

Ref #: 739895

## FEEDBACK SUMMARY – [4 July 2019]

### **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.

### INITIAL BATCH OF 2019 DRAFT TLAB

#### WORKSHOP WITH NATIONAL TREASURY AND SARS

4 July 2019

Below are some of the matters discussed at the above workshop.

### **ANTI-AVOIDANCE RULES FOR DIVIDEND STRIPPING**

#### **Matters discussed**

The National Treasury thanked the delegates for their various submissions on the anti-avoidance rules for dividend stripping. It was reiterated that the initial batch of the draft Bill, was exactly that, an initial draft and that further changes will be made based on the current submissions and any further submissions received when the final bills are released. The following matters were discussed and points raised:

#### **Applicability of s22B and par 43A**

These provisions as currently worded in a manner that is nearly all encompassing. However, National Treasury stated that these provisions are aimed at addressing only those transactions where a shareholder company, in the first instance, has effective control of or a significant interest in the target company (i.e. hold a qualifying interest as contemplated in the dividend stripping provisions). Secondly, the target company must have distributed an extraordinary



dividend to that shareholder company within 18 months of the share issue. It was acknowledged that this would require tracking and differences in accounting and tax treatment. The reasons for not selling the shares in certain instances (eg. legitimate commercial transactions and in certain instances due to regulatory requirements) were raised and would be considered further by National Treasury, but National Treasury reiterated that no special provisions can be made to cater for BEE transactions and these transactions will be treated the same as all other transactions. It was also noted that the proposed amendments to section 22B and paragraph 43A provisions were broader than the value shifting arrangement provisions and consideration must also be given to the direct/indirect holding in a group context when determining the effective interest. Furthermore, the proposed amendments are currently not applicable to trusts and this is something that National Treasury would need to consider further.

#### *Double taxation on actual disposal*

Despite the Explanatory Memorandum stating that there will be a deemed disposal of and *an immediate reacquisition* of the shares in the target company, the initial batch of the draft legislation did not include the deemed reacquisition. National Treasury stated that this will be addressed in the new legislation.

#### *Effective date*

It was confirmed that the proposed amendments will be deemed to have come into operation on 20 February 2019 and apply in respect of shares held by a company in another company if the market value of those shares is reduced by reason of shares issued by that other company, on or after 20 February 2019 to a person other than that company.