2018 PRE-BUDGET TRANSFER PRICING EXPECTATIONS

Johannesburg, 19 February 2018 - There is no question that it has been one of the most eventful and dramatic pre-budget weeks in the history of South Africa and it is a relief that we are having a budget speech as scheduled. Even though we are not sure how much the changes in the presidency would impact on the budget speech it is certain that, with the election of Cyril Ramaphosa as the President of South Africa, the anticipated changes in the cabinet and potentially certain key government positions, there will be a new dimension in terms of enforcement of legislation across the board.

"The search for additional revenue to address the shortfall is expected to result in stricter enforcement measures and anti-avoidance. Transfer pricing and Base Erosion and Profit Shifting (BEPS) would be a major focus area for the South African Revenue Services (SARS)," says Nico Kruger, Member of the SAICA Transfer Pricing Sub-Committee and Managing Partner at Africa Transfer Pricing (Pty) Ltd. "Even though the BEPS requirements only apply to certain multinationals, global revenue scrutiny in terms of BEPS transparency could result in the boosting of revenue collection, not only in South Africa but also in Africa and the rest of the world."

Since the last budget, there has been several further notices and guidelines issued by the Organisation for Economic Cooperation and Development (OECD) and SARS in terms of the drafting and filing of BEPS Country-by-Country reports, Master Files and Local files, which has been welcomed. With the three-tier documentation required to be filed for the first time, it has been a learning curve for both SARS, service providers and multinational taxpayers globally. Consequently, taxpayers are facing many practical challenges and although a lot of the queries have been answered in a comprehensive and practical guideline document issued by SARS in December 2017, it is expected that it would take time for all involved parties to fully get versed in the preparation and filing of the required documentation. As a result, the deadline for Country-by-Country reports to be submitted by multinationals with 31 December year-ends was extended from 31 December 2017 to 28 February 2018 to try and ensure a smooth-running filing process. It is anticipated that the 2018 budget could propose further implementation steps to ensure the most effective enforcement and processing of the required documentation.

“Since the last budget there has also been calls for comment by SARS relating to the issuing of the new transfer pricing interpretation note, to replace the outdated SARS Practice Note 7/1999, as well as a final interpretation note on thin capitalisation. SAICA, apart from other role players, is in the process of compiling such comment and hopefully we would see the issuing of such guidance during the course of the year, which, in combination with the BEPS three-tier implementation, should ensure more effective enforcement of the transfer pricing and thin capitalisation provisions.

“With the ongoing uncertainty in the past number of years on various levels of government, it would be a step in the right direction by SARS and other key role players to clarify as far as possible what is expected from taxpayers in terms of transfer pricing and thin capitalisation compliance,” concluded Kruger.

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