

Ref #: 751330

**FEEDBACK SUMMARY
NATIONAL TREASURY WORKSHOP
DRAFT TLAB AND TALAB 2019
[5 & 6 September 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.

FEEDBACK SUMMARY

The National Treasury (NT) thanked the delegates for their various submissions received on the 2019 Taxation Laws Amendment Bill (TLAB) & the Tax Administration Laws Amendment Bill (TALAB). It was reiterated that no decisions could be taken by NT and the ultimately responsibility to change the legislation rested with the Standing Committee on Finance. The following matters were discussed and points raised:

A. BUSINESS TAX: INCENTIVES

1. Venture Capital Companies (VCCs)

NT concern: large amounts were being invested just before year-end impacting on tax expenditure and they need to protect the fiscus. Incentives tend to undermine the progressivity of the tax system.

Taxpayers (TP) concerns: VCCs need an anchor investor to invest a large amount as having to contact numerous additional investors if a cap is introduced, will make fundraising difficult & costly and certain VCC models will have to be changed. Bearing sunset clause in mind, this may also lead to many VCCs not being viable anymore. Difficult to measure output from SMEs in first 3 years. Need at least 5 years to measure the impact.

Suggestions by TP: If a cap must be inserted, introduce a larger cap and perhaps split limits between corporates & individuals.

NT comment: Will take this into consideration as well as the effective date of the amendment.

2. Special Economic Zones (SEZs)

NT concerns: Validity of expansions into the SEZs.

Suggestions by TP: SEZ operators do have checks and balances to ensure valid new businesses or expansion into SEZ (AFS, due diligence, increase in jobs etc). NT needs to meet with DTI and SEZ operators to discuss this further.

NT comment: Will take this into consideration as well as the effective date of the amendment. Domestic transfer pricing rules will also be considered in future by NT (not this year) as SARS would first need to provide input on whether they could police this.

B. BUSINESS TAX: GENERAL

1. Dividend stripping provisions

NT concern: A company that has reserves and distributes an extraordinary dividend and then issues shares within 18 months – this results in a disinvestment without a corresponding tax charge.

Suggestions by TP: Carve outs for legitimate transactions, such as rights issues, BEE transactions etc should be considered.

NT comment: From a policy perspective, NT cannot insert a carve out for BEE transactions. The deemed disposal will result in a capital gain. The treatment of equity, non-equity and participatory rights will need clarification.

2. **Value shifting rules**

NT concern: Clarifying the effect of deferred tax when applying the value shifting rules.

TP concerns: Reference to IAS 12 or IFRS is inappropriate as not all companies need to disclose the deferred tax assets/liabilities.

NT comment: This will be taken into consideration and the reference to IFRS will be removed.

3. **Special interest deduction for debt funded share acquisitions**

NT concern: Interest deductions being claimed for debt financed acquisitions of start-ups.

TP concern: Retrospective effective date should be changed.

NT comment: The change is a principle issue and a mere clarification of what was already in the law, not a change in policy intention so effective date will not be changed. In addition, it was clarified that only one unbundling transaction will be catered for in this section and not any subsequent unbundling transactions.

4. **Clarifying the interaction between corporate reorganisation rules and other provisions in the Income Tax Act**

NT concerns: The accrued interest and a change in the market value of an instrument as a result of changes in the market interest rates should be reflected in taxable income and the corporate rules should not override the application of section 24J.

TP concerns: Proposal will lead to cash flow issues. Interest-bearing assets and foreign exchange assets should be treated the same as trading stock or capital asset.

NT comment: Although the objective of reorganisation rules is tax neutral transfers, the taxpayer proposal was not accepted by NT.

5. **Section 22 – Trading stock**

TP concern: T/S needs to be valued on an item by item basis. Proposals included in Annexure C of the 2019 Budget Review, but no amendments in the 2019 Draft TLAB. Large retailers and manufacturers can't comply. Section will need to be redrafted.

NT comment: Noted.

C. BUSINESS TAX: FINANCIAL

1. **REITs tax regime**

TP concerns: The current proposal on the definition of rental income is too narrow and it should be extended to all foreign exchange gains and losses. The net effect of borrowing is that a REIT is in a net zero position, but "gross income" only catches one leg of the transaction. The REIT is a regulated entity so it is limited in terms of what it can do (asset

classes it can enter into are very limited - all targeted at invested in property – no speculation).

Suggestions by TP: Reconsider 'rental income' definition to take the above into account. What exchange items are covered? Currently only covering the hedging, but ignores debt related to rental income. Not all lending is back to back, other exchange items are used to fund property from which rental income earned. Should apply to all exchange items. Risk that current REITs won't qualify anymore.

NT comment: Can't expand the gain to other areas other than rental income (can't go as far as funding of rental property) but will consider the situations where 75% could be breached.

2. Interaction between reorganisation rules and REITs regime

NT concerns: The REIT regime rules are not aligned with the corporate reorganisation rules.

TP suggestions: CIS have the same problems. Don't isolate REITs, but consider other taxpayers.

NT comments: CIS won't be covered but this will be considered in the CIS research study that will be conducted in due course.

3. Exempt entities (PBOs)

NT concern: More than 10 years have passed allowing these entities to transition to the new tax exempt regime – can't transition for this long & then request a refund.

TP suggestions: Reasons for the introduction of the relevant sections provided in the EM are not the same as the EM of 2009. Entities that have not registered before due to lack of knowledge/skills should be allowed to be approved as a PBO retrospectively.

NT Solution – Retrospective approval will be done only for reasonable & legitimate cases to avoid the administrative and financial burden of this oversight by the PBOs.

D. INTERNATIONAL TAX

1. Definition of domestic treasury management company

NT problem: SARB has not withdrawn its Circular 5/2013.

NT solution: SARB will change their circular and small nuances will be clarified.

2. Permanent establishment definition

TP problem: The proposed reduced threshold is not sufficient. UK's rate is 19% currently. Other jurisdictions have rates around 15%.

NT solution: GloBE 2 of the Digital Economy is not yet finalized - once this is done, then the 15% might be considered.

3. CFC Anti-diversionary rules

TP problem: The scope of the proposed anti-diversionary rules is too wide.

NT solution: Court decision on this & SARS/NT lost – but it was a split decision. NT wants an upfront specific anti-avoidance measure so as not to have to rely on transfer pricing route which requires an audit.

4. Review of the “affected transaction” definition in transfer pricing rules

TP problem: The definition of “associated enterprise” in Article 9 of the OECD Model tax convention is too broad – catch all approach. If not caught by connected person (CP) definition, then caught by this definition. But this is too wide as it is brought into management & control. Suggestion to bring in economic nexus. More certainty on how this definition will be applied is needed.

NT solution: Noted.

E. DRAFT RATES BILL

1. Excise duty on tobacco

TP problem: Rates are too high & will encourage illicit trade & result in a loss to the fiscus.

NT solution: Noted & need for further enforcement will be discussed with SARS & the increases with the Minister.

F. AD-VALOREM EXCISE DUTIES ON MOTOR VEHICLES

TP problem: The removal of the ad-valorem duty on imported motor vehicles will have a detrimental effect on the local industry. There are also concerns regarding the formula.

NT solution: Will hold bilateral discussions with manufacturers before 18 September 2019.

G. CARBON TAX AMENDMENTS

1. Environmental tax increase

TP problem:

Section 12L, introduced in 2013. Supposed to come to an end in Dec 2019 & now extended to align with the first phase of the carbon tax on 31 Dec 2022.

Section 12K repealed due to potential double benefit. There is a double benefit for the unit but not to the entities as the entities are different. Need to differentiate credits for those in and outside the carbon tax net. In SA, there may be a dearth of carbon tax credits as there

is not enough supply at the moment. Expensive to get the offsets registered. Only 1 local company can verify local offsets, making this a very expensive process.

NT solution: Section 12L: A review will be done on this incentive. Section 12K: Concerns will be considered & grandfathering clause will need to be drafted.

2. Technical carbon tax amendments

TP problem: Various concerns were raised regarding the formula, such as the density factor for carbon dioxide which is not included etc.

NT solution: Concerns will be considered.

H. TLAB – INDIVIDUALS, SAVINGS AND RETIREMENT

1. Surviving spouse's pension

TP problem: Identifying surviving spouse is a problem from a systems perspective. More time is needed to get this information. It is requested that this proposal be extended from funds to insurance companies as well & also to other beneficiaries as they also have this problem.

NT solution: Will consider giving till 2021 to get this information.

2. Exemption of annuities from a provident or provident preservation fund

TP problem: The effective date is 1 March 2020.

NT solution: Will consider changing this.

3. Tax neutral transfers from a retirement fund – par 6(1)(a)

TP problem: The effective date is 1 March 2019.

NT solution: Effective date will remain 1 March 2019.

4. Transfers between employer provided funds

TP problem: Request to extend to paid-up members. Effective date is also a problem.

NT solution: Intention of NT seems to be misunderstood. Actual intention was to allow some employers to allow their employees to move from Provident to Pension Fund even though a termination event has not occurred. Reason for this is cost-effectiveness. Effective date – to be maintained & will not change.

5. **Contributions to a retirement fund immediately prior to death**

TP problem: Estate duty amendment to close the loophole where persons were trying to prevent someone on their death bed makes a large contribution to RAF which will reduce Estate Duty. Effective date is a concern – 1 January 2019.

NT solution: This was brought in to rectifying a 2015 error. NT will consider the date of death though.

I. **EMPLOYMENT**

1. **Employment tax incentive**

TP problem: National minimum wage – difficult to convert weekly to monthly rates. Suggestion to change R2 000 to an hourly rate. Effective date – 1 Aug 2019.

NT solution: Will explain guidelines in regulations (not in the legislation). Suggestion to change R2 000 to hourly will be discussed next year. Effective date won't be extended as NT doesn't want firms to get an incentive if they are not paying the minimum wage. Payroll concerns were raised & NT will consider these.

TP problem: Interaction between ETI and SEZ requirements. Effective date should not be retrospective. Sectional requirements published in the regulations & other support services are also of concerns.

NT solution: Effective date will be considered. Policy intent will be maintained & sticking to these sectors only.

2. **Variable remuneration – s7B**

TP problem: Extending the scope of variable remuneration – various concerns.

NT solution: Will move away from a generic definition & move back to a specific list.

TP problem: Deduction of interest paid to SARS – various concerns.

NT solution: Open to using explicit wording. Effective date 1 Jan 2019 will be moved to date of promulgation.

TP problem: VAT and the determined value of a fringe benefit – s23C. Intention to include/exclude VAT.

NT solution: Will not change current wording of draft.

TP problem: Employment related allowances – other sections will be affected.

NT solution: Concerns noted & to be taken into consideration.

3. **Section 10(1)(o)(ii)**

TP problem: No further guidance on this section or s6quat has been given.

NT solution: SARS is finalizing a Guide on this issue & have provided some updated info on the website. Any questions can be sent to Rennie Naidoo: rnaidoo1@sars.gov.za.

J. 2019 DRAFT TLAB – VAT

1. Tax treatment of foreign donor funded projects

TP problem: Approval by Minister may be problematic regarding timelines & operational procedures are also uncertain. Can blanket approval not be given?

NT solution: Turnaround times cannot be given but the process does currently move quite quickly & NT will formalize the process. Minister won't necessarily sign off himself, he will delegate this to a Treasury official. SARS will publish details of what would be needed operationally. Regarding approval, not all projects fall under the ODA and thus blanket approval cannot be given.

TP problem: Definition of enterprise – does each project need to register for VAT separately and what about projects current in process?

NT solution: Projects are recorded & accounted for separately, hence each project must register & submit its own VAT return. Current projects will continue as usual but new ones will need to meet new requirements after 1 Apr 2020.

TP problem: Who is the implementing agency & what are the VAT implications for the payment from government to the subcontracting party?

NT solution: First level of implementation is the implementing agency but each case will be dealt with based on the case specific facts.

2. Section 72 – Hardship decisions

TP problem: Requirement to prove that similar difficulties have arisen or may arise for any other vendor or class of vendors of the same kind is problematic.

NT solution: Laws have to have general application. The Constitutional problem with this section is that it permits the Commissioner to change tax (write the law) which is reserved in terms of section 77 of the Constitution for the Minister and this needs to be addressed. Overall, the State Law Advisor has the final say whether the section can remain.

TP problem: Implementation date 21 July 2019 & effect on current rulings? If the decisions will cease, then time would be needed by taxpayers for systems to be changed and/or for the law to be changed.

NT solution: Transitional provisions will be inserted for current rulings. Law amendments would need to be done in terms of the Annexure C process.

K. DRAFT TALAB – INCOME TAX ACT

1. Removal of per payment declaration - Royalties and Interest

TP problem: 2 years is too short & a one size fits all approach does not work. Very administratively burdensome for banks etc. Perhaps rely on KYC data & form or extend the period.

NT solution: Can't rely on KYC as not all taxpayers are subject to this. Perhaps a hybrid model can be used: KYC for regulated intermediaries & the rest (royalties & other dividends & interest) can have a periodic review. 5 years is perhaps the appropriate period which aligns with the prescription period. These options will be considered.

L. DRAFT TALAB

1. Extension of notice period to institute legal proceedings against the Commissioner

TP problem: The extension of the notice period, to be provided to SARS to inform SARS that legal proceedings will be instituted against it, to 21 business days is too long.

NT solution: If the matter is truly urgent, the taxpayer can go to the Court. NT will, however consider this again.

2. Imposition of criminal sanctions where document submitted to SARS is erroneous, incomplete or false

TP problem: From the wording in the Explanatory Memorandum it appears that criminal sanctions will be imposed if any document required to be submitted to SARS is erroneous, incomplete or false.

NT solution: The opening words of the section in the Act start with “wilfully & without just cause” and this clarifies when the criminal sanctions will be imposed. No further adjustments will be made but it is acknowledged that this should have made explicit in EM.