

24 August 2015

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**RE: COMMENTS CONCERNING THE DRAFT TAXATION LAWS AND TAX ADMINISTRATION LAWS  
AMENDMENT BILLS: VALUE-ADDED TAX ISSUES**

Attached are the SAIT value-added tax comments associated with the draft Taxation Laws and Tax Administration 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,

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## VALUE-ADDED TAX ISSUES

### Draft Taxation Laws Amendment Bill, 2015

#### I. **PARAGRAPH 120: COMMERCIAL ACCOMMODATION – THE AMENDMENT IN SUBSECTION (1)(1) IN THE DEFINITION OF “enterprise” FOR PARAGRAPH (IX) OF THE PROVISIO:**

SAIT supports the amendment - threshold for commercial accommodation to be increased from R 60 000 to R 120 000.

##### **1. Problem statement:**

The fact that a person will be deemed not to be the carrying on an enterprise (effective 1 April 2016) will mean that the person will no longer be supplying commercial accommodation if such receipts do not exceed R120 000 in a 12 month period. This would be relevant where total value of taxable supplies made by that person in the preceding period of 12 months exceeded R60 000, but not R120 000. If such a person was registered as a vendor it would mean that the person then will cease to be a vendor as envisaged in section 8(2) of the Value-Added Tax Act (“the Act”). SARS must then cancel the registration of such vendor with effect from the last day of the tax period during which all such enterprises ceased (unless another date is determined by SARS). The vendor will have to declare an output tax in that tax period.

##### **2. Proposed solution / recommendation:**

It is recommended that a 12 month period repayment relief is given to vendors who will have to deregister in terms of section 8(2) of the Act as a result of the proposed amendment.

##### **3. Problem statement:**

It appears that the substitution of paragraph (ix) to the definition of “enterprise” in section 1(1) of the Act may result in confusion for vendors making supplies other than that of commercial accommodation as it provides that the person will not be carrying on an enterprise if the total value of taxable supplies made by that person will not exceed R120 000.

**4. Proposed solution / recommendation:**

The total value of taxable supplies in proviso (ix) in the definition of “enterprise” should be limited to the supply of ‘commercial accommodation’ only.

**II. PARAGRAPH 120: DEFINITION OF “connected persons” IN PARAGRAPH (d)(ii) OF SECTION 1(1) OF THE ACT:****1. Problem statement:**

The amendment deletes the words “(being shareholders as contemplated in the definition of ‘shareholder’ in section 1 of the Income Tax Act)”.

There is currently no definition for shareholder in the Act. The wording of the subparagraph, if the proposed amendment is implemented, refers to “...substantially the same persons as the shareholders...” The amendment may result in interpretational difficulties and does not expand to differentiate between Joint Ventures, Partnerships and the like which has different legal relationships than that of companies.

Another difficulty we envisage is whether or not Preference Shareholders will be included as they do not have the same legal privileges as normal shareholders.

**2. Proposed solution / recommendation:**

It is recommended that additional consideration be granted to provide a definition of “shareholder” which is based on recognised legal principles to avoid creating a “connected person” in a transaction which may not legally exist.

### III. **PARAGRAPH 121: DELETION OF SECTION 8(23) OF THE ACT - A NATIONAL HOUSING PROGRAMME CONTEMPLATED IN THE HOUSING ACT:**

#### **1. Problem statement:**

SAIT is generally in favour of a broad based VAT system with as little exceptions that erode the base as possible. However, where the tax system is the only instrument available to achieve socio economic objectives, it should be carefully considered against the negative policy impact that the use of the tax system to achieve these objectives would have. Where other means outside of the tax system is available and can be deployed effectively, these should rather be used.

SAIT does not support the deletion of section 8(23) read with section 11(2)(s) for the sole purpose of enhanced enforcement. We believe that the VAT relief provided by these provisions directly benefits the lower income segment of our population.

The legislation contains clearly defined rules to ensure that the grants should only benefit the poor. Grants are generally awarded to qualifying Public Benefit Organisations and Welfare Organisations for capital expenditure which forms part of social services to the poor.

We understand that such grants, in most instances, are not adequate to cover capital expenses incurred in full and by deleting these sections will result in such organisations having to obtain yet more additional income in a market where it is already a challenge to obtain donations.

#### **2. Proposed solution / recommendation:**

We would support the deletion of section 8(23) and 11(2)(s) of the Act only if these sections cannot be revised to cater for National Treasury's concerns. In the alternative, where effective assistance can be granted outside of the VAT system, a deletion is supported.

**IV. PARAGRAPH 124: SECTION 11(2)(R)**

SAIT agrees with the proposed amendment.

For the sake of absolute clarity, we recommend that the proviso be amended to read as follow:

*“Provided that this paragraph shall not apply where the supply is made to the said employer, to the extent to which that employer is a resident of the Republic or a vendor...”*

**V. DRAFT TAX ADMINISTRATION LAWS AMENDMENT BILL, 2015;**

- a. Paragraph 25: section 16(3)(g) of the Act - alternate documentation containing such information as the Commissioner may by public notice specify

**1. Concern:**

A “public notice” must be published in the Government Gazette. We believe that this process may result in unnecessary delays.

**2. Proposed solution / recommendation:**

It is suggested that the information that must be contained in the alternative documentation should be specified by SARS in a more informal process i.e. by means of a general binding ruling.

It is therefore recommended that the words “... by public notice...” are deleted in this proposal.

**VI PARAGRAPH 27: SECTION 41**

Please refer to the following extract of our submission dated 8 June where we recommended that the payment basis of accounting for VAT be extended to all vendors subject to certain requirements.

**1. Background**

Section 15(2)(b) allows only natural persons (and unincorporated bodies of persons) to register on the payments basis if taxable supplies did not/will not exceed R2,5m in the previous/following 12 months. However, it is submitted that section 15(2)(b) should be extended to incorporated persons (e.g. companies), especially small businesses.

Numerous small businesses are struggling to maintain positive cash flows. Accounting for output tax on the invoice basis only worsens the situation because VAT is often payable long before the underlying cash yield is received. Accounting for VAT on the invoice basis is especially problematic for vendors who render goods or services to government and to large businesses that insist on extended credit terms. In the Committee's experience, Government can take as long as two years to pay for tenders. Even large private firms often take as long as 90-to-120 days to make payment (e.g. it is not unheard of for some larger companies to use their leverage with smaller contractors to delay payment). It is furthermore submitted that the invoice basis places a substantial compliance burden on small businesses who often rely on cash-flows (as opposed to invoice accounting) in order to run their daily businesses.

It is accordingly submitted that the threshold of R2.5 million has not kept pace with inflation and should be adjusted upwards according to the Consumer Price Index ("CPI"). Alternatively, as suggested in the Davis Tax Committee: Small and Medium Enterprises: Taxation Considerations, Interim Report, July 2014, the threshold should be increased to R20m in accordance with section 12E of the Income Tax Act (No. 58 of 1962) ("Act"). This change would also be consistent with the promotion of the SMME sector as stipulated in the National Development Plan.

## 2. Proposed solution/Recommendation

It is proposed that the relief of section 15(2)(b) be extended to incorporated entities. Many small business entrepreneurs form companies to reduce risk or as quick form of eligibility for tenders. It is further proposed that the R2,5 million threshold be increased with reference either to CPI since enactment or to align the threshold with the R20m threshold in section 12E(4)(a)(i) of the Income Tax Act. The proposed expansion would be of great assistance to many small businesses.

In addition, it is proposed that companies registered on the payments basis must still account for output tax on the invoice basis (despite the payment basis registration) should the value of a supply exceed R800 000 which is increased from its current R100 000 by the same ratio as proposed above. This R800 000 limit would replace the R100 000 limit for natural persons and unincorporated bodies (section 15(2A)) if accepted. It is further submitted that section 22(3) would adequately address any avoidance that may take place by forcing recipients registered on the invoice basis to account for output tax if those recipients had not paid the supplier registered on the payments basis within 12 months.