BUSINESS UNITY SOUTH AFRICA

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16 August 2018

Ms Nombasa Langeni
Legal Tax Design: Tax Policy Unit
National Treasury
Private Bag X115
PRETORIA
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Dear Ms Langeni,

RE: DRAFT TAXATION LAWS AMENDMENT BILL, 2018

1. Business Unity South Africa ('BUSA') welcomes the opportunity to submit written comments to National Treasury on the Draft Taxation Laws Amendment Bill, 2018.

2. BUSA is a confederation of business organisations, including chambers of commerce and industry, professional associations, corporate associations, and unisectoral organisations. It represents a cross-section of business, large and small, on macro-economic and cross-cutting policies and issues which affect business in all three spheres of government and at the international level. BUSA's function is to ensure business plays a constructive role in economic growth, development and transformation, and to ensure an environment in which business can thrive, expand and be competitive. As the principal representative of business in South Africa, BUSA conveys the views of its members in various national structures and bodies, both statutory and non-statutory.

3. Whilst BUSA understands that the 2018 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 2018 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 to the detailed submissions by its members.

PROPOSED AMENDMENTS TO VENTURE CAPITAL COMPANY REGIME

4. With respect to proposed changes to section 12J of the Income Tax Act, whilst BUSA is supportive of efforts to curb abuse arising from the existence of different categories of shares, the effect of the proposal to restrict companies to having a single class of shares will be the non-compliance of virtually the entire Venture Capital Company (VCC) industry. This would be contrary to the objectives of funding SMMEs, promoting investment and creating jobs.
5. BUSA proposes clarification from Treasury from a policy perspective on what constitutes acceptable and unacceptable behaviour with regard to the incentive and design the intervention to target unacceptable schemes, with a view to retaining the positive socio-economic outcomes associated with the current regime.

CURRENT TAX TREATMENT OF COLLECTIVE INVESTMENT SCHEMES

6. With respect to proposals (Section 25 BA) to effectively treat investments held by Collective Investment Schemes (CIS) for less than 12 months as being on income account, BUSA is concerned about the effect of this proposal on the CIS industry and, by extension, on national savings. As is well documented, the CIS industry fulfils an important role in facilitating and thereby encouraging (as well as channelling) domestic savings in the context of continued low national savings rates.
7. The effect of the proposed changes will be to render CIS investments less desirable for investors (including retail investors) who have little control over the management of individual funds. While CIS operate in the context of a stipulated mandate that includes the long-term growth of a portfolio of assets, this involves the buying and selling of assets to do so. The proposal seemingly inadvertently reduces the incentive of fund managers to manage investments prudentially by introducing tax optimisation concerns to the decision-making process of managers. It should also be borne in kind that certain categories of CIS, such as index trackers (frequently presenting low barriers to entry to investing from a cost perspective), are obliged to buy and sell assets on the basis of underlying value and have little control over market valuations.
8. From an equity perspective, the proposal has the added disadvantage of unfairly targeting investors who have not exhibited the behaviour that the proposed amendment seeks to

disincentivise. In other words, the fact that CIS are by definition pooled investments means that the tax liability arising from, for example, the decision of a large unitholder to redeem units within the 12-month period, will be distributed to all unitholders. This is not in the interests of fairness and may in fact prove counter-productive.

9. Given the above, the proposed amendment entails a significant risk to savings and investment levels in South Africa and therefore to long-term economic growth. BUSA recommends that the proposed amendment be withdrawn.

CONCLUSION

10. As indicated, many of BUSA's members have submitted comments to the draft TLAB in their respective capacities. BUSA encourages National Treasury 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 is welcome to contact BUSA for clarity should there be further questions in this regard.

Kind Regards,

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