South African Institute of Taxation

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28 November 2025

To: The National Treasury
240 Madiba Street
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0001

The South African Revenue Service
Lehae La SARS,
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Via email: **National Treasury** (AnnexCProposals@Treasury.gov.za);
SARS (2026LegislationComments@sars.gov.za)

RE: ANNEXURE C PROPOSALS: SAIT CORPORATE AND INTERNATIONAL TAX TECHNICAL WORK GROUP

We attach the Annexure C proposals from the SAIT Corporate Tax Technical Work Group (the WG), as it pertains to technical proposals for possible inclusion in Annexure C of the 2026 Budget Review.

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 Corporate and International Tax Technical Work Group

Unless otherwise indicated, all references to sections of the Income Tax Act, No. 58 of 1962 (the Act)

1. Section 23N: Providing for limitation to cease to apply where debtor and creditor to form part of the same "group of companies" where an intra-group transaction has been undertaken and funded by interest-bearing funding
[Applicable provision: Section 23N of the Act read with section 45(4)]

1.1. **Background**

1.1.1. We set out below the reasons why the provisions of section 23N require legislative amendment to cater for the scenario where the "acquired company" and "acquiring company" cease to form part of the same group of companies and trigger the de-grouping provision in section 45(4).

1.2. **Overview of section 23N**

1.2.1. Section 23N limits the amount of interest that can be deducted for debt incurred to fund corporate restructurings or acquisitions (e.g., intra-group transfers under s 45 or liquidation distributions under s 47), to prevent excessive gearing. The deduction limit applies during the year of acquisition/reorganisation and for the next five consecutive tax years

1.3. **Legal nature of the problem that arises in section 23N**

1.3.1. Prolonged application for 6 years

1.3.1.1. The limit in section 23N will, effectively, continue to apply for a period of 6 years. This is largely aligned to the time period during which the section 45 de-grouping claw-back in section 45(4) would apply.

1.3.1.2. To the extent a de-grouping occurs within 6 years of the section 45 transactions or any other transactions following a section 45 transaction and group relief has been applied, the de-grouping charge in section 45(4) would be triggered and, to the extent debt funding was used to fund the transaction, the zero-base cost rule in section 45(3A) would cease to apply and the base cost in the debt instrument will revert to face value, less payments received.

1.4. **Proposal and conclusion**

1.4.1. We recommend that the limitation in section 23N should cease to apply where a "de-grouping" has occurred within the six period during which section 23N applies. This would align with the principles in section 45, where the de-grouping provisions apply and the base cost of the debt instrument is restored.

2. Amending the reference to "by reason or in consequence of that disposal" and the removal of ordinary company liquidations/deregistration
[Applicable provision: Paragraph 43A of the Eighth Schedule and Section 22B of the Act]

2.1. Background

2.1.1. We set out below the reasons why the references to "*by reason or in consequence of that disposal*" in paragraph 43A of the Eighth Schedule and section 22B of the Act, require urgent legislative amendment. The current wording introduces unnecessary uncertainty, potential for unintended tax consequences and administrative complexity in the application of these provisions.

2.1.2. Paragraph 43A of the Eighth Schedule and section 22B of the Act were introduced to address specific anti-avoidance concerns relating to the disposal of shares by a shareholder who has previously received an "extraordinary dividend" that could be viewed as being part of the proceeds for the shares (commonly referred to as "dividend stripping"). Both provisions use the phrase "*by reason or in consequence of that disposal*" when referring to the definition of "extraordinary dividend".

2.2. Legal nature of the problem that arises from the Reference to "by reason or in consequence of that disposal"

2.2.1. Unintended Breadth

2.2.1.1. Time Period

2.2.1.1.1. The phrase "by reason or in consequence of that disposal" is not limited to the 18 months seen in the rest of the definition of "extraordinary dividend". It is thus extremely broad and may be interpreted to include an indefinite period, potentially reaching back to dividends that were declared many years prior to the current tax year, particularly, if they were part of a deregistration, liquidation or winding up process. This creates the risk of retrospective application, which is generally contrary to principles of legal certainty and fairness in tax law.

2.2.1.1.2. Taxpayers may thus be unfairly exposed to tax liabilities where no "dividend stripping" has taken place. This is particularly concerning as paragraph 77 of the Eighth Schedule to the Act deems there to have been a disposal of shares on liquidation or deregistration. Thus, if a company is liquidated and a dividend has been distributed relating to the winding up, at any point in the past and it exceeded 15% of the market value of the share in the 18 months before liquidation it will be deemed to be 'proceeds' rather than a dividend. Bear in mind that the corporate rules (sections 44 and 47) provide for a period of 36 months to fulfil the relevant steps, thus recognising that liquidation or winding up may take much longer than 18 months.

2.2.2. What is the rationale for penalising a winding up

2.2.2.1.1. An additional question arises being, why treat a winding up as a dividend stripping exercise at all? Consider the following example:

2.2.2.1.1.1. A company holds only one property, which is sold at market value (MV). The reserves remaining after payment of CGT and associated payments

are declared to the two (company) equal equity shareholders on deregistration/liquidation of the property company.

2.2.2.1.1.2. For tax purposes, why is 85% of the dividend 'transformed' from a being a dividend to being capital proceeds and subjected to capital gains tax?

2.2.3. Increased Administrative Burden

2.2.3.1.1. The absence of a defined period for the phrase "by reason or in consequence of that disposal" places a significant administrative burden on both taxpayers and the South African Revenue Service (SARS). Taxpayers are required to retain records and track transactions indefinitely, while SARS must be prepared to audit and assess matters with potentially no temporal limitation. This is impractical and inconsistent with standard record-keeping requirements and prescription periods under the Tax Administration Act.

2.2.4. Inconsistency with Other Provisions

2.2.4.1.1. Most provisions of the Act and related legislation specify defined periods (e.g., years of assessment, specific look-back periods, or prescription periods). The use of "by reason or in consequence of that disposal" in section 22B and paragraph 43A is inconsistent with this approach and creates ambiguity regarding how far back SARS or taxpayers must look when applying the law.

2.2.5. Potential for Dispute and Litigation

2.2.5.1.1. The ambiguity and breadth of "by reason or in consequence of that disposal " increases the likelihood of disputes between SARS and taxpayers regarding the correct application and scope of these provisions. This could result in protracted litigation, uncertainty in the tax system, and increased costs for both parties.

2.3. Proposals

2.3.1. We recommend that the references to "*by reason or in consequence of that disposal*" in paragraph 43A of the Eighth Schedule and section 22B of the Act be amended to specify a reasonable and defined period i.e. to refer to 18 months as with other parts of the section.

2.3.2. This amendment would:

- Promote legal certainty and fairness for taxpayers;
- Reduce administrative burdens and record-keeping requirements;
- Align these provisions with the broader legislative framework; and
- Minimise the risk of disputes and litigation.

2.3.3. It is further proposed that the sections exclude the deemed 'disposal' of shares that arises on liquidation, deregistration and winding up.

2.4. Conclusion

2.4.1. The current use of "by reason or in consequence of that disposal" in paragraph 43A of the Eighth Schedule and section 22B of the Act is problematic and out of step with established principles of tax law and administration. Bringing the deemed disposal that arises on winding up of a company penalises legitimate transactions that are surely not intended to be included.

2.4.2. Amending these provisions to provide for a clear and reasonable time frame will enhance certainty, fairness, and compliance for all stakeholders.

3. Section 42 of the Act: Additional Taxes

3.1. Introduction

3.1.1. We proceed to set out below proposals for technical amendments as these relate to transactions that are subject to the provisions of section 42 of the Act, which we understand deals specifically with the tax consequences of asset-for-share transactions, which are often used in corporate restructurings, amalgamations, or business transfers in South Africa. Although section 42 is designed to be a deferral rule, it can give rise to additional taxes that are surely unintended.

3.2. Overview of Section 42: Asset-for-Share Transactions

3.2.1. Section 42 provides a mechanism for deferring the normal tax consequences that would arise on the disposal of assets by allowing taxpayers to transfer assets to a company in exchange for shares, without triggering immediate income tax, CGT, or value-added tax (VAT) liabilities. This relief is available provided that all conditions stipulated in section 42 are met, including the requirement that the transfer must be in exchange for equity shares and must not be part of a tax avoidance arrangement.

3.3. The legal nature of the problem arising from section 42

3.3.1. On implementation of a section 42, the transferor of the asset receives shares in the transferee company, that are deemed to have a base cost equal to the asset transferred. If those shares are disposed of (i.e. on death of the holder or to a third party) that disposal will give rise to immediate tax on the difference between the market value and that base cost. Equally, if the asset is later disposed of by the company, the company will pay tax on the difference between the market value and that base cost. In this manner, the deferred tax under section 42 has become payable twice.

3.3.2. Should the company then declare a dividend to the shareholder of the shares, because the contributed tax capital ("CTC") is also deemed to assume the base cost of the transferred asset, dividends tax will be payable thereon i.e. a third tax. Thus, instead of a deferral benefit section 42 has given rise to three times the market value less base cost of the asset on the date of the section 42

transaction. Surely this is not the intention of the section, unless it is being abused.

3.4. Proposal and conclusion

3.4.1. It is recommended that section 42 be amended to ensure that the additional taxes set out above only arise if there is abuse of the section i.e. if the shares are sold before the asset is realised the base cost/ tax value of the asset should be uplifted to its value on the date of the section 42. Equally the CTC.

3.4.2. If, on the other hand the assets is disposed of first then the base cost/tax value of the shares should be uplifted. We believe that this will create a more equitable section 42. Amending section 42 to ensure it properly achieves its objective of simply deferring the tax on the initial transaction and not 'creating' additional taxes will provide for a clear and reasonable time frame will enhance certainty, fairness, and compliance for all stakeholders.

4. Section 9H Exit Tax Provisions: Addressing Double Taxation and Promoting Economic Freedom for South African Taxpayers

4.1. Introduction

4.1.1. This submission is presented to the relevant tax authorities and policymakers for consideration in the ongoing review of South Africa's tax legislation. Its purpose is to critically examine the implications of section 9H of the Income Tax Act, specifically the imposition of an exit tax upon cessation of South African tax residency. The submission argues that the current provisions give rise to double taxation and effectively constrain South Africans as 'economic prisoners'. Drawing on international best practice, particularly the German model of exit tax deferral, this submission advocates for a legislative reform that would promote fairness and economic mobility.

4.2. Overview and legal nature of the problem relating to Section 9H Exit Tax

4.2.1. Section 9H of the Income Tax Act provides for a deemed disposal mechanism whereby taxpayers who cease to be South African tax residents are treated as having disposed of their worldwide assets (with certain exceptions) at market value on the day before their residency ends. The resultant capital gains are immediately subject to South African tax, notwithstanding that the assets may not have been sold, nor any economic benefit realised by the taxpayer at that point.

4.2.2. The legislative intent behind section 9H is to protect the South African tax base by taxing accrued gains that would otherwise escape taxation upon emigration. While this objective is understandable, the method of immediate taxation on unrealised gains raises significant concerns regarding double taxation and its broader economic effects.

4.2.2.1. Analysis of Double Taxation

4.2.2.1.1. The application of section 9H exit tax often results in double taxation for affected individuals. Upon emigration, the taxpayer is compelled to pay South African capital gains tax on deemed disposals, despite not having received any proceeds. Thereafter, if the assets are eventually disposed of in the new country of residence, the taxpayer may be subject to local capital gains or income tax on the actual disposal, with limited or no relief for the tax already paid in South Africa.

4.2.2.1.2. The lack of comprehensive double tax treaty relief for deemed disposals exacerbates the risk of economic double taxation. Many treaties do not cater for credits or exemptions on exit taxes, as these are not triggered by an actual realisation event. Consequently, the taxpayer faces a dual tax burden: first, on a notional gain in South Africa, and later, on the real gain in the new jurisdiction. This outcome is at odds with principles of international tax equity and undermines South Africa's standing as a globally integrated economy.

4.2.2.2. The Economic Prisoner Effect

4.2.2.2.1. Section 9H, in its current form, creates a significant disincentive for taxpayers to emigrate or pursue international opportunities. The prospect of immediate, often substantial, tax liabilities on unrealised gains can effectively 'trap' individuals within the South African tax net. For many, the liquidity required to settle the exit tax may necessitate the forced sale of assets, disrupting long-term investment and retirement planning.

4.2.2.2.2. This 'economic prisoner' effect undermines the constitutional right to freedom of movement and may deter high net worth individuals, entrepreneurs, and skilled professionals from engaging with the global economy. The broader economic consequence is a potential loss of talent, investment, and goodwill, to the detriment of South Africa's future growth and competitiveness.

4.2.2.3. International Comparison: Germany's Deferred Exit Tax Model

4.2.2.3.1. A review of international practice reveals alternative approaches that achieve the objective of protecting the domestic tax base without imposing undue hardship. Notably, Germany's exit tax regime provides for a deferral mechanism. Under German law, individuals who emigrate are subject to an exit tax on latent gains in certain shareholdings, but payment is deferred until the actual disposal of the asset, subject to certain conditions (such as remaining within the EU/EEA).

4.2.2.3.2. This deferral model ensures that tax is ultimately collected by the country of emigration, but only when the taxpayer has realised an economic benefit and has liquidity to satisfy the liability. It also accommodates the realities of cross-border mobility and reduces the risk of double taxation through more effective treaty relief and administrative cooperation.

4.2.2.4. *Proposal: Defer Exit Tax Until Actual Disposal*

4.2.2.4.1. *In* light of the above analysis, it is submitted that South Africa should reform section 9H to align with international best practice by introducing a deferral option for exit tax. The tax on deemed disposals should be suspended until the taxpayer actually realises the gain through disposal of the asset, or until certain anti-abuse triggers are met (e.g., transfer outside treaty jurisdictions).

4.2.2.4.2. Such reform would:

- Eliminate the risk of double taxation by ensuring that tax is only paid when cash is actually received;
- Mitigate the economic prisoner effect and facilitate greater freedom of movement for South African taxpayers;
- Align South Africa's tax system with global standards, thereby enhancing its attractiveness as a destination for investment and talent;
- Safeguard the integrity of the tax base without unduly penalising emigrants.

5. Enabling Funding Flows Between Section 18A(1)(b) Public Benefit Organisations for Government Hospital Infrastructure

5.1. Introduction

5.1.1. This submission proposes a critical amendment to the current application of section 18A(1)(b) of the Act specifically relating to Public Benefit Organisations ("PBOs") involved in the construction and improvement of facilities for government hospitals. The objective is to enable funding PBOs, themselves approved under section 18A(1)(b), to provide financial support to other similarly classified PBOs engaged in hospital infrastructure projects, while retaining the ability to issue section 18A certificates to their own donors. This change will enhance the collaborative capacity of PBOs, optimise resource allocation, and ultimately serve the public health interest.

5.2. Background

5.2.1. Section 18A of the Act allows donors to certain PBOs to claim tax deductions for donations made towards qualifying public benefit activities. Specifically, section 18A(1)(b) provides for tax-deductible donations made to PBOs carrying out activities in the form of providing, building, or equipping facilities for government hospitals. However, the legislative and administrative framework currently restricts the ability of funding PBOs (those raising and distributing funds) to support facility-building PBOs under the same section, without jeopardising their own ability to issue section 18A certificates to their donors.

5.3. Legal nature of the problem: Limitation on Funding Flows

5.3.1. At present, section 18A(1)(b) is interpreted such that only PBOs directly engaged in the construction or equipping of government hospital facilities may issue 18A certificates. Funding PBOs that collect and distribute funds to these infrastructure PBOs are precluded from issuing certificates when the ultimate

activity is carried out by another PBO, even if both entities are approved under section 18A(1)(b). This limitation constrains the ability of funding PBOs to mobilise resources from donors who seek tax deductions, thereby reducing the overall funding available for essential government hospital infrastructure projects.

5.4. Proposal: Enabling Funding PBOs to Support Facility-Building PBOs

5.4.1. It is proposed that funding PBOs, approved under section 18A(1)(b), be permitted to make grants to other section 18A(1)(b) PBOs engaged in building or equipping government hospital facilities, and still issue section 18A certificates to their donors in respect of such grants. This would create a streamlined funding ecosystem, whereby both direct implementers and intermediary funders can participate fully in the resource mobilisation process while ensuring compliance with the Act and its regulatory objectives.

5.4.1.1. Legal Argument

5.4.1.1.1. The current restriction is not explicitly mandated by the text of section 18A(1)(b), but arises from administrative interpretation. Allowing funding PBOs to issue certificates for grants made to facility-building PBOs would be consistent with the legislative intent of incentivising public benefit activities in the health sector, provided that robust tracking and reporting mechanisms are in place to prevent abuse.

5.4.1.2. Practical Considerations

5.4.1.2.1. Many PBOs specialise in fundraising and grant-making, leveraging their networks and expertise to pool resources for larger-scale projects. Preventing such organisations from issuing 18A certificates diminishes their effectiveness and reduces the total funding available for hospital infrastructure. In practice, direct implementers may lack the capacity to raise significant funds independently, making collaboration with funding PBOs essential.

5.4.1.3. Public Benefit

5.4.1.3.1. Facilitating funding flows between PBOs will increase the resources available for the construction and equipping of government hospital facilities, contributing directly to improved public health outcomes. Expanding the pool of eligible donors through the issuance of section 18A certificates will attract greater philanthropic support and expedite the delivery of critical health infrastructure.

5.4.1.4. Operational Mechanism: Issuing and Tracking Certificates

5.4.1.4.1. To ensure compliance and transparency, the following operational mechanism is proposed;

- Funding PBOs must obtain written confirmation from recipient PBOs that all grants will be used exclusively for qualifying activities under section 18A(1)(b).

- Both funding and recipient PBOs must maintain detailed records of all transactions, including the flow of funds and the specific hospital projects funded.
- Funding PBOs may issue section 18A certificates to donors in respect of amounts granted to recipient PBOs, provided that the use of funds is verified and reported to the authorities as part of annual compliance submissions.
- Recipient PBOs must not issue duplicate certificates for the same funds received.
- All parties are subject to audit and review by the authorities to ensure adherence to the intended use of funds.

5.5. Conclusion

5.5.1. In summary, permitting funding PBOs approved under section 18A(1)(b) to support facility-building PBOs, while retaining the ability to issue section 18A certificates to their donors, will significantly enhance the collective impact of the non-profit sector on public health infrastructure. This targeted amendment aligns with the legislative purpose of section 18A, promotes collaborative resource mobilisation, and safeguards the integrity of the tax deduction system through robust reporting and oversight. We respectfully urge the authorities to consider and implement this proposal for the benefit of South Africa's public health system.

6. Analysis of Proposed Amendments to the Definition of "Company" and Their Effect on Hedge Fund CIS

6.1. Background

6.1.1. We believe that the issue stems from National Treasury's broader review of CIS taxation, which began in 2024 to address uncertainty around whether CIS trading profits are capital or revenue in nature. Hedge funds, given their active trading and leverage strategies, were singled out for possible separate treatment. The TLAB amendment is part of aligning definitions, but the lack of corresponding changes to section 9D creates unintended consequences. National Treasury has indicated that further consultation would continue into 2025, and industry feedback strongly favors clarity and alignment to avoid penalizing hedge funds relative to other CIS types.

6.2. The legal nature of the problem

6.2.1. The TLAB 2024 proposed to include a portfolio of a hedge fund collective investment scheme in para (e)(ii) of the definition of 'company' in s 1(1) of the Act. The amendment came into effect on the date of promulgation. However, no corresponding amendment is proposed to proviso (D) of s 9D(2).

Proviso (D) prevents attribution:

> *(D) to the extent that the participation rights are held by a portfolio of a collective investment scheme in securities or a portfolio of a collective*

investment scheme in participation bonds that is a resident directly or indirectly in a scheme or arrangement contemplated in paragraph (e) (ii) of the definition of "company" in section 1; and:

6.2.2. The result is that if a local hedge fund CIS invests in a para (e)(ii) entity, it could become a CFC, resulting in inconsistent treatment of hedge funds compared to other CISs.

6.2.3. In addition it is administratively problematic to make such an amendment effective from the date of promulgation, which is an arbitrary date. It would be better for the amendment to apply to future years of assessment commencing on or after a specified date.

6.3. A detailed factual description

6.3.1. Local CIS in hedge funds invests in offshore portfolio of a foreign CIS in hedge funds or any other type of portfolio. The effect may be to make the investment a CFC which may cause considerable administration. If a CIS and a participation bonds CIS are excluded, why not a hedge fund CIS?

6.4. The nature of the business/persons impacted.

6.4.1. Local hedge fund collective investment schemes with investments in a portfolio of a foreign hedge fun CIS.

7. Contributions to Eskom infrastructure

7.1. Background

7.1.1. Eskom's financial constraints have hindered the proper maintenance of critical infrastructure. The lack of essential upgrades and upkeep has resulted in service disruptions, causing costly unplanned shutdowns for manufacturing companies. To reduce the significant financial impact on their operations, these companies are now investing in Eskom's infrastructure upgrades and maintenance.

7.2. **Legal nature of the problem**

7.2.1. Section 12D of the Act requires that a taxpayer must own an asset to claim allowances. However, Section 12N of the Act allows taxpayers to deduct expenditure on improvements to property they do not own, provided such costs are incurred to effect those improvements. Importantly, Section 12N also requires that the taxpayer "uses or occupies the land or building for the production of income or derives income from the land or building." As a result, deductions are not permitted for capital expenditure on assets owned by Eskom, even if the taxpayer benefits indirectly through infrastructure used to receive electricity.

7.2.2. Under current legislation, Eskom will be taxable on the receipt as an accrual and will qualify for a tax deduction under Section 12D when the asset is capitalised. However, companies contributing to Eskom's infrastructure are not entitled to any tax deduction for their contributions.

7.3. Proposal

7.3.1. We propose that a new section, 12NB, be introduced into the Act to provide a tax deduction for taxpayers who contribute towards Eskom's infrastructure, therefore allowing taxpayers to claim tax allowances on costs incurred (own emphases) on Eskom infrastructure not owned by the taxpayer. The proposed provision would permit the deduction to be claimed over a ten-year period, commencing from the date the relevant asset is brought into use. The deduction would be calculated based on the amount of the taxpayer's capital contribution to Eskom.

End.