

24 August 2015

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BY EMAIL: Normalizo Bulisile (normalizo.bulisile@treasury.gov.za)
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RE: COMMENTS CONCERNING THE DRAFT TAXATION LAWS AMENDMENT BILLS: BUSINESS TAX INCENTIVE ISSUES

Attached are the SAIT business incentive tax comments associated with the draft Taxation Laws Amendment Bills. We thank you for the comment period and understand that a workshop concerning international and business tax issues will occur on 2 September 2015.

Should you have any further questions, feel free to contact us.

Yours sincerely,



Duane Newman
Chair of the Business Tax Incentives Committee

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INCENTIVE TAX ISSUES

I. INDUSTRIAL POLICY PROJECTS – COMPLIANCE PERIODS (SECITON 12I)

The proposed amendment seeks to clarify the period to comply with the various mandatory and points scoring criteria under S12I. To date there has been uncertainty and in some cases companies could not comply with the requirements in time as the period to comply was linked to the date the application was approved.

We generally support the amendment, but would recommend an adjustment:

- The policy behind the co-ordination between the years in which the additional deduction is allowed both for training and for assets and consequent new compliance period is unclear. We suggest that the compliance period is limited to 3 years or until the mandatory and points scoring criteria have been complied with. This will deal with the situation where the training compliance period is longer than 3 years.

The Minister's discretion to extend section 12I for an additional year from 4 to 5 years is not aligned in section 12I(19). This subsection should also refer to the 4 year period under S12I (7)© and not just subsections 12I(2) and 12I (6)(b) The extension should cover all sub sections otherwise the application of the Minister's discretion if awarded could have unintended consequences.

Although technically outside the issues raised in the Taxation Laws Amendment Bill, certain section 12C assets fall outside the SIC Codes under major division 3 even though these assets are otherwise depreciable. We would suggest that section 12I be expanded to cover all of these section 12C assets without regard to the SIC Codes (other than the specific exclusions such as alcohol). We believe that the requirement that the assets are claimable under S12C is sufficient enough qualifying criteria.

We also suggest that assets that are claimable under S12B should also be allowed to claim S12I.

We also note that the reason for extending the period for applications from 2015 to 2017 is to align S12I with the MCEP period. We however are of view that this extension could be of academic interest if the associated budget of R20 billion of allowances is not increased. We understand that the budget of R20 billion will be mostly utilised by December 2015. It is vital, to large projects that have long planning cycles and the tough economic conditions, that S12I is effectively open for applications post December 2015.

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II. RECEIPT OF EXEMPT GRANTS (SECTION 12P AND THE ELEVENTH SCHEDULE)

Although the receipt and accrual of grants is technically stated to be exempt, the relief is more akin to deferral. We note that mere deferral is a far cry from exemption because the loss of tax attributes may, in unique circumstance, be too high a price to be paid for the exemption. Others find the complexity (and resultant uncertainty) of tracing the exemption to tax attribute reduction as similarly problematic. Therefore, we request that section 12P be optional so taxpayers do not find themselves in a worse position.

In making this suggestion, we note that certain SARS auditors are taking positions that could result in a double loss of tax attributes as a price for the exemption.

Example:

Facts. Manufacturer undertakes a training programme which is funded by 11th Schedule exempt grants. The training costs R500 000 and the grant covers these costs.

Outcome. SARS takes the position that the section 11(a) deductions for training are denied because the training is aimed at the grants (exempt income). The tax attributes of the taxpayer are additionally reduced due to the section 12P tax attribute reduction rules. It should be noted that we believe that the section 11(a) deductions should be allowed because the training objective is ultimately intended to generate business revenue (as opposed to receiving the grant). However, if this harsh view potentially exists, many would simply prefer to accept the grant as taxable without have to face the possible denial of section 11(a) deductions along with the section 12P loss in tax attributes.

III. NOTE ON THE SECTION 12L ENERGY EFFICIENCY SAVINGS

We welcome the increase in the incentive from 45 cents to 95 cents.

We strongly recommend that the suggestions to amend S12L to include fuel switching eg solar PV seriously considered to be implemented as soon as possible. We understand a study was done by SANEDI and GIZ on this.

The section 12L energy incentive is not working as intended due to implementation challenges. The incentive rests on the issue of certificates from SANEDI that taxpayers can fully rely upon for key criteria. Without full approval as required from these certificates, taxpayers have no certainty that section 12L deductions can be claimed. Early history indicates that SENEDI is only willing to issue certificates with multiple caveats. These caveats have essentially rendered these certificates meaningless or creating significant tax risk for taxpayers who chose to rely on them. The certificate system must be changed or the incentive will be viewed as too unreliable to act upon.