South African Institute of Tax Professionals

23 June 2014

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Ms A. Collins
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BY E-MAIL: NOMBASA.NKUMANDA@TREASURY.GOV.ZA; ACOLLINS@SARS.GOV.ZA

Dear Ms Nkumanda and Ms Collins

RE: CALL FOR COMMENT: THE FIRST BATCH OF THE DRAFT TAXATION LAWS AMENDMENT BILL, 2014

Thank you for the opportunity to contribute proposals on the first batch of the draft Taxation Laws Amendment Bill, 2014. Set out below, is the South African Institute of Tax Professional's consolidated commentary developed from both an internal review of the provisions as well as from consultations with members, stakeholders and industry.

1 DRAFT TAXATION LAWS AMENDMENT BILL, 2014

1.1 The definition of risk policy in clause (a) is too wide

Problem statement

The proposed definition of 'risk policy' in clause (a) is too wide as it could include investment policies that contain a risk element. This may give rise to manipulation as it would be relatively easy to attach a small element of risk to a policy if it is desired to account for that policy in the Corporate Fund. It would similarly also be possible, where the insurer would like to account for the policy in the policy holder fund, to split the policy so that only investment risk is accounted for in one policy and the risk element in another policy.

Proposed solution/recommendation

The definition of 'risk policy' in clause (a) should exclude investment policies.

1.2 The basis of the formula in clause (f) is unknown

Problem statement

Basic tax principles seem to have been ignored in the proposed formula in clause (f). The reasoning behind the formula is unclear.

Proposed solution/recommendation

Normal tax principles in respect of the disallowance of expenses should apply to the extent that a taxpayer cannot demonstrate or calculate expenses attributable to exempt income. If there is no support for such an approach, National Treasury should rather consider the establishment of a fifth fund to which the risk business must be allocated. Such a fifth fund will have a much more equitable effect than allocating the business to the Corporate Fund and running the risk of creating inconsistencies which have not been anticipated.

1.3 Existing losses in a policyholder fund

Problem statement

The Draft Taxation Laws Amendment Bill, 2014 made no reference as to how existing losses in a policy holder fund is to be dealt with going forward. The only reference is that the insurer must place assets with a market value equal to the liabilities in respect of the relevant policies in the fund concerned.

Proposed solution/recommendation

It is advised that specific provisions be inserted in the Draft Taxation Laws Amendment Bill, 2014 to deal with how existing losses in a policy holder fund should be dealt with. Alternatively, a comprehensive guide to the taxation of the four funds in the form of a Binding General Ruling as envisaged in Chapter 7 of the Tax Administration Act (No. 28 of 2011) would suffice.

1.4 Negative effect on savings as a result of the application of clause 136 of the draft Taxation Laws Amendment Bill, 2013

Problem statement

Various sets of information are needed from a valuator to determine the taxable value of the benefit of an employer contribution to a defined benefit retirement fund. It is unfortunate that the costs of obtaining this valuator will ultimately be borne by the members of the fund, reducing their potential savings.

Proposed solution/recommendation

Some relief for the time and costs incurred in providing this information should be provided to ease the compliance burden for these taxpayers.

2. CLOSING

Concerns were raised that the full impact of these changes have not been researched and should rather stand over until the Davis Committee has completed its work and the Financial Services Board has finalised the new solvency regime. In the meantime disallowance of certain expenses in the Individual Policyholder Fund and Corporate Policyholder Fund that relates to risk business could be considered.

Please do not hesitate to contact us should you wish to discuss this further.

Yours sincerely,

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