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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
0181

Via email: National Treasury (2025AnnexCProp@treasury.gov.za); and
SARS (2025legislationcomments@sars.gov.za)

RE: DRAFT TAXATION LAWS AMENDMENT BILL, 2025: WEALTH AND FAMILY BUSINESS TECHNICAL WORK GROUP

Dear Colleagues,

We attach the comments from the SAIT Wealth and Family Business 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 Wealth and Family Business Technical Work Group

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. **Cross-Border Tax Treatment of Retirement Funds**

[Applicable provisions: Section 10(1)(*g*C)(ii) of the Act]

1.1 Government Proposal

1.1.1 The DTLAB proposes the deletion of Section 10(1)(gC) to the Act, which currently provides an exemption for foreign pension income received by South African tax residents. As indicated in the draft Explanatory Memorandum, the rationale is to prevent double non-taxation, where neither the source country nor South Africa taxes the pension income, thereby eroding the South African tax base.

1.2 WG response

1.2.1 The WG acknowledged the fiscal rationale for deleting the exemption, as double non-taxation is generally discouraged in international tax policy. However, concerns were raised about fairness to individuals who become South African tax residents and bring foreign pension assets with them as well as South African tax residents who have genuinely relied on this exemption.

1.2.2 The WG deliberated on the amendment and notes the following commentary:

1.2.2.1 It was noted that South Africa does not allow a deduction for contributions made to foreign pension funds prior to residency. Therefore, taxing the full pension income upon receipt may be inequitable, as the individual did not benefit from a deduction at the contribution stage.

1.2.2.2 The WG further highlighted that while annuity income from foreign pensions will become taxable, lump sum withdrawals may still remain exempt under para 54 of the Eighth Schedule to the Act, provided the foreign pension vehicle is "similar" to a South African fund. The definition of "similar" remains unclear and untested, which could lead to structuring behaviour favouring lump sums over annuities.

1.2.2.3 The WG does not seek to legitimately alert National Treasury to the above-board usage of the above-mentioned provision. However, the technical ambiguity may unintendedly incentivise individuals to structure foreign pensions as lump sums to benefit from continued exemption, rather than as income streams. This could potentially undermine the policy intent.

1.2.2.4 The WG further referenced Binding Private Ruling 119 that outlines the tax consequences arising from a transfer of a pension fund interest from a source outside the Republic to approved South African retirement annuity fund. BPR 119 essentially outlines prevailing SARS' view that allows for certain deductions or exemptions to equalise the tax treatment. On the basis that the proposed amendment seeks to do away with this exemption in its entirety, principles outlined in the aforementioned BPR 119 would need to be clarified to ensure technical clarity and fairness.

1.2.2.5 Concerns were raised that foreign pension income could be taxed at up to 45% in South Africa, whereas the source country (e.g., Germany) might apply a much lower effective rate, essentially resulting in effective tax rate disparity. To remedy this the recommendation is made that a formulaic adjustment, similar to that used for foreign dividends, to avoid punitive taxation and maintain South Africa's attractiveness for foreign retirees.

1.3 Recommendations

1.3.1 The following proposed recommendations are made, with the intention of balancing National Treasury's policy rationale and the concerns and unintended consequences that may arise from this proposed amendment:

1.3.1.1 The draft legislation should adequately clarify the treatment of lump sums versus annuities and provide a clear definition of "similar" foreign pension vehicles.

1.3.1.2 Consideration should be given to exempting the capital element of foreign pensions or allowing a deduction for contributions not previously deducted in South Africa, to align with the principle of taxing only the profit element.

1.3.1.3 Technical clarity to be provided in relation to current SARS BPR's to support technical arguments for fairness and clarity.

2. Taxation of trusts and their beneficiaries
[Applicable provisions: Sections 7(5) and 25B of the Act]

2.1. Government proposal

2.1.1. The draft bill proposes further amendments to section 7(5) and 25B of the Act, aiming to limit the flow-through principle to South African residents. The explanatory memorandum cites the difficulty in identifying and collecting taxes from non-resident beneficiaries of trusts. To this end the current wording in the Act does not meet the above objective and, in some instances, may still be interpreted to include non-resident beneficiaries and donors.

2.2. WG response

2.2.1. We are of the view that the attribution rules in section 7 are a cornerstone of anti-avoidance and aim to ensure that income is taxed in the hands of the appropriate party. As a result, the WG expressed concern that the amendment seeks to remove the wording "subject to section 7" from section 25B. This will potentially disrupt the order of tax liability between trusts and beneficiaries and does not address the motivation for the change In fact, it will now also affect distributions by trusts to resident beneficiaries. Also, no similar amendment was proposed for the corresponding capital gains treatment in paragraph 80(2) of the Eighth Schedule to the Income Tax Act.

2.2.2. Reordering the attribution rules in this manner could result in resident beneficiaries and trusts (in instances where distributions are made to non-resident beneficiaries) being taxed first, with attribution only applying afterwards. This

could potentially result in/ create double taxation or unintended mismatches, especially in cross-border scenarios.

2.2.3. Additionally, deeming income in a trust as taxable in South Africa could create mismatches under DTAs, where the beneficiary (or donor) is resident elsewhere and may not/ is not able to claim relief. The principles outlined in recent case law that dealt with trust-to-trust distributions and the application of section 25B, highlight the importance of maintaining clear attribution rules to avoid litigation and uncertainty amongst the relevant parties.

2.3. Recommendations

2.3.1. We recommend retaining the specific wording "*subject to section 7*" in section 25B to preserve the integrity and order of the attribution rules and prevent unintended tax consequences.

2.3.2. Should the above wording removal be intended, we request that the explanatory memorandum should clarify whether the removal of attribution is intentional or an oversight and address the technical implications for both income and capital gains.

2.3.3. Overall, we request and recommend that the proposed amendment should not create mismatches with DTAs; and that beneficiaries can claim relief where appropriate.

End.