Ref #:

FEEDBACK SUMMARY – 14 March 2019

GENERAL

SAICA attends various discussions and meetings on behalf of members with National Treasury ("NT"), the 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.

FOREIGN REMUNERATION WORKSHOP

SOUTH AFRICAN REVENUE SERVICE & NATIONAL TREASURY

6 March 2019

Below are some of the matters discussed at the Foreign Remuneration Workshop held on 6 March 2019.

Background

NT noted that the discussion is around implementation of the proposed legislation of foreign remuneration as contained in section 10(1)(o)(ii) of the Income Tax Act, No 58 of 1962 (the Act) only. Any request to amend the policy was therefore not considered.

It was further noted that SARS is not in a position to verbally agree and commit to the discussions being held on the day, but rather determine what the administrative and practical concerns are in order to provide formal guidance where possible.

Broader policy position

NT provided an example to indicate what its broader policy position was:

- X, a South African tax resident, works in the Seychelles and earns R2 million for the year of assessment
- X is outside South Africa for more than 183 days, as well as for a continuous period of longer than 60 days during a 12 month period
- The Seychelles has a flat tax rate of 15%, amounting to R300 000 in income tax paid by X to the Seychelles tax authority
- The R1 million would be exempt from South African Tax, as per the new exemption threshold
- Hence, X would only be taxed on the remaining R1 million at the individual sliding scale tax rates, equalling R312 973.49 ([(R1 000 000 - R708 311) x 41%) + R207 448] – R14 067)
- Section 6*quat* of the Act would also come into play allowing the full R300 000 as a rebate having the effect that X would only pay R12 973.49 income tax for South African tax purposes.

The question was raised by stakeholders as to whether the R300 000 should not be apportioned in terms of section 6*quat* as only R1 million would be taxed in South Africa. This would result in a R150 000 rebate on foreign taxes paid. SARS noted that its system would apportion the section 6*quat* rebate to R150 000.

NT noted that its intention was that the full foreign tax payment should qualify for a section 6*quat* rebate with no apportionment. It was therefore proposed that NT will clarify its intention via technical amendments to the Draft Taxation Laws Amendment Bill, where possible (keeping in mind that there is no guarantee).

It was also proposed that the actual example calculation of how the foreign remuneration exemption would interact with the tax legislation (including section 6*quat*) should be included in the SARS guidance.

Miscellaneous matters discussed by Stakeholders

The following matters were raised by Stakeholders with NT and SARS:

Fringe benefits

Stakeholders noted that in high risk countries, employees are provided with security and accommodation, which are considered as a policy in these countries. Hence, although it may be seen as a fringe benefit in South Africa, it is a necessity in such high risk countries.

Stakeholders noted that fringe benefits are more likely to occur where an employee is in the foreign country for more than 183 days.

NT noted that if the employee was in South Africa, it would be seen as a fringe benefit, forming part of remuneration and therefore taxable according to NT's policy. The SARS guidelines will provide detail around the administrative side thereof, for example where things are not necessarily noted on payslips.

Alignment of outbound expat with inbound expat exemptions

Stakeholders proposed that the outbound employees' fringe benefits as far as it relates to accommodation should be aligned with inbound employees' exemption as stipulated in paragraph 9(7) of the Seventh Schedule to the Act.

NT requested that this proposal together with proposed wording to clarify the alignment should be submitted.

Employer discretion regarding payroll

Stakeholders raised the question as to what the South African employer's obligation is where the employee is paid by the employer in the host country and not South Africa. Currently, if the employee is not on the South African payroll, the employee will need to declare his/her income taxes (including fringe benefits) on a provisional tax basis. This may also create unexpected surprises for the employees' who are unaware of their obligation to register as provisional taxpayers and their provisional tax liabilities that may lead to administrative penalties.

SARS advised that it will look into the issue and provide guidance.

Evidence available to provide proof to SARS for section 6quat purposes

From practical experience by the Stakeholders, SARS is using a benchmark of **taxes actually paid** to allow a section 6*quat* rebate, while the law only requires that a taxpayer should only showcase that ***"taxes proved to be payable"***. For example, the United Kingdom is based on a self-assessment basis and SARS sometimes do not accept that return.

Stakeholders noted that SARS should provide clarity to taxpayers and administrators around the information required to allow a section 6*quat* rebate. It was noted that the clarity should be practical and also include consistent instructions to all SARS employees.

SARS noted that it is difficult to provide guidance. Hence, SARS will consider the matters on a case by case basis and may, for example, accept a payslip as proof if no assessment or return can be provided.

Stakeholders noted that SARS need to equip employers upfront with what information is required from a payroll perspective to ensure that payroll functions adhere to the guidance and South African employers/tax advisors facilitate the administration with host countries. Stakeholders noted that the case by case basis will lead to payroll complexity as there may not be a dedicated resource to overlook each case. This will further lead to major disputes.

SARS Head Office to introduce dedicated channel for section 10(1)(o) matters

SARS advised that it is currently formalising a Head Office dedicated channel in order to accommodate and ease the implementation of section 10(1)(o) matters. Stakeholders can provide their proposals and concerns from an administrative perspective in future.

SARS was not able to provide timelines as to when the dedicated channel will be up and running, but noted that it is being prioritised and will not be delayed.

Multi-year remuneration

Stakeholders noted that NT should provide clarification where multi-year remuneration is paid out in a specific year of assessment, for example a bonus that accrued over a 9 year period is paid out in year 9 or where gains accumulate under section 8C of the Act.

NT noted that from a policy perspective one would need to consider how it would have been treated locally. Hence, it would have been taxed in the year that it is paid out.

Incorporation of R1 million exemption and foreign tax credits

Stakeholders noted that system developments are required to incorporate the R1 million exemption and therefore requested that NT provide clarity as to whether the R1 million exemption as provided for in section 10(1)(o) in the Act will be smoothed or cumulative. A similar question arose regarding foreign tax credits.

NT noted that amendments to the Fourth Schedule to the Act is required to take into account the R1 million exemption and foreign tax credits. NT will also consider how to minimise the applications for hardship directives. Stakeholders also noted that NT should incorporate the exchange rate timing when a foreign tax credit is converted to South African Rand on a monthly basis.

Furthermore, the question arose as to whether the R1 million and/or foreign tax credits not utilised in the year of assessment can be carried forward. Payroll complexities arise where a tax year in the host country and South Africa differs. Hence, SARS and NT will have to look at overlapping years to provide the foreign tax credits in future years, provided there is documentary proof.

High tax jurisdictions exemptions

Stakeholders noted that NT and SARS should provide an exemption/exclusion towards the application of section 10(1)(o) of the Act where taxpayers are working in high tax jurisdictions. The exemption/exclusion can be drafted as a percentage of income tax paid. It was, however, noted that issues may arise as to which taxes one needs to take into account, as other direct taxes paid in a foreign country may also be significant.

Stakeholders also requested an exemption/exclusion where there is double taxation. NT noted in this regard that section 10(1)(o) of the Act was introduced for double non-taxation cases and ensures that taxpayers are taxed on a residency basis.

State Owned Enterprises (SOE)

It was noted that SARS and NT should also consider SOEs when implementing the administration process of section 10(1)(o) of the Act. For example, SOEs cannot see an assessment or return submitted in the host country and therefore will not be able to determine what taxes are being paid in the host country.

ITR12 guide and returns

Stakeholders noted that SARS should update its ITR12 Guide to incorporate the guidance provided for section 10(1)(o) purposes.

Furthermore, it was noted that the ITR12 return questionnaire should also be updated to incorporate the claiming of the foreign tax credits and the R1 million exemption.