

BUSA/SACOB

Revenue Laws Amendment Bill – Commentary

1. Introduction

BUSA is a unified Business organization that represents the widest body of business interests in South Africa. The Draft Revenue Laws Amendment Bill has been considered by a BUSA work group and the commentary set out below addresses clause 10. As a general observation the draft amendments are technical in nature that perhaps reflects the complexity of the Income Tax. BUSA welcomes the provisions introduced under Clause 70 concerning the concessions applicable to employer provided medical programmes.

2. Commentary

2.1 Clause 10 Amendment of section 6quat of the Income Tax Act

There exists an anomaly with regard to section 6quat that relates to management fees from countries such as Kenya and Tanzania. The Explanatory Memorandum to the Bill, proposes to address the problem of a South African resident selling shares in (for example) a Tanzanian company. The more serious problem concerns the circumstance where a South African resident receives management fees from the Tanzanian company, or royalties. Consider the following situation.

In many cases, the services are rendered in South Africa under a management fee arrangement, or the intellectual property is developed in South Africa under a royalty provision. The South African resident providing these services or intellectual property to the Tanzanian (or other African country) company receives a fee or royalty. Typically, such fee or royalty is subject to withholding taxes in Tanzania. However as the source of the income is South African (in many cases) no credit is available in South Africa in respect of the foreign withholding tax.

This is a problem that arises in many African countries where there either exists no treaty with South Africa or where the treaties are older versions. The problem does not arise under the more modern treaty versions as they provide credit without reference to source.