

Ref # 630499

FEEDBACK SUMMARY

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 19 SEPTEMBER 2017

The NT workshop held on 19 September 2017 discussed the below matters. This followed after NT briefed the Standing Committee on Finance (SCoF) in relation to the manner in which they propose finalising the draft Taxation Laws Amendment Bill, 2017 (DTLAB17) and the draft Tax Administration Laws Amendment Bill, 2017 (DTALAB17).

The updated DTLAB17 and DTALAB17 will be introduced by the Minister in Parliament on 25 October 2017. Whilst the DTALAB17 is not a Money Bill, it is nonetheless tabled in parliament on the same day as the DTLAB17 due to the close connection between these Bills.

NT advised that SAICA raised the issue that too short a time frame is allowed for stakeholders to respond meaningfully and that this must be considered. This workshop was noted as constituting a public consultation process.

The taxation of foreign employment income in SA (withdrawal of the exemption for residents working abroad)

NT believes that the amendments to be introduced to the current DTLAB17 (to defer the effective date to 1 March 2020 and exempt the first R1m of income) were welcomed when introduced in Parliament in the report back hearings on 14 September 2017. As a result, no further public consultations are to be held before the DTLAB17 is tabled in parliament on 25 October 2017.



It is understood that some commentators have committed to sharing information with NT regarding the difficulties being experienced with SARS in claiming foreign tax credits (FTCs). It is considered that this issue must be resolved as the claiming of FTCs is integral to the success of implementing the proposals.

Debt issues

There are three debt related issues being considered by NT, namely:

- 1) Mining
- 2) Dormant companies, and
- 3) Debt converted to equity.

NT believes that the proposed amendments to be made relating to issues 1) and 2) have largely been settled and it is only issue 3) which requires further public consultation. A meeting between NT and other stakeholders has been arranged for 26 September 2017, which was attended by SAICA.

Bargaining Councils (BCs) (the offering of specific relief instead of requiring BCs to claim relief via the VDP process)

NT is in continued discussions with the Bargaining Councils (BCs) directly and does not believe that any further public consultation is required. NT could therefore not make any further commitments on the way forward at this stage.

Banks

NT confirmed that the amendments to be introduced to section 11(jA) (only allowing banks to claim 25% of stage 1 and 2 IFRS 9 bad debt provisions, with an uplift to 85% of stage 3 in accordance with the “default” criteria in Regulation 67 of the Banks Act, without any “phase in” of the impact) and 24JB (to bring the section in line with IFRS 9, which replaces IAS 39 on 1 January 2018) have been settled, except for a “phase in” period for section 11(jA), the decision on which is exclusively at the instance of Mr Momoniat from NT.

Share buy backs (the taxation of dividends in share buy-back transactions and other transactions (including normal dividends and preference share redemptions), since the proposal is far too wide)

NT confirmed that the amendments to be introduced to the current draft TLAB (to target only excessive dividends, buy-backs and exclude preference shares) were welcomed when introduced in Parliament, therefore no further meetings are to be held.

The inclusion of trusts interposed between a resident and a CFC into section 9D, the new “control” requirement to qualify as a CFC in terms of IFRS 10 and the proposed taxation of resident beneficiaries of offshore trusts (the proposed section 25BC)

NT confirmed that further consultation was required. After discussion of various proposals in relation to section 9D and section 25BC (all of which included a request for the proposed new subsection (b)(i) of the definition of a CFC in section 9D and the proposed new section 25BC



to be deleted, and for the proposed new subsection (b)(ii) of the definition of a CFC in section 9D to be clarified), NT confirmed that they are considering 2 options, namely –

Option 1

- Delete the proposed new subsection (b)(i) of the definition of a CFC in section 9D;
- Clarify the proposed new subsection (b)(ii) of the definition of a CFC in section 9D. This new subsection materially alters the concept of a “controlled” foreign company, since it currently requires more than a 50% participation in the equity or voting rights of a foreign company, whereas what is being proposed is for “any foreign company where the financial results of that foreign company are reflected in the consolidated financial statements, as contemplated in IFRS 10, of any company that is a resident”. Once a foreign entity is consolidated, there will also be disclosure of outside shareholder interests, which will result in a net income effect in relation to that company. The legislation needs to make it clear that what is being targeted as imputable is the net income effect in relation to that company, not 100% because it is consolidated. It was also pointed out that not all residents are actually subject to IFRS (private companies, for example, may not be on IFRS) which means that the current wording will only include some residents and result in a discriminatory application. On the other hand, to make the hurdle “as if IFRS 10 applied” would require taxpayers which are not subject to IFRS to potentially obtain IFRS 10 opinions to determine the extent of their obligations under section 9D. It is also not well understood yet whether IFRS 10 will actually include companies held by offshore discretionary trusts (since the 3 criteria in IFRS 10 are all required before control is established), however it was confirmed that one such case was identified, although the incidence of more such cases would be rare; and
- Delete the proposed new section 25BC (but effect changes to sections 7(8) & 25B and paragraph 80 of the Eighth Schedule in 2018 to give effect to the intent behind section 25BC).

Option 2

- Retain the proposed new subsection (b)(i) of the definition of a CFC in section 9D but define an “interest in a trust” and a “foreign foundation”;
- Clarify the proposed new subsection (b)(ii) of the definition of a CFC in section 9D, in exactly the same manner as in option 1 above;
- Retain the proposed new section 25BC but change it to –
 - Take into account the effects of double taxation (override section 7(8), etc. and the potential provision of foreign tax credits, etc.);
 - Deem all foreign distributions to be foreign dividends (this is a fundamental policy shift and it is unclear as to exactly how this would be done); and
 - Move the effective date to 1 March 2018.

NT confirmed that if they select option 1, then no further public consultation meetings will be held. However, if NT selects option 2, then a further public consultation meeting will be



arranged to discuss their proposed new wording. Stakeholders will be informed timeously what option has been selected by NT, with Option 1 being the generally preferred option.

Consultation process

As an aside, the legislative process for next year was also discussed. SAICA again asked NT whether the process could be more consultative before the next DTLAB is actually released for public comment, so that the amount of comments required can be minimised and then only the critical issues need to be taken to the SCoF.

NT was reluctant to agree to discuss proposed wording with a group of stakeholders before the release of the DTLAB in case they are challenged regarding discriminating against those stakeholders who were not afforded the opportunity to attend the public consultations or SCoF public hearings.

A stakeholder suggested that NT publicly release only the “contentious” parts of the DTLAB for comment (in writing and via a focused stakeholder meeting to discuss) prior to the release of the entire DTLAB for public comment, which may be acceptable from an NT perspective depending on the availability of the Minister of Finance to authorise the early release of certain parts of the legislation. NT is reluctant to discuss specific wording at the early stages of the legislative and consultation process. NT did seem open, however, to consultations to better understand factual situations at the early stages of the process. SARS seemed to suggest that there may be room for circulating the draft Bills earlier for purposes of a first consultation and that the Bill is again circulated for a second round of consultation, in effect therefore two full rounds of public consultation, but the view from NT appeared to be that this would need to be run past the Minister.

Stakeholders further suggested that NT accept public comments on the National Budget proposals prior to drafting the DTLAB, which NT welcomed, The National Budget process is, however, by design very brief. Therefore a lack of clarity remains on especially the policy intention, which was raised by SAICA as an issue, requesting that more clarity be provided on such policy intent at the early stages of the process. It was noted that this brief process makes effective public commenting quite difficult. It was proposed that directly after the Budget Review, stakeholders should be able to make written submissions to NT, which proposal seemed to be entertained by NT.

Stakeholders also suggested expanding the Annexure C process, but this only really addresses technical amendments and policy suggestions by the industry and does not provide the industry with any insight into what anti-avoidance NT intends targeting. In summary, NT acknowledged the need for a more expanded and efficient consultative process but no firm proposals were made on the optimal solution. It appears that the early release of contentious proposals is currently the option that NT may consider, without making any firm commitments in this regard. The delineation in the process between the design leg and policy consideration issues remain in contention but NT agreed that requests and submissions in this regard will be considered.