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12 September 2025

To: The National Treasury
240 Madiba Street
PRETORIA
0001

The South African Revenue Service
Lehae La SARS
299 Bronkhorst Street
Nieuw Muckleneuk
Pretoria
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Via email: National Treasury (2025AnnexCProp@treasury.gov.za); and
SARS (2025legislationcomments@sars.gov.za)

RE: DRAFT TAXATION LAWS AMENDMENT BILL, 2025: CORPORATE TAX TECHNICAL WORK GROUP

Dear Colleagues,

We attach the comments from the SAIT Corporate Tax Technical Work Group (**WG**) on the proposals contained in the draft Taxation Laws Amendment Bill, 2025 (**DTLAB**).

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.

SAIT Corporate Tax Technical Work Group

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

1. **Extending the anti-avoidance rules dealing with third-party backed shares**
[Applicable provisions: Section 8EA of the Income Tax Act]

1.1 Government Proposal

1.1.1 Government proposes strengthening the anti-avoidance rules relating to enforcement rights attached to shares or equity instruments. Specifically, it is proposed that section 8EA of the Act be expanded to address situations where a holder—or any connected person to that holder—has the ability to compel third parties to perform obligations under a dispensable enforcement right, whether in the current or any prior year of assessment.

1.1.2 The proposed amendment would deem any dividend or foreign dividend received or accrued in respect of such a share or equity instrument to be income in the hands of the recipient, where that entitlement to enforce third-party obligations exists. This measure seeks to limit structuring opportunities that undermine the intent of the current provisions and ensures a more robust application of the anti-avoidance rules.

1.2 WG response

1.2.1 The DTLAB now references "the year of assessment or previous years of assessment," meaning that even if the guarantee or backing is removed in a subsequent year, the share remains tainted for tax purposes.

1.2.2 The policy intent is to prevent avoidance schemes where taxpayers "remedy" their position at the end of a year of assessment, only to revert the structure in the following year. However, the WG expressed concern that the amendment may be too broad and could capture legitimate commercial transactions.

1.3 Recommendations

1.3.1 The legislation should provide carve-outs for transactions that are commercially driven and not designed for tax avoidance. For example, if a guarantee is relinquished for genuine commercial reasons, the instrument should not remain tainted. This is relevant for current and preceding years of assessment.

1.3.2 We request guidance on the treatment of intra-group disposals and amalgamations. If the original holder no longer exists or the shares have been transferred within the group, we strongly recommend that the anti-avoidance provisions should not apply.

1.3.3 This anti-avoidance provision should not apply retrospectively to instruments that have been remedied for valid commercial reasons. This proposed amendment should distinguish between avoidance schemes and genuine commercial restructurings.

1.3.4 While the policy intent is clear, the lack of commercial carve-outs may result in

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unintended consequences for genuine commercial transactions. Thus, for alignment purposes, we recommend and request that National Treasury provide examples of transactions that are viewed as abusive as envisaged by the tightening of these anti avoidance provisions as well as guidance on how to distinguish between avoidance schemes and genuine commercial restructurings.

2. **Clarifying the ordering of set-off of balance of assessed losses and certain deductions**

[Applicable provisions: Sections 18A and 29A of the Act]

2.1. Government proposal

2.1.1. It is proposed that amendments be made to clarify the sequence in which deductions are applied when calculating taxable income. Specifically, the relevant deduction limitation should be applied to taxable income calculated *prior* to the application of that deduction and *before* offsetting any balance of assessed losses under section 20 of the Act.

2.1.2. The intention is to confirm that assessed loss limitation rules are applied last—only after all other applicable deductions have been taken into account.

2.2. WG response

2.2.1. The WG expressed support for the proposed clarification, given its alignment with current industry practice and the added benefit of providing certainty for tax planning purposes.

3. **Clarifying the determination of Contributed Tax Capital**

[Applicable provisions: Section 8G of the Act]

3.1. Government proposal

3.1.1. The original intent behind introducing the anti-avoidance rule in section 8G of the Act in 2017 was to address intra-group transactions that effectively re-organised shareholding without resulting in any real movement of operational assets or deployable capital. To accommodate certain legitimate corporate financing transactions within group structures, National Treasury proposes that section 8G be amended to exclude specific equity financing arrangements. Examples were set out in the draft explanatory memorandum.

3.2. WG response

3.2.1. The WG has noted that engagements in this regard have been ongoing for a number of years. While the proposed change is a welcome development, we believe that it remains too narrow in scope.

3.2.2. As previously raised, the concern persists in relation to standard group funding arrangements—specifically, where a foreign parent company injects equity through a multi-tiered South African group structure, ultimately funding the bottom-tier company. That company may then use the funds for legitimate business purposes such as acquiring trading stock or settling operational debt.

Despite the commercial rationale and absence of aggressive tax planning, current interpretations of the CTC provisions still present challenges. This remains a problematic area that requires further clarification. The intention is to fund a business through genuine equity injections, but the resulting tax treatment does not align with the underlying commercial reality.

3.2.3. We therefore wish to reiterate our previous recommendations for broader concessions to address CTC issues in tiered group structures and non-aggressive funding arrangements.

4. Roll-Over Relief for Listed Shares in Asset-for-Share Transactions and Reviewing asset-for-share and amalgamation transactions involving collective investment schemes

[Applicable provisions: Section 41, definitions of a “company”, “equity share”; section 42, definitions of “asset-for-share", “qualifying interest” and section 44 of the Act]

4.1. Government proposal

4.1.1. The legislation proposes an amendment that more clearly reflects the original policy intent, specifically addressing the practical tracing difficulties associated with the special roll-over relief regime for listed shares. The relief will be limited to apply only in cases where the acquiring company obtains listed equity shares in the target company from shareholders who held less than 20% of the target's listed equity prior to the transaction. Furthermore, the roll-over relief mechanism will be refined to ensure that both the tax character and tax cost of the listed target shares acquired are aligned with the principles applicable to standard asset-for-share transactions. This alignment will apply equally to any such transactions concluded on the same terms within a 90-day period following the initial disposal.

4.1.2. To address unintended tax avoidance and promote a more equitable and consistent application of tax legislation, it is proposed that the provisions governing asset-for-share transactions (section 42) and amalgamation transactions (section 44) be amended to exclude their application to transfers involving CIS’. This change seeks to prevent the deferral or avoidance of tax on realised capital gains arising from the transfer and subsequent disposal of shares by CIS’ in these specific circumstances.

4.2. WG response

4.2.1. Impact on Commercial Transactions

4.2.1.1. The denial of roll-over relief for listed shares has significant implications for legitimate commercial transactions, including those previously approved by SARS through private rulings. The WG noted that several transactions, which had received positive SARS rulings, may now potentially be rendered unviable by this amendment. We believe that this undermines certainty and trust in the tax system.

4.2.2. Need for regulatory distinction (closely held vs. widely held CIS) and consideration of policy rationale

4.2.2.1. At the outset, the WG expressed concern that the proposed amendment is too broad and could capture legitimate commercial transactions, leading to unintended consequences such as discouraging investment and undermining the efficiency of the capital markets.

4.2.2.2. As such, the WG strongly recommends that a distinction be drawn between closely held and widely held CIS's. In the aim to balance regulatory oversight, commercial viability and policy intent we propose that roll-over relief should be retained for widely held schemes subject to regulatory oversight (such as Financial Sector Conduct Authority (FSCA) policies), as these are less likely to be used for avoidance purposes.

4.2.2.3. There are legitimate commercial reasons for asset-for-share transactions involving listed shares, such as regulatory-driven transfers, changes in management companies, or restructuring for efficiency. The proposed blanket denial of roll-over relief, in our view, fails to account for these scenarios.

4.2.2.4. The repeal of section 44 CIS mergers read with the paragraph 82A CGT triggered on distributions other than income or gross income would result in CGT for investors when decisions are made by the asset manager on the fund. These decisions are out of the control of the investors and non-tax commercial reasons to merge an existing CIS with another. For example, there could be a change of management companies, industry consolidation or change in investment mandates.

4.3. Recommendations

4.3.1. The proposed amendment may potentially result in a negative impact on legitimate commercial transactions, including those previously approved by SARS. And such clarity is sought in respect of those transactions as well as further consultation with industry stakeholders.

4.3.2. To this end, we recommend the retention of roll-over relief for widely held CIS and provide carve-outs for transactions driven by regulatory requirements. For example, transfers required by the FSCA should not trigger a capital gains tax event. Additionally, we urge the National Treasury to distinguish between closely held and widely held CIS's, with roll-over relief retained for widely held schemes subject to regulatory oversight.

5. Refining and clarifying the meaning of "interest" to enhance certainty

[Applicable provision: Section 23M of the Act]

5.1. WG response

5.1.1. The current proposed amendment is inconsistent. Proposed changes to section 23M involve using different definitions for interest. For calculating adjusted taxable income, the adjustment is made only for interest as defined in section 24J. However, when applying the actual limitation in section 23M, interest as defined in section 23M is applied.

5.1.2. NT notes the reason for not including the additional elements of "interest" as per the definition in section 23M is that there is no policy rationale. However, NT notes that the interest (with all the additional elements per the definition of interest in section 23M) is retained when determining the interest that is subject to the limitation.

5.1.3. This creates a disconnect between the definition in section 23M, the mechanics of the calculation and the explanation provided in the draft explanatory memorandum. It is unclear how it is not NT's policy to not adjust the adjusted taxable income with the additional elements but still subject those additional elements to the limitation.

5.1.4. One possible solution could be to remove the definition of "interest" in section 23M in its entirely. As it stands, the treatment remains uncertain and we believe that clarity in this regard is required. Specified items could be inserted into the relevant parts of section 23M, in addition to section 24J interest as required to achieve the policy objective. This would enhance the ability of taxpayers applying the section to achieve a correct application.

5.1.5. Alternatively, the elements included in the interest deduction that is subject to the limitation; should also be adjusted for in the calculation of the limitation.

5.1.6. We further express concern that the treatment of interest rate swaps and other financial instruments, noting that the exclusion of foreign exchange losses, may result in inconsistent application of these limitation rules.

5.2. Recommendations

5.2.1. Remove the definition of "interest" in section 23M in its entirety; alternatively create parity between the amount of interest subject to the limitation and the calculation of the limitation.

5.2.2. Alternatively we set out the following considerations:

5.2.2.1. the provisions relating to the determination of adjusted taxable income should remain unchanged. However, upon assessment of the application of the section (by considering section 23M(2)) the application of the definition of interest as included in section 23M(1)should apply <u>excluding par (c)</u>, or

5.2.2.2. the provisions relating to the determination of adjusted taxable income should remain unchanged per section 23M and eliminate the application of section 23M to section 24I items i.e. <u>remove only par (c) of the interest definition</u>.

5.2.3. We cannot overemphasis the need for clear, predictable rules to enable taxpayers to plan and comply with the limitation rules.

6. Clause 23 - Amendments to Section 24I (Preference Shares included as "exchange items")

6.1.1. This proposed amendment to include "preference shares" as an exchange item, in our view would have been premised on it being akin to "debt" as was proposed in the amendments section 8E (Hybrid Equity Instruments) hence the withdrawal of

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that proposed amendment which was due to "numerous commentators have raised concerns with National Treasury and SARS that the current broad wording in the DTLAB in relation to this proposal will effectively eliminate preference shares as a viable means of financing" as noted in the NT media release dated 3 September 2025. Accordingly, this amendment need also be withdrawn until such time as further public consultations are undertaken in this regard.

6.1.2. Including preference shares as an exchange item subject to the taxing of foreign exchange gains and losses would be highly detrimental and hinder genuine business transactions which rely on preference share funding.

7. **Clause 30 Amendments to Section 64E(4)(a)**

7.1.1. Whilst the reason provided for this amendment is accepted, it is unclear whether the mere insertion of the words "directly or indirectly" achieves this intent.

7.1.2. As this is a deeming provision and the immediate shareholder of such subsidiary is a company (in most cases resident company), this amendment merely deems the dividend to be that of the holding company which would likely qualify for the section 64FA read in conjunction with section 64F(1)(a) qualify for an exemption.

7.1.3. It is contended that in order to achieve this policy objective that the amendment would need to go further by way of an additional insertion of subclause (dd) and a corresponding amendment by way of an insertion in section 64EB to deem the beneficial owner of such dividend to the person referred to in section 64(4)(a)(i) to ensure that it will be subject to the relevant dividend withholding tax.

End.