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Submission File

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National Treasury / South African Revenue Service

BY E-MAIL: Christopher.Axelson@treasury.gov.za
ftomasek@sars.gov.za

Dear Mr Axelson and Mr Tomasek

SAICA COMMENTS ON THE IMPLEMENTATION OF THE ADVANCE PRICING AGREEMENT PROGRAMME (PART 1A OF THE INCOME TAX ACT)

The Transfer Pricing Committee, on behalf of the South African Institute of Chartered Accountants (SAICA), welcomes the opportunity to make representation to the National Treasury ('NT') and the South African Revenue Service ('SARS') on the implementation of Section 76A to Section 76P of the Income Tax Act No. 58 of 1962 ('The Act') – The Advance Pricing Agreement ('APA') provisions.

This submission follows a meeting held with the SARS Transfer Pricing Unit on 21 May 2025, where certain concerns regarding the implementation of the APA provisions were discussed.

We once again thank NT and SARS for the ongoing opportunity to provide constructive comments in this regard.

SAICA continues to believe that a collaborative approach is best suited in seeking solutions to complex challenges and should you wish to clarify any of the above matters please do not hesitate to contact us.

Yours sincerely

Christian Wiesener
Chair: Transfer Pricing Committee

Lesedi Seforo
Lead Tax Advocacy: Tax Law

The South African Institute of Chartered Accountants

PART IA OF THE INCOME TAX ACT NO 58 OF 1962 – ADVANCE PRICING AGREEMENTS

1. Section 10 of the Tax Administration Laws Amendment Act No 18 of 2023 introduced the Advance Pricing Agreement ('APA') provisions into the Act.
2. These provisions were enacted to ensure taxpayers are able to gain certainty relating to certain international transactions which are currently precluded from the Advance Ruling provisions under section 80(1)(a)(iii) of the Tax Administration Act.
3. Section 76B specifically states that "*the purpose of this Part is to promote tax certainty in respect of an affected transaction that will prevent or minimise double taxation and associated dispute resolution procedures.*" [own emphasis]
4. APAs are also listed in [SARS' 2025/2026 Annual Performance Plan](#) as part of SARS' Strategic Objective 1¹: *Provide clarity and certainty for taxpayer and trader of their obligations.*
5. The [Memorandum On The Objects Of The Tax Administration Laws Amendment Bill, 2023](#), in articulating the insertion of the APA provisions into the Act, made the point that:

*"...it is envisaged that the programme will commence with a pilot **shortly after the legislative framework has been put in place.**"* [own emphasis]
6. It is now more than 18 months since the promulgation of the *Tax Administration Laws Amendment Act No 18 of 2023* and not only have taxpayers been unable to access the regime, a pilot programme is yet to be launched, despite there being significant appetite in the market for APAs.
7. We appreciate the fact that the APA programme requires scarce resources and that "*the chief impediment in establishing a workable APA programme in South Africa relates to the scarcity of transfer pricing expertise in the country, which will require resources and time to develop at SARS...*"²
8. Notwithstanding the above challenge, SARS nevertheless committed to the implementation of APAs, stating "*whilst challenging, the necessity of establishing an APA unit is foundational in advancing the SARS strategic agenda and restoring the organisation to world class status.*"³
9. SARS Transfer Pricing officials noted at the 21 May 2025 meeting with SAICA that section 76A to section 76P is conditional upon the release of supplementary legislation.

¹ Page 28

² Page 1 of *The Proposed Model for Establishing an Advance Pricing Agreement Programme in South Africa and Release of Draft Legislation*

³ Ibid

10. We hold that the inclusion of section 76A to section 76P of the Act is not stated as being subject to the implementation of any other legislation, nor is its implementation stated as being conditional on the release of any specific guidance.
11. SAICA therefore maintains that the legislation is currently enforceable and that taxpayers are free to avail themselves to the remedies included in it.
12. The reference to this supplementary legislation is not referred to either in the Act itself, nor in section 10 of the Tax Administration Laws Amendment Act, 2023.
13. SARS officials further clarified that this supplementary legislation is in fact a Public Notice referred to in certain of the sections of the APA provisions, notably:
 - **Section 76C.** The Commissioner may prescribe, by public notice, the persons eligible to apply to the Commissioner for an advance pricing agreement.
 - **Section 76D.** In order to defray the costs of administering the advance pricing agreement system, the Commissioner may, by public notice, prescribe fees payable by an applicant, ...
 - **Section 76I.** The Commissioner may reject an advance pricing agreement application if the application does not meet— (a) the requirements of this Part; and (b) such additional requirements as the Commissioner may prescribe by public notice.
 - **Section 76P.** The Commissioner may, by public notice, specify procedures and guidelines for the implementation and operation of the advance pricing agreement system.'
14. SAICA would like to draw SARS attention to the fact that in the majority of the sections which are, in the view of SARS, conditional on the issuing of a public notice, the term "may" is used.
15. This does not place any obligation on SARS or National Treasury to actually issue a public notice. On the contrary, it suggests that the legislation as it stands is effective as is and may be subject to certain additional requirements contained in a public notice which SARS may issue.
16. We maintain that this cannot therefore create a conditional requirement for the implementation of the legislation.
17. SAICA would further like to draw to SARS' attention that failure to accept an application for an APA under section 76F would be subject to a judicial review under section 2(g) of the Promotion of Administrative Justice Act.
18. Submission: SAICA recommends that National Treasury make the following amendments to the APA provisions:
19. Section 76P be amended to state that implementation of the aforementioned sections is conditional on the issuance of supplementary guidance in the public notice.
20. Sections 76C, 76D, 76I and 76P are amended to replace the word 'may' with the word 'must'.
21. SARS issues a notice informing the public of the intended changes and provides a timeline for the issue of the public notice.