

Submission File

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Dear Sibusiso, Vernie and Vonani

## COMMENTS ON THE VIABILITY OF A SHORTER TAX SEASON

1. We present herewith, on behalf of the South African Institute of Chartered Accountants' (SAICA) National Tax Committee, our comments on the viability of a shorter tax season that would end in October, rather than November of each year as noted by the South African Revenue Service (SARS).
2. Our submission includes a discussion of some of the most pertinent matters, which we believe require SARS' most urgent attention.
3. As always, we thank SARS for the ongoing opportunity to provide constructive comments in relation to draft legislation. SAICA believes that a collaborative approach is best suited in seeking actual solutions to complex challenges.
4. Should you wish to clarify any of the above matters please do not hesitate to contact us.

Yours sincerely

Christel van Wyk

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**Project Director: Tax**

**Project Director: Tax**

**South African Institute of Chartered Accountants**

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## **ANNEXURE A**

### **Background**

5. SARS informed the Recognised Controlling Bodies (RCBs), during a meeting held on 13 April 2018, that it is exploring the viability of a shorter tax season for individual taxpayers who are not registered as provisional taxpayers (non-provisional individuals) that would end in October rather than in November each year. SARS proposed that the amendment be introduced and made effect from as early as the 2018 filing season.
6. We understand that SARS considers that this would lighten the capacity and resources challenges experienced each year by SARS, given that the end of the current tax filing season is so close to the December holidays. Furthermore, the shortening of the tax filing season would, in SARS' view, address refund delays on the basis that the bulk of refunds are processed only after the closing of the tax filing season.
7. SARS invited RCBs to make submissions by 23 April 2018 on the proposed shortening of the tax filing season.

### **Impact on non-provisional individuals**

8. It is our understanding that the proposal of a shorter filing season is limited to non-provisional individuals. This seems to be in line with the practice last year where those individuals had to electronically submit their income tax returns by 24 November 2017 at a SARS branch or via e-filing.
9. For the current year, without considering the proposed shortening thereof, we note that the tax filing season is already just under 5 months, which is already a relative tight time frame for non-provisional individuals. This is considering that the filing season is anticipated to open on 1 July 2018 and was initially proposed to end by 23 November 2018.
10. The proposal by SARS to now shorten the filing season for non-provisional individuals to end in October instead of November (i.e. one month) would effectively reduce the tax season period by 20%. This shorter tax season would in our view adversely impact non-provisional individuals, employers, tax practitioners, as well as SARS, as set out herein.

### **Manual submissions by non-provisional individuals**

11. Per the 2016/2017 SARS Annual Report,<sup>1</sup> SARS received 4 695 499 personal income tax returns of which 2 500 806 were submitted electronically (i.e. 52.36%) – presumably this relates to returns submitted outside of SARS, via eFiling. This means that the balance of 46.74% (i.e. 2 194 693) taxpayers either submitted manually or electronically at a SARS branch during the previous tax season.

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<sup>1</sup> 2016/2017 SARS Annual report, pages 50 and 62

12. It is not clear how many of the submissions made at SARS branches were submitted electronically (with a due date in November) and how many were submitted manually (with a September due date).
  13. Even if 50% of the total 'in-branch' submissions were manual, this is a significant number.
  14. Given the high percentage of in-branch submissions, the question therefore arises as to how the proposed shortening of the filing season for individuals will impact the manual submissions specifically, given that last year the deadline for manual submissions (22 September 2017) was earlier than the deadline given for electronic submissions, and assuming that the same practice will prevail this year – that is, we assume that the time allowed for the submission of manual returns will remain the same as prior years.
  15. This would mean an influx of those individuals seeking assistance in the branches, in a much shorter time frame for both manual and electronic submissions.
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| <ol style="list-style-type: none"><li>16. <u>Submission:</u> We submit that taxpayers who submit manual returns would be severely prejudiced if the tax season only opens on 1 July 2018 and is then shortened, as is the practice, to an earlier date than the electronic submissions filing season, for example, to end August 2018. In this example, these taxpayers would therefore have less than 60 days to complete and file their income tax returns, assuming that they have received the necessary information beforehand.</li><li>17. Even if the time period allowed for manual submissions remains the same with the time period for electronic submissions shortened, we propose that to address the high number of taxpayers seeking assistance at branches, staff capacity should be increased to address this and SARS may need to consider extended office hours from the start of the tax season.</li><li>18. SARS should also consider that non-provisional individuals should rather be incentivised for filing earlier to relieve the anticipated congestion in November. In addition, we submit that the time value of amounts settled earlier as a result of earlier filing may set off the cost of any incentive allowed by SARS in this regard.</li><li>19. Alternatively, if SARS wishes to proceed with a shorter tax season, but cannot increase staff capacity etc, it is proposed that this be implemented only from the 2019 or 2020 tax year to allow tax practitioners and taxpayers sufficient time to plan for this change.</li></ol> |
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#### **Late issuing of IRP5s**

20. Circumstances arise where individuals are not provided with their IRP5s until deep into the filing season. The problem appears to be exacerbated by the lack of enforcement on payroll submissions. In some instances, there are errors on the IRP5 certificates that are submitted. The taxpayers themselves are then burdened with resolving it with their employers. Based on complaints received in the past, it appears that there are employers who are unwilling or unable to timeously issue corrected IRP5s.

21. Submission: Both the Minister of Finance and the recently suspended Commissioner of SARS have noted that there is a decline in taxpayer morality most likely linked to poor administration at SARS and misuse of funds.
22. We note that SARS would like to encourage compliance of taxpayers and work on improving the trust and their customer service to taxpayers.
23. We submit that whilst SARS is in the process of addressing the issues relating to late submission of IRP5s by employers and addressing the issues around the multiple re-issuing of IRP5s, that individual taxpayers should not be further burdened by shortening the current tax filing season, until such time that all these issues have been adequately addressed. In many instances the taxpayers are trying to be compliant whilst their employers are hindering their ability to do this.
24. We therefore propose that SARS exercise the legislative powers afforded to it to compel reluctant employers in timeously submitting and issuing IRP5s or resubmitting the correct IRP5 information where errors have been made.
25. In this regard shortening the tax season will only be more burdensome on individuals and should in our view be avoided, or at least postponed to a later date.
26. Alternatively, if the shortened tax season is implemented from 2018, SARS then needs to consider how it will allow concessions to those taxpayers affected by their employer or ex-employers non-compliance which has in turn affected that taxpayer's ability to submit their return on time.

#### **Impact on expatriate taxpayers**

27. It is specifically noted with respect to expatriates that the income tax return does not pre-populate with personal particulars. Similarly, despite the fact that an IRP5 is issued by an employer, it does not pre-populate on the income tax return. This information therefore needs to be captured manually, resulting in additional time required to complete and submit.

28. Submission: We submit that before SARS implements any shorter filing season, system changes should be made to ensure that the personal particulars and the IRP5 for expatriates are pre-populated. This will assist significantly in lightening the burden of tax practitioners with respect to these administrative tasks and therefore make the process more efficient for expatriates, their employers and SARS.

#### **Cash flows and penalties**

29. A predominant number of non-provisional individuals are salaried employees whose tax liabilities would have been settled through payroll taxes, including employees' tax (PAYE). Hence, no real cash flow benefits would arise for SARS by virtue of a shortening of the tax filing season for this category of taxpayer.
30. The SARS proposal to shorten the tax season will on the contrary result in an increased risk of non-provisional individuals defaulting in timeously submitting their income tax returns. This will in turn result in an increased risk of administrative penalties being

imposed for late submission as well as interest charges, which therefore will be significantly more onerous on them, whilst distorting the compliance status of these individuals.

31. Submission: We submit that before implementing any changes to the filing season, that SARS first give taxpayers the time to re-educate and inform themselves of any proposed changes. This will, in our view, ensure that taxpayers fully understand their compliance obligations and further ensure that there are not increased penalty exposures.
32. We propose that, should SARS proceed with the implementation of the shortened tax filing season that this is postponed to a more suitable date such as 2019 or even 2020.
33. If SARS in the meantime improves various processes as proposed herein, this will, going forward in any event, result in less administration time required for SARS.

### **Impact on employers**

#### **Availability of required information**

34. Currently, employers have to issue IRP5s and finalise their EMP501 reconciliations by 31 May 2018.
35. However, updates on the e@syfile system before it officially opens, usually impacts employers' ability to submit, thereby affecting the deadline by which employers are able to submit. For example, last year the source code 4582 was "dropped" by e@syfile after submission of reconciliations, and in respect of which 65 000 employers were affected and required to resubmit their EMP501 reconciliations and IRP5s, and therefore a significantly increased compliance burden on employers and additional administration for SARS.
36. This system error also impacted those individuals who had submitted their returns, which through no fault of their own, submitted returns containing incorrect data. After engaging with SARS, it was evident that these individuals were required to remedy this by lodging an objection (where the option to correct was not available) thereby again creating more work for taxpayers, tax practitioners and of course SARS staff who had to finalise the relevant objections.
37. All suppliers of third party information, such as financial institutions, medical aid, investment funds, etc. have to issue tax certificates by 31 May. It also resulted in amended tax certificates being issued after the date, requiring taxpayers to request for a correction in such circumstances where they have already submitted.
38. Given the practical experience of last year, we are aware that there is a significant amount of pressure on employers to meet this deadline.
39. Submission: We submit that if there is either a systemic issue or if a resubmission of data is required, this directly impacts on employers to timeously comply and also indirectly impacts on salaried individuals' ability to timeously file their returns and hence leads to increased penalty and interest risk exposures.

40. We further submit that despite endeavours by employers and suppliers of third party information, it is not guaranteed that taxpayers will have the necessary required information at hand to submit their income tax returns timeously.
41. If SARS were to open the filing season earlier, (as suggested below) we submit that consideration must then be given to also amending the above deadlines for employers and third parties. To the extent that this is not considered to be feasible, we request that SARS engage with employers to consider the options available.
42. In this regard, our earlier suggestion of only implemented a shortened tax season from the 2019 or 2020 year may allow SARS more time to engage and fully understand the implications and challenges for all parties prior to implementation.

### **Impact on tax practitioners**

#### **Capacity and resources**

43. We received numerous responses from our members and they noted that, as it currently stands, tax practitioners already have significant capacity and resource constraints, particularly in view of the additional SARS deadlines noted below:
  - 43.1 Tax practitioners assist employers with the submission of their EMP501 reconciliations due by **31 May**;
  - 43.2 The first provisional tax returns need to be submitted by **31 August**. In practice, tax practitioners tend to focus on these submissions during July and August to ensure submission and payment of taxes by the due date;
  - 43.3 The third provisional tax payments (i.e. top-up payments) is furthermore usually a focus area of tax practitioners during **September**, as interest runs from 1 October; and
  - 43.4 During October, the tax practitioners usually attend to the bi-annual IRP5 reconciliations for employers, which are due **31 October**. During the submission deadlines, tax practitioners also need to attend to SARS queries, which, as raised with SARS at the meeting held on 13 April 2018, seem to be increasing at an alarming rate. Some tax practitioners have noted that they are finding it difficult to meet their client's compliance deadlines as they are being inundated with queries across their client base.
44. Submission: We submit that the shortening of the tax season will give rise to significant additional practical difficulties for tax practitioners, particularly in view of an anticipated more onerous compliance burden in dealing with the shorter time frame, dealing with several other SARS deadlines that must be met simultaneously and the anticipated increased risk of significant penalty exposures if any of these deadlines cannot be met.
45. Tax practitioners have various internal risk procedures in place, such as reviewing of work done and receiving the clients input during their review processes, which add to the time period required to finalise the income tax return for non-provisional individuals. It is imperative that the highest standards for these processes are maintained, which



will be compromised if further time pressures are placed on an already overburdened administrative framework.

46. We submit that tax practitioners, especially the small and medium size offices, simply do not have the required capacity and resources to meet simultaneous deadlines for the bi-annual IRP5 reconciliation and non-provisional income tax returns. This would ultimately also adversely impact the tax practitioner's income earning ability and is therefore considered to be counter-productive.

### **Expatriate tax returns**

47. In many instances, the expatriate will have left South Africa by the time that the income tax return is completed. This is particularly challenging for tax practitioners as they would require the expatriate to review and confirm the information in the return before submitting, which is a time consuming process as a result of an increased number of correspondence interchanges.

48. Submission: SAICA submits that the shorter tax season is not feasible in relation to expatriates due to the additional compliance time frame that is as a general rule required to finalise these individuals' tax submission processes.

49. Should the filing season be shortened as proposed, we recommend that SARS considers extending the filing deadlines for this category of taxpayer, if the administrative challenges are not resolved.

50. This is proposed especially for situations where the expatriate has already left the country, thereby creating practical difficulties, in view of the existing administrative challenges, in timeously finalising the return.

### **Impact on SARS**

#### **SARS capacity**

51. The 2016/2017 SARS Annual Report<sup>2</sup> noted SARS's success in processing 99.9% of all returns electronically, of which 92.4% of tax returns were assessed within 3 seconds and 93.28% of refunds were paid to taxpayers within 72 hours.

52. Submission: We submit that if the above is a true reflection of how the electronically returns are processed, there should not be capacity and resource restraints on SARS officials, given that the majority of assessments are processed electronically.

53. Once an income tax assessment has been issued, SARS has three years within which to complete an audit and issue an additional assessment. This compares favourably with the exceptionally short time frame within which a taxpayer aggrieved by an assessment may lodge an objection, and in respect of which detailed grounds of objection must be included. Taking this into account clearly places SARS in a

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<sup>2</sup> 2016/2017 SARS Annual report, page 6



considerably more favourable position compared with individual taxpayers and further time constraints would for this reason, and on this basis, not be justified.

#### **Short term constraint on SARS resources**

54. Apart from what we have already noted above on SARS's limited resources, we also note that at the RCB meeting of 13 April 2018, SARS raised concerns about its capacity and resources constraints and concluded that shortening the filing season will assist in addressing these concerns. With reference to the above statistics mentioned, we note for example that a significant number of taxpayers still visited a SARS branch during the tax filing season.

55. Submission: We submit that the proposed shortened tax filing season would, contrary to SARS's view, only add to the burden of the SARS officials at the SARS branches, as more people would be going into a SARS branch in a shorter time period, i.e. 1 July 2018 to 31 October 2018 and therefore placing an immediate burden on the SARS system.

56. As SARS will presumably rely on the same staff base and not be in a position to appoint significant numbers of additional staff in the short term. It is therefore highly unlikely that the proposed change will have a positive impact envisaged in the short term either on SARS or taxpayers and is inclined to have the opposite effect.

#### **Impact on SARS resources for tax disputes**

57. The Tax Administration Act, 28 of 2011 (the TAA) defines a business day and specifically notes for purposes of the provisions of Chapter 9, which deals with tax disputes, excluded the days between 16 December of each year and 15 January of the following year, both days inclusive.

58. Submission: Since these days are excluded in the turnaround times in relation to tax disputes, we submit that the proposed shorter filing season will not have any impact on any SARS resources over the holiday season in December.

59. Furthermore, if a review query is submitted during December, it is done so automatically via the SARS system which issues an automatic letter. The taxpayers then have the responsibility to ensure that they attend to the queries timeously and this does not place additional strain on SARS resources.

#### **Early opening of filing season**

60. Currently, the tax season is proposed by SARS to only open in July, which means that taxpayers and tax practitioners are only able to determine during that stage what the questions are on the tax returns.

61. Due to the complexity of the South African tax legislation, onerous compliance requirements and the severe consequences for non-compliance (i.e. interest and penalties), a growing number of taxpayers are seeking services from tax practitioners to assist them in completing and filing their income tax returns.

62. As has been the case over the past few years, there have often been changes to tax returns at the beginning of and sometimes during tax season. It is only on generating the new return at the start of the tax season, and after answering the questions in the tax wizard, that one becomes aware of what information is specifically required per taxpayer.
63. Therefore, even though tax practitioners would start requesting information from the clients before July, they would only be able to determine what information and supporting documentation would be required from the taxpayers in July.
64. Similarly, taxpayers would only be in a position to determine what information and supporting documents are required at this point in time.
65. Submission: We submit that if SARS wishes to end the tax season in October 2018 it should consider opening the tax filing season earlier, i.e. 2 May 2018. However, this then requires that all third parties who have to submit data would need to do so by the end of March each year. This will be burdensome on such third parties and as a result also not necessarily a feasible solution.
66. As an alternative, we propose that the filing of returns should be opened earlier to allow taxpayers to view, input and save their income tax returns, while the submission tab can then be made available at a later date to allow for any changes to third party data submitted, at which point the return may be refreshed for this. This will provide for additional time to at least start preparing or uploading the required data.
67. Similar measures will need to be available to allow individuals who wish to submit returns manually to have a process available at the SARS branches.

#### **Future expansion to provisional taxpayers**

68. Per the 2017 Trade Statistics, jointly released by SARS and National Treasury (NT), the provisional tax payments received by SARS, from individuals, amounted to 23 944<sup>3</sup>, while 199 138<sup>4</sup> provisional tax payments were received from companies.
69. These numbers only take actual payments into account and do not consider those circumstances where no payments have been made.
70. The 2017 Trade Statistics<sup>5</sup>, noted that 19 075 270 individuals are registered as taxpayers, of whom 6 367 627 are expected to submit an income tax return, while only 4 800 344 individuals were assessed.<sup>6</sup> Furthermore, it was noted in the 2017 Trade Statistics<sup>7</sup> that 3 732 416 taxpayers are registered for corporate income tax, but it is expected that only 884 459 taxpayers would file an income tax return.

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<sup>3</sup> 2017 Trade Statistics, page 36

<sup>4</sup> 2017 Trade Statistics, page 135

<sup>5</sup> 2017 Trade Statistics, page 36

<sup>6</sup> The statistics is as at March 2016

<sup>7</sup> 2017 Trade Statistics, page 137



71. Given the above statistics, the provisional taxpayers would potentially represent a larger number to target for any tax season changes, considering that companies must be registered for provisional tax and that many individual taxpayers may not even have to make provisional tax payments due to losses incurred.

72. Submission: SAICA submits that whilst the proposed shortening of the tax filing season deadline would result in practical difficulties for non-provisional individuals, the bigger concern is to what extent and in terms of what time frame future tax filing season deadlines would impact provisional taxpayers if the filing season is shortened for this type of taxpayer as well.

73. We request that SARS clarifies the future roll out of shortened filing seasons to provisional taxpayers and that a reasonable consultation process with RCBs is given before any implementation thereof.