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**FEEDBACK SUMMARY
NATIONAL TREASURY WORKSHOP
ANNUEXURE C 2020
[4 & 5 December 2019]**

GENERAL

SAICA attends various discussions and meetings on behalf of members with National Treasury (“NT”), South African Revenue Service (“SARS”) and other stakeholders (internal and external). These meetings represent an opportunity for them to obtain further information on any tax matter from the public and discussions and views expressed do not represent policy or decisions. Furthermore, these discussions do not represent an undertaking by SARS, NT or other stakeholders, but merely statements of their understanding or how they perceive or anticipate a particular matter to be addressed.

The below Feedback Summary should be seen in the above context as merely attempts to inform SAICA members of the discussions and of any proposals that were made during such discussions.

FEEDBACK SUMMARY

The National Treasury (NT) thanked the delegates for their various submissions received on the Annexure C 2020. It was reiterated that no decisions could be taken by NT and the ultimately responsibility to change the legislation rested with the Standing Committee on Finance. The following matters were discussed and points raised:

A. BUSINESS TAX: GENERAL

1. Dividend stripping provisions

Taxpayers (TP) issue raised:

Concern was expressed over the scope of the application of the section, especially for financially distressed companies. Many anomalies of this section arise because of the absence of the link between the funding of the extraordinary dividend and the sale of the shares, which gives rise in some circumstances to economic double taxation. Collateral damage of these provisions is the concern.

NT comment: NT cannot accommodate these specific shareholders due to the abuse that is currently taking place and taking into account recent case law (Sasol SCA case) – to what extent is the court going to apply the anti-avoidance rules or GAAR? Furthermore, the definition of an ‘extraordinary dividend’ does cater for companies that are in financial distress as this definition takes into account the higher of the market value of that share as at the beginning of the period of 18 months and as at the date of disposal of that share.

2. Debt forgiveness rules

Taxpayers (TP) issue raised:

There is uncertainty regarding the exclusion to the exclusion in respect of the waiver of debts where assets are transferred via the reorganisation rules and the sequence of the application of the rules (debt waiver vs asset transfer).

NT comment: NT will clarify that the intention is that the legislation can be read in two different ways ie. the law applies to debt waived prior or after the disposal of the assets in terms of the reorganisation rules. NT’s concern is with the interest bearing debt.

3. Dividends derived from certain shares & equity instruments deemed to be income (s8E)

Taxpayers (TP) issue raised:

Concern was raised regarding the definitions of financial instrument and interest bearing arrangements. It is difficult to separate the two especially with preference share funding becoming very difficult to obtain and where the interest may arise incidentally in the future.

NT comment: NT will consider the suggestion of a *de minimus* rule.

4. Hybrid debt rules (s8F)

Taxpayers (TP) issue raised:

Section 8F does not apply to any instrument that constitutes a hybrid debt instrument solely in terms of paragraph (b) of the definition of hybrid debt instrument if a registered auditor, as contemplated in the Auditing Profession Act, 2005 (Act No. 26 of 2005), has certified that the payment, by a company, of an amount owed in respect of that instrument has been or is to be deferred by reason of the market value of the assets of that company being less than the amount of the liabilities of that company. The only difference between the inclusion and the exclusion is the requirement for certification and it is suggested that the annual financials or a formal letter in this regard should be sufficient.

NT comment: NT will take this into consideration.

5. Provisions resulting in cash flow issues for taxpayers

Taxpayers (TP) issue raised:

The following three areas raised give rise to cash flow difficulties for taxpayers:

5.1 *Trading stock leased leading to a recoupment at MV* but no sale of an asset, so no cash.

5.2 *Limitation of allowances granted to lessors under s24A* - In initial years the tax is payable but the businesses can't get tax back in the future years as they are losing some of the allowances. There must be a matching of the income and expenses. This is a policy issue - rollover of income until it can be matched with expenses to prevent economic loss (permanent loss).

5.3 *Credit agreements & debtors allowances* – accrual on conclusion of contracts rather than when cash is actually received in respect of a sale of immovable property. Provision should be removed and taxed on the cash basis.

NT comment:

5.1 Request will not be considered as the normal taxing rules remain.

5.2 Need to see what the scope/impact of this is as this is a large change in tax policy.

5.3 NT will consider.

6. Corporate reorganisation rules – section 45

Taxpayers (TP) issue raised:

Companies who may have the cash resources to settle the payment consideration and who may wish to do so by means of using cash resources are excluded from using the relief that is provided by section 45(1)(b)(i).

NT comment: This section will not be changed to cater for this as it is not the policy intention of the inter group transaction rules.

7. Capital gains tax

Taxpayers (TP) issue raised: In specie distributions by non-resident companies to resident companies do not provide the resident company with a base cost for that asset as the 8th Schedule doesn't apply to the event.

NT comment: NT has noted this concern.

8. Section 1 definitions

Taxpayers (TP) issue raised:

8.1. The "gross income" definition iro refurbishing allowances for leased property (treated as capital iro a court case) was discussed.

8.2. The "equity share" definition does not cater for foreign dividends and foreign returns of capital.

8.3. The “connected person” definition iro foreign partnerships and in general was also debated.

NT comment:

8.1. The refurbishment allowances will need to be considered on a case-by-case scenario and it would need to be determined if there is an enduring benefit for it to be excluded from gross income.

8.2. NT conceded that the definition of “equity share” would need to be amended to cater for foreign dividends and foreign returns of capital.

8.3. NT stated that the whole “connected person” definition needs to be revisited as currently it is over/under inclusive in certain situations.

9. Provisional tax for companies

Taxpayers (TP) issue raised: Concerns were raised regarding the first provisional tax payment due by companies that have an incorporation date less than 6 months from its year end.

NT comment: NT will take this into consideration.

B. BUSINESS TAX: INCENTIVES

10. Special Economic Zones (SEZs)

Taxpayers (TP) issue raised: The use of domestic transfer pricing rules in these zones was recommended rather than the current proposed restrictions on SEZs.

NT comment: NT will take this into consideration and the domestic transfer pricing rules are currently being considered by SARS.

11. Urban Development Zones

Taxpayers (TP) issue raised: The sunset clause is 31 March 2020.

NT comment: These provisions are currently under review by NT and more details will be released in the 2020 Budget Speech.

12. VCCs

Taxpayers (TP) issue raised: Various issues relating to VCCs were discussed but focusing on the relinquishment of a VCC’s status and shareholders affected by the introduction by the cap.

NT comment: NT is considering these concerns but the cap will remain.

13. Exemption of government grants – s12P

Taxpayers (TP) issue raised: The list of grants exempt from income tax under the Eleventh Schedule currently includes government grants which have been terminated/suspended and those recently introduced are not included.

NT comment: NT will meet with the DTI as the DTI needs to formally confirm if these grants are actually terminated/included etc. before NT can make adjustments to the Eleventh Schedule.

14. Learnership agreements

Taxpayers (TP) issue raised: A concern was raised with regard to the registered learnership agreement date and the impact of the completion date of these learnership agreements.

NT comment: The learnership agreement date is linked to the sunset clause date and cannot be changed. The timing of the completion of the agreement is an administrative issued and will not be dealt with by NT but should be referred to SARS.

15. Public Benefit Organisations (PBOs)

Taxpayers (TP) issue raised: The retrospective approval for only 3 years is welcomed but is still problematic for the smaller PBOs. The dual registration process (as a normal taxable company and then as a PBO) is administratively burdensome for PBOs and SARS. The meaning of “funding” and “substantially the whole” under s30C needs clarity. The application for section 18A certificates where the PBO does both funding and PBO activities is currently being declined by SARS.

NT comment: The 3 year retrospective approval will remain and will not be extended. The dual application process, although cumbersome, is necessary but will be mentioned to SARS to ensure that registering as a PBO is not delayed unreasonably. Guidelines will be issued by SARS to provide more clarity on the terms “funding” and “substantially the whole”. The application for section 18A certificates is an operational issue and the law will not be changed.

C. CARBON TAX AND OTHER ENVIRONMENTAL TAX ISSUES

1. Carbon tax issues

TP concern: Taxpayers wanted confirmation that they can use the DEA approved methodologies regardless of the tiers that they use.

NT comment: NT confirmed this as being correct.

D. BUSINESS TAX: FINANCIAL

16. Sukuk definition (s24JA)

Taxpayers (TP) issue raised: An extension of this definition to financial services that are listed with the FSB was requested.

NT comment: NT needs to engage with the FSCA before this can be considered.

17. Taxation of REITs

Taxpayers (TP) issue raised: It was requested that the definition of “rental income” be extended to include foreign exchange gains. A timing issue was also raised iro the interaction between s25BB and section 24I. An amendment to section 10(1)(k)(i) to exclude distributed dividends from disregarded capital gains was also requested.

NT comment: The definition of rental income will not be amended. The timing issue is taken and the amendment to section 10(1)(k)(i) will be considered.

E. INTERNATIONAL TAX

18. Withholding tax on interest or royalties

Taxpayers (TP) issue raised: Clarity was sought on the double withholding tax if sections 8F or transfer pricing (s31) rules apply.

NT comment: NT will consider these.

19. Controlled foreign companies

Taxpayers (TP) issue raised: Various issues were raised regarding the CFC rules, such as the definition of the participation exemption to include economic rights, the comparable tax calculation and the look through of underlying taxable dividends from CFCs.

NT comment: These will be considered by NT but the comparable tax calculation will not change to what it was previously and taxpayers were warned that the new OECD provisions (Pillar 1 and 2) will also impose similar administrative provisions on taxpayers in the future.

20. The exclusion of shares as payment to acquire immovable property (s35A)

Taxpayers (TP) issue raised: Taxpayers can't comply with section 35A in circumstances where shares are issued as payment for the acquisition of immovable property as there is no cash to withhold the tax from.

NT comment: NT will consider this and the suggestion provided by taxpayers that similar provisions, such as those found in respect of withholding of employees' tax in the Fourth Schedule, be applied in these circumstances.

F. INDIVIDUALS, SAVINGS AND RETIREMENT

1. Foreign pensions

TP problem: Tax treatment on withdrawal (by a South African tax resident) from a foreign pension fund appears to be uncertain – contributions made to such a fund would not have been allowed as a deduction.

NT solution: Will consider but would like to see examples of the different scenarios that arise in this regard as it is very difficult to legislate for foreign funds and it would need to be determined what the nature of the distribution is.

2. Surviving spouses' pension

TP problem: Identifying a surviving spouse was the problem originally identified by ASISA. The proposed changes are now too wide according to ASISA and IRFA (it now includes people who receive s18 annuities, individuals who purchased voluntary purchased annuities) and would impose a severe administrative burden on financial and insurance institutions.

NT solution: A separate meeting will be held next year to discuss this further.

3. Withdrawals from employer provided funds

TP problem: The request was to treat transfers from one employer fund to another employer fund the same as a transfer to a 'preservation fund' as the administrative costs are less than in retail funds and to permit paid up members to have a once off lump sum from these funds as partial withdrawal treated as a full withdrawal.

NT solution: It is NT's policy to consolidate all funds and to ensure preservation (pre and post retirement). This request undermines this policy and will thus not be accepted.

4. Disability benefits in approved funds

TP problem: Unapproved funds do not have the ability to access disability funds. NT is treating the regulated as well as unregulated funds the same.

NT solution: Noted, NT will try and accommodate this request.

G. EMPLOYMENT ISSUES

5. ETI abuse

TP problem: There are various schemes currently in the market whereby educational institutions are paying companies a fee to 'employ' young students that are studying at the educational institution. In most cases these students never 'work' at the company as they are full-time students. The company actually pays their study fees and then claims the ETI for these 'employees'.

NT solution: NT and SARS will look into these schemes and SARS should conduct audits in this regard.

6. ETI – rectifying errors & hourly rates

TP problem: The ETI system does not currently allow a taxpayer to change an incorrect claim of ETI that was made, that is, an amount of ETI that was under-claimed. The EMP201 does not cater for this adjustment despite the 6-month period allowed for adjustments between March and August. It was also requested that the wage regulation be expressed an hourly rate so as not to skew the issues.

NT solution: Noted, these issues will be considered.

H. INDIVIDUALS

1. **Section 10(1)(o)(ii)**

TP problem: The current proposed effective date of the changes (1 March 2020) is not reasonable taking into account all the administrative (and certain legislative [s6quat]) changes that are required for the payroll. Although SARS stated that it had opened communication channels to express concerns with these changes, taxpayers stated that the first formal communication from SARS on which to comments could be made was only released at the end of October 2019. All previous concerns were raised with SARS via a RCB submission and during the workshop in April 2019. Furthermore, the fact that comments on the draft Interpretation Note 16 are only required to be submitted to SARS by 13 December 2019, once again emphasises the need to delay the implementation date. Concerns regarding the valuation of fringe benefits (such as residential accommodation) were also raised.

NT solution: NT stated that the changes were implemented to prevent non-taxation. NT requested to see the submissions on the draft IN dealing with the impact of the changes to section 10(1)(o)(ii) and that any further legislative concerns should be provided to them. NT suggested that SARS should hold a workshop to discuss these concerns.

2. **Tax consulting services**

TP problem: South Africa is essentially penalising skilled persons from working in the country by taxing the payment by employers of tax return services for its employees.

NT solution: NT needs to balance progressivity with equity. In this case, equity must be maintained.

3. **Employer provided company car – MV of sponsored vehicle**

TP problem: The current regulation does not provide for this.

NT solution: The regulation will be updated and published in due course.

4. **Share incentive schemes: Withholding obligations if grantor and employer are non-resident**

TP problem: Paragraph 11A of the Fourth Schedule may be problematic where both the “person” (who granted the right or from whom the equity instrument or qualifying equity share was acquired) and the employer (who pays or is liable to pay any amount by way of remuneration to the employee during the year of assessment during which the gain arises) are foreign non-resident entities. This may occur where a foreign national on a secondment to South Africa is paid by his/her non-resident home country employer and acquires an equity instrument from a foreign group entity.

NT solution: Noted.

5. Share incentive schemes: Registration of a trust

TP problem: It was submitted a share incentive trust is currently not included in the definition of “associated institution”. It was suggested that it would be more practical for the employer to register for PAYE than the share incentive trust.

NT solution: Noted, but this will be problematic in certain instances, such as if foreign entities are involved.

6. Medical tax credits

TP problem: Clarity is required when 2 or more people pay for a dependent that is on his/her own medical aid. For example: two sons pay for their mother’s own medical aid fund contributions but the one son (who is on his own medical aid) has three other dependents, whereas the other son (also on his own medical aid) has none (just his mom). What is the sequence of the claim for the dependents?

NT solution: NT will consider revising the SARS guide if not clear as generally NT will consider the medical aid plan and whether the person is a main member or a dependent.

7. Donations tax

TP problem: It is uncertain if the R30m limit applies in respect of a tax year or from 1 March 2018 going forward.

NT solution: Noted.

8. Deceased estates: Interaction with s7C and s25(5)

TP problem: Clarity is required on the interaction between these two sections.

NT solution: NT is trying to combat the establishment of a trust to avoid estate duty. However, where the person has died, section 25(5) should be applied. NT would need to ensure that no loopholes are created with deleting the section.

I. VALUE-ADDED TAX

1. E-services – Zero-rating of electronic services to a CCA and to SEZs

TP problem: Section 11(2)(k) seems to exclude electronic services to the above areas from the zero-rating provisions. The preamble to the section should be amended to make the relevant distinction or provision should be made to allow the zero-rating of electronic services by South African vendors to SEZs.

NT solution: Noted but the difference is that the services are electronically rendered and not physically rendered – so how does one determine where the customers are situated and if the service is actually rendered in these areas? The policy intention behind the electronic services regulations was to protect the local suppliers. A separate meeting on this issue should be held and SARS should also be engaged on the interpretation issues.

2. Electronic services – s23(1A) – provision for abnormal circumstances

TP problem: The proviso to section 23(1), in particular par (iii) of the proviso to section 23(1), does not currently apply to section 23(1A). Thus there is no parity between domestic suppliers and intermediaries.

NT solution: Noted, however it would be difficult to audit a foreign supplier. NT is considering the exchange of information regime with other jurisdictions that might help ensure that foreign entities pay the VAT.

3. Section 54(2B) – Deemed supplies of intermediaries

TP problem: This section only provides for intermediaries accounting for VAT on behalf of non-registered principals, not all non-residents. Many non-registered vendors use intermediaries as it is costly and there is a risk that this would make the supplies vat-able.

NT solution: Noted.

4. Electronic services – B2B and B2C distinction

TP problem: SA does not distinguish between the two approaches.

NT solution: SA will not adopt this approach as there are too many risks involved.

5. Electronic services – Definition of ‘telecommunication services’

TP problem: The final regulations published contain a definition of “telecommunication services” to mean telecommunication services as defined in section 1 of the Electronic Communications and Transactions Act. However, there is no such definition in that Act.

NT solution: Noted and it will be addressed.

6. Corporate reorganisation rules – “Qualifying assets” for income tax purposes

TP problem: The purpose was to align sections 8(25) of the VAT Act and section 42 of the Income Tax Act. Thus an opt-out provision, similar to that in section 42 should be provided.

NT solution: Noted.

7. Corporate reorganisation rules – Partnerships

TP problem: No roll-over relief is provided for partnerships, as this is important when the partners are companies. The treatment of partnerships in general needs to be considered as currently there are many instances where the VAT Act just does not cater for these types of entities – for instance, joint ventures.

NT solution: Noted – a separate workshop will be held to discuss the VAT treatment of partnerships.

8. Section 72 – Telecommunications, insurance, pooling arrangements

TP problem: All s72 ruling obtained before 21 July 2019 will cease to exist in December 2021. The repeal of the s72 rulings has left various industries with requests for changes to be made to the legislation to accommodate their specific circumstances that are/were previously dealt with under a s72 ruling.

NT solution: Noted and a separate meeting will be held with the various industries, but the industries must be willing to share their 'confidential information' with NT (waiver their taxpayer secrecy provisions) in order for NT to understand the concerns of these industries. If a ruling is not confirmed, then the taxpayer would need to follow the Annexure C process next year.

9. Tax invoices – removal of word 'invoice' in zero-rated supplies

TP problem: Commercial invoices (such as those used in the mining industry) and issued in terms of the Customs Control Act, do not contain the word "invoice" when the supplies are zero-rated. These are therefore not valid invoices to the VAT Act.

NT solution: Noted.

10. Tax invoices – valid VAT invoice & electronic invoicing

TP problem: SMMEs are currently sending invoices in PDF format to clients via email. In SARS' VAT 404 Guide for Vendors, it states that electronic tax invoices must also meet the requirements of the Electronic Communications and Transactions Act ("ECT Act"). This Guide also refers to another SARS publication, the VAT News, which lists the requirements for a valid electronic invoice as the following:

- The parties must agree in writing that electronic invoicing will be done;
- The data must be sent over a secure line or contain an electronic signature; and
- The data must be 128 bit encrypted.

These requirements are, however, not contained in the VAT Act, or the ECT Act. Clarity regarding the validity of using these emailed PDF invoices is thus required.

NT solution: Noted but it would be difficult to legislate for something that changes so quickly. NT will ask SARS to clarify in an updated VAT News (VAT Connect).

11. Registrations/thresholds

TP problem: Other countries do not require group companies to register for VAT to eliminate the administrative burden. On another point, the compulsory registration threshold for VAT (R1m) has not been updated to account for inflation and should be increased.

NT solution: NT will consider the "group of companies" but this is a policy decision. Regarding the VAT registration threshold, according to the statistics 80% of the businesses voluntarily register for VAT even though they are not required to register.

12. Section 54 – Agents to account for VAT on behalf of principals

TP problem: In certain complex transactions (eg. In the logistics industry) a company can act both as an agent and principle for a single customer.

NT solution: NT will consider internally and consider section 72 rulings.

13. Importation of goods by an agent on behalf of a non-resident principle

TP problem: The VAT Act deems the services to be rendered by the agent, who can then claim the VAT back. However, the non-resident principle is required to register for VAT and pays VAT on the full contract price, with no relief for the input tax credit as the recipient paid the VAT to the agent who claimed the input tax deduction.

NT solution: Noted.

14. Foreign donor funded projects – multiple registrations under one implementing agent

TP problem: Definition of ‘enterprise’ – does each project need to register for VAT separately and what about projects current in process?

NT solution: Projects are recorded & accounted for separately, hence each project must register & submit its own VAT return. Current projects will continue as usual but new ones will need to meet new requirements after 1 Apr 2020.

15. VAT rate changes

TP problem: The second proviso to section 67(3) does not currently apply to section 67(1). Where section 67(1) applies, a vendor may currently increase its fees with the VAT rate (currently 15%) notwithstanding that its fees may already have been calculated with reference to another VAT inclusive amount (this results in VAT cascading).

NT solution: Noted but the law will not be changed – the commercial terms of the agreement must take this into account.

16. Clarification of residency status of foreign branch of a SA holding company

TP problem: It is uncertain how the definition of ‘resident’ and imported services are to be dealt with in respect of a foreign branch of a SA holding company.

NT solution: Noted.

17. VAT treatment of temporary letting of residential accommodation

TP problem: The valuation of the temporary letting of residential accommodation at the OMV versus the total cost is the issue here. Section 18(1) states that it must be accounted for at the OMV and when the property is sold it must be accounted for at the selling price. For property developers section 18(4) only allows the deduction on the adjusted cost which results in a cash

flow burden that can in some cases lead to insolvency of the property developer. It is suggested that section 18B be reinstated.

NT solution: Noted, but this is a policy matter.

18. VAT treatment of irrecoverable debts

TP problem: Concern was raised iro the wording of "equal to" rather than "tax fraction of". The second concern was iro the timing of the adjustment especially when the compromise is made and it was suggested that a net adjustment should be made at the end of 12 months in terms of the 12-month rule when all the information is available.

NT solution: Noted, this should be clarified in an Interpretation Note.

19. Inclusion of share buy-backs as exempt financial services

TP problem: Section 2(1)(d) does not cater for the cancellation of an equity security and share buy-backs. A share buy-back is not a separate transfer of shares but rather a cancellation of a shares previously issued. The issued shares are reduced and the authorised share capital is increased.

NT solution: Noted.

J. TAX ADMINSTRATION

1. Income tax: WHT on royalties, interest & dividends

TP problem: The effective date for the 2019 changes (1 July 2020) should be deferred.

NT solution: The changes are already in the law and cannot be changed now.

2. Deferral of cessation of reliance on declaration based on FIC/FATCA/CRS monitoring

TP problem: No 5-year deferral will be granted and this could affect the validity of the declaration.

NT solution: Noted and NT will consider this further internally.

3. Reliance by companies on FIC/FATCA/CRS monitoring ito 64G

TP problem: RI only get the concession.

NT solution: Noted, this should not only apply to RI.

4. Refunds by regulated intermediaries ito s64M

TP problem: Request was made to reduce the time from 3 years (to 1 year?) for the submission of the declaration or written undertaking by the person to whom the dividend was paid. The concern was raised, however, that in some instances the RI don't have the funds to pay the refund.

NT solution: Noted.

5. VAT - Relaxation of "credit" or "debit note" wording

TP problem: It was recommended that section 21 be relaxed as was done for section 20 in cases where the only missing information from a credit/debit note is the words "credit note" or "debit note" and there are sufficient records available, or will be available, to establish the particulars of the supply.

NT solution: This will not be changed as taxpayers have a discretion to approach the Commissioner in these circumstances – section 21(5).

6. VAT – interest on late refunds

TP problem: Request was made to remove the requirement that taxpayers need to request the payment of interest by SARS on late refunds.

NT solution: Noted, but SARS would need to be approached in this regard.

7. Official publication: Extension of definition to BRS

TP problem: Currently the Business Requirement Specification (BRS) documents are not included in the section 1 definition of 'Official Publication' and these also do not form part of the section 5 TAA Practice Generally Prevailing and are listed and treated as 'Guides' or 'External Publications' by SARS.

NT solution: The BRS's describe how to complete a form and does not provide SARS' view of the law. Should these be changed, taxpayers will lose their right to rely on practice generally prevailing and will not be able to object to them.

8. Applicability of TAA to Carbon Act

TP problem: The Carbon Tax Act is dealt with under the Customs & Excise (Amendment) Act which makes provision for the administration and collection of carbon tax revenues.

NT solution: The Customs & Excise Act has the necessary administrative provisions and specific reference was made to section 4(2) and 4(3) of the TAA that states that if there is an inconsistency/silence between the TAA and another other Act, the other Act prevails.

9. Tax Ombud: Timeframes for SARS & Tax Ombud

TP problem: No time frames are provided in section 20 for SARS to respond to the Tax Ombud's queries raised with it. Neither is there a time frame in section 16 for the Tax Ombud to provide feedback to a taxpayer on its review of the complaint lodged by the taxpayer.

NT solution: Noted.

10. Keeping taxpayers informed – Timeframe for first stage of completion report

TP problem: It is uncertain if the 90 days starts running from the stage the case is referred to audit or when the audit actually commences. A further request was made to shorten the 90 calendar days.

NT solution: Noted, NT proposed to shorten this to 60 calendar days and also suggested standardising the use of "days" in the Act to refer to "calendar days".

11. Keeping taxpayers informed – verifications, stage of completion and letter of findings

TP problem: The same timeframes should be applied to verifications as taxpayers cannot interact with a verification as an assessment is issued immediately after information provided. This could be in contravention of the PAJA.

NT solution: There is no PAJA contravention, but SARS could consider issuing SMSes, but this has not always been successful. This is an operational issue and should be raised further with SARS.

12. Inquiry proceedings: Minimum time periods for taxpayers

TP problem: The concern was raised that third parties are now also being asked to attend inquiries and a minimum time period for a taxpayer to provide information at an inquiry was suggested.

NT solution: NT argued that the presiding officer can be asked for an extension of the time limit and the introduction of a minimum time period might also be insufficient and then the presiding officer would need to be approached in any case.

13. Objections: extend period without demonstrating exceptional circumstances

TP problem: Extending the period of objections without demonstrating exception circumstances is not currently provided for in the rules.

NT solution: The new rules that are to be promulgated soon do provide this opportunity.

14. Objections: permit objection after s93(1)(d) refusal

TP problem: Taxpayers should be afforded the opportunity to permit an objection after a s93(1)(d) refusal.

NT solution: The concern is that this could open the door to very late objections, but the proposed longer objection period could alleviate this concern.

15. Objections: diesel rebates

TP problem: It is unclear as to how one may object against the disallowance of diesel rebates where no assessment is issued, as the customs and excise legislation is specifically excluded from the provisions of the TAA.

NT solution: Objections do not apply to diesel rebates but the internal appeal process of the C&E Act should be used.

16. Activation of internal appeal process

TP problem: When will these provisions become effective.

NT solution: Noted, but SARS has certain system constraints, so not sure when this will be implemented.

17. Penalties – Percentage based

TP problem: The date of payment triggers this and a suggestion was made to expand the 5-day rule.

NT solution: Concern is that this would give an automatic extension for all payments. A suggestion was proposed that this should only be allowed for top-up payments iro a correction that was being made for a payment that has already taken place.

18. Penalties: USP – Bona fide inadvertent error

TP problem: The meaning of this term is still unclear.

NT solution: Agreed, this term requires further clarification.

19. Penalties: USP – Voluntary disclosure in columns 5 & 6

TP problem: This difference in interpretation and practice by SARS and taxpayers makes it very difficult for taxpayers to understand and know their obligation in order to qualify for the relief. That is, the meanings range from the normal grammatical meaning of the term “voluntary disclosure”, to those *applied* under Part B, to those *qualifying* under Part B and even to the extreme of having a signed contract under Part B.

NT solution: Agreed, this needs clarification but it is SARS’ view that it applies to formal voluntary disclosure programme applications.

20. VDP: 5-year limitation

TP problem: The period of coverage by the VDP is limited to 5 years.

NT solution: NT will not extend this period.

21. Registration of tax practitioners

TP problem: Section 240(3) does not mention a person that is insolvent meaning that an insolvent person can register as a tax practitioner.

NT solution: There are various reasons why a person can become insolvent – eg. harsh economic climate or a spouses' fault and not necessarily fraud. NT will consider this but is generally of the view that insolvency should not prevent a person from registering as a tax practitioner.