

FISH HOEK VALLEY RATEPAYERS & RESIDENTS ASSOCIATION

(Incorporating Fish Hoek, Clovelly and Sun Valley)

Central Circle, Fish Hoek 7975

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Heritage Western Cape: Conservation Body

TO: National Treasury's tax policy depository, 2020AnnexCProp@treasury.gov.za
Adele Collins, acollins@sars.gov.za

SUBJECT: 2020 draft Tax Administration Laws Amendment Bill (2020 draft TALAB) ¹

DUE DATE: 17 AUGUST 2020

1. DISCUSSION

Thank you for this opportunity to comment on these regulations. Our sincerest wish is that the concerns raised here actually result in the changes requested.

The key tax proposals contained in the 2020 draft TALAB include the following:

- Removal of the requirement to prove intent with regard to certain offences listed in the Fourth Schedule to the Income Tax Act, the Value-Added Tax Act and the Tax Administration Act; and
- Withholding of a refund pending a criminal investigation.²

We have a major problem with 2.8. Income Tax Act, 1962: Amendment of paragraph 30 of Fourth Schedule Paragraph (a), section 58 of the Value-Added Tax Act, 1991, and section 234 of the Tax Administration Act wanting to remove the word "wilfully and without just cause" for wilful intent.

In Section 35(3)(h) of our Constitution's (Constitution of the Republic of South Africa, 1996) Bill of Rights it states: "Every accused person has a right to a fair trial, which includes the right to be presumed innocent, to remain silent, and not to testify during the proceedings."

Largely, staff at Sars treat everybody as though they were a criminal already. Honest mistakes happen. Negligence (*culpa*) or even a lack of attention to detail is just human nature. One must remember that this can include such as the failure to notify Sars of a postal address, a physical address, banking particulars used for transactions with Sars, an electronic address used for communication with Sars, or such other details as the commissioner may require by public notice. When one changes their physical address, they usually monitor interactions that reference their address over several months and still miss some. However, some only deal with Sars on an annual basis. Government should consider a single POPPI protected database as centralised contact point. Recently Telkom started cutting off copper services in our valley, which required many to change their email addresses. So, those forgetting to tell Sars of this change are now criminals. We have many pensioners in our valley that don't have access to the Internet. Often newspapers are not found on the newsstands or being delivered any more. Thus, public notice may be insufficient for these "criminals". Sars doesn't even like to communicate with taxpayers by normal channels of email. They rely upon taxpayers to visit their website – often.

Sars has said that they will assist taxpayers by pre-compiling individuals' tax returns. If these are incorrect, is the taxpayer a criminal or should the Sars preparer (or programmer) rather be treated as a criminal.³

1 DRAFT MEMORANDUM ON THE OBJECTS OF THE TAX ADMINISTRATION LAWS AMENDMENT BILL, 2020

2 MEDIA STATEMENT: PUBLICATION OF THE 2020 DRAFT TAX BILLS, DRAFT REGULATIONS PRESCRIBING ELECTRONIC SERVICES, VENTURE CAPITAL COMPANY SURVEY TO GIVE EFFECT TO 2020 BUDGET AND EXTENSION OF SOME COVID-19 RELIEF TAX MEASURES

3 Sars is seeking to criminalise mistakes in Moneyweb [Barbara Curson]

An accused must be taken to have objectively foreseen the consequences of his / her act (*dolus directus*) in order for a taxpayer to be considered a criminal for a tax offence.⁴ The burden of evidence must be laid upon Sars.

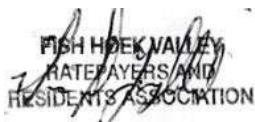
The NPA and Sars need to up-skill their staff and remove their inefficiencies rather than removing elements that constitute a crime so that it is easier to prosecute. They must abide by Section 25 of our Constitution and section 235(2) of the Tax Administration Act, 2011 regarding a fair trial and onus of proof.

Our second concern stems from the first, “withholding of a refund pending a criminal investigation” as stated in Section 2.33. Tax Administration Act, 2011: Amendment of Section 190. As Sars is trying to make it easier to classify everyone as a criminal, then more refunds will be withheld due to these false criminal claims. Sars needs to expedite their tax findings (including verification, inspection and audit) and associated process rather than changing the wording to allow more withholding.

2. SUMMARY OF RECOMMENDATIONS

For the reasons stated above, we highly recommend that Sars:

- Retains the word “wilfully and without just cause” where referenced in 2.8. Income Tax Act, 1962: Amendment of paragraph 30 of Fourth Schedule Paragraph (a), section 58 of the Value-Added Tax Act, 1991, and section 234 of the Tax Administration Act;
- Extinguishes the thought of adding “pending a criminal investigation” as contemplated in Section 2.33. Tax Administration Act, 2011: Amendment of Section 190; and
- Up-skill and hire competent staff at Sars (and the NPA) to expedite their processes.

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