 3 of the Bill]

Proposed amendment

The proposed amendment aims to reduce the “administrative burden for local persons that enter into multiple transactions with a single foreign person during the year.”

Problem identified and suggested solution

Currently, section 49E(2) of the Income Tax Act doesn’t specifically require the foreign person to submit a declaration or undertaking in respect of each payment of a royalty to be made. The same applies with respect to the payment of interest – section 50E(3) of the Income Tax Act.

The new proposal, that a declaration and written undertaking under these sections will no longer be valid after a period of 2 years, will limit the validity of a declarations or written undertakings and, we believe, cause greater and unnecessary administrative burden on taxpayers.

It is proposed that the reference to the period of 2 years be removed.

2. Repeal of section 60(5) of the Income Tax Act

[Applicable provision: section 60(5) of the Income Tax Act]

[Clause 4]

We have no comment or additional submission with respect to the repeal of section 60(5).

3. Introducing the period of 2 years to the dividends tax

[Applicable provision: section 64G and section 64H of the Income Tax Act]

[Clause 5 and clause 6]

Proposed amendment

This proposal aims to align sections 64G and 64H with the proposed amendments to sections 49E, 50E and 64G. The new proposal, that a declaration and written undertaking under these sections will also no longer be valid after a period of 2 years, will limit the validity of a declarations or written undertakings and, we believe, cause greater and unnecessary administrative burden on taxpayers.

Problem identified and suggested solution

It is proposed that the reference to the period of 2 years be removed.

4. Introducing the period of 2 years to the dividends tax

[Applicable provision: paragraph 14 of the Fourth Schedule to the Income Tax Act]

[Clause 7]

Proposed amendment

The proposed amendment aims to clarify that the penalty in terms of this paragraph may also be imposed where an employer submits a return that is an incomplete return.

Problem identified and suggested solution

It is proposed that the definition of what is meant by an incomplete return be considered to exclude an error in a return, which could be attributable to pure oversight or clerical error.

5. Introducing the period of 2 years to the dividends tax

[Applicable provision: paragraph 19 of the Fourth Schedule to the Income Tax Act]

[Clause 8]

No comment or additional submissions. The proposed amendment welcomed.

It is accepted that SARS will refrain from levying the underestimated penalty where the date of death is after before the date of promulgation of the Act.

PROPOSED AMENDMENTS TO THE TAX ADMINISTRATION ACT, ACT 28 OF 2011

6. Amendment to section 11(4)

[Applicable provision: section 11(4) of the Tax Administration Act]

[Clause 25]

Proposed amendment

The amendment is proposed because, in SARS' experience, a one-week notice period has proven to be impractical to enable SARS an opportunity to investigate the matter further and to decide how to resolve the dispute.

Problem identified and suggested solution

When a taxpayer serves a section 11(4) notice on SARS, it is possible that considerable time could already have passed, as the matter could have followed the relevant Tax Administration Act dispute provisions with its own lengthy timeframes attached to it.

Also, the SARS Litigation team is a dedicated unit that only deals with legal proceedings against SARS and should be able to swiftly consider the notice and the matter it relates as this applies only applies to civil proceedings (to follow post issuing of notice) in the High Court.

We therefore submit that 21 business days would unnecessary delay the process and increase inefficiencies. Accordingly, we propose that the period be extended to a maximum of 10 business days. This would allow SARS more time to consider the facts and background of the specific dispute and whether litigation would be appropriate.

7. Amendment to section 191

[Applicable provision: section 191 of the Tax Administration Act]

[Clause 36]

Proposed amendment

[Paragraph (a) of clause 36]

The amendment introduces the phrase “an outstanding tax debt” into section 191.

Problem identified and suggested solution

The phrase, an outstanding tax debt, in the proposed amendment needs to be refined in order to provide further clarity.

We recommend that it should be “an outstanding tax debt as defined in section 1”.

8. Amendment to sections 210 and 212

[Applicable provision: sections 210 and 212 of the Tax Administration Act]

[Clause 37 and clause 38]

Proposed amendment

The proposed amendments of section 210 and 212 aim to enforce a reporting obligation by means of similar penalties to those currently in force for non-compliance with the reportable arrangement scheme under the Tax Administration Act.

Problem identified and suggested solution

The increased penalties proposed in section 210 are of significant concern.

In an environment where SARS mostly relies on voluntary compliance, increasing the penalties for non-compliance reduces trust and may reduce voluntary compliance. For example, the EMP501 penalty of up to 10% is now being applicable to “incomplete returns”, which opens up significant possibilities for over-zealous application by SARS, in a manner that is inconsistent with section 209 of the Tax Administration Act.

The removal of the maximum period for which penalties can be applied for reportable arrangements has the effect of potentially significantly increasing these penalties. Higher penalties for reportable arrangements are particularly problematic given the difficulty for normal taxpayers in applying the reportable arrangement rules. The different reportable arrangement provisions are in different documents (tax statute versus notices) and the SARS reportable arrangement guide is not up to date.

It is our recommendation that greater clarity, updated SARS documents, and more consideration therefore be given to this matter before it is implemented.

9. Amendment to section 234

[Applicable provision: section 234 of the Tax Administration Act]

[Clause 40]

Proposed amendment

The proposed amendment clarifies that any document required to be submitted under a tax Act to SARS that is erroneous, incomplete or false, is subject to criminal sanction under section 235.

Problem identified and suggested solution

This could potentially lead to arbitrary criminal sanctions and proceedings.

Human error, for one, is common cause for any erroneous or incomplete submission. Subjecting ANY erroneous or incomplete submission to criminal sanctions would therefore be disproportionate. Falsified documentation is another matter and we agree with the proposed amendment in this instance (it is any event already, under South African criminal laws, subject to criminal sanctions).

Clarity should therefore be given in relation to circumstances where erroneous or incomplete submissions would culminate to criminal sanctions.

10. Amendment to section 256

[Applicable provision: section 256 of the Tax Administration Act]

[Clause 43]

Proposed amendment

The amendment is made “to take account of recent system developments that speed up the process.” But it is also to enable “the Commissioner to, by public notice, insert a *de minimis* for the amount of outstanding tax debt that will contribute to a taxpayer’s tax compliance status as being indicated as non-compliant.

Problem identified and suggested solution

We are not sure what the underlying concern is with this proposed amendment. Furthermore, we do not agree with the proposal with the main concern relating to the *de minimis* amount which could be adjusted by the Commissioner at his discretion.

The policy rationale for this amendment seems to be driven by the recent changes to the eFiling system implemented by SARS. Whilst it seems logical that the legislation and the system be aligned, it must also be borne in mind that there are flaws in the current system that may have unintended consequences for the taxpayer.

Example: A debt that has been suspended does not guarantee that the tax compliance status is reflected as compliant on the SARS online eFiling system. In many instances, a request has to be made to SARS to manually grant a Tax Compliance Status as the system does not seem to be configured to cater for these scenarios.

We submit that the SARS systems be configured to be in line with the legislation to ensure that the taxpayer is not unduly prejudiced by a systemic error which may arise from time to time and that any changes to reflect system changes be held in abeyance until the system inefficiencies are resolved to ensure that the system is aligned to the legislative provisions that underpin the SARS processes. The impact it could be severe on day-to-day businesses, CIPC compliance, payments to be made and received, etc. We refer SARS to the recent Red Ant Security Relocation and Eviction Services (Pty) Ltd v CSARS (2999/18) case in which the court granted costs to the taxpayer and ordered the respondent to restore the applicant's tax compliance status within 24 hours to enable the taxpayer to generate a tax clearance certificate.

Our members have informed us that SARS is not responding timeously to section 164 requests (i.e. suspension of payment of tax debt). This proposed amendment may introduce an additional layer in the already laden dispute process with an undue burden on the taxpayer. It will therefore create additional unintended consequences and inefficiencies.

In addition, we also request that consideration be given to the fact that a decision pending the submission of a request for suspension of payment in terms of section 164 is not within the control of the taxpayer who is subject to the decision by the Commissioner and that subsection 3(b) be amended by the insertion of the following words “after section 167 or 204” to read as follows “a tax debt for which an application for suspension under section 164 has been submitted and ending 10 business days after SARS’s decision has been issued to the taxpayer” to align to the provisions of section 164(6)”.

End.