**FEEDBACK SUMMARY -28 January 2018**

# 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.

**NATIONAL TREASURY (NT) WORKSHOP ON 6 December 2017**

The NT workshop held on 6 December 2017 discussed the below matters. This followed after NT received the Annexure C submissions for 2018.

This workshop was noted as constituting a public consultation process.

# Fringe Benefits: Seventh Schedule

***Promotional gifts and branded items***

Various concerns were raised relating to promotional gifts applied in the carrying on of business. Stakeholders need legal certainty and consistent application of the principles. The causal link between employment and the gift must be considered. Promotional items and gifts are not processed through payroll giving rise to a significant administrative burden in working through lists of promotional items.

It is understood that NT will consider the compliance burden and whether these items should be taxed as a matter of principle. Options to be considered include realistic interpretational guidance on what is given “by virtue of employment”.

# *Low or interest free loans for mining company employees*

Stakeholders requested fringe benefit relief for beneficial interest on loans from employers. Whilst NT agreed that this seems to be a good suggestion, policy issues were also raised around housing in other sectors, education, thresholds and equity considerations so that not only the mining sector benefits. NT will consider the policy issues and a further consultation process was proposed.

# Allowances: Section 8

***Reimbursive travel allowance***

Stakeholders requested that, for purposes of the reimbursive allowance, the remuneration portion is done away with as it is a business expense. NT committed that this will be considered.

***Normal travel allowance***

Stakeholders asked that for numerous years, values should be in line with the business expenses and should not be structured into the employee package. NT advised that if the reimbursive method works well, this could be phased in. the matter will be taken offline. Stakeholders discussed a number of compliance issues around the use of logbooks as well as the cash flow impact for certain staff members if the travel allowance is taken away. NT called for the sharing of pro forma contracts to illustrate the principles.

# Section 10(1)(o) exemption on foreign employment income

***Double tax on monthly tax withholding in both local and foreign jurisdictions***

Stakeholders discussed the hardship directive and the double taxation concerns, suggesting that the foreign liability should be allowed to reduce the South African tax liability in terms of legislative amendments. Furthermore, bulk applications should be allowed as well as operational concerns where no payroll is run offshore. It was proposed that the resident should get a foreign tax credit against payroll instead of a discretionary hardship directive.

***Proof of foreign taxes paid***

NT declined to comment on the matter of proof required of foreign tax paid or on the design of the pre-payment of tax. Various concerns were raised including the evidentiary proof required, the question whether the same proof test for section 6quat should apply, and the certificates required from foreign revenue authorities. Concerns were also raised around differing tax years in the underlying countries and the manner in which end values should be dealt with. Difficulties also arise where payroll is not being run in the other country.

***Section 10(1)(o) exemption does not apply to parastatal employees***

It was mentioned that the exemption as it currently stands excludes SOE employees. The original proposal to remove the exemption in totality was aimed at aligning the public and private sector. The decision to include or to continue to exclude SOE employees into the revised exemption is a policy issue that will be considered in further detail.

# Low or interest free loans to trusts: Section 7C

***Loans at arms-length: Section 7C(5)(e)***

The interplay between section 31 and section 7C was considered and NT will consider any duplication issues.

***Timing for the payment of donations tax***

Stakeholders raised that the penalty is donations tax but that the underlying transaction is a loan, mentioning a number of practical issues relating to the loan value at month end, asking for a six-month delay in implementation but NT did not seem amenable to this.

***Exclusion of sharia compliant financing arrangements***

The interplay between section 7C and sharia arrangements were considered and NT committed to consider the detailed submissions.

***Extension of the ambit of this section to companies***

The ambit of this provision is still considered to be too wide and NT will therefore need to give due consideration to this.

# Refund of amounts accrued to an employee in the course of his employment:

It was submitted that an employee should be allowed to lodge an application with SARS that would enable him to claim a refund (as opposed to the current deduction under section 11(nA)) from SARS of the PAYE previously paid by his employer on money refunded by the employee to the employer. NT questioned whether this would not be corrected by a re-opening of an assessment and whether it is widely prevalent. The cash flow issues were discussed and NT confirmed that this will be considered.

# Retirement issues

***Technical corrections***

A number of technical corrections are required which NT will address. The concerns include:

* Non-resident administrative burden for interest payments;
* Group bulk transfers to be included again;
* Simplification and uniformity of directives to avoid onerous consequences;
* Transfers and consolidation between funds on which NT will issue a paper after further consultation with FSB and trade unions on consolidations;
* Partial retirement issues and partial withdrawals; and
* Beneficiary funds require legislative amendments including the tax consequences of transfers from trusts to beneficiary funds.

**Section 8C**

A concern was raised around unexercised options upon death, which is a complex issue with no guidance from SARS. Other concerns raised included not having a definition for market value, especially for private companies, and not being able to use a volume weighted average price which is generally used for off the market transactions. Whilst it is considered that a ruling could be obtained from SARS, it was proposed that a legislative amendment will offer a better solution. Consistency and legal certainty concerns were raised as well as the uncertainty around restrictions for private companies that are legislatively required to restrict transferability. With regards to financial penalties stakeholders requested clarity on the definitions which are cast in overly broad terms

**Reinstating relocation allowance**

The reinstating of the relocation allowance, per the SAICA submission was discussed and NT noted that this was inadvertently removed as a result of the removal of various SARS discretions but did not commit to any particular action in this regard.

# Employment Tax Incentive

***National minimum wage***

It was discussed that when the minimum wages are announced, that the provisions of the ETI Act will be aligned with this. Currently an EMP501 cannot be submitted with any difference from the EMP201 and is not recognized by SARS. It was proposed that it should be recognized that the adjustments must follow through aligned for ETI submissions. This issue was noted by NT.

**VAT**

# VAT on Export Regulations

Stakeholders raised concerns around the resubmission of a VAT refund request and NT mentioned that it is in process of revisiting the regulations with SARS.

# Refunds of foreign VAT incurred in respect of services supplied to SA entities

Stakeholders requested that a mechanism should be investigated to enable non-resident businesses to claim VAT refunds for services rendered in South Africa. The examples used included reciprocity agreements and the New Zealand movie industry. NT considers this to be a policy issue.

# Permissible deductions in respect of input tax: Section 17

***Backdating of apportionment methodology: Section 17(1)***

The concerns were raised that a turnover basis is not considered to be appropriate in certain circumstances and for particular industries but that no appropriate alternative method was available. SARS would despite this, require taxpayers to go back five years when submitting VDP applications, the concerns are not only the historic difficulties but also the forward looking approach and the absence of any meaningful guidance. Taxpayers are faced with the practical difficulty of being prevented from determining their correct VAT liability denied the right to claim input tax. The fact that SARS can go back five years is considered to be unfair and to the prejudice of taxpayers. As a minimum, guidance by way of a ruling should be considered

SARS responded that the backdating of the apportionment method would be considered and possibly hardcoded in law. Alternatively, an overhaul would be required at a policy level, and this was not an Annexure C amendment.

***Incidental costs of airlines: Delayed flights: Section 17(2)(a)(i)***

The concern was raised that input tax may not be claimed for incidental costs such as delayed flights and SARS raised concerns about potential abuse. Stakeholders submitted that this should be treated the same as VAT on subsistence costs and stakeholders submitted that there is in practice little room for abuse. NT noted the concerns.

***Car hire: Employee away from usual place of work/residence: Section 17(2)(c)***

Stakeholders submitted that the vendor should be able to deduct this as business costs. With regards to pre-emptive disallowance for private use, it was discussed that expenses incurred for entertainment while away on business there is no level of private use involved. As per the SAICA submission, it was proposed that the “away on business overnight” rule applicable to entertainment, be extended to the rental of motor cars used by employees when away overnight on business. This was debated and NT is understood to be considering this.

# Special Provisions: Part VIII of the VAT Act

***VAT registration of separate branches or divisions: Section 50***

The issue was discussed around the word “system” of accounting, which could be interpreted as an entire accounting package. NT comment is that SARS interpretation is not a total separate accounting system, but a cost center. There are cases where there is uncertainty, and had given rise to interpretational issues, then wording to be simplified in the definition of ‘enterprise’ and ring-fence the branch.

***Unincorporated bodies of persons jointly owning fixed property: Section 51***

NT considers that this could involve broader policy issues, including who should rightfully claim the VAT, as well as the VAT on the maintenance costs. *En commandite* partnership issues were also raised as well as spouses married in community of property. The core challenge appears to be around ‘body of persons’ definition. Whilst the issues are complex a solution is desperately needed. A discussion document will be published for comment and a workshop was proposed by NT.

***Voluntary registration: Proof of expenditure: Regulation 3(5)(a)(i): GN.r447***

It was agreed that a TLAB change is not required but a regulatory change was proposed to clarify the agreements that will be acceptable for SARS. NT considers this to be an operational issue which must be clarified with SARS.

# Certain supply of goods or services deemed to be made or not made: Section 8

***Relief in respect of group reorganisations – Going concern: Sections 8(25) and 11(1)(e)***

A number of matters were raised that require further clarity around reorganisations, including some interpretation issues. NT agreed in principle with the proposals and concerns and mentioned that the provision was aimed at moving assets piecemeal or one-by-one without VAT consequences.

***2017 changes re VAT vendor status of municipalities: New section 8(28)***

Various concerns were raised around structural legislative changes that have not been aligned with VAT legislation and a lack of certainty around the effective date of 1 January 2018 and the impact of this on the BGR.

# Zero Rating: Section 11

***Extension of the zero-rating provisions to goods imported into a licensed Customs and Excise storage warehouse but not yet cleared for home consumption: Section 11(1)(u)***

Stakeholders proposed that goods imported into warehouse, and not yet cleared for consumption, to extend to shipped dock in South African territorial waters containing goods that are then sold as this is considered to be technically within South Africa. This will address cash flow issues. The SAICA proposal was discussed and NT was asked to align the rules. NT expressed concerns structuring opportunities.

***Interaction of zero rating provisions in sections 11(2)(l) and 11(1)(q)***

The concern is around past “loop” structure proposals and risks if opened up too broadly, but NT is looking at this in the interim. Submissions were made to legislate around the possibility of abuse and further proposals would be made by stakeholders to address the possible issues around perceived abuse. With global services provided this is considered a big issue. NT will also consider how any proposals will interact with e-services regulations proposed.

# Exempt supplies by associations not for gain: Interaction between section 12(b) of the VAT Act and section 9(1)(c) of the Transfer Duty Act

A concern exists around associations not for gains where goods/services donated to it are exempt, but NT considered that the issues are catered for in the legislation.

# Irrecoverable debts: Section 22

The provisions of this section need clarity to ensure that they remain applicable as long as the parties form part of the same group of companies and as long as both parties are vendors. The concerns raised in the SAICA submission were discussed.

***Definition of the term “face value”: Section 22(1A)***

The core issues appears to be a double deduction (accounting entry) and uncertainty around the meaning and proposed treatment face value of debt. The fact that too much VAT is being recovered was explained at the hand of a securitization example as well as the practical issues in that purchaser needs to establish how a loan was written off.

# Financial Services: Sections 2 & 12(a)

***Cancellation of an option: Sections 2(1)(k) & 12(a)***

A submission was made that the consideration for cancellation should be exempt that the provision of section 2(1)(k) should be expanded. It was further proposed that the provisions around the cancellation of an option be aligned with the cancellation for other derivatives.

# Crypto-currencies

This was discussed in broad terms and identified that this matter involves broader policy issue.

# Loyalty programmes

NT stated that the request to address loyalty programme issues is not an Annexure C issue but a broader policy issue.

**TAX ADMINISTRATION ISSUES**

**INCOME TAX ACT**

# Dividends tax refund by regulated intermediaries section 64M

The discussion centered around refunds of dividends tax where the following dividend cycles would not allow for the intermediary to fully recover the dividends tax refund. SARS and NT were of the view that this would only arise in very limited circumstances i.e. if an intermediary was ceasing operations and was therefore not a widespread matter affecting the industry.

**VAT**

# Correcting tax invoices section 20 and 21

It was mentioned that credit notes not precluded from being issued if it changes non-core information and that the ruling process could potentially be used.

# Requirements of separate VAT registrations of branches or divisions section 50

SARS confirmed that a VAT registration is required, even if there is no CIPC number as the SARS system caters for a foreign company number.

**TAA**

# Remedies for denial of suspension requests section 104

Stakeholders requested the right to object and appeal to a decision by SARS declining a request for suspension of payment. It was furthermore requested that the process be simplified, and made more accessible. SAICA again raised the concern that the provision requires an amendment to prevent arbitrary denials. Concerns raised by the DTC were discussed as well as a number of international examples. Stakeholders requested a workshop. SARS mentioned that section 9 of the TAA is available to taxpayers and should be relied on more often but stakeholders considered that this muddies the water as this issue is not fully within the tax dispute space.

**Role of the Tax Ombud**

The role of the OTO was discussed and the need for more effective taxpayer relief was discussed. A concern was raised around the application of the VDP provisions and the need for involvement by the OTO was mentioned as well as the need for a less rigid approach by SARS considering the purpose of the VDP is to encourage taxpayers to remedy their non-compliance and settle taxes due.

**Outstanding returns and VDP section 227**

The concerns were briefly raised and the consensus was that a separate VDP workshop would be hosted.

**RCB issues**

The concerns were briefly raised and the consensus was that a separate RCB workshop should be hosted. SAICA requested that the workshop be hosted by NT.