Business Parliamentary Office	*An initiative of the South African Chamber of Commerce and Industry (SACCI)* *Representing Business Unity South Africa (BUSA) &* *Chambers of Commerce and Industry South Africa (CHAMSA)*

Submission to the Portfolio Committee on Finance

Parliament of the Republic of South Africa

Commentary by organised business on the

Revenue Laws Amendment Bill 2007

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1. INTRODUCTION

The following submission on the Revenue Laws Amendment Bill 2007 is presented on behalf of organised business, via the Business Parliamentary Office (BPO).

The BPO is an initiative of the South African Chamber of Commerce and Industry (SACCI, formerly the South African Chamber of Business [SACOB]), representing Business Unity South Africa (BUSA) and Chambers of Commerce and Industry South Africa (CHAMSA). CHAMSA is the organised business umbrella body comprising the Afrikaanse Handels Instituut (AHI), the National African Federated Chamber of Commerce (NAFCOC), the Federation of Africa Business and Consumer Services (FABCOS) and SACCI.

Through the active support and involvement of all of these formations and appropriate mandating processes, the mission of the BPO is to provide a centralised forum for input from organised business to Parliament and to disseminate information from Parliament to the organised business community. In so doing, the BPO facilitates the collective voice of organised business in parliamentary proceedings and related affairs.

Organised business has considered the 2007 Revenue Laws Amendment Bill. The commentary contained in this submission covers the following five areas contained in the Bill, around which organised business would like to make its views heard, through the public hearings on the Bill:

- Secondary Tax on Companies (STC), including the issue of dividends.
- Intellectual Property
- Capital contributions
- Environmental Deductions

The process of consolidating this submission was coordinated through the efforts of members of the joint BUSA/SACCI Taxation Committee. The commentary on environmental deductions has particularly accommodated the concerns of the Chemical and Allied Industries Association, whose overall convenor actively participates within this committee and the structures of BUSA. This is contributing to ongoing efforts to strengthen environmental stewardship and a focus on the triple-bottom line within organised business.

We have had sight of the commentary by other interested and affected parties, whose submissions deal with some of the aforementioned areas in significant detail. With due respect for the time constraints of the Committee, we have crafted our submission to succinctly narrow-in on the most pertinent concerns of organised business within the areas mentioned above, without diluting the importance of providing the Committee with sufficient details to ensure an appropriate depth of understanding.

In so doing, we have collaborated with the law firm Mallinicks Inc. to assist us in elaborating on the technical nature of the issues covered in our submission. In this regard, our delegation includes Mr. Des Kruger – a tax specialist and Head of Tax at this legal outfit. Mr. Kruger is also a former convenor of the BUSA/SACCI Taxation Committee.

Through such collaboration and by virtue of the broad spectrum of organised business serviced by the BPO, this submission ensures legitimacy and sound technical acumen of the complex nature of the revenue law amendments being proposed, as it affects business on the ground.

In the 2007 Budget Review of the National Treasury and the 2007 Budget Statement by Minister of Finance, the broad underpinnings of the 2007 tax proposals were articulated as aiming to provide further support for economic growth, investment and South Africa's attractiveness as an investment destination, job creation, business development and business confidence.

In legitimately representing the broadest spectrum of business in South Africa, organised business hopes that the commentary contained in this submission will be understood and considered within the context of our commitment to support and contribute to the achievement of these strategic national economic objectives, which we are firmly committed to and share as a collective responsibility.

The complex nature of some of the revenue law amendments focused on in our submission, underscores the importance of a robust and vibrant interaction between organised business and the Committee through these hearings, in ensuring a sufficient depth of understanding around the concerns of organised business. We therefore welcome this opportunity to make our views heard, as part of an open ethos approach that will contribute to the strengthening of participatory parliamentary democracy.

2. COMMENTARY

2.1 Secondary Tax on Companies (STC)

The deletion of the exemption for <u>pre-1993</u> revenue profits and capital profits relating to the period before 1 October 2001 (when the distribution of capital profits became subject to STC) where a company is being liquidated or wound up must surely constitute a retrospective measure. Whether a subject for debate or not, it is certainly regarded as such by the business sector. The principle of retrospective legislation is one that the business community has consistently opposed.

2.2 Dividends

The comments above in regard to capital profits relating to the period of ownership prior to 1 October 2007 (the date CGT was introduced) apply equally to the proposed deletion of the exclusion relating to capital profits pre-1 October 2001 in the “dividend” definition.

Of concern is the proposed amendment (clause 5(1)(m) of the Bill) that would result in any distribution of share capital/share premium in consequence of a reduction of the share capital/share premium of a company being apportioned on a per share basis. The apportionment is required to be done on the basis of the “value“ of the shares. However the relative value of the shares is not an appropriate basis given that the “value” of certain classes of shares may remain constant (i.e. preference shares), while others may increase in value (i.e. ordinary shares). The proposed amendment is also unjust in situations where shareholders have subscribed for shares at various times and at various premiums. Thus Shareholder A may have subscribed for 1 share at R1 and a premium of R10, while Shareholder B would have subscribed for 1 share at R1 and a premium of R20 at a later date. Should the premium paid by Shareholder B (R20) be repaid to him or her, and assuming the value of the 2 shares are the same, Shareholder B would be deemed to have received share premium of only R10, with the remaining share premium being regarded as a “dividend”. This cannot have been the intention.

Once again, it is apparent that a specific anti-avoidance provision has been introduced when in fact the application of the newly introduced general anti-avoidance provision (sections 80A to 80L of the Income tax Act, 1962) would have been more appropriate to address the mischief.

2.3 Intellectual Property

Research and development (R&D) are rightfully considered as necessary for promoting economic growth and international competitiveness in South Africa. Ancillary to the encouragement of R&D is the role and protection of Intellectual Property (IP). For many companies IP has become their most important resource and the management of that resource has become a strategic business issue. Organised business would argue that the development of IP resources and the market that arises from it should be encouraged in South Africa. For this reason, it must be noted that certain provisions relating to foreign exchange control as well as the deductions permitted under the taxation of controlled foreign companies have a detrimental affect on the development of IP in South Africa.

From a foreign exchange control perspective, approval for the disposal of IP is limited to foreign third parties not connected to a South African resident.

From an income tax perspective, the proposed disallowance of a reduction of expenditure incurred in respect of the use, right of use or permission to use so-called “affected intellectual property” (proposed new section 231 – clause 34 of the Bill) once again seems to be an anti-avoidance measure that will affect genuine and legitimate transactions. It is submitted that the recently introduced general anti-avoidance provisions (sections 80A to 80L of the Income Tax Act, 1962) are adequate to combat any avoidance relating to royalty payments and should instead be used as the appropriate legislative response to any perceived avoidance. It would seem that compared to other tax jurisdictions, both these measures (foreign exchange control and the disallowance of deductions on royalty payments) are absent. Organised business submits that appropriate measures be taken to remove the foreign exchange limitation and that the proposed section 231 not be adopted.

2.4 Capital Distributions

While organised business understands the rationale for the proposed new CGT regime for capital distributions (clause 71 of the Bill), essentially a capital distribution will trigger an immediate part disposal for CGT purposes, we are strongly opposed to the proposed retrospective application of the provisions. Companies will have made capital distributions on the basis of the law as it then read, and shareholders would have had an expectation that a liability would only be triggered when the relevant shares are disposed of, and to now effectively accelerate the liability is unjust in the extreme.

2.5 Environmental Deductions

The amendments that provide deductions for environmental rehabilitation and protection are welcomed. However, the proposed allowance rate of 5% (20 year straight line depreciation) to be granted for a post-production asset is akin to that used for manufacturing buildings and in the view of organised business is far from appropriate. Consider that the assets in question would include waste water dams, reservoirs, pumps, filtration plants, etc. Bearing in mind that the taxpayer would be involved in the environment rehabilitation/protection exercise for many years after the closure of operations, a realistic depreciation would be no more than ten years. On this basis, it is submitted by organised business that the rate be amended to 10%.

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