South African Institute of Taxation

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27 August 2021

To: The National Treasury
240 Madiba Street
PRETORIA
0001

The South African Revenue Service
Lehae La SARS, 299 Bronkhorst Street
PRETORIA
0181

Via email:	**National Treasury**	(2020AnnexCProp@treasury.gov.za) and
	SARS	(acollins@sars.gov.za)

Dear Colleagues,

RE: DRAFT TAXATION LAWS AMENDMENT BILL, 2021: BUSINESS (INCENTIVES)

Please find attached hereto the comments from the SAIT Business Incentive and Grants Tax Technical Work Group (the WG) on the draft Taxation Laws Amendment Bill, 2021, as it pertains to Business Incentives 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 Business Incentives and Grants Tax Technical Work Group

All references to legislation are to the Income Tax Act, No. 58 of 1962 (the Act), and proposals contained in the draft Taxation Laws Amendment Bill, 2021.

1. Extension of the urban development zone (UDZ) tax incentive sunset date

[Applicable provision: Section 13*quat* of the Act]

1.1 Government proposal

In line with the Minister's announcement in the 2021 Budget Review, it is proposed that the below changes be made in section 13*quat* of the Act to extend the UDZ tax incentive by another two years, to 31 March 2023:

> *1) Section 13quat of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (5) for paragraph (c) of the following paragraph:*
> ***"(c) which is brought into use by the taxpayer after 31 March [2021] 2023."***
> *(2) Subsection (1) is deemed to have come into effect on 1 April 2021 and applies in respect of any building, part thereof or improvement that is brought into use on or after that date*

The extension of the incentive's sunset date will provide time for an extensive review of its effectiveness in achieving its objectives to be conducted.

1.2 WG response

The amendment is noted. The WG has no additional comments.

2. Extension of the learnership tax incentive sunset date

[Applicable provision: Section 12H of the Act]

2.1 Government's proposal

In line with the Minister's 2021 Budget announcement, it is proposed that the below changes be made in section 12H of the Act to extend the learnership tax incentive by another two years, to 1 April 2024:

> *Section 12H of the Income Tax Act, 1962 is hereby amended by the substitution in subsection (1) in the definition of "registered learnership agreement" for paragraph (b) of the following paragraph:*
> ***"entered into between a learner and an employer before 1 April [2022] 2024****"*

2.2 WG Response

The amendment is noted. The WG has no additional comments.

3. Refining the timeframes of compliance requirements of industrial policy projects tax incentives.

[Applicable provision: Section 12I of the Act]

3.1 Government proposal

In order to ensure that approved projects have a better chance of complying with section 12I provisions and are not adversely affected by COVID-19 and consequent restrictions on economic activity resulting in non-compliance, there are several amendments that were proposed in section 12I of the Act.

3.2 WG response

Applicants will be required to submit a motivation to the adjudication for extension of periods in contemplated in:

- paragraph (b) of the definition of 'compliance period' in subsection (1); and
- subsections (2), (6)(b) and (7)(c).

Although this addresses the impact of COVID-19 on some Industrial Policy Projects, the timing of the legislative process and the requirement of projects to receive adjudication committee approval for the extension of these time periods, will create further delays for projects which have already reached the time limits outlined in the act and thus create uncertainty.

Stated differently, with applicants currently required to submit a motivation to the adjudication committee for an additional extension to be granted, this leads to additional administrative burden, uncertainty and delays. It appears that a transitional period may have to be included, which can assist in mitigating the administrative burden and addressing the backlog.

Applicants are faced with different scenarios:

- Projects that have reached the 4 year period and have applied for 1 year extension and are still waiting for approval from DTI; these are projects that need to be considered. The proposals will assist with administrative backlog.

- Projects which have reached their 4 year period and have been granted an additional 1 year extension, but due to COVID-19 they could not reached their 50% investment requirement; these projects should be considered under the transitional period.

- Projects that are in the 3rd year of the compliance period and due to COVID-19 they could not finish training; these project should be considered.

Regarding the above, the WG makes the following recommendations:

- Projects with periods contemplated in paragraph (b); and sub sections (2), (6) (b) and (7) (c) that fall between 1 January 2020 and 31 January 2022, that have had delays as a result of the impact of COVID-19, will be deemed to have been extended for a period not exceeding 30 June 2022 or until all the requirements are met.

OR

- Projects with periods contemplated in paragraph (b); and sub sections (2), (6) (b) and (7) (c) that fall between 1 January 2020 and 31 January 2022, that have had delays as a result of the impact of COVID-19, will be deemed to have been extended for a period not exceeding all tax year of assessment before 1 January 2023 or until all the requirements are met.

It is envisaged that applicants will be required to provide motivation to adjudication for extension of the project post the transitional period showning that the transitional period was not sufficient to implement the project and that the fundamental reason for non-compliance was the COVID-19 pandemic or any circumstances arising therefrom.

4. Extension of sunset clause for section 11D

4.1 Background

With the Department of Science and Innovation's (DSI) review of the effectiveness of section 11D of the Act underway, industry stakeholders require business continuity and policy certainty. Industry stakeholders are hoping that National Treasury will announce the extension of the sunset clause in the Budget for 2022.

4.2 WG response

The WG recommends that the *status quo* be maintained until DSI, and National Treasury finalise the study on the effectiveness of section 11D of the Act. We further recommend that a conservative approach be maintained. This exploration should be aligned with the decision to extend the sunset clause period for section 12H and the UDZ incentive (as discussed above).

There is some evidence to suggest that companies that have been able to thrive during COVID-19 are those who have been able to innovate and adapt to changing conditions. Essentially research and development are key to this process and terminating section 11D given this context is inopportune.

Following on from the discussion above, we suggest that the section 11D incentive be extended for 5 years

5. Extension of sunset clause 12L

5.1 Background

With the review of the programme underway, industry stakeholders require business continuity and certainty. Industry stakeholders are hoping that National Treasury will announce the extension of the sunset clause in the Budget for 2022.

5.2 WG response

Energy is a critical input for economic growth and development and energy efficiency is a core strategy for a sustainable energy system and thus key to South Africa's competitiveness and economic recovery post COVID-19.

The WG recommends that the *status quo* be maintained until the South African National Energy Development Institute (SANEDI) finalises its study. To this end, we recommend that a conservative approach be maintained. Similar to our above comment, this should be in line with the decision to extend the period for 12H.

Following on from the discussion above, we propose that the programme be extended for 5 years

End.