

Ref #630501

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.

FEEDBACK SESSION AT THE STANDING COMMITTEE OF FINANCE (SCoF) ON 14 September 2017

The parliamentary budget committee expressed some concern around the fact that despite the measure of consultation, still no agreement could be reached on the tax proposals. This committee proceeded to summarize the main issues as dealt with at the NT workshops. The Chairperson pointed out that point of views were required and not a summary of experiences and that this would therefore need to be followed up at a later stage.

Mr Momoniat on behalf of NT pointed out that there must be agreement on taxes, but this process should not be used as a delaying tactic and that a judgment call must be made and that NT's judgment call may need to be accepted. He noted that he was not too concerned as the NT workshops were quite robust. Issues around tax residence and citizenship are according to him hard concepts and difficult to understand. Retrospectivity always gives rise to issues and it must be understood that NT has to announce dates, for example the change on withholding tax on dividends had to take effect immediately otherwise there would be avoidance. He proceeded to comment that sometimes it is a game of bluff and that deliberate uncertainty is needed, a question of constructive ambiguity which is par for the course.

Section 10(1)(o)(ii)

Concessions were made following the public consultation process which include a R1 million exemption threshold with the excess to be taxed in SA. The 183 day rule would be retained. NT explained that if a taxpayer was earning foreign income in a high tax country, there should



not be a need to top up as there would be a credit in the high tax country. The logic of this reasoning was questioned and NT would clarify later.

A further concession was made namely to provide extension of the amendments only by 1 March 2020 and not 1 March 2019 as previously announced, which would provide more time for taxpayers to prepare for the changes. A phased in approach was considered but NT preferred an extended date.

The provisional tax concerns raised by stakeholders will be discussed with SARS as there seems to be misunderstandings about the practical impact, for example the ability to submit reduced estimates.

The concerns around the SARS systems not being able to handle the volumes should no longer be in issue as a result of the high exemption threshold, which means that fewer additional returns would be required to be submitted.

NT dismissed the notion that a taxpayer not being present in South Africa means that he or she is not enjoying the benefits of public expenditure and that it is therefore unfair to tax such person. NT contended that the well accepted tax residency test confirms linkages with remaining family and business which results in indirect benefits.

Tax relief for bargaining counsels

NT noted that the proposed Bargaining Counsel (BC) relief would proceed and that it is not considered discriminatory as 1,8 million people are involved and that it would be too complex to follow a VDP route considering the number of applications that must be launched. NT is, however engaging, in further consultation with the Department of Labour as all the BCs are registered in terms of section 28 of the Labour Relations Act. An assessment will be made as to the extent of the issue. SARS response to the BC relief is that one must be cautious about special relief but one must realise that the audit and dispute process is a lengthy process.

It was again noted by stakeholders that the proposed relief was in fact discriminatory because of the arbitrary manner in which the beneficiaries were chosen and the mere fact that 1,8 million people were involved does not change this. The process would furthermore be simpler than suggested by SARS and that it would primarily involve the 40 BCs acting on behalf of their employees and not 1,8 million separate applications as indicated, but instead a more structured approach as is the norm with any other employer in a PAYE audit. The fact that the costs are not fully passed on to employees is not normally in issue for SARS. SAICA also pointed out that the future of the arrangement needs to be considered and the poor precedent set for other groups of non-compliant taxpayers. NT noted the concerns but pointed to the element of judgment required in an equitable system. NT conceded that it set a bad precedent but that all amnesties set a bad precedent and that the issues are complex.

SCoF noted that what was still missing was the reasoning as to why the BCs would go under and that clarity is required from NT.



Share-buy backs

In light of the proposed amendments being overly retrospective NT agreed to apply the proposed changes in terms of a more balanced approach.

Whilst the proposal is still broad, it will be limited to extraordinary dividends. Stakeholders noted that even this concession may affect ordinary transactions and that NT must consider the impact of the proposed provisions to ensure that extraordinary dividends not part of an avoidance scheme should be considered and excluded from the scope and that NT must therefore refine the provisions to accurately target the mischief.

The proposed 18 month threshold will however remain. A distinction will be drawn between listed and unlisted shareholding percentages.

It was requested that further consideration be given by NT in addressing the unintended consequences and enquired about the process to make further submissions to the extent required on this and a number of other outstanding issues. In this respect NT noted that whilst BEE transactions may be affected, the policy considerations are that if BEE partner wants to disinvest (sell shares) the CTC is imposed but if this is done via a share buyback then the same rules apply as to any other company.

Debt relief for mining companies

NT conceded the proposed amendments had some challenges especially as to the proposals made on debt relief relating to mining companies. NT remains of the view that the relief must apply to direct and indirect funding. Ring-fencing would still occur per mining operation whilst the proposals on the definition of capital expenditure was noted.

Dormant group relief

NT noted that the proposed amendments would be restricted only to dormant companies in terms of section 41 group companies. NT further accepted that the proposals were too stringent and that not carrying on a trade is the test. Issues around which provisions should first be applied will be addressed.

The proposal will address the concern regarding using SARS rulings instead of clear law to address the matter. NT conceded that a lot of confusion was created and that the proposed section 19A and 19B amendments would be deleted for purposes of the DLTAB and that NT will define the reduction amount to cover conversion debt to equity to avoid the need for rulings.

Section 24JB

The proposed amendments apply to banks registered in terms of the Banks Act and stringent financial liquidity requirements apply, but NT advised that it will study the impact on the fiscus and after that see if the provisions could be extended to other financial institutions.



CFC rules

In view of the NT workshop which was to be on the 19th of September 2017, the issues around CFC rules and the proposed section 25BC which impact on individuals were not discussed further.

The spreading of provident fund contributions

SARS was of the view that taxpayers were reading too much into the proposed amendments and that the proposed spread of the amount over 12 months would not result in any loss to a taxpayer. Whilst a number of innovative proposals were considered, they were found to be too complex to implement and therefore not accepted.

Dividends on employee share incentive schemes

NT advised that considerable concerns were received from CSDPs holding and administering the shares and that they were required to create payroll systems based on the proposed amendments. This was taken into account and the decision was taken to drop the suggestion that CSDPs need to withhold employees' tax, but the relevant employer of the share incentive scheme must withhold and advise the CSDP.

Holds on taxpayer bank accounts - Fraudulent refunds

Concerns were expressed about the proposal. SARS noted that it was of limited application and only for two days and not similar to the refund stopper process.

NT pointed out that there are considerable issues around illicit flows and anti-money laundering and that this should obviously be weighed up against the efficiency of bank risk systems, and bank risks such as being sued, acknowledging that what SARS requires is a narrow application of the principle but that NT would like to take a broader perspective view of the issue going forward to look at issues around the risks of including legitimate transactions being impacted.

SCoF raised a number of concerns around the proposals that banks will be able to stop payment for 2 business days and pointed out that the process relates to the stopper process, and that whilst illicit flows must be considered as raised, there were also other mechanisms such as the Financial Intelligence Centre (FIC). In essence more assurances would be required from SARS.

Procedure going forward

The draft bills will be tabled in parliament on 25 October 2017 at which point in time the bills are the further responsibility of parliament and any further taxpayer submissions may then only be addressed to parliament. This should preferably happen in writing but, as pointed out by NT, this practice is not overly encouraged. NT noted that there is an element of coercion in paying taxes and that there is resistance where people are not used to paying taxes. Whilst parliament will hear what taxpayers are saying there is an element of judgment.



Consultation process

Stakeholders had a mixed response on the effectiveness of the consultation process.

SAICA nevertheless welcomed the continued opportunity for engagement with NT and SCoF and would await further clarity on the public consultation processes with both NT and SCoF. SAICA again requested that due consideration be given to the request for a more extensive process.