Treasury heeds public concern over tax laws

By Linda Ensor

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The Treasury has made far-reaching concessions on the draft Taxation Laws Amendment Bill and the draft Tax Administration Laws Amendment Bill after public hearings highlighted the concerns of tax experts and other stakeholders.

The Treasury has withdrawn, for the time being, its anti-avoidance proposal on the circumvention of rules dealing with employee-based share incentive schemes while it considers other options. It has also agreed to broaden the mandate of the Tax Ombud and to backdate the implementation of the inclusion of personal liability companies under the small business tax regime.

Treasury chief director of legal tax design Yanga Mputa outlined the Treasury's response to public comments on the bills in a briefing to Parliament's two finance committees on Wednesday, 21 September 2016.

She said the Treasury had agreed to allow the Tax Ombud to undertake reviews of the application of tax laws and of their procedural or administrative provisions on its own initiative as long as the minister of finance approved. The draft bill proposed that reviews were only possible at the request of the minister.

The Treasury has partially acceded to demands for the retrospective extension of small business corporations' tax benefits to personal liability companies. However, it has agreed to backdate the application of the benefit only from the 2013 tax year instead of the 2011 tax year, which was what tax experts wanted.

The concession, announced by Treasury chief director of tax design Cecil Morden, will have significant tax benefits for personal liability companies such as architects, lawyers, accountants and a host of other enterprises that should have paid the lower tax rates enjoyed by small businesses but have been subject to the flat corporate tax rate of 28% since 2011.

Their exclusion was a mistake that arose when the Income Tax Act was aligned in 2011 with the new Companies Act, which specifically excluded personal liability companies from the definition of a small business corporation.

The effective date would be changed from 1 March 2016 to 1 March 2013, "as years of assessment prior to the 2013 year of assessment would have prescribed", Morden said.

He did not expect that the South African Revenue Service would have to pay back large refunds to personal liability companies that had paid tax at the corporate tax rate as he understood most had continued to assume they were beneficiaries of the small business tax regime. These companies would, however, be freed of any penalties and interest for which they might be liable.

PricewaterhouseCoopers SA tax partner Kyle Mandy partly welcomed the concession, but said it should be extended to 2011.

The Treasury accepted a number of criticisms of its proposal to introduce a specific anti-avoidance measure to section 7C of the Income Tax Act aimed at curbing the tax-free transfer of wealth via low-interest or interest-free loans to trusts.

However, there was no compromise as to the scope of its application, with the Treasury insisting it would apply to all loans in existence before and after 1 March 2017.

Source: *Business Day* via I-Net Bridge