

**SAICA SUMMARY:  
2020 DRAFT TLAB & TALAB WORKSHOP  
WEDNESDAY, 9 SEPTEMBER 2020, 9:00-16:00  
EXPORT TAX, CARBON TAX, INDIVIDUAL TAX &  
EMPLOYMENT TAX INCENTIVE  
ONLINE MICROSOFT TEAMS MEETING**

**MORNING SESSION (starting at 9am)**

**A. Export Tax**

*NT acknowledged more intensive consultation was needed on this new tax but COVID resulted in this not realizing.*

**1. Policy Instrument**

*NT noted serious limits on deciding policy instrument due to trade agreements. Comments received on the policy instrument included:*

- 1.1. Support for export tax
- 1.2. Alternative to export tax (e.g. a ban) - *to ensure sufficient quality scrap for local market*
- 1.3. Free market approach - *no need for tax as sufficient scrap is available*

*COMMENTS discussed:*

- *Many, including manufacturing sector, support tax as scrap is being exported without considering local needs.*
- *This tax will bring certainty but extent of tax and administration of tax is critical.*
- *Interventions should be sustainable to ensure that there are no unintended consequences for the industry & economy.*
- *Price to collect scrap is determined by selling price and local scrap selling price is lower than price for export market. Unfair competitive market – South African steel producers are at a disadvantage as their costs are high.*
- *Ban will bring scrap prices down & boost economy. Need a level playing field.*
- *Export ban, however, not supported by some as there are no local markets for some metals.*
- *Need to develop supply chain to ensure quality products are available locally & for export.*
- *Allow local steel market to absorb scrap as it can (currently there is a shortage) and then find export markets.*
- *There should be regular reviews of the tax & enforcement thereof by SARS.*

**2. Scope of Tax**

- 2.1. Keep the current structure – *most commentators supported of this*
- 2.2. Create more categories and subcategories
- 2.3. Imported scrap (i.e. country of origin) – *destined for an export market – will this be included in the scope?*

*COMMENTS discussed:*

- *Memo asked:* *If there is a legal challenge does NT have a strong case for imposing this tax – is it legally possible taking trade agreements etc. into account?*
- *Delegates:* *Offered to assist with legal issues*
- *Range of products covered – too limited due to the diverse nature of the metals.*
- *Recommendation:* *Split out categories & deal with them individually to make supply chain work.*
- *Requires proper policy assessment & policy needs to be flexible enough to accommodate market.*

### 3. Rates

- 3.1. Ferrous metals (including stainless steel)
- 3.2. Aluminum
- 3.3. Red metals
- 3.4. Other (waste and scrap metals)

#### COMMENTS discussed:

- Rates not always an incentive as based on Rands, but pricing international market is priced in Dollars
- Include mechanism to monitor these exchange rate fluctuations
- Different rates for different categories – essential (need to go even further into levels)
- Commentators felt the rates are too low/too high – diverse views
- Lead is exported out of the country as scrap batteries – need rate to be raised
- Recommendation: Rates should be in Rands and reviewed quarterly

### 4. Exemptions and Trade Agreements

**Note:** Trade Agreements are binding to s231(2) of Constitution

- 4.1. EU, SADC & EFTA
- 4.2. Turkey
- 4.3. Re-routing risks (*SADC countries*)

NT Concerns: Lower rates for trade agreements create a loophole for exporting of scrap metal (re-routing of exports will circumvent export taxes).

#### COMMENTS discussed:

- Recommendation: Duty should be paid & refunded once proof provided that scrap has gone to correct destination.

### 5. Revenue Earmarking

#### COMMENTS discussed:

- Revenue from tax should be used for development of industry.

### 6. Administration

- 6.1. VAT fraud (input tax)
- 6.2. SARS risk engine
- 6.3. Proposed penalties, sanctions and criminal liability as deterrent

#### Administration concerns:

- input VAT refund manipulations (deemed export on scrap should be disallowed, increase audits)
- circumvention enforcement (needs to be increased eg. inspection of containers)
- mechanism for reporting illegal activity should be introduced
- penalties & sanctions need strengthening

## B. CARBON TAX

### 7. Clarification of carbon fuel levy adjustments

- *S5 allows adjustment of rate for non-stationary emissions.*
- *Formula inserted*

#### COMMENTS received & noted:

- *Clarification of formula – amend to provide for conversion from kgs to tons*
- *Exclude petrol & diesel emissions and administer as part of fuel levy: NT noted that there are 2 types of emissions (combustion emissions & using fuel in a vehicle). To extent required to report emissions to DEFF, they will be covered under that, to extent fuel used in boilers could be a deduction in the carbon tax formula.*
- *Carbon Tax Act should provide for different periods (Schedule 1): NT note that period adjustments to technical guidelines are done regularly and NT will engage with them to adjust in Carbon Tax Act as well.*

### 8. Carbon tax “pass-through” for refineries

- *Principle: Why should consumer pay for emissions of company? Benefit for refinery done through off-set of carbon tax.*
- *Sector is regulated & therefore a limitation of pass through of carbon tax cost.*
- *NT to consider limited pass through determined in a transparent manner to cater for these costs to the industry.*
- *Question: Do taxpayers still have to report the (stationary combustion) diesel emissions under the carbon tax?*
- *NT response: Yes, required to report to DEFF as this forms part of base of carbon tax provided the threshold is exceeded. It must be based on activity & must be combined.*
- *Inflation adjustment of pass-through – NT: effective CT rate derived from prevailing CT rates (inflationary rate + 2%) & will consider retrospective application of this.*
- *Concern by delegates & Questions:*
- *Non-regulated sectors are passing their carbon tax onto consumers.*
- *Refund mechanism – how work in practice?*
- *Carbon tax is incurred in the production of income & tax deductible for income tax purposes?*
- *Response by NT:*
- *NT cannot enforce how companies invoice.*
- *Refunds – discussed at roadshows (provision on accounts for this) but contact Marina at SARS for further clarity.*
- *Carbon tax cost will be deductible under section 11(a) as clarified in Parliament by NT.*

## AFTERNOON SESSION (starting at 2pm)

### C. INDIVIDUALS, SAVINGS AND RETIREMENT

#### 9. Addressing an anomaly in the tax exemption of employer provided bursaries

##### COMMENTS received

- *Effective date: 1 March 2020 in Budget, but in TLAB this is moved to 1 March 2021 and low appetite to extend further.*
- *NT will not scrap the “salary sacrifice” requirement*
- *What constitutes forgone salary - an actual reduction or the perception that a bonus had been forgone?*
- *NT view of salary sacrifice = bursary paid out of TCTC instead of line item above TCTC.*
- *Bona fide bursary is not one that is salary sacrificed.*
- *Commentator suggestion: Include in legislation – “to the extent....” as part could be salary sacrificed and part not.*
- **NT is open to conceding on certain issues:**
  - **1) open bursary requirements**
  - **2) Scope for who amendment is applicable to.**
- *1) Bona fide bursaries do not need to be bursaries open to the public.*
- *2) Budget announcement focused on relatives, Bills applies to both – but see below.*
- *Question: The salary sacrifice is allowed for employee bursaries but not for relatives?*
- *NT open to restricting changes to relatives of employees only but ...**clarity will be provided by NT in the response document as they are still fleshing this out!***
- *Although NT states bona fide bursary cannot be subject to salary sacrifice, it is open to allow employer deduction even if salary sacrifice.*
- *Possible Summary:*
- *No requirement for bursaries to be available to the public for both employee and employee relative bursaries.*
- *No employer deductions available for bursaries to employees' relatives when part of salary sacrifices.*
- *The employee would be taxable on the bursary.*
- *Concerns raised by commentators: Those currently accessing this benefit (low tax bracket) will not be able to afford this benefit if it is taken away.*
- *One alternative suggestion by commentators: SARS should instead provide all citizens with a deduction or allowance towards education...similar to other countries. This handles the aspect of equity.*

#### 10. Retirement

##### 10.1. Withdrawing retirement funds upon emigration

- *NT Reason: Moving from an exchange control process to capital management process (not in any way linked to prescribed assets).*
- *Concern: become non-tax resident, access retirement funds and then return after 1 year.*
- *NT alternative to 3-year requirement suggested:*
  - *tax triggered when individual ceases residency,*
  - *liability deferred until withdrawal from fund,*
  - *if opt not to withdraw before retirement – then normal tax rules apply.*
- *Commentators suggestions:*
- *Provide one-year tax non-resident plus some evidence that no quick return planned.*

- *Align provisions of emigration with other provisions in ITA (s9H) and fund rules but ensuring that the legislation does not force people to exit the fund.*
- *Make the trigger ceasing to be ordinarily resident in SA, not just ceasing to be SA tax resident, which should eliminate temporary cessation of residence through treaty tie-breakers.*
- *However, the determination of 'ordinary residence' is difficult to prove. The solution is to base the reason for withdrawal on the 'ordinary residence' or physical presence test in the host country on a permanent basis & require the proof as a certificate of residency from the foreign jurisdiction - this will be consistent with the proof that insurers and SARS relies on when applying for tax directives for ALL non-resident members of retirement funds when they exit their retirement funds but want DTA relief.*
- *The trigger for exiting a RA or preservation fund should still be their election to withdraw. It's just the basis for making the election that should change from emigration to cessation of residency.*
- *Allow upfront directives pre-ceding ceasing to be an ordinarily resident in SA.*
- *Transitional provisions: for those in the process of emigrating are still being considered by NT*

#### 10.2. Clarifying deductions in respect of contributions to retirement funds

- *S10C change will be catered for*
- *S11F(3) makes reference to s11(k) so no change need here*

#### 10.3. Effective date of qualifying annuities definition

- *S7C – effective date should be 1 March 2019, EM will be amended accordingly*

#### 10.4. Living annuities and termination of trusts

- *Paid on/before termination should be included in legislation – NT will change legislation accordingly*
- *Payments payable to anyone other than trust – not the intention, only want payments to flow one way into a trust*

#### 10.5. Transfers to a provident preservation fund from a pension fund

- *Consequential amendments to para 6A are noted*

#### 10.6. Vested rights following annuitisation

- *Individuals 55-years-old or younger on 1 Mar 2021 - NT would be affording vested right protection for individuals who is/was a member of such funds before 1 Mar 2021 but NT investigating comment further as intention is that individual is still a member at 1 Mar 2021.*
- *Individuals over age of 55 on 1 Mar 2021 – contributions & credits made after this date not subject to annuitisation. Intention not changed (they will not be affected by the proposal), but NT will see if amendments are required to legislation.*
- *Deductions allocated proportionally between vested and non-vested right. Intention still remains as included in EM and s14 transfers will be investigated further with SARS.*
- *Question: Is the industry going to be required to open separate funds for those under 55 to separate the vested right funds from the new contributions post 1 Mar 2021?*
- *Answer: The industry will not be required to open separate funds but will be required to separately track vested and non-vested benefits in the same fund.*
- *Clarity sought on whether allowing more than 1 transfer from Prov/Prov Preservation funds – NT open to allowing more than 1 transfer, but limiting protection to transfers made after 1 Mar 2021.*
- *Public sector funds treated as provident funds – NT in process of investigating how to deal with this.*

## 11. Employment Tax Incentives

### 11.1. Addressing an anomaly in the roll-over amounts claimable under the ETI

- *NT stated a concern was raised: Non-compliant employers not given sufficient time to remedy non-compliance (SARS system problems) – NT suggest make contact with SARS as bugs have apparently been sorted out.*
- *NT then wanted to understand how often does this happen as intention of incentive is that it goes to taxpayers of good standing.*
- Commentators: Circumstances leading to non-compliance:
  - *TCCs obtained in 1 year and then outstanding returns from a long time ago pop-up (>5 years ago, not done on e-filing & taxpayers don't have documents anymore) and such situation cannot be resolved with SARS in 6 months.*
  - *Also PAYE statement of accounts with journal entries not directly related to payments made by employer or declarations submitted that can't trace & track these (see OTO report).*
  - *NT asked for examples that could be escalated to SARS.*

## 12. Reimbursing employees for business travel

- Commentators concerns:
- *Should be a market related amount – NT will circulate amounts for comment.*
- *Incorrect section referencing – NT noted and will correct, intention was that this applies to sub-section (bb) only and not the whole section.*
- *Need an Interpretation Note for when an employee will qualify for this – SARS to consider this.*
- *Need to include a substantial anti-avoidance rule against salary sacrifice – SARS will consider this.*

## 13. Addressing the circumvention of anti-avoidance rules of trusts

### 13.1. Effective date and the application of the extended rules to existing structures

- *1 Jan 2021: Applies iro existing structures OR dividends that accrue on/after that date?*
- *NT response – Dividends accruing from 1 Jan 2021.*

### 13.2. Definition of preference share

- *No definition – NT agrees, so will decide if s8EA definition should be expanded*

### 13.3. Extension of the proposed rules to foreign dividends – NT will consider this further.

### 13.4. Appropriate rate of return for preference shares in determining the deemed donation

- *NT wants to ensure that there are no tax free transfers of assets & ensure donations tax is paid.*
- *s7C rules triggered when a transfer of assets or a capacitating of a trust to acquire assets for estate planning purposes. It was directed at low interest loans ie, receiving benefit by not paying the arm's length rate of return.*
- *Predominately happened with loan funding – hence official rate of interest used.*
- At issue: *What is the commercial rate of return on a preference share?*
- *s7C rules have exclusions so NT wanted to know what commercial reasons are there for using preference share funding when s7C circumstances apply?*
- Example of concerns provided by commentators: *Rate of return on pref share (eg.3%). This is subject to DWT and pref shares will be subject to STT. The anti-avoidance rule is trying to capture the portion of interest that is not charged but should be charged.*

- *Actual rate should be lower – to get parity, you would need to gross up 3% to compare to official rate otherwise pref shares are penalized.*
- *Prefer shares – arm's length rate of return is less than interest, rule of thumb is to reduce this by corporate tax rate of 28% (72%). The arm's length rate of return iro a dividend is lower than interest.*
- *Thus dividend type of returns should be a lower rate.*
- *NT: what is the market rate? (80% vs 72%)? **NT happy to receive further written comments in this regard highlighting legitimate structures to explain the concerns further.***

13.5. Alignment of the rules relating to preference shares with the principle of "interest incurred"

- *NT to consider further.*