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**THE CHAIRPERSONS OF THE PORTFOLIO COMMITTEE ON FINANCE (PCOF) AND THE SELECT COMMITTEE ON FINANCE (SCOF)**

**RESPONSES TO WRITTEN REPRESENTATIONS BY ORGANISATIONS TO THE AD HOC COMMITTEE ON FINANCE AND SELECT COMMITTEE ON FINANCE ON THE TAXATION LAWS AMENDMENT BILL, 2004 (the Bill)**

# 1 Introduction

As indicated to you during the informal briefing on the above-mentioned Bill on 8 June 2004, National Treasury and SARS wish to respond as follows to the various points raised by commentators in their submissions on the Bill.

# 2 Responses to specific issues raised in representations by commentators

## 2.1 Section 9D

**The current legislation does not cater for a change in tax status of Controlled Foreign Corporations and offshore branches from exempt to taxable to allow prior year losses incurred, while the net income was exempt, as a deduction.**
(CHAMSA)

This comment does not relate to any part of the Bill under consideration. Income accrued prior to the date the CFC or branch becomes taxable is not taxed, similarly losses incurred prior to the change to taxable status cannot be allowed.

**2.2 Limitation of deduction of interest for non-compliance with tax legislation – section 23*(d)* of the Income Tax Act**

**Interest is charged to compensate for the time value of money. It seems inappropriate to impose a further penalty by disallowing a deduction for interest arising from non-compliance with legislation.**
(South African Institute of Chartered Accountants)

This comment is not accepted. The amendment merely extends an existing entrenched tax principle to Unemployment Insurance Contributions. Government should not encourage non-compliance with legislation. As noted by SAICA these penalties and interest would in any event not otherwise be deductible for tax purposes.

**2.3 Effective date of 2003 amendment to deductible disability premium provision – section 23*(m)* of the Income Tax Act**

**The date of operation of the 2003 amendment should come into operation on 1 March 2002.**
(Life Offices' Association of SA)

This proposal is partly accepted. Currently the provisions come into operation on 13 December 2003 but have been changed to come into operation with effect from 1 March 2003. It would not be acceptable to allow further retro-activity as most 2002/2003 tax returns have already been assessed and reopening of assessments is to be avoided.

**2.4 Individuals – section 23*(m)* of the Income Tax Act**

**Consideration should be given to allowing professional membership fees to be deductible.**
(CHAMSA)

This comment does not relate to any part of the Bill under consideration.

**A case exists for independent non-executive directors to be allowed a deduction for their business expenses that would serve them to do the job expected of them.**
(CHAMSA)

This comment does not relate to any part of the Bill under consideration but is noted for further consideration.

**2.5 Effective date of amendment relating to labour brokers – Fourth Schedule to the Income Tax Act**

**The effective date of the amendment should apply in respect of any application processed by the Commissioner on or after the date of promulgation of the Act instead of applications which is lodged with the Commissioner on or after that date.**
(South African Institute of Chartered Accountants)

This comment is not accepted as this formulation would rise to its own set of practical problems with regard to applications in process.

**2.6 Labour brokers and Personal Service Companies (PSC)**

**Some parts of the legislation remain unworkable and are unfair, e.g. where a PSC does not employ three full time employees throughout the year of assessment.**
(CHAMSA)

The comment does not form part of the Bill under consideration. However, it should be noted that the 80 per cent test is applied in respect a full tax year. The related three full time employees test should, therefore, also be performed in respect of a full tax year.

**2.7 Employees' Tax – Fourth Schedule to the Income Tax Act**

**SITE only taxpayers should be allowed to claim a refund in respect of premiums paid for qualifying cover for loss of income.**
(Life Offices' Association of SA)

This proposal is accepted and paragraph 11B(4) of the Fourth Schedule will be amended to provide for a refund of tax relating to deductible insurance cover.

**2.8 Interest on overpayments of tax on retirement funds**

**The effective date of the amendment should be 1996 or the date the Bill was first made public.**
(South African Institute of Chartered Accountants)

This comment is not accepted as overpayments are rare. A retroactive amendment would raise administrative complexities out of proportion to the issue being addressed. The amendment will, therefore, be prospective applying to tax periods commencing on or after 1 September 2004.

### 2.9 Effective date for amendments relating to reconnaissance permits

**The effective dates should be 1 May 2004, the date the Minerals and Petroleum Resources Development Act, 2002 came into effect.**
(South African Institute of Chartered Accountants)

This proposal is accepted.

## Prepared by SARS and the National Treasury