PRICEWATERHOUSECOOPERS

PricewaterhouseCoopers Tax Services (Pty) Limited
Reg. no. 1983/008289/07
No 1 Waterhouse Place
Century City 7441
P O Box 2799
Cape Town 8000
Telephone +27 (21) 529 2000
Facsimile +27 (21) 529 3300
Direct Phone +21 (21) 529 2061
Direct Fax +21 (21) 529 3309
www.pwc.com/za

The Portfolio Committee on Finance
Parliament of the Republic of South Africa
Plein Street, Cape Town
By e-mail : mmphephu@parliament.gov.za

CC : Prof Keith Engel, National Treasury
keith.engel@treasury.gov.za

CC : Mr Franz Tomasek, South African Revenue Service
ftomasek@sars.gov.za

9 October 2007

Chair,

Submissions in respect of :

- **The (draft) Revenue Laws Amendment Bill, 2007;**
- **The Securities Transfer Tax Bill, 2007; and**
- **The Securities Transfer Tax Administration Bill, 2007**

We present herewith PricewaterhouseCoopers' written submissions on the above-mentioned Bills.

Our submissions include a combination of representations, ranging from serious concerns about the impact or effect of certain provisions to simple clarification-suggestions for potentially ambiguous provisions.

We have deliberately tried to keep the discussion of our submissions as concise as possible (although this might not always appear to be the case), which does mean that you might require further clarification. In this respect, we have requested the opportunity to present oral submissions at the hearings scheduled for 16 October 2007.

As always, PwC thanks the Portfolio Committee –as well as National Treasury and SARS– for the ongoing opportunity to participate in the development of the SA tax law.

Yours faithfully

(Prof) Osman Mollagee
Tax Director
osman.mollagee@za.pwc.com

David Lermer
Tax Director
david.lermer@za.pwc.com

Attached :

- Executive summary (2 pages)
- Detailed submissions (19 pages)

Executive summary of Submissions

The submissions are presented under three headings, namely :

- Primary submissions;
- Matters not directly addressed in the current draft Bill; and
- Lesser drafting recommendations.

Primary submissions

1. Withdraw para 76A(1)(*a*), 8th Sch. ITA: This aspect of the draft proposals –i.e. which taxes capital distributions received between 1 October 2001 and 30 June 2008– is drafted too widely and would catch many commercial transactions far beyond the target tax-avoidance transaction. As a result, this appears to be unfair retrospective taxation, and should therefore be withdrawn.

   Furthermore, an exemption from para 76A should be available in cases where the s47 ITA liquidation relief would in any event have applied.

2. Retain the STC exemptions in s64B(5)(*c*): The withdrawal of this exemption unfairly taxes 'old' profits that should remain outside the STC net. The exemption should therefore be retained in its entirety. Alternatively, only sub-para (i) should be deleted (dealing with 16-year-old profits), but sub-para (ii) in respect of 7-year-old capital profits should be retained for longer.

3. Retain the proviso to s64B(5)(*c*)(ii): This proviso complements sub-para (iii) to exempt profits accrued before a company became resident, and so should be replicated into sub-para (iii) if and when sub-para (ii) is withdrawn –otherwise pre-residence capital appreciations will be unfairly taxed.

4. Retain proviso (*b*) to s64B(3): This proviso is an extension of, and complementary to, the exemption in s64B(5)(*c*). It would be unfair and inconsistent to delete this proviso while s64B(5)(*c*) is still in effect.

5. Clarify the s41(1) ITA definition of a 'group': Group companies under the s1 definition, that are prevented from being part of the group for the s41 definition, because of the exclusion of a parent company, must be specifically re-included back into the s41 definition. As the definition currently stands, there would be substantial incidence of automatic s45 de-grouping penalties –effectively retrospective taxation– that could not have been intended (in our opinion).

   Furthermore, only exempt *entities* should be excluded, not simply any company that earns exempt income.

6. Share capital & premium re-allocations : Para (iiiA) of the first proviso to the '*dividend definition*' should be withdrawn or reworded in order to achieve a more equitable and commercial 'spread' of Share Capital and Premium amongst company shares. The objective of ensuring that you should be able to 'get out what you put in' does not appear to be achieved by the current wording.

7. The 3rd proviso to the 'dividend' definition should clarify that 'unrealised profits can only be distributed upon the distribution of the actual underlying asset to which those unrealised profits are attached.

8. The s9C definition of '*qualifying share*' should specifically exclude so-called s24A shares acquired before 24 November 1999.

9. Provision of accommodation to expatriates: Limit the tax free period that the accommodation may be provided to expatriates to 4 years and in terms of any changes made, make them effective only from 1 March 2008.

10. Exemption for foreign employment income: The s10(1)(*o*)(ii) exemption should also cover remuneration derived in terms of s8A and also certain termination payments.

11. Employee Share schemes: The proposed amendments to s8C should apply only to those equity instruments *acquired* on or after the effective date, not to those already held on that date.

12. Debt waivers and assessed losses: The amendment to s20(1)(*a*)(ii)(*aa*) should refer only to creditors used 'directly' to fund deductible expenditure, i.e. do not target debt that is indirectly linked to expenditure deductions.

13. Deduction for foreign taxes: S6*quat* should be amended to ensure that unused foreign tax deductions may be carried forward for up to seven (7) years.

14. STC group exemption: The proposed new 'included in the profits' test in the proposed s64B(5)(*f*)(i) should be reworded to ensure that *bona fide* group profits are not unfairly disqualified from the exemption.

15. CGT Dividend stripping: Dividends sourced out of post-acquisition profits should not rank to be included as 'proceeds' for the purposes of the dividend-stripping rules in para 19, 8th Schedule ITA.

16. Intra-group transactions - 6-year de-grouping rule: Confirmation is required that the effective date for the 6-year rule is 2002 when these rules were first applied.

17. Restriction on licensing expenditure (etc): The scope of the definition of '*affected intellectual property*' in s23I(1) should be narrowed to refer only to connected persons and situations where there has been a substantial involvement by the SA-taxpayer.

18. Stamp Duty / STT: The duty chargeable on share redemptions should be repealed.

Matters not directly addressed in the current draft Bill

19. Allowances for the acquisition of trade marks: The s11(gC) allowance provisions should be amended to include Trade Marks acquired.

20. Trading stock held upon becoming resident/CFC: S22(3) should be amended to also permit an opening stock deduction for trading stock held at the point when a taxpayer becomes SA-resident or becomes a CFC.

Drafting corrections

21. S8C(3)(*b*)
22. Para 12(5) Eighth Schedule
23. Para 20(3)(*b*) Eighth Schedule
24. Subpara (ii)(*aa*) of the proviso to s20(1)(*a*)
25. Deletion of 'married women' definition in 1
26. 3rd Proviso to 'dividend' definition

DETAILED SUBMISSIONS

SECTION I – PRIMARY SUBMISSIONS

1. CLAUSE 71 : Part-disposals attributed to capital distributions – Retrospective application

1.1 The proposed new para 76A of the 8th Schedule ITA[1], seeks to tax certain 'capital distributions' as part-disposals for CGT purposes. Specifically, sub-para (1)(*a*) seeks to deem an automatic part-disposal to take place on 1 July 2008 in respect of all capital distributions[2] received during the 6½-year period from 1 October 2001 to 30 June 2008.

1.2 It is submitted that this proposal is tantamount to retrospective legislation and, as such, is harsh and unfair. Even though the proposed implementation date is in the future (1 July 2008), this proposal attacks directly transactions that would have been completed in the past –up to more than 6 years ago.

1.3 It is submitted that taxpayers have a right to undertake their transactions in an environment of certainty –without the fear that a transaction undertaken today (and taxed according to today's tax laws) will be recalled tomorrow to be taxed under new rules that increase the tax burden for the taxpayer concerned.

1.4 It is recognised that there might have been 'abuse' of the existing para 76 by some taxpayers, necessitating (according to SARS and National Treasury) the introduction of anti-avoidance measures. It is also accepted in modern tax law that anti-avoidance provisions sometimes unavoidably prevent *bona fide* commercial transactions, but at least taxpayers should be aware of the tax rules before and at the time of contemplating their transactions. The proposed para 76A(1)(*a*) will not only retrospectively target abusive schemes but also *bona fide* commercial transactions that would not have been undertaken if the new rules had been in force at that time.

1.5 This also potentially creates hardship where the cash-flows from the original transactions have since been re-invested or otherwise applied, because the prospect of short-term taxation did not exist at that time.

1.6 We should also point out that the tax treatment that is now proposed to be retrospectively withdrawn (i.e. para 76(1)(*b*)) was a creation of the legislature. The *way* these rules were applied was precisely what they permitted, albeit that SARS and Treasury are now indicating that they were sometimes applied in unexpected *circumstances*. Whilst it is accepted that, where a provision is found to be inappropriate, the legislature is entitled to cancel or withdraw it going forward, i.e. to stop it from continuing. However, reaching back into past transactions sends a worrying message and may be seen to be creating a dangerous precedent. In other words, the desire to target taxpayers who might have abused these rules in the past should be balanced against the perceptions that will be created by retrospective taxation.

---

[1] The South African Income Tax Act (No 58 of 1962)

[2] As contemplated in para 76(1)(*b*), 8th Sch., ITA

1.7 It is submitted that capital distributions under the previous regime should be left to run their course as permitted under those rules, and that the new regime should only apply to subsequent capital distributions. We are already aware of actual cases where taxpayers will suffer tremendous immediate tax charges because of this retro-active taxation of past transactions.

1.8 Request : The proposed para 76A(1)(*a*) should be withdrawn in its entirety, and only capital distributions made from 1 July 2008 should trigger part-disposals.

1.9 Furthermore, it should be noted that these rules will in some instances undermine the intended relief offered by s47 ITA (the so-called liquidation roll-over).

1.10 The stated target of these new para 76A rules is the situation where certain shares are held indefinitely and never disposed of in a taxable transaction –the point of the proposed deemed disposal rules being to artificially recognise that taxable disposal should take place. In other words, there is a presumption that there is an inherent future tax charge that is being deferred by the shareholder (by the non-disposal). But it is not always a taxable disposal that is being avoided. If the distributing company is liquidated in accordance with s47 ITA, no tax charge arises on the 'disposal' by the shareholder of its shares. Even though the inherent tax liability attached to the underlying assets is now rolled over to the parent, the fact of the matter is that the share-disposal has not created a tax charge –so the capital distributions targeted by para 76A were not in fact avoiding tax.

1.11 Request : The entirety of the proposed para 76A should include an exemption for situations where the shareholder and declaring company would qualify for s47 relief. Alternatively, s47 could be extended to make such an exemption elective.

2. CLAUSES 5(1)(*c*) & 55(1)(*i*) : Withdrawal of STC exemptions upon liquidation – Old profits

2.1 We note the recent Briefing Note issued by National Treasury on 28 September 2007, confirming that the effective date for the withdrawal of s64B(5)(*c*)(i)&(ii) is proposed as 1 January 2009 (not 1 October 2007 as erroneously indicated in the draft Bill).

2.2 However it is submitted that s64B(5)(*c*) should not be withdrawn at all, or alternatively that only sub-para (i) should be deleted (not sub-para (ii)). The entirety of s64B(5)(*c*) is aimed at excluding 'old' profits that would have 'accrued' during a period before the company became subject to the relevant taxing rules. So it is submitted that s64B(5)(*c*) should not be seen as a generous concession, but rather as an attempt to achieve equity and fairness. Therefore, its withdrawal should inevitably be seen as creating some measure of unfairness.

2.3 That said, it is acknowledged that the potential unfairness that arises should be balanced with the administrative simplification that could be achieved by the proposed deletion. However, even the profits referred to in sub-para (i) refers to profits that would be almost 16 years old (i.e. pre-March 1993) –and older– must be considered in context. Whilst it is arguable that in most modern economies the number of taxpayers adversely affected by the withdrawal of a 16-year-old exemption should be quite low, we still need to recognise that that many SA taxpayers are subject to exchange controls which restrict the distribution of profits. Perhaps once exchange controls have been removed and all taxpayers have had more freedom to distribute their profits as they see fit, will the withdrawal of s64B(5)(*c*)(i) seem more reasonable.

2.4 Given the discussion around sup-para (i) above, the point seems even harsher in relation to sub-para (ii) –which exempts more recent profits (i.e. pre-1 October 2001), specifically realised and unrealised *capital* profits. The question of what would be a 'reasonable' period to retain such historic exemption is likely to the subject of substantial debate, but it is submitted that cognisance should be taken of the fact that *capital* assets are more likely to have been (continue to be) held as long-term assets. Hence, the number of taxpayers that have significant pre-October 2001 capital profits (realised and unrealised) is still substantial.

2.5 In the light of the fact that sub-para (i) will have been retained for *at least* 16 years, it is submitted that sub-para (ii) should similarly be retained for at least 15 years.

2.6 Request : s64B(5)(*c*) should not be withdrawn at all.

2.7 Request : Alternatively, only sub-para (i) of s64B(5)(*c*) should be withdrawn from 1 January 2009, but sub-para (ii) should be retained with a view to deleting it at a future date when the incidence of taxpayers with old capital profits has declined further.

3. CLAUSE 55(1)(*i*) : Withdrawal of STC exemptions upon liquidation – Pre-residence unrealised capital profits

3.1 If and when sub-para (ii) of s64B(5)(*c*) is withdrawn, it is submitted that its proviso should be retained to complement sub-para (iii) –which is in any event being retained.

3.2 The proviso to sub-para (ii) currently complements sub-para (iii) in that (iii) exempts all profits 'derived' before the company became resident whilst the proviso to (ii) exempts the unrealised appreciation of capital assets up to the point that the company became resident. Therefore, this aspect of sub-para (ii) cannot be deleted, since it will unfairly render pre-residence capital appreciations taxable.

3.3 Request : If and when sub-para (ii) of s64B(5)(*c*) is withdrawn, the wording of the proviso should be replicated to become part of sub-para (iii).

4. CLAUSE 55(1)(*h*) : Withdrawal of STC credit upon liquidation shareholder

4.1 The draft Bill currently proposes the deletion of proviso (*b*) to s64B(3). It is presumed that the proposed deletion is an oversight since this proviso is an extension of s64B(5)(*c*) which is not proposed to be deleted in its entirety. It is submitted that the proposed deletion would be unfair and inconsistent.

4.2 Request : Proviso (*b*) to s64B(3) should not be withdrawn.

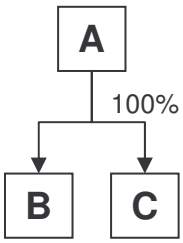
5. CLAUSE 48(1)(*c*) : Definition of a 'group'

5.1 In s41(1) ITA, a new definition of '*group of companies*' (hereinafter referred to as '*group*') was inserted. A number of companies are specifically excluded from the 'group' for the purposes of this definition in s41 –as opposed to the s1 definition. We have two main concerns, namely that :

- The exclusion of certain target companies will result in the de-grouping and/or prevent the grouping of group companies that are not directly targeted; and
- the general targeting of exempt income in sub-para (*dd*) is unduly broad.

Indirect exclusion of non-targeted group companies

5.2 It is arguable that specifically excluded companies must also be excluded for the purposes of determining whether other companies, that are controlled by an excluded company, are also part of the group or not. For example :



5.3 In the diagram above, all three companies would be considered to be 'group' companies in relation to each other in terms of the s1 definition. However, if the s41 definition excludes Company 'A', it is arguable that B and C should NOT be seen to be group companies in relation to each other, i.e. the entire 'group' simply ceases to exist completely because of the critical position that A holds. As we understand it, the intention behind this amendment is to exclude the specified companies only without disqualifying the other group companies.

5.4 This creates at least two serious complications :

5.4.1 Existing group-companies may now suddenly and automatically 'degroup', so transactions previously effected under s45 between two group companies (as they then were) are forcibly made subject to the de-grouping penalty rules in s45(4).
For example, if B and C in the diagram above were SA subsidiaries under common *foreign* ownership (i.e. if A is foreign) –then previous s45 transactions between B and C would suddenly be attacked even though there has been absolutely no change in any aspect of the relationships between A, B and C.

Clearly this is wholly undesirable and the proposed amendments must ensure that this does not occur.

5.4.2 The issue highlighted above would also appear to prevent affected companies (e.g. two SA subsidiaries of a common foreign parent company) from utilising s45 in respect of transactions between themselves. Again we submit that this is inappropriate and undesirable.

5.5 Request : The new definition (s41(1)) should expressly clarify that group companies that would have formed part of the 'group' under the s1 definition, remain group companies for the purposes of s41(1) notwithstanding that its 'controlling company' might be excluded by the first proviso to the 'group' definition in s41(1).

5.6 Para (*dd*) of proviso (i) to the new (restricted) definition of '*group of companies*' disqualifies companies whose receipts are all exempt under s10 ITA. We are concerned with the broad reference to s10, meaning that all the exemptions contemplated in s10 are being referred to.

5.7 It appears particularly anomalous that (for example) a SA holding company –whose only receipts are dividends from other SA companies– would be disqualified from the 'group' of all its SA subsidiaries, merely because its only receipts are dividends that are exempt in terms of s10(1)(*k*)(i) ITA.

5.8 Furthermore, as noted above, this disqualification of the SA holding company could then also automatically de-group all its underlying SA subsidiaries.

5.9 Clearly the above is an unintended result (even described by some as 'ludicrous'). Our presumption is that para (*dd*) should be targeting exempt *entities* (as opposed to exempt receipts & accruals), hence we would expect that the wording should replicate that found in the current versions of s45(6)(*b*) and s47(6)(*a*), to exclude companies that are ".. exempt from tax in terms of section 10(1)(*c*A), (*c*H), (*c*M), (*c*N), (*d*), (*t*) and (*t*A)".

5.10 If this above is adopted it would appear that para (*bb*) of proviso (i) can be deleted as superfluous, being dealt with by the reference to s10(1)(*c*M).

5.11 Request : Amend para (*dd*) of proviso (i) to refer only to exempt *entities*, e.g. as currently contemplated in s45(6)(*b*) and s47(6)(*a*). Para (*bb*) may then also be deleted.

6. CLAUSE 5(1)(*m*) : Apportionment of Share Capital and Premium

6.1 The proposed new para (iiiA) of the '*dividend*' definition seeks to share or spread all a company's Share Capital and Premium proportionately amongst all the shares issued by that company. The stated target of this rule is (for example) the situation where Share Premium is introduced by one shareholder only to be paid out to another shareholder (i.e. the company is merely a conduit for a payment intended in essence to flow directly between the two shareholders).

6.2 However, this proposed rule flies in the face of the commercial reality that Share Premium in many cases attaches to specific shares. For example, redeemable preference shares or special classes of ordinary shares often have specified premiums attached to them (to the exclusion of the other classes of shares). To artificially 'share' the premium and nominal value of one share with all other shareholders is contrary to the commercial [and Company Law] reality that the capital contributed by one shareholder does not always and automatically 'belong' equally to all other shareholders.

6.3 It is submitted that the targeted abuse might still be neutralised by 'sharing' share capital and premium between only the shares of a similar type or class. This means that any attempt to pay out (for example) the Share Premium contributed by preference shareholders to the ordinary shareholders could potentially be re-characterised as distributable profits.

6.4 Against that, the 'general sharing' concept in the current draft proposals could end up penalising Share Premium that is returned to the self-same shareholders that contributed that Premium.

6.5 Furthermore, the anti-avoidance (as apparently intended) is easily avoided and thus ineffective. The new (incoming) shareholder simply needs to increase or 'gross up' the amount of Share Premium introduced to provide for the fact that the incoming shareholder will also participate in the proportional repayment of Share Premium.

6.6 It is submitted that the legislation should simply seek to achieve the objective of allowing shareholders to receive capital distributions to the extent of their respective capital contributions, i.e. shareholders can take out the capital that they acquired and /or contributed. The sharing across all classes of shares on a 'value' basis, simply does not – it is submitted – achieve this end and, as described above, creates a number of surely unintended anomalous results.

6.7 Request : The new apportionment rule in the 1st proviso (new para (iiiA)) should be restricted to spread (or share) Share Capital and Premium only within the same types or classes of shares.

6.8 The reference in this para (iiiA) to 'value' is also considered to be unhelpful. Given that the legislation-drafters could easily have used 'nominal value' or 'market value', it is submitted (with respect) that the use of the undefined 'value' causes nothing but confusion and uncertainty. It is suggested that 'nominal value' could be specified in order to avoid this confusion and uncertainty.

6.9 Request : The reference to 'value' in para (iiiA) of the first proviso to the dividend definition should be expressly clarified, e.g. nominal value.

7. CLAUSE 5(1)(*o*) : Unrealised profits and valuation

7.1 The new proposed 3rd proviso to the '*dividend*' definition seeks to confirm that 'unrealised' profits are also considered to be 'profits'. In this respect, there are at least two areas of difficulty that require further attention.

Valuation

7.2 The issue of asset-valuation is perhaps one of the most controversial areas in our tax system at present. The need for independent valuation of assets creates an extra level of administration for taxpayers and (it is submitted) the likelihood of disagreements between taxpayers and SARS add another further level of administration and costs.

Cash distributions and ongoing record-keeping

7.3 Whilst it is conceded that the distribution of an actual asset could be argued to be a distribution of the unrealised profits attached to that specific asset, the notion that a cash distribution could be a distribution of unrealised profits creates inordinate complications.

7.4 For example, s64C deems certain events and transfers to be 'dividends' but limited in s64C(4)(*c*) to the company's available distributable profits –which would now also include unrealised profits.

7.5 First, this means that the valuation problem referred to above may be repeated several times because the asset itself has not been distributed; hence a new valuation of ALL assets may have to be undertaken every time there is a deemed dividend. Whilst the concept of valuation is considered to be 'difficult' in any event, this difficulty is compounded if the several assets will have to be valued several times.

7.6 Secondly, there will be a significant administrative cost associated with keeping track of valuations and distributions while the unrealised assets are still retained. Taxpayers and SARS will expect to know how much unrealised profits are available and how much has already been distributed e.g. through s64C.

7.7 In the light of the strong 'simplification' message accompanying the currently proposed draft amendments, it is submitted that the need to monitor unrealised profits is a step in the opposite direction –and arguably untenable. We should not have tax legislation that, in practice, cannot be applied or administered.

7.8 Request : Unrealised profits should only be considered to be distributed as and when the asset itself is distributed.

8. CLAUSE 12 : Deemed capital shares (s9C & s24A)

8.1 A new s9C is being introduced to deem certain shares to be capital (as opposed to trading stock) if those shares were held for 3 years or more. To a large degree, s9C replaces s9B which contained a 5-year rule.

8.2 In relation to shares acquired in terms of a so-called s24A arrangement, s9B applied (i.e. permitted the 'capital' treatment) for such shares acquired between 1990 and 1999. S9B(5) prevents s9B from applying to any s24A shares acquired on or after 24 November 1999. In other words, s9B offered protection to s24A shares (i.e. permitted such share to be treated as capital) as long as they were acquired before 24 November 1999.

8.3 However, the proposed new s9C offers no such protection and simply disqualifies all s24A shares (with no reference to acquisition dates). It is submitted that it would be unfair to suddenly tax shares that have been held for many years as deemed capital under s9B.

8.4 Request : Para (*c*) of the definition of '*qualifying share*' in sS9C(1) should specifically exclude shares acquired before 24 November 1999.

9. CLAUSE 60 : Accommodation provided to expatriate employees

9.1 The Draft Bill proposes that amendments are made to para 9 of the 7th Schedule to limit the circumstances in which a zero amount is ascribed to residential accommodation provided in SA by an employer to an employee when the employee's usual place of residence is outside SA. Only where the employee's assignment is for 183 days or less will the zero value be applied. In all other cases, the accommodation will be valued in accordance with the 7th Schedule. It is also proposed that the legislation will be deemed to have come into force on 1 March 2007, i.e. it will have retrospective application.

9.2 It is stated in the explanatory memorandum that para 9(7) has been 'misinterpreted'. We do not believe this to be case, in particular as the interpretation of this section has been

recently subject to the determination of the Tax Court, which found in favour of the taxpayer. Indeed, the correct interpretation of the current wording of the aforementioned paragraph, as recently confirmed by the courts, has considerable benefit in terms of attracting and retaining vital skills required in SA, and the proposed amendments will undermine this.

9.3 SA needs skills and it is very important that changes are not made to the tax legislation which will have a negative impact on the ability of SA (and SA employers or multinational companies with operations in SA) to attract and retain imported skills. Indeed, the skills shortage has been front page news for many months and recently amendments have been made to the Immigration Act that seeks to remove barriers and attract skills. It would seem counter productive if the tax laws were now amended to create a financial barrier.

9.4 Consideration needs to be given to the fact that other countries with whom SA potentially competes for skills do have specific exemptions or reliefs relating to the provision of accommodation by employers to expatriate employees such as Australia, Botswana and China. The proposed amendments brings the SA tax legislation in line with countries that do not need to attract the levels of skills and foreign investment that SA so desperately needs (such as many European countries). That said, it should be mentioned that the Netherlands and Belgium, for example, have specific beneficial expatriate tax regimes, and the UK will exempt employer provided accommodation where the expatriate is assigned to the UK for a period of less than 2 years and does not have an UK employer. Any suggestion that the amendments will bring SA in line with international norms is therefore not correct.

9.5 In many cases the foreign nationals working in SA are subject to tax equalisation / protection by their employers. Generally speaking, assignment specific benefits such as residential accommodation are tax protected, i.e. the employer must pay the tax liability of the expatriate employees in respect of the accommodation provided. The tax paid on behalf of the employee will itself be a taxable fringe benefit resulting in a compounding effect, with a taxable fringe benefit far in excess of the rental value of the accommodation provided.

9.6 It is also important to recognise the impact that the security situation in SA has on the ability to attract skills. One of the main concerns for any assignee coming to work in SA is the security of the residential accommodation. As a result, most international employers house their expatriate employees in secure accommodation, more often than not in security estates such as Dainfern. Owners of such property have taken advantage of this situation and rentals for accommodation in security estates are at a significant premium to similar accommodation in other areas. The *fiscus* already collects significant taxes from the owners of the accommodation. To tax the full market value of this accommodation (plus the gross up factor) is tantamount to the *fiscus* profiting from the security situation in SA, which surely is not intended.

9.7 The tax costs that will be associated with the provision of such accommodation (it will increase the cost of accommodation by approximately 60%) will result in such accommodation no longer being affordable. This will either result in a fall in the rentals being paid (resulting in lower tax take from the owners) or companies providing accommodation for expatriates in less secure accommodation (raising security risks), or the expatriates turning down assignments to SA, or the company deciding to disinvest/relocate certain parts of its international operations.

9.8 It should be pointed out that several multinational companies have recently moved their African coordination offices from SA to other locations due to concerns over the ability to retain their skilled employees, because of questions around the implementation of the immigration regulations and safety issues. This additional tax cost may well prompt others to make a move to the detriment of SA.

9.9 Additionally, commentators have mentioned that the current legislation benefits foreign nationals and that the situation needs to be amended to equate the position between SA and foreign nationals. This comment is not correct. South Africans that work away from their usual place of residence, for example, persons that live with their family in one city such as Cape Town, but work Monday to Friday in another city, such as Johannesburg, would not be taxable on employer provided accommodation in Johannesburg. It seems unfair and discriminatory that the same benefit should not apply to persons whose usual place of residence is outside of SA and who are required by their employer to provide services inside SA. This is especially the case where the immediate families of the taxpayer remain in the taxpayers' country of usual residence, and they would otherwise have the costs of maintaining two homes.

9.10 Limiting the exemption to assignment periods of less than 183 days will have limited practical benefit to assignees/employers. Practically speaking, it is rare that international assignments are less than 183 days, and in most cases where accommodation is provided and the less than 183 day period is achieved, the foreign national may well be exempt from tax in SA in terms of a relevant double taxation agreement. Having said that, it will benefit some and in the event that no other modifications are made, it should be retained.

9.11 Accordingly, as motivated above, there would appear to be good reasons why the legislation should remain unchanged. However, should the legislation be amended such that this benefit is taxable in future, we suggest that some form of relief (either permanent or transitional) should be provided.

9.12 Request : Our suggestions are as follows:

9.12.1 The benefit should only apply where the legal employer of the assignee is not SA-resident, AND, the assignee retains his primary residence in his home country, AND will only apply for the first 48 months (in line with the intra-company transfer work permit period); and/or

9.12.2 Valuation rules need to be amended and capped where taxable under this section to, say, maximum taxable value of R20,000 per month AND the tax paid by the employer is not a taxable fringe benefit; and/or

9.12.3 Taxation to be phased in such that 25% of taxable value is assessed in year one of the assignment, 50% to be taxed in year 2, 75% to be taxed in year 3 and 100% in year 4.

9.13 These reliefs will still result in significant taxes being collected, but also recognise the unique situation faced by employers of expatriates.

9.14 Finally, making the legislation effective retrospectively effective from 1 March 2007 will have considerable cost and practical implications for employers. Treasury will be well aware of the uncertainty created by making retrospective legislation, especially so late in the tax year. Based on the view of the Tax Court, employers will not have accounted for tax on accommodation since the beginning of the current tax year.

9.15 For those employers who are responsible for the taxation, this will result in an unacceptable increase in the cost of their expatriate population. For those assignees who are responsible for their tax, it is unclear as to how they are expected to now fund the tax costs arising from what was a tax-free benefit at the commencement of the tax year and which at the end of the tax year has become retrospectively taxed.

9.16 Request : To the extent the provision of accommodation is considered a taxable benefit in terms of paragraph 9(7), this must be from 1 March 2008.

10. CLAUSE 14(*g*) : Exemption for foreign employment income

10.1 The Draft Bill proposes that amendments are made to s10(1)(*o*)(ii) to extend the foreign employment exemption to include share incentive arrangements and other forms of deferred compensation where the tax point of income is deferred until a tax year when an individual may not currently qualify for the exemption.

10.2 The proposed amendments also remove the requirement that an amount must fall within remuneration as defined to qualify for exemption, and replaces this with a specific list of the types of receipts and accruals that may now be treated as falling within the exemption.

10.3 Specifically included in the list of receipts and accruals are amounts that fall to be taxed in terms of ss8B and 8C. However, there is no mention of s8A (share options issued before 26 October 2004). It should be noted that there are still many SA nationals that will hold unexercised share options the gains on which will be taxable in terms of s8A and who may have earned these options (in whole or in part) as a result of services rendered outside of SA.

10.4 Request : Any gains arising in terms of s8A (in addition to s8B and s8C) are treated as falling within the exemption as there does not appear to be any logical reason or stated intention to exclude any such gains.

10.5 Further, it would appear that severance payments (payments received on the termination of an individual's employment) will not fall within the scope of the exemption. However, to the extent that such payments do relate to services rendered to follow the general intention of excluding amounts relating to overseas services, such payments should fall within the exemption (to the extent that it can be demonstrated they relate to services performed overseas in a qualifying period). An example of such a payment is in the circumstances when an individual is contractually entitled to a sum amounting to one month's pay for each year of service.

10.6 Request : Termination payments that clearly relate to the appropriate period of employment should also qualify for the exemption.

11. CLAUSE 10(2) : Retrospective application of amendments to rules on Employee Share Incentive benefits (s8C ITA)

11.1 By proposing to apply in respect of any equity instrument already '*held*' on the proposed effective date (and not merely to equity instruments '*acquired*' on or after that

date) the Bill attempts to apply retrospective taxation, which is at odds with the accepted policy of applying retro-activity only in favour of taxpayers.

11.2 Request : It is recommended that in order to maintain the integrity of the tax system and the consultative process that the proposed amendments to s8C ITA should apply to only those equity instruments which are *acquired* on or after the date the Bill is introduced.

12. CLAUSE 29 : Broad application to debt-waivers that reduce Assessed Loss

12.1 It is submitted that the proposed reference in s20(1)(*a*)(ii)(*aa*) to '*directly or indirectly*' (in relation to the link between creditors and the deduction of expenditure) is unfair and contrary to SARS' long standing practice, and in any event inappropriate.

12.2 It is creates an unfair additional burden in that taxpayers may now be required to keep track of how 'general' borrowings are being applied to deductible and non-deductible expenditure. Furthermore, many borrowings may be continuously repaid and increased and then repaid (and so forth), which makes the tracking exercise one of futility.

12.3 The '*Income Tax Practice Manual'* detailing SARS' unofficial practices states that : "…. In order to apply section 20(1)(*a*)(ii), it must be shown that the creditor was the person in whose favour a credit was created which was allowed as a deduction under sections 11 to 20 of the Act, …"[3]

12.4 There is thus a clear distinction to be drawn between :

- instances where expenditure is incurred on credit (and a deduction obtained in respect thereof), and that creditor subsequently reaching a compromise; and
- the position where, for example, a loan is taken and the funds are used to incur expenditure on a cash basis and/or to settle suppliers (with the deduction taken in respect of the goods/ services that were supplied and paid for) and there is then a subsequent compromise with the financier.

12.5 A compromise with a financier may in any event be subject to either the 'gross income' rules in s1 ITA or to paragraph 12(5) of the Eighth Schedule ITA, so the proposed amendment is considered to be inappropriate and, as such, unwelcome and unjustified.

12.6 Request : The amendment to s20(1)(*a*)(ii)(*aa*) should refer only to creditors used 'directly' to fund deductible expenditure, i.e. do not target debt that is indirectly linked to expenditure deductions.

13. CLAUSE 7 : Deduction for foreign taxes

13.1 The proposed new subsections (1C) & (1D) of s6*quat* ITA seek to permit a deduction for foreign taxes that are not creditable as a rebate under the first part of s6*quat*. Just like the existing 'rebate' rules, the new 'deduction' rules contain certain restrictions as to how much of the foreign taxes can be used in the current year.

[3] See Income Tax Practice Manual – page A547 and SARS' 'Draft Comprehensive CGT Guide' published on 13 January 2006, example 4 on pages 95 and 96

13.2 However, the 'rebate' rules in subsections (1) - (1B) permit the unused credits to be carried forward to the next tax year to be considered for use as a credit in that subsequent tax year. But the proposed new 'deduction' rules in subs (1C) & (1D) do not appear to permit any such carry-forward.

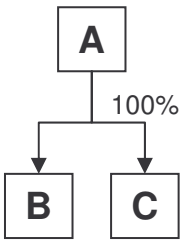
13.3 Request : S6*quat* should be amended to ensure that the deductions permitted by subs (1C) but restricted by subs (1D) from being used in the current tax year, may be carried forward for up to seven (7) years.

14. CLAUSE 55(1)(*k*) : STC group relief – Amended restriction on pre-acquisition profits

14.1 Whilst ostensibly targeting certain abusive avoidance schemes, this proposed amendment to s64B(5)(*f*)(i) appears to have ended up targeting legitimate commercial transactions that are precisely the intended beneficiaries of this group relief.

14.2 To summarise, the objective of s64B(5)(*f*) is to enable normal profits generated inside a group to be distributed within the group without any STC (unless and until the profits leave the group). Put another way, it is submitted that this relief is seriously undermined if it expressly subjects the distribution of *bona fide* group profits to STC.

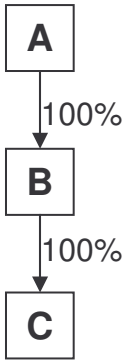
14.3 Our specific concern here deals with restructuring of groups where existing group companies are simply moved around in the group –for bona fide commercial reasons. We set out below an example to illustrate our concern. Consider the following group :



14.3.1 In January 2000 a group was established consisting of a SA parent company ('A') and its two wholly owned subsidiaries, B and C, each of which are established with R100 of share capital.

14.3.2 In the 8 years to December 2007 company C earns profits of R10m, and at that date is worth R10m.

14.3.3 In January 2008 A transfers its shares in C to B in exchange for the issue of further shares by company B. The structure now looks like this :



14.3.4 For accounting purposes B raises share capital (and premium) of R10m and has a cost of investment in the C shares of R10m.

14.3.5 'A' either recognises a profit on the sale of the C shares to B (R10m less R100 acquisition cost) or rolls over its accounting cost in the C shares to the new B shares issued (i.e. under the latter scenario it would have an unrecognised and unrealised gain in the B shares held).

14.3.6 Under the proposed amendment, C is no longer able to declare a dividend to company B within the group exemption from STC *notwithstanding that the profits were all earned whilst members of the same group of companies AND no so-called 'cash out' from the group results*.

14.3.7 This problem exists irrespective of whether C was transferred down to beneath B (as in the above example), or whether it is the reverse situation which starts out with a vertical structure and C is 'unbundled' to be held next to B.

14.4 Clearly this is an undesirable result. Whilst we appreciate the SARS and Treasury concerns where the parent company is *not* subject to STC, we submit that the wording is a case of anti-avoidance gone too far and impacting negatively on the ability of groups to restructure for *bona fide* commercial (non-tax) reasons.

14.5 This avoidance provision as currently worded very widely when, in our opinion, there is only the justification more targeted and precise rules (i.e. attack the avoidance schemes without targeting *bona fide* commercial transactions within a SA group). It is submitted that this anti-avoidance provision is not required where the parent company ('A' above) is indeed subject to STC, and it is therefore suggested that an exception needs to be introduced to avoid the unintended (we assume) result outlined above.

14.6 Specifically this anti-avoidance rule should not apply to transactions involving first and lower tier subsidiaries in a group.

14.7 Request : The 'included in the profits' test in the proposed s64B(5)(*f*)(i) should be reworded to ensure that *bona fide* group profits are not unfairly disqualified from the exemption.

15. CLAUSE 63 : CGT dividend stripping rules

15.1 The restructured para 19 (8th Sch. ITA) aims to add previous 'extraordinary' dividends to the disposal proceeds of certain shares, when they are sold.

15.2 Whilst we understand and appreciate some of the mischief that the proposed amendment intends to target, we are seriously concerned that the revised wording casts the net significantly too widely. We have three specific concerns, namely that these rule will catch (at least) the following unintended targets.:

- distributions of post-acquisition profits –which we understand to be contrary to its purpose;
- liquidations; and
- sudden devaluations

Post-acquisition profits

15.3 It appears from the wording '*to the extent that those dividends do not exceed expenditure incurred by that person in respect of that share*' that the intention is to permit post-acquisition profits to be extracted by shareholders without a negative para 19 consequence (i.e. the anti-avoidance rule should target only the extraction of pre-acquisition profits which could otherwise give rise to the creation of tax losses, but not economic, losses). With this we are fully in agreement.

15.4 However, no tax avoidance results from the removal of post acquisition profits. We present an example below to demonstrate how the extraction of post-acquisition profits would in fact be taxed under para 19 :

15.4.1 Company shares acquired for R100 (represented by share capital of R10 and reserves of R90).

15.4.2 Post acquisition growth in reserves of a further R80, i.e. total value now R180.

15.4.3 Dividend declared of R80 (being the R80 of post acquisition reserves).

15.4.4 Company then sold for R100.

15.4.5 Total amounts received by purchaser of R180 (sale proceeds of R100 and dividends of R80)

Based on the currently proposed changes to para 19, the outcome from the above would be :

15.4.6 Extraordinary dividend of R65 (R80 – 15), i.e. excess of dividend (R80) over 15% of proceeds (R100 x 15% = R15).

15.4.7 Actual sale proceeds = R100.

15.4.8 Para 19 adjustment = Extraordinary dividend of R65. Therefore 'proceeds' total = R165 (R100 + 65).

15.4.9 Capital gain = R65 (R165 – R100).

15.5 We would submit that it is wholly inappropriate to trigger a taxable gain in these circumstances, where the purchaser's return over acquisition cost is represented wholly by post acquisition reserves. In effect the exemption afforded local dividends by s10(1)(*k*)(i) is being negated by converting tax exempt dividends into taxable capital proceeds.

15.6 We accept that the purchaser should not be permitted to realise a capital loss in respect of the sale of the 'stripped' company and we submit that this effect can still be achieved by adding extraordinary dividends to proceeds only to the extent that those extraordinary dividends exceed the corresponding portion of post-acquisition profits (i.e. come from pre-acquisition reserves).

15.7 However, we might venture so far as to say that this provision is fundamentally flawed in that it will tax companies that follow a policy of retention-and-re-investment as opposed to regular distribution policy. There are many commercial reasons (including exchange

controls) that impact a company's dividend policy, and these factors have been and should continue to be recognised in our law.

15.8 In short, these proposed amendments will often result retrospective taxation of post-acquisition profits that should not be subject to the anti-avoidance measures.

Liquidation

15.9 Additional problems arise in situations where certain factors could 'abnormally' affect the relationship between the disposal-value and the value of pre-disposal dividends. That is, the 15% threshold may be easily breached in certain non-targeted situations.

15.10 First, the scenario of liquidations is an obvious situation where substantial pre-disposal (i.e. pre-liquidation) dividends arise before relatively small proceeds are received by the shareholders. Again we are concerned that the proposals effectively convert tax-free dividends into taxable capital proceeds in circumstances where no tax avoidance is intended. Although, where section 47 relief may be available to a majority shareholder, the absence of any such relief could result in minority shareholders (whose vote not to liquidate may be insufficient) from being unduly prejudiced against.

Devaluations

15.11 Secondly, sudden devaluations (e.g. a 'market crash') means that the potential disposal value of the share might render previous dividend-declarations to suddenly be 'extra-ordinary'. Shareholders looking to sell their devalued shares (e.g. to cut their losses in a declining market) might feel prevented from disposing of their shares because of the penal effect of converting tax-free in taxable disposal proceeds.

15.12 It is submitted that the exclusion of post-acquisition profits will substantially reduce the likelihood of unduly negating (i.e. in *bona fide* commercial transactions) the s10(1)(*k*)(i) dividend exemption as explained above.

15.13 Request : Dividends sourced out of post-acquisition profits should not rank to be included as 'proceeds' for the purposes of the dividend-stripping rules in para 19.

15.14 Admittedly, this could still result in a capital loss arising to the extent that any pre-acquisition reserves stripped are not classified as 'extraordinary' due to the 15% threshold.

16. Intra-group transactions and de-grouping – Effective date of 6-year rule

16.1 The draft Bill proposes that the so-called de-grouping penalty in s45(4)(*b*) should only apply if de-grouping occurs within 6 years. This deals with situations where relief has been claimed for the transfer of an asset between two group companies, but the recipient company leaves the group shortly after the deal.

16.2 Given that the absence of a fixed period (i.e. limiting the application of the de-grouping penalty) has been a sorely debated point since the 2001 inception of the predecessor to the current s45, it is presumed that the 6-year rule should now apply for intra-groups transactions undertaken from 1 October 2001.

16.3 Request : The Amendment Act should clarify and confirm that the 6-year rule in s45(4)(*b*) takes effect from 1 October 2001

17. Stamp Duty / Securities transfer tax – Scrap the redemption tax

17.1 In announcing the removal of stamp duties on the issue of shares, the 2005 Budget contained the following statement :

> "The resulting tax non-neutrality between debt and equity capital makes little economic sense because equity financing offers companies better flexibility in terms of payments over the long-term than debt financing"

17.2 We would submit that the logic and policy underlying that decision should apply equally in the case of the *redemption* of shares. No duty is payable on the repayment of a debt and we would submit that the redemption of share capital should similarly be exempt from duty.

17.3 Request : The duty chargeable on the redemption of shares should be repealed.

17.4 On the basis that it is not possible to repeal the provision that charges the duty on share redemption in this current Bill, we would request that a further exemption should be introduced in respect of the redemption of shares on which duty was paid on the issue thereof so as to avoid double taxation (a double tax charge in respect of the same shares).

We accept that this is a policy decision outside the scope of the current Bill, but we table it now for attention in advance for next year's Budget.

18. Restriction on IPR expenditure (s23I)

18.1 The creation of IPR (intellectual property rights) is in practice a complex matter which, is has already been the subject of much focus in terms of SA exchange controls and the transfer pricing rules in tax law.

18.2 The restriction of IPR-related deductions under the proposed new s23I should be considered within this context and, specifically we wish to warn against a broad-brush assault on avoidance schemes, which unintentionally pull in other taxpayers undertaking entirely commercial transactions.

18.3 We have two main concern s with the new s23I :

18.3.1 First, in the definition of '*affected intellectual property*' in s23I(1) paras (*a*), (*b*) and (*c*) appear to be three independent and mutually exclusive targets. On this basis, para (*a*) requires that SA taxpayer should know whether the IPR was ever owned by another SA-resident even if such previous (SA) owner is completely unrelated to the SA taxpayer. It is submitted that it is unreasonable to expect the taxpayer to always have knowledge of the ownership history of IPR that is owned by an unrelated third party. This aspect of the legislation may then become impossible to apply.

18.3.2 The use of the phrase '*wholly or partly*' in the definition is also unfortunate and (in our opinion) and example of an anti-avoidance measure that may deny relief where the local component is minimal. We therefore request that these terms be refined or defined. In our view, we should only target circumstances where the

cost or value of the 'tainted' (SA) component of the IPR exceed a specified threshold (say, 15%-20% of total market value or cost).

18.4 There is a real concern that we may be creating legislation that harms our international competitiveness in the way that we attract intellectual property to SA. (especially in the light of the IPR-related exchange controls). It seems that this might be another case of where anti-avoidance rules are being drafted too widely, where the legislation in fact need to focus preventing the specific avoidance in a more pragmatic and targeted way.

18.5 Request : The scope of the definition of '*affected intellectual property*' in s23I(1) should be narrowed to refer only to connected persons and to target only situations where there has been a substantial involvement by the SA-taxpayer in the ownership, development, etc. of the IPR.

SECTION II – MATTERS NOT ADDRESSED IN DRAFT BILL

19. Allowances for acquisition of Trade Marks

19.1 At present, no allowances are granted for the acquisition costs of Trade Marks. Specifically, the existing s11(*g*C) expressly forbids allowances from being taken for Trade Mark acquisitions.

19.2 It is submitted that there is no sound commercial reason for treating Trade Marks any differently from any other intellectual property –especially where the Trade Marks are acquired from unrelated third parties.

19.3 It is recognised that the current policy adopted in respect of intellectual property is very much a 'carrot-&-stick approach, by incentivising the creation of SA intellectual property, whilst preventing its erosion (e.g. through its disposal to foreign connected persons). In this respect, we note that the exchange control policy of not permitting intellectual property to be exported and relicensed back into SA has been in place for many years –and furthermore a new s23I is proposed to be introduced to restrict the deduction of certain expenditure relating to intellectual property.

19.4 However, the prevention abuse should be balanced against the need to remain competitive and consistent with international norms.

19.5 Request : The s11(*g*C) allowance provisions should be amended to include Trade Marks acquired from unconnected persons.

20. S22(3)(*a*)(ii) – Tax cost in assets held on revenue account

20.1 Whilst this section currently provides for a tax cost in trading stock equal to the market value where this results from a change in the nature of an asset previously held as a capital asset (as upon the change in nature of the holding a deemed disposal arises in terms of paragraph 12(2)(*c*) of the Eighth Schedule), it fails to do so in respect of assets which come

into the SA tax net as a result of a foreign company becoming either a controlled foreign company or South African tax resident.

20.2 It is submitted that it is inappropriate to seek to tax any inherent gains in trading stock attributable to periods prior to their coming into the SA tax net. Indeed, for capital gain purposes, this is recognised by the provisions of para 12(4) of the Eighth Schedule, which provides for a base cost in assets held on becoming subject to SA tax (either by reason of being a CFC or a South African tax resident), equal to market value.

20.3 Request : S22(3)(*a*)(ii) should be amended to also include para 12(4) assets, thus :

> "In the case of any trading stock which is in terms of paragraph 12(2)(c) or (4) of the Eighth Schedule treated as having been acquired at a cost equal to the market value, be that market value."

20.4 The alternative of amending para 12(4) of the Eighth Schedule to state that the market value of assets held on becoming a resident forms the tax cost not only for CGT purposes (as is currently achieved by deeming that value to be expenditure for purposes of paragraph 20(1)(a) of the Eighth Schedule) but also for purposes of s22 of the Act for trading stock, is *not* preferred as this would conflict with the approach taken for paragraph 12(2)(c) disposals and would confuse the interaction between the main body of the Act and the Eighth Schedule.

SECTION III – DRAFTING CORRECTIONS

21. S8C – Share schemes

21.1 S8C(3) provides for the following (underlining is our emphasis)

> "An equity instrument acquired by a taxpayer is deemed for the purposes of this section to vest in the taxpayer –
>
> (*b*) in the case of a restricted equity instrument, at the earliest of –
>
> (i) .....
> (ii) immediately before that taxpayer disposes of that restricted equity instrument, other than a disposal contemplated in subsection (4) or (5)(*a*), (*b*) or (*c*)"
> (iii) ....

21.2 Whilst we understand the current references to disposals under subsection (4) and (5)(*a*) and (*b*), the inclusion of subsection (5)(*c*) seems to be at odds with the section for the reasons detailed below.

Subsection (5)(c)

21.3 Subsection 5(*c*) operates to dis-apply subsection (5)(*a*) in certain circumstances.

21.4 Subsection (5)(a) disposals are precluded from resulting in a vesting for purposes of subsection (3)(*b*)(ii).

21.5 Under the current legislation subsection (5)(*c*) disposals are similarly precluded from resulting in a vesting for purposes of subsection (3)(*b*)(ii).

21.6 It seems incongruous that a disposal in respect of which (5)(*c*) specifically dis-applies (5)(*a*) is, for purposes of (3)(*b*)(ii), treated in the same way as a disposal to which (5)(*a*) does apply.

21.7 Request : Accordingly we submit that the reference to (5)(*c*) in (3)(*b*)(ii) should be removed.

22. Para 12(5) Eighth Schedule

22.1 Paragraph 12(5) applies to treat any amount waived as a capital gain against which there is no base cost which may be set off. Para 12(5) does not apply to the extent that the waiver has either constituted a capital gain in terms of para 3(*b*)(ii), or has been taken into account in terms of section 8(4)(*m*), 20(1)(*a*)(ii) or paragraph 20(3).

22.2 However, if the capital gain is taken into account under para 3(*b*)(iii) there is no express exclusion in para 12(5).

22.3 Request : In order to avoid double taxation, reference should also be made to instances where paragraph 3(*b*)(iii) applies.

23. Para 20(3)(*b*) Eighth Schedule

23.1 Request : Similar to the issue identified above regarding paragraph 12(5), it is respectfully submitted that, again in order to avoid double taxation, reference should made to s20(1)(*a*)(ii) in para 20(3)(*b*).

23.2 This is in addition to the existing references to s8(4)(*a*) and para (*j*) of the '*gross income*' definition.

24. CLAUSE 29 : Subpara (ii)(*aa*) of the proviso to s20(1)(*a*)

24.1 With reference to the phrase '*the amount advanced by such …*', it is submitted that an '*advance*' is usually considered to be akin to a cash loan. To put it slightly differently, where a supplier sells trading stock on credit, the debt owing by the customer is usually not referred to as an 'advance'.

24.2 We note the use (for example) of '*loan or advance or debt*' in s24I ITA.

25. CLAUSE 46 : Deletion of s37D (Taxation of married women)

25.1 With this proposed deletion it is possible also to delete the definition of '*married woman*' in s1 which currently seems to exist only for the purposes of s37D.

26. CLAUSE 5(1)(o) : Proviso to 'dividend' definition

26.1 Whilst most people will understand what is meant by '*accounts*' in this paragraph, it is submitted that the phrase '*accounting records*' might be more appropriate in the context of legislation.