GENERAL NOTICES • ALGEMENE KENNISGEWINGS

PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

NOTICE 617 OF 2018

MR NYIKO FLOYD SHIVAMBU, MP

NOTICE OF INTENTION TO INTRODUCE A PRIVATE MEMBER'S BILL AND INVITATION FOR COMMENT ON THE DRAFT ANTI-AVOIDANCE OF TAX BILL, 2018

Mr Nyiko Floyd Shivambu, MP, acting in accordance with section 73(2) of the Constitution of the Republic of South Africa, 1996, intends to introduce the Anti-Avoidance of Tax Bill, 2018, in Parliament. An explanatory summary of the Bill is hereby published in accordance with Rule 276(1)(c) of the Rules of the National Assembly (9th Edition).

We live in an era where powerful Transnational Corporations ("TNCs") are operating within, and themselves creating, a "financialised" and globalised capitalism where profits can be shifted around the world in trade between fellow companies or so called "inter-related parties". Current economic policy and legislation in South Africa has allowed major South African corporations to list abroad, and has also allowed for the relaxation of capital controls.

As a consequence, TNC's are continuously planning and engaging in aggressive tax avoidance that is costing the country billions of rands in tax revenue. The Report of the High-Level Panel on Illicit Financial Flows from Africa found that between 1970 and 2008, South Africa lost R1.208 trillion ($81.8 billion) because of aggressive tax avoidance. Yet very few tax avoidance cases have been taken to court, as the current tax laws are outdated and do not account for the fact that the difference between illegal tax evasion and legal tax avoidance is more blurred than ever due to current economic policies and the financialization of the world economy. With companies engaging in transfer mispricing, tax avoidance, tax evasion, illicit financial flows, base erosion and profit shifting at the expense of the country, there is an urgent need to provide taxation legislation that is robust and up to date. The difference between illegal tax evasion and legal tax avoidance must be clearly delineated.

Money needed for housing, healthcare education, water, sanitation, roads, and state led development is leaving the country illegally under the guise of legal tax avoidance. The Anti-Avoidance of Tax Bill ("the draft Bill") aims to give the South African Revenue Services ("SARS") the necessary legal mechanisms to tackle aggressive and illegal tax avoidance. It is therefore necessary and urgent to replace the General Anti-Avoidance Rule ("GAAR") set out in sections 80A to 80L of the Income Tax Act, 1962 (Act No. 58 of 1962), with the draft Bill.

The draft Bill will:

- Improve the legal tools SARS has available, by legally compelling SARS to intervene against aggressive tax avoidance schemes;

- Legislate clear definitions and eliminate all legal loop hope holes and grey areas, as to what constitutes tax avoidance, and tax avoidance schemes;

- Introduce strong penalty regimes for companies that participate in aggressive tax avoidance schemes; and

- Repeal sections 80A to 80L of the Income Tax Act, 1962 (Act No. 58 of 1962) and amend sections 80M to 80T of that Act, where necessary.

Interested parties and institutions are invited to submit written representations on the proposed content of the draft Bill to the Speaker of the National Assembly within 30 days of the publication of this notice. Representations can be delivered to the Speaker, New Assembly Building, Parliament Street, Cape Town; mailed to Speaker, P O Box 15 Cape Town 8000, or emailed to speaker@parliament.gov.za and copied to gumanitk@gmail.com.

Copies of the Anti-Avoidance of Tax Bill, 2018 may, after introduction, be obtained from:
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