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Submission File

15 November 2019

South African Revenue Service  
Private Bag X923  
Pretoria  
0001

BY E-MAIL: [policycomments@sars.gov.za](mailto:policycomments@sars.gov.za)

Dear SARS

**COMMENTS ON THE DRAFT INTERPRETATION NOTE 18 (Issue 4): REBATE AND DEDUCTION FOR FOREIGN TAXES ON INCOME (Section 6quat)**

1. We herewith take an opportunity to present our comments on behalf of the South African Institute of Chartered Accounts' (SAICA) Employees' Tax sub-committee (a subcommittee of the SAICA National Tax Committee) on the draft Interpretation Note 18 (issue 4) dealing with section 6quat of the Income Tax Act, No 58 of 1962 (the Act).
2. Our submission includes a discussion of some of the most pertinent matters, which we believe require most urgent attention and we suggest that this submission be read in conjunction with our submission on Draft Interpretation Note 16 (Issue 3) dealing with section 10(1)(o)(ii) of the Act.
3. We would like to thank SARS for the opportunity to provide constructive comments in relation to this draft interpretation note. SAICA believes that a collaborative approach is best suited in seeking actual solutions to complex problems.

**CONCERNS**

**Apportionment of the s6quat rebate**

4. Currently the Interpretation Note includes an example on the apportionment of the foreign taxes but it does not include an example that clarifies if the section 6quat rebate would be apportioned to exclude the R1 million exemption. The legislation in its current form does not provide for this treatment and the SARS' system also, to our knowledge, apportions the section 6quat rebate.
5. If it is the legislature's intention to allow the full foreign tax paid as a foreign tax credit, which is what we understand from the engagements in the National Treasury workshops where this exact point was discussed, the interpretation note and section 6quat should make reference to the R1 million exemption and the proposed application of the foreign tax credit which will not be apportioned to exclude the R1 million exempt remuneration amount.



6. Submission: The Interpretation Note (and the law) must be amended to provide clarity on the application of the foreign tax credit in relation to the R1 million exemption and how it is to be applied and on which components of the remuneration will it be applied.

#### **Documentary proof required by SARS for foreign taxes**

7. A taxpayer bears the onus to prove an entitlement to a rebate under section 6quat(1) or a deduction under section 6quat(1C)(a). The draft Interpretation Note, in paragraph 9, sets out the general documentary proof required by SARS to prove that foreign taxes have been paid.
8. As we have previously noted to Treasury, these documentary requirements, in certain instances, are not always readably available from certain countries/institutions in the formats prescribed in the Interpretation Note. For instance, certain countries/employers only provide hand written statements and do not have the necessary information per employee. Other countries do not require the equivalent of an IRP5 which may provide evidence of the taxes paid on behalf of the taxpayer and many countries do not provide final assessments.

9. Submission: We submit that the documentation/proof acceptable for the purposes of claiming the section 6quat rebate in the annual income tax return would need to cater for the limitations with regard to the documentary proof/information available from certain revenue authorities in certain countries.
10. We accept that as a minimum the taxpayer should be able to prove payment of the relevant tax to the foreign tax authority.

#### **Timing - foreign tax payments vs claiming the credit**

11. SARS recognises that cash-flow timing mismatches will occur if a foreign tax year ends after the South African year of assessment. As a result, SARS may regard the advance or provisional tax payments as being “proved to be payable” for purposes of the rebate under section 6quat(1) and the deduction under section 6quat(1C)(a) *to the extent that* a resident taxpayer can satisfy SARS that such payments correspond to and do not exceed the final foreign tax liability.
12. Advance payments of tax are not taxes which are proved to be payable to a foreign government and are merely advance payments of taxes which may ultimately be proved to be payable to a foreign government. In this situation, and **subject to obtaining a detailed understanding of the relevant foreign tax**, SARS may treat the payment as a final tax payment and not a provisional tax payment (Paragraph 5.3.2).
13. In practice SARS may allow provisional taxpayers to take foreign provisional tax payments (or similar advance payments) legally due and payable into account when determining their local provisional tax payments to the extent that the taxpayer is able to satisfy SARS that those **payments will be or are the same or similar to the final tax liability in that country** (Paragraph 7.4).

14. Submission: Clarity is required on what documentary evidence would be regarded as satisfactory to provide SARS with a detailed understanding of the relevant foreign tax and whether the provisional payments made will be or are the same or similar to the final tax liability in that particular country. Amendments may also be needed to the IRP6 forms to enable the clear disclosure of these foreign taxes.

**Carry forward of the tax credit on the e-filing**

15. It is noted that the SARS system is currently not set up to carry forward the section 6quat rebate. Although the ITA34 Notice of Assessment indicates that the section 6quat rebate of Rxxx will be carried forward, the amount does not pull through to the next tax year in the same way as assessed capital losses for example.

16. It is the experience of members of the committee that the carry forward of the section 6quat rebate has not been automated, which has also been confirmed by SARS in specific cases.

17. Submission: The SARS e-filing system should be updated to automatically carry forward the section 6quat rebate to ensure that the administration burden on both taxpayers and SARS is reduced.

Should you wish to clarify any of the above matters please do not hesitate to contact us.

Yours sincerely

**Tarryn Atkinson**  
**Chairperson: Employees' Tax**  
**Sub-Committee**

**Dr Sharon Smulders**  
**Project Director: Tax Advocacy**

*The South African Institute of Chartered Accountants*