



31 August 2024

To: The National Treasury

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The South African Revenue Service

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Via email: National Treasury (2024AnnexCProp@treasury.gov.za)
SARS (acollins@sars.gov.za)

RE: DRAFT TAXATION LAWS AMENDMENT BILL, 2024: WEALTH AND FAMILY BUSINESS

Dear Colleagues,

We attach the comments from the SAIT Wealth and Family Business Tax Technical Work Group (**the WG**) on the proposals contained in the draft Taxation Laws Amendment Bill, 2024 (DTLAB), as it pertains to wealth and family business tax and related matters.

We value the opportunity to participate in the legislative process and would welcome further engagement where appropriate.

Please do not hesitate to contact us should you need further information.

Yours sincerely,

SAIT Wealth and Family Business Tax Technical Work Group

Disclaimer

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All references to the legislation are to the Income Tax Act, No. 58 of 1962 (the Act) and the proposals contained in the draft Taxation Laws Amendment Bill, 2024 (DTLAB)

1. Clarifying anti-avoidance rules for low-interest or interest-free loans to foreign trusts

[Applicable provisions: Section 7C of the Act]

1.1 Government Proposal

1.1.1 The current trust anti-avoidance measures specifically exclude a low- or no-interest loan arrangement that constitutes an affected transaction that is subject to the transfer pricing rules contained in the Act. Presently the above-mentioned exclusion does not effectively address the interaction between the trust anti-avoidance measures and transfer pricing rules where the arm's length interest rate is less than the official rate of the cross-border loan arrangements.

1.1.2 To address the anomaly and to clarify the policy intent of the trust anti-avoidance measure, government proposes that an amendment be made to ensure that the exemption of the trust anti-avoidance measure in respect of a loan, advance or credit that constitutes an affected transaction, as defined in the transfer pricing provisions, only applies to the amount or portion thereof, owing by that trust in respect of that loan, advance or credit, to the extent of an adjustment being made on that amount or part thereof in terms of the transfer pricing provisions.

1.2 WG response

1.2.1 Our understanding is that the proposed amendment seeks to clarify the initial policy intent whereby the provisions of section 7C would not apply to the extent the provisions of section 31 are applicable, in order to avoid double taxation. Specifically, to the extent that the primary adjustment (in section 31(2) of the Act) applies to tax-free transfer of wealth to foreign trusts that utilise low or interest-free loans, advances, or credit arrangements, including cross-border loan arrangements, the provisions of section 7C(5)(e) should be precluded from application. The proposed wording seeks to give effect to this intention.

1.2.2 However, upon our reading, the wording in the DTLAB results in loans to foreign trusts from lenders that are connected persons to be affected transactions. In this case, the provisions of section 7C would still apply unless the primary and secondary adjustments in section 31(2) are carried out by the resident lender. The essentially results in double taxation in the hands of the resident lender.

1.2.3 Additionally, the example in the draft Explanatory Memorandum (EM) is not commercially viable. It is uncommon to have arms' length rates which are less than the repo rate.

1.3 Request

1.3.1 We request that clearer examples be provided in the draft EM.

1.3.1.1 For example, one example of what happens if the loan is an affected transaction



- 1.3.1.2 with arms' length interest charged; and
Another example to examine is a case involving USD or Swiss Franc repo rates where the arm's length rate is lower than the prevailing USD or Swiss Franc repo rate.

2. Reviewing the connected person definition in relation to partnerships

[Applicable provision: Definition of "connected person" in section 1 of the Act]

2.1. Government proposal

- 2.1.1. Limited partners in an *en commandite* partnership (a partnership carried out in the name of only some of the partners; the undisclosed partners contribute a fixed sum and are not liable for more than their capital contribution in case of a loss) are potentially affected by the wide ambit of paragraph (c) of the definition of "connected person". In many instances, these limited partners are inadvertently connected to each other even in instances whereby these partners are unaware of each other. Thus, it was proposed that the definition of a "connected person" be amended to exclude "qualifying investors" due to their isolated involvement in the partnership.

2.2. WG response

- 2.2.1. Whilst we are *prima facie* in agreement with the proposed amendment and the intent to create certainty in this regard, we request that clarification be provided pertaining to the meaning of "qualifying investor".
- 2.2.2. Further to the clarification of the definition of "qualifying investor" which should be sufficient, we caution that in order to circumvent the occurrence of a *bona fide inadvertent error* being made by a taxpayer when practically applying this proposed amendment – the requested clarification should be clear insofar as who is intended to be a "qualifying investor" and which taxpayers are being sought to be excluded from being inadvertently connected to each other.
- 2.2.3. Does excluding a "qualifying investor" from the definition of connected person itself achieve the intended result?

End.