Dear Sir,

TECHNICAL TAX PROPOSALS FOR ANNEXURE C OF THE BUDGET REVIEW

We refer to the invitation to submit technical proposals to improve or correct current tax legislation. Set out below please find the SAICA National Tax Committee’s additional proposals in this regard.

Debit loans deemed to be a dividend repaid or otherwise extinguished after 1 April 2012

Legal nature of the problem

Section 64C(5) provides that where a loan granted by a company to a shareholder or any connected person in relation to the shareholder was deemed to be a dividend declared by the company in terms of section 64C and is thereafter wholly or partly repaid by the shareholder or connected person the amount so repaid shall for the purposes of section 64B be deemed to be a dividend which accrued to the company concerned on the date on which such amount was repaid.
This essentially allows the company to deduct the amount in the determination of net amount of any subsequent dividend declared by the company which is liable to Secondary Tax on Companies.

**Detailed factual description of the relevant transaction**

Certain loans by companies to shareholders or connected persons in relation to shareholders were subject to Secondary Tax on Companies under section 64C(2)(g) and were still outstanding on 1 April 2102 when the dividends tax became effective. If this loan is repaid on or after 1 April 2012 the company gets no STC credit. If a dividend is declared subsequent to the repayment or the loan is otherwise extinguished on or after 1 April 2012 the company will be liable to withhold the dividends tax as no exemption exists. The exemption in section 64E(4)(e) merely ensures that no deemed dividend arises after 1 April 2012 due to the fact that the interest at less than the “market-related interest” is payable. The exemption in section 64F(m) also does not apply.

**Nature of business impacted by the problem**

All companies (and close corporations) where a debit loan was granted before 1 April 2012 and this loan was deemed to be a dividend for purposes of section 64C.

**Proposed solution / recommendation**

A specific exemption must be included in section 64F to exempt any dividend which arises as a result of the writing off of a loan that was subject to STC. In addition, the exemption should make provision to exempt any dividend paid by way of reduction of the amount owing in terms of such a loan (i.e. if a dividend is declared, but the shareholder loan asset is reduced and utilised to pay the dividend rather than another asset or cash).

**Intra-group exchange items**

**Legal nature of the problem**

The general principle of section 24I is that the taxation of annual mark-to-market currency exchange gains and losses should closely follow the accounting principles of International Financial Reporting Statement (IFRS) unless there are good reasons for deviation. One of the
main reasons for deviation is liquidity and this applies in the case of intra-group loans there is often a problem with liquidity, and therefore a deviation from IFRS is necessary.

**Detailed factual description of the relevant transaction**

The following uncertainties arise when the section is applied in practice:

An exchange item may fall both under 24I(10) and 24I(10A) and the question is whether the taxpayer then continues to apply 24I(10) until the deemed realisation date in that section. It is possible that an exchange item was treated under section 24I(10) as "deemed realised" but still falls within the ambit of the new section 24I(10A). The question is whether the taxpayer can then disregard any further exchange losses or gains or must one then start to treat it under the section 24I(10A). If so, how will one calculate it? If not, to what does the last part of section 24I(10A)(b) refer "less any amount of exchange difference included in or deducted ...."?

For IFRS part of a long-term loan for example is recognised as current every year. The question is how does one then recognise (calculate) the "part" of the exchange difference for purpose of section 24I(10A) since that "part" of the difference will then not comply with section 24I(10A)(ii)(aa) anymore and therefore 24I(10A)(b) should be applied to that "part" of the difference.

Section 24I(10A)(b) prescribes how the calculation must be done if the exchange item is realised, but it does not deal with the difference between realisation date and translation date.

**Nature of business impacted by the problem**

All loans between group companies and connected persons.

Proposed solution / recommendation

It is proposed that sections 24I(10) and 24I(10A) be amended to address the above uncertainties and also to give effect to the Explanatory Memorandum.
Variable remuneration

Legal nature of the problem
Section 7B of the Income Tax Act became effective on 1 March 2013 and requires that “variable remuneration” as defined in section 7B be treated on a cash basis for both the employee receiving the remuneration and the employer paying the remuneration.

Paragraph 2(1B) of the Fourth Schedule requires that employees’ tax on variable remuneration must be deducted when the variable remuneration is paid. In terms of paragraph 11C of the Fourth Schedule the employees’ tax for directors of private companies must be determined on the greater of the amount paid or an amount determined in terms of a deemed formula (subject to certain criteria).

Detailed factual description of the relevant transaction
If the director of the private company is entitled to a bonus (and the 75% rule does not apply) the bonus would be variable remuneration. A bonus that accrued in a year of assessment that ended before 1 March 2013 would have been paid out to the director without any employees’ tax being deducted. The only consequences would have been that once the bonus has been determined the previous year’s income is also finally determined and the formula amounts will have to be adjusted for purposes of determining the employees’ tax for the rest of the year of assessment.

If the bonus accrues on or after 1 March 2013, employees’ tax would have to be deducted from the bonus and the formula amounts would also have to be adjusted. This will negatively influence their cash flows and the law should be amended to prevent the anomaly explained above.

It sometimes happens that an employee or director gets an advance on their bonus (variable remuneration) during the tax year, which is debited to the employee/director’s loan account in the accounts of the employee. The bonus accrues to the employee at year-end, but is only quantified after year-end and off-set against the money already taken by the employee on loan
The problem that arises is that the amount paid to the employee was not remuneration and consequently also not variable remuneration.

**Nature of business impacted by the problem**

All directors of private companies whose remuneration is not finally determined during the year of assessment.

Please do not hesitate to contact us, should you have any questions regarding the above.

Yours faithfully

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