



Diesel Refund Comment Sheet

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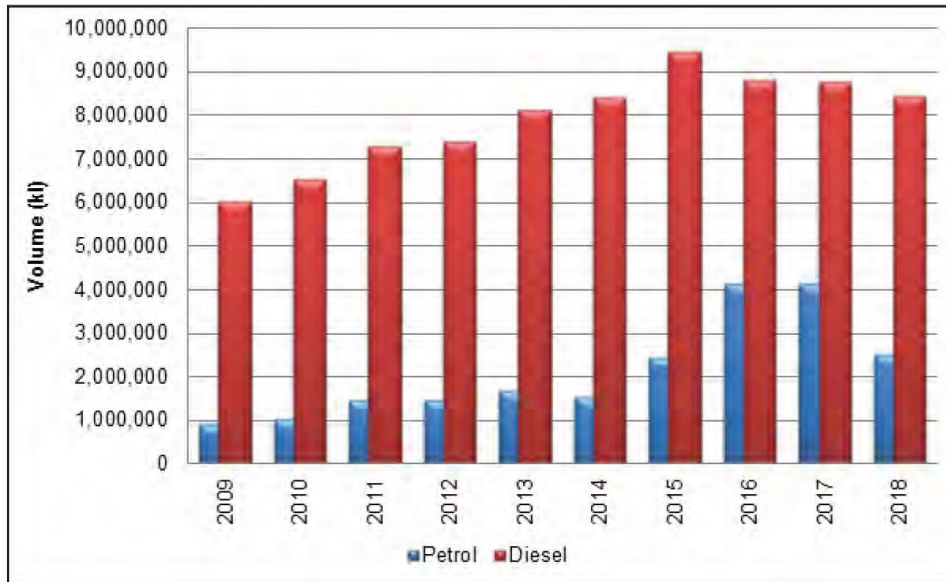
C&E_legislativecomments@sars.gov.za

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Comments from	Dr Sharon Smulders & Pieter Faber
Company / Institution / Department	SAICA / Tax Department

Rule	Comment	Recommendation
	<p>SAICA notes the following from the 2018 consultations held by the National Treasury and SARS (minutes & notes are ours):</p> <p><i>“NT and SARS had numerous consultative workshops with taxpayers, in general and specific industries. The discussion remarks will be incorporated into the comprehensive review of the Diesel Rebate system. <u>A new draft Diesel Rebate reform design</u> will thereafter be introduced during the 2019 legislative cycle for public comment in the Tax Administrations Law Amendment Bills and the schedules thereto.”</i></p> <p>It is noted that the new policy document where previous public comments were incorporated was never issued and was not issued with the current amendment proposals either. Given that NT and SARS expressed views that from a policy perspective Carbon Taxes were the future and that inefficient fossil fuel subsidies (IFFS) should be phased out (NT believes the diesel rebate to be such a subsidy), it remains unclear what the government official policy intent is.</p>	<p>The lack of policy certainty in South Africa remains the number one business challenge to our economy as acknowledged by the Minister in Budget 2020 and by President Ramaphosa in his keynote address at the Mining Indaba on 2 February 2021. The current amendment proposals should have been issued together with a final Policy document on Diesel Reform Design as NT had undertaken to do in 2018. It is recommended that the current amendments be postponed until such a policy document has been issued so that the legislation's alignment to policy can be determined.</p>
	<p>At the 2018 public engagement it was noted that the Diesel Rebate Scheme had drastically reduced from estimated R8bn to R2bn in tax expenditure. The 2021 Budget indicates an estimated decline from R8.2bn (2015/6) to R4.6bn (2018/9) in 3 years. However, the 2020 SARS Tax Statistics indicates a 50% increase from R5.8bn in 2018/19 (which oddly differs from the 2018/19 amount mentioned in the Budget 2021 figure) to R8.8bn in</p>	<p>There should be closer alignment to National Treasury's policy review process and fundamental changes should be deferred until finalisation of that process. Furthermore, given all the stated public consultations, it would be prudent for NT and SARS to provide clarity on the success of the diesel rebate scheme, why it needed change and why the</p>

2019/20 driven mainly by the use of diesel generators for electricity production in the energy sector. Diesel usage growth (outside Eskom) has only slightly decreased since 2016 and has not reduced as the tax expenditure decreases (ignoring the generator usage due to electricity shortages) indicate.

Figure 7: Petrol and diesel sales volumes in the commercial sector, 2009 - 2018



Source: Department of Energy (DOE)

Although the incentive is important as many industries rely on it, its impact is questionable. An incentive should be efficient and effective, yet many businesses are stating that the exclusions from the incentive and administrative matters underpinning the rebate are hampering their ability to claim this incentive. Evidence of the administrative concerns is evidenced by the 50% increase in the rebate from 2018/19 to 2019/20 being partly

proposed amendments would assist, especially given the concerns expressed regarding the importance of the incentive to various industries.

	attributable to the <i>completion of significant audits</i> in the mining and agriculture sectors (SARS Tax Statistics, 2020).	
	Notwithstanding significant additions to disclosures and administration for rebate users, no concomitant efficiency amendments are proposed for SARS as to processing of refunds etc. As noted, the burdensome administration and cost inefficiency of this scheme has undermined its value as an incentive.	It is recommended that efficiency criteria and time periods be introduced for SARS for audits and refunds.
	At the 2018 consultation it was noted that there was no interest accrual provision for cases when audits took considerable time (i.e. beyond 21 days) which meant that it incentivised SARS officials to delay audits.	Interest should become payable from 21 days after the refund is payable unless SARS can prove that the user delayed providing it with documentation.
	At the 2018 consultations it was stated: <i>“It was noted that the reform will be introduced and implemented as smoothly as possible, either by a <u>phased approach or a dummy run</u>”.</i>	There do not seem to be plans to do this and it should be ensured that taxpayers have sufficient time to prepare for the introduction of the new proposals and that SARS’ systems are able to accommodate these changes without any glitches.
75A.01(d)(ii)	The “ diesel refund ” definition refers to “ <i>a refund and includes any diesel refund amount that <u>is debt equalised against outstanding tax liabilities...</u></i> ”. We welcome SARS separating the Diesel Refund from VAT and acknowledge that no refund will actually be made if there is a tax debt owed to SARS as the refund will be set-off against the tax debt. Taking into account the concerns raised by our members with regard to the statements of account that are not always understandable or correct in	We agree with this principle contained in section 191 of the Tax Administration Act that taxes can be set-off against each other, but due to incorrect statements of account issued by SARS showing debts due by taxpayers, this can result in valid diesel refunds not being paid to taxpayers. We thus urge SARS to ensure that this set-off only takes place where there are valid debts between persons

	<p>many instances, valid diesel refunds may remain unpaid whilst account issues are being sorted out with SARS.</p>	<p>who have reciprocal debts, which are both due and payable (see <i>Top Watch (Pty) Ltd v The Commissioner of the South African Revenue Service</i> (Johannesburg Case No: 2017/4557 and Pretoria Case No: 2016/90099) (judgment delivered on 12 June 2018)).</p> <p>Furthermore, we believe that legally a concomitant amendment has to made to section 2 of Act 21 of 2012 to expand the application of the set off provision in section 191 of the TAA to include Customs and Excise refunds against other tax debts as the Customs legislation cannot itself override the TAA where it is the TAA that empowers the “outstanding tax debt” set-off of the customs refund. The 2019 amendments to s191 TAA also only allow set-off of a tax refund against a customs liability and not a customs refund against a tax liability.</p>
75A.02(c) and 75A.03(b)	<p>It appears that every person who intends to apply for diesel refunds under the refund scheme who is already registered under the existing system, must now re-register.</p> <p>Although this is understandable, it must be noted this will increase the taxpayers’ cost of compliance.</p>	<p>It is recommended that where possible, data that is already on the system be transferred to the new system so that mere verification needs to take place rather than a reinsertion of existing information. This will reduce the time taken and costs incurred by a taxpayer in order to be compliant.</p>

75A.04(a)	Every user who is required to register must create a diesel refund user registration profile electronically through a communication system indicated on the SARS website.	It is hoped that the system has been thoroughly tested and will be ready for users to input their details before or at least by the time the legislation becomes effective. It is also hoped that communication to taxpayers on these new requirements will take place well in advance of them having to comply and that adequate user guides have been prepared for this.
75A.05(a)	<p>This section requires each user to show each registered seller of diesel that supplies the user, on each user's registration profile. Fishing vessels move around and may need to fill up diesel in a port where the supplier is not a usual supplier. This may mean that they may not be listed on the user's registration profile at the time the vessel buys the fuel.</p> <p>The way it is proposed, each company will have to list most suppliers of diesel on the coast onto their registration profile. This seems a huge unnecessary burden unless this is a simple process that will allow the details to be easily inserted on the diesel refund user's profile within the 30 days allowed in terms of rule 75A.07(b)(i).</p>	All that should be required is for the user to buy from an approved supplier. Alternatively, the process to add a supplier to the user's registration profile should be a simple process that can easily be achieved within the permitted 30 days considering that many fishing vessels are out at sea for lengthy periods of time.
75A.08(b)(ii)	"corrections that result in a decrease in the historical diesel refund application must be effected on the diesel refund e-filing account of such diesel refund user for the historical period concerned."	Clarity on the penalties applicable to these corrections should be provided.
<u>General comments:</u> See above		

Form	Comment	Recommendation
	No specific comments.	
<u>General comments:</u>		
Note	Comment	Recommendation
REPAIRS and MAINTENANCE		
Sch 6, Part 3(c) (iii)(cc)/(dd)	(cc) maintaining, repairing or refitting agricultural requirements. (dd) trips connected with the maintenance, repair or refit of any vehicle.	These are essential activities for the continuance of primary activities and should be allowed as eligible. Otherwise, it should be clearly stipulated that these repairs relate to repairs etc. that take place off the agricultural property.
Sch 6, Part 3(d) (iii)(hh)/(ii)	(hh) maintaining, repairing or refitting a vessel or its on-board equipment. (ii) trips connected with the maintenance, repair or refit of a vessel. In terms of the existing legislation and the MLRA (section 1(xviii)) any operation in support or in preparation of any fishing activity is considered fishing. In terms of the new proposals a “trip connected with the maintenance, repair or refit of a vessel” is now specifically excluded from the definition of qualifying fishing activities. An example is provided to contextualise the concern with this change. In the	These are essential activities for the continuance of primary activities and should be allowed as eligible. Furthermore, the South African Maritime Safety Authority places the onus on the owner and in some cases the master as well, to ensure that the vessel and the crew always comply with the requirements of the regulations. It is therefore recommended that trips connected with the maintenance, repair or refit

	<p>fishing industry, fishing vessels must be “bottom” surveyed every 2 years in terms of the various Acts and Merchant Shipping (National Small Vessel Safety) Regulations. This means the vessel must be taken out of the water and placed onto a slipway. A vessel, due to its size or availability of slip time, often must sail from its home harbour to another harbour to go on the slip. This trip to and from the slip harbour will now be excluded but in terms of the MLRA it is regarded as a fishing activity. This concern similarly applies to farming activities as trucks have to be driven to Johannesburg for instance from rural farming areas for a required service.</p>	<p>of a vessel be regarded as a qualifying activity to align with the MLRA and the safety requirements imposed in respect of fishing vessels.</p>
Sch 6, Part 3(e) (iii)(dd)	(dd) maintaining, repairing or refitting mining requirements	These are essential activities for the continuance of primary activities and should be allowed as eligible.
Sch 6 part 3(f) (iii) (aa)	(aa) relocating or transporting an installation.	Where relocation or transportation of an installation is within the existing mining area under permit – this should be regarded as eligible offshore mining activities.
Sch 6 part 3 (f) (iii) (bb) (cc)	<p>(bb) maintaining, repairing or refitting an installation.</p> <p>(cc) trips connected with the maintenance, repair or refit of an installation.</p>	These are essential activities for the continuance of primary activities and should be allowed as eligible.
Sch 6 part 3(g) (bb) / (cc)	<p>(bb) maintaining, repairing or refitting an offshore vessel or its on-board equipment.</p> <p>(cc) trips connected with the maintenance, repair or refit of an offshore vessel.</p>	These are essential activities for the continuance of primary activities and should be allowed as eligible.

Sch 6 part 3(h) (iii) (cc) / (dd)	(cc) maintaining, repairing or refitting a harbour vessel or its on-board equipment. (dd) trips connected with the maintenance, repair or refit of a harbour vessel.	These are essential activities for the continuance of primary activities and should be allowed as eligible.
Sch 6 Part 3(i) (iii) (bb) / (cc)	(bb) maintaining, repairing or refitting a rail freight locomotive, its on-board equipment, or a freight wagon. (cc) trips connected with the maintenance, repair or refit of a rail freight locomotive or a freight wagon.	These are essential activities for the continuance of primary activities and should be allowed as eligible.
Sch 6 Part 3(j) (iii) (aa) / (bb)	(aa) maintaining, repairing or refitting an open cycle gas turbine or electricity generation plant. (bb) any activities related or incidental to the maintenance, repair or refit of an open cycle gas turbine or electricity generation plant.	These are essential activities for the continuance of primary activities and should be allowed as eligible.
OTHER MATTERS:		
Sch 6 Part 3(a) (iii)(bb)(A) and (3)(b)(v)(aa)	“Fuel collected by user” – does this definition include off site fuel filling?	If allowed, this must be stipulated on recording and documentation. This can work if adequately logged with supporting evidence.
Sch 6 Part 3(a) (x)(bb)	Included in the definition of a “storage facility” is a fuel tank controlled by the user for safekeeping of eligible purchases, but this is limited to a distillate fuel browser and distillate fuel truck as applicable on agricultural and mining on land.	A question has been asked if a Jerry Can will meet this requirement.
Sch 6 Part 3(b) (vi)(cc)/(vii)(cc)	SARS says it is still to publish logbook templates. There is reference to the fact that a simplified logbook can be used if	It is important to note that logbooks for fishing are different to farming and mining and that this should be taken into consideration when finalising the

	<p>needed in certain circumstances (Part 3(b)(vii)(dd)).</p> <p>We welcome the fact that only one overall logbook is required for all diesel consumed on the vessel. (Engines & equipment such as generators usage does not have to be recorded separately). However, a monthly logbook is not practical in the fishing industry. The logbook gets updated every time the vessel puts in fuel and this period may fall over a month-end for instance.</p> <p>Assuming that the tank is deemed to be full at month end is not considered suitable for the fishing industry as the claim is only made on diesel used and this is measured when the vessel fills up with fuel after a trip. The tank quantity has no bearing on the claim.</p>	<p>templates.</p> <p>The following treatment for fishing vessels, as has been accepted during SARS audits is considered a more suitable treatment:</p> <ul style="list-style-type: none"> • the first time a vessel is filled with diesel, no rebate is claimed as the fuel has not been used. • No rebate is claimed either when a new vessel sale from one bay to another if the vessel was not fishing. • Thereafter all fuel bought by the vessel is replacing that used while fishing, so the rebate is claimed when the fuel is bought.
Sch 6 Part 3(b)(vii)(dd)(B)	Simplified logbook – satellite tracking – It is unclear how will eligible and non-eligible distinction will occur.	Guidelines on how this is to be documented should be included in the Schedule.
Sch 6 Part 3(c)(ii)(hh)	One of the qualifying activities includes developing and maintaining fire-fighting access roads and firebreaks on the agricultural property.	Assisting one's neighbour with fire breaks that will benefit the user's property should also be considered.
Sch 6 Part 3(c)(ii)(qq)	One of the qualifying activities returning a specialised haulage vehicle to the agricultural property from the first delivery to the market.	Would a user need to prove that an empty vehicle returned?

Sch 6 Part 3(c) (iii)(aa)	Qualifying agricultural activities exclude – (aa) transporting agricultural requirements or labourers to or from the agricultural property. (bb) transporting agricultural requirements or labourers between non-adjacent sections of the agricultural property.	It is uncertain why these are excluded as they directly relate to primary activities.
Sch 6 Part 3(c) (iii)(gg) / (hh)	Qualifying agricultural activities exclude – (gg) transforming agricultural products through any process of manufacture. (hh) any activities related or incidental to such transformation of agricultural products.	A clear definition of “transforming” and “transformation” is required.
Sch 6 Part 3(c) (ix) / (x) / (xi)	These notes provide that small-scale sugarcane/forestry produces with an average production of less than 1 800 tons (sugarcane) and R1 million turnover (forestry) each per year who fail to keep the logbook information prescribed in paragraph (b) may arrange for the sugar/timber mills to which the sugarcane/forestry products of these producers are delivered to act as agents on behalf of such producers on the basis prescribed in paragraph (c)(xi). This paragraph states that if an agency relationship with these small-scale producers is entered into, then the mill must register as a user and process collective refund applications as an agent ... in consultation with South African Sugar Association (SASA) or Forestry South Africa (FSA)”. In order to contextualise the concerns with regard to this new section, a current group structure is provided for illustrative purposes. A group consists of an agricultural Co-operative and subsidiary companies. The Co-operative	Clarity should be given on: <ul style="list-style-type: none">• exactly what the underlined section means – would the mill include the amount in their VAT return as a diesel rebate or will there be some other mechanism provided by SARS?• the wording indicates that timber mills “must” process the application – does this therefore mean that they will not have the option to refuse?• what does “in consultation with SASA/FSA” mean?

	<p>markets timber on behalf of its members (growers) and also owns farms and mills. It has various mills in the group to which growers deliver timber and it also manages the process of members delivering timber to various other timber mills. Roughly 50% of its members are not VAT vendors.</p> <p>In terms of the new rules, the administration of processing refund applications on behalf of these the producers (growers) will be immense due to the volume of suppliers (for relatively small amounts of refund). The cost to the timber mills to implement controls, checks and refund mechanism has not been considered in the draft legislation.</p>	<ul style="list-style-type: none"> It should be made clear that the refunds <i>can be accumulated</i> and periodically passed on as part of the price paid for products delivered to the mills. <p>In the example provided, the co-operative has numerous small growers who do not supply timber monthly or even regularly. This could potentially require single payments of a few Rand if the rebates cannot be accumulated and added to the next supply payment. Allowing accumulation of small rebates should thus be considered.</p>
Sch 6, Part 3(d)(i)(ee)	<p>This section defines “fishing vessel” and it refers to vessels with inboard motors only. The new “small scale” fisheries pushed by the DEFF could incorporate ski boats using outboard petrol or diesel engines.</p>	<p>It seems that the small-scale fishermen will be penalised when compared to their larger counterparts. This does not appear to be equitable and should be reconsidered.</p>
Sch 6, Part 3(c)(viii)	<p>This section proposes a list of “dedicated equipment and vehicles” used in agriculture for which usage logbooks are not required (only storage logbooks are required). This change is commended as it reduces the administration burden on the users of the fuel.</p>	<p>One suggestion would be to allow businesses (users) to apply for specific equipment and vehicles to be dedicated vehicles based on their business model and that are not catered for in the list currently provided. This will reduce the administrative burden on the user as they only then need to keep the storage logbook and substantiate</p>

		the dispensing of the fuel into the equipment and vehicle.
<p><u>General comments:</u></p> <p>Large scale construction</p> <p>Large scale construction should be allowed into the eligible net on an application basis. Briefly, equipment and activities in large scale construction mirror that of mining and quarry (especially) and the equipment is operated almost, if not exclusively, off road and these activities are major economic contributors and should be afforded fair competition. Parameters with regard to enterprise/operation size, fuel usage etc. should be introduced and dedicated eligible vehicles should be clearly identified.</p> <p>Fuel Dye</p> <p>Consideration by SARS should perhaps be given to the use of fuel dyes. Certain countries, such as the USA and certain European countries are required by law to dye a low-tax fuel to deter its use in applications intended for higher taxed ones. Another example is the United Kingdom, where "red diesel" is dyed fuel to be used for registered agricultural or construction vehicles such as tractors, excavators, cranes and some other non-road applications such as boats. Red diesel carries a significantly reduced tax levy compared to un-dyed diesel fuel used in ordinary road vehicles. As red diesel is widely available in the UK, the authorities regularly carry out roadside checks.</p>		