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SUBMISSION ON THE 2017 DRAFT TAXATION LAWS AMENDMENT BILL

Submission by Business Unity South Africa (BUSA)

August 2017

Background

BUSA is a confederation of business organisations including chambers of commerce and industry, professional associations, corporate associations and unisectoral organisations. It represents South African business on macro-economic and high-level issues that affect it at the national and international levels. BUSA's function is to ensure that business plays a constructive role in the country's economic growth, development and transformation and to create an environment in which businesses of all sizes and in all sectors can thrive, expand and be competitive.

As the principal representative of business in South Africa, BUSA represents the views of its members in a number of national structures and bodies, both statutory and non-statutory. BUSA also represents businesses' interests in the National Economic Development and Labour Council (NEDLAC).

Introduction

In order for South Africa to achieve inclusive growth to address the triple challenges of unemployment, poverty and inequality, a fair and efficient revenue collection system and appropriately designed tax policies are critical. Whilst BUSA understands that the 2017 draft Taxation Laws Amendment Bill ("TLAB"), along with the draft Tax Administration Laws Amendment Bill ("TALAB"), deal with complex administrative and technical matters to give effect to proposals published in the 2017 Budget Review, this submission deals with high-level aspects of the TLAB that BUSA feels are of wider economic relevance. For detailed technical inputs on the above, BUSA would like to refer National Treasury and the Standing Committee on Finance to the detailed submissions by its members.

Detailed Comments

1.2. Repeal of foreign employment income exemption[1]

BUSA is profoundly concerned about the proposed repeal of the foreign remuneration exemption earned by South African employees. The repeal goes much further than removing the exemption where employees are not subject to tax in the foreign jurisdiction as originally announced in the Budget Review. The bulk of employees that will be impacted work in taxable regions where tax rates generally fall between the ranges of 30-35%. Although these employees should be entitled to foreign tax credits against their South African tax, our foreign tax credit system is not performing optimally, very often resulting in significant cash flow hardship while many employees experience difficulties in accessing refunds. We note that there are no consequential tax proposals to mitigate the hardship. We therefore strongly recommend that the proposal should be reconsidered.

1.6. Increase of thresholds for exemption of employer provided bursaries to learners with disabilities

BUSA unequivocally supports this amendment, as it did the 2016 amendment to the Act to increase the monetary limits for employer provided bursaries to relatives of employees. Generally, business supports any workable incentive that contributes to unblocking impediments to skills development in line with the future needs of an inclusive economy.

[1] Note: This and the subsequent numbering is based on that of the draft Explanatory Memorandum that accompanied the draft 2017 TLAB.

1.9. Removing the 12-month limitation on joining newly established pension or provident fund

BUSA is supportive of efforts on the part of National Treasury to encourage employees to contribute towards their retirement and remove practical difficulties association therein. The proposed amendment in this regard will make a positive contribution to encouraging and incentivising retirement saving.

1.10. Postponement of annuitisation requirement for provident funds to 1 March 2019

BUSA is disappointed that this crucial change in the law has not been implemented. The postponement appears to contradict National Treasury's other, laudable efforts to encourage retirement savings. The continued delay fosters ongoing uncertainty in the retirement fund industry. It is also not the case that National Treasury's initial objectives in proposing the amendment or the broader socio-economic context have altered in such a way as to necessitate any ongoing delay. BUSA therefore opposes the delay.

4.4. Strengthening anti-avoidance measures related to mining environmental rehabilitation funds

The additional penalties proposed for mining rehabilitation funds seem to be extremely harsh but a problem not addressed is the apparent misalignment between the National Environmental Management Act (NEMA), the 2015 NEMA Regulations and the Income Tax Act ("ITA") (s37A). In order to comply with the Regulations, withdrawals may have to be made which may (based on the current wording of the ITA) be subject to extremely punitive tax implications. For more detailed comments on this, BUSA would like to refer National Treasury and the Standing Committee to the detailed submissions of its members; particularly on this point to those of the Chamber of Mines, the South African Institute of Tax Professionals Mining Tax Technical Work Group and the Banking Association (BASA).

4.5. Industrial policy projects – window period extension

BUSA welcomes the proposed extension of the period for applications to 31 March 2020 in order to allow sufficient time for a review of the incentive. We encourage the timeous review of the incentive and additional budget allocations so that certainty can be provided to potential investors, as pre-approval of projects is required before the assets can be acquired.

Conclusion

As expressed earlier in this submission, many of BUSA's members have submitted comments to the draft TLAB in their respective capacities. BUSA encourages both National Treasury and the Select Committee to study these in detail, particularly with a view to obtaining greater detail from a sectoral perspective. The contents of this submission have been deliberately kept as succinct and high-level as possible; however National Treasury and the Standing Committee are welcome to contact BUSA for clarity should there be further questions in this regard.