

27 April 2020

Honourable Dr Nkosazana Dlamini-Zuma
Minister of Cooperative Governance and Traditional Affairs (COGTA)
87 Hamilton Drive
Pretoria
0002

BY E-MAIL: lockdowncomments@cogta.gov.za
Cc Mandisa Mbele: Secretary to the Minister (mandisaMB@cogta.gov.za)

Dear Minister Dlamini-Zuma

COMMENTS ON SCHEDULE OF SERVICES TO BE PHASED IN AS PER THE COVID-19 RISK ADJUSTED STRATEGY

Background

1. On behalf of the members of the South African Institute of Chartered Accountants (SAICA) we hereby submit comments on the Schedule of Services to be Phased-in to the Ministry of Cooperative Governance and Traditional Affairs (COGTA).
2. SAICA represents more than **46 000 accountants** of which nearly 5 000 are SARS registered tax practitioners and 3 903 are registered auditors. Nearly 28 000 of these members are employed in commerce and industry.
3. The below comments are made in addition to the **submission made to COGTA on 21 April 2020** on declaring tax compliance services as “essentials services”. That position remains and we have attached in **ANNEXURE A** a copy for ease of reference.
4. The context of our comments below should be seen in light of the fact that many regulators in South Africa rely on financial information from businesses and people. These regulators include:
 - 4.1 SARS
 - 4.2 CIPC
 - 4.3 IRBA
 - 4.4 JSE
 - 4.5 FSCA



4.6 COIDA

4.7 UIF

5. Such financial information must in many instances be processed to comply with the reporting, disclosure and calculation requirements of a particular regulator.
6. In fact, many of the COVID-19 **Disaster Relief Measures** themselves require submission of financial records of a business, **including by those that still cannot trade**.
7. Financial records therefore have to be continually updated, whether the business is in lockdown or not and **particularly in relation to SARS compliance obligations, as unfortunately our tax obligations have not been deferred like in most other countries**. SARS' instruction for taxpayers and tax practitioners to visit branches during level 5 lockdown has therefore been met with much reservation as to whether SARS complies with the relevant regulations as clause O(2)(f) of the essential services list does not seemingly allow CSARS such powers.
8. The capturing and processing of these financial records can either be done by the business itself or by professional services providers and the same applies to the statutory compliance submissions and payments.
9. "Essential services" and the "phased in services" therefore have to account for both scenarios depending on the importance of the statutory obligation and whether it is deferred or not. **For example, should government continue to require payments from taxpayers and for taxpayers to remain compliant, tax compliance should be an essential service in all aspects and at all levels.**
10. It should also be noted that many of the actual **Disaster Relief Measures** that businesses and employees can access, including UIF, TERS, PAYE deferrals, COVID-19 Disaster Relief Trusts and extended bank finance, will rely on up-to-date and processed financial records and information **before any relief is paid**.
11. Though we believe that many of these services can be performed offsite and we believe members will do so where possible, there are instances where these services cannot be processed offsite, which include (but are not limited to):
 - 11.1 Information in physical records is kept at business offices;
 - 11.2 Accounting and tax systems access are restricted from the office for IT security purposes;
 - 11.3 Audits can in some cases not be completed as some physical audit evidence is not available and site visits, for example for inventory counts and physical asset inspections, is not possible; and
 - 11.4 Rural areas where there may be no or limited access to broadband internet or ability to scan or photograph high volumes of documents. This applies especially to rural areas such as farming and agriculture.



12. We have made comments in relation to **both Level 5 and Level 4** restrictions given that it remains unclear whether South Africa could return to Level 5 in future and whether more stringent regulations could continue to apply in the 6 most infected metropolitan areas where the highest number of businesses are located.

COMMENTS RELATING TO LEVEL 5

CLAUSE NUMBER	COMMENT
H5	<p>Payroll system implementation seems to only narrowly address actual payroll processing and payment to employees. However, there is also payroll compliance such as PAYE, UIF, SDL and COIDA submissions and payments. Furthermore, the UIF TERS Benefit is also payroll information dependent as is UIF and COIDA benefits.</p> <p>Submission: H5 should be extended to payroll processing, compliance and benefit claims.</p>
H7	<p>H7 only covers professional services to essential service providers. However, with many non-essential businesses having to deal with a myriad of Disaster Relief Measures for which they need to apply to ensure their survival after lockdown, they require professional advice. There may be instances where this cannot be rendered from home or the relevant business needs to collect certain information for the business offices.</p> <p>Submission: H7 should be extended to allow professional services that are assisting businesses or individuals to apply for any COVID-19 related disaster relief, only where necessary, to access offices for such specific purpose of obtaining information for such professional services and advice.</p>
H (NEW) (Statutory Compliance)	<p>H7 only covers professional services to essential service providers. However as noted above, the updating of financial records and statutory compliance obligations apply to ALL businesses. This is not necessarily the same as professional services required by businesses operating during the disaster such as labour law/corporate attorneys or accountants required to determine operating cash flows. This would also include ALL tax compliance for which no compliance deferrals were given.</p> <p>Submission: A NEW H8 should be added that allows for the capturing, processing, reviewing and auditing of financial information for the purpose of fulfilling a statutory compliance obligation. This would apply to both the business (finance and tax teams) and the professional service providers.</p>



COMMENTS RELATING TO LEVEL 4

CLAUSE NUMBER	COMMENT
H5	<p>Payroll system implementation seems to only narrowly address actual payroll processing and payment to employees. However, there is also payroll compliance such as PAYE, UIF, SDL and COIDA submissions and payments. Furthermore, the UIF TERS Benefit is also payroll information dependent as is UIF and COIDA benefits.</p> <p>Submission: H5 should be extended to payroll processing, compliance and benefit claims.</p>
H7	<p>H7 only covers professional services to other level 4 services. However, with many non-level 4 services businesses having to deal with a myriad of Disaster Relief Measures for which they need to apply to ensure their survival after lockdown, they require professional advice. There may be instances where this cannot be rendered from home or the relevant business needs to collect certain information for the business offices.</p> <p>Submission: H7 should be extended to allow professional services that are assisting businesses or individuals to apply for any COVID-19 related disaster relief, only where necessary, to access offices for such specific purpose of obtaining information for such professional services and advice.</p>
H (NEW) (Statutory Compliance)	<p>H7 only covers professional services to essential service providers. However as noted above, the updating of financial records and statutory compliance obligations apply to ALL businesses. This is not necessarily the same as professional services required by businesses operating during the disaster such as labour law/corporate attorneys or accountants required to determine operating cash flows. This would also include ALL tax compliance for which no compliance deferrals were given.</p> <p>Submission: A NEW H8 should be added that allows for the capturing, processing, reviewing and auditing of financial information for the purpose of fulfilling a statutory compliance obligation. This would apply to both the business (finance and tax teams) and the professional service provider.</p>

Should you wish to clarify any of the above matters please do not hesitate to contact us.

Yours sincerely

Freeman Nomvalo
Chief Executive Officer

The South African Institute of Chartered Accountants



ANNEXURE A

21 April 2020

Honourable Dr Nkosazana Dlamini-Zuma
Minister of Cooperative Governance and Traditional Affairs (COGTA)
87 Hamilton drive
Pretoria
0002

BY E-MAIL: Mandisa Mbele: Secretary to the Minister (mandisaMB@cogta.gov.za)
Dan Mashitsho: Director General COGTA (zodwam@cogta.gov.za)
Dr Mmaphaka Tau: DDG Disaster Management (MmaphakaT@ndmc.gov.za)

Dear Minister Dlamini-Zuma

APPLICATION TO CLASSIFY TAX COMPLIANCE AND RELATED ACCOUNTING SERVICES AS ESSENTIAL SERVICES

Background

13. On behalf of the members of the South African Institute of Chartered Accountants (SAICA) we hereby apply to have **tax compliance and associated accounting services** be promulgated as “essential services” in terms of the Regulations to the Disaster Management Act 2002. This application follows the referral of our application by the Department of Trade and Industry to COGTA.
14. SAICA represents more than **46 000 accountants** of which nearly 5000 are SARS registered tax practitioners as well.
15. On the 18 March 2020 the President of South Africa, Honourable Cyril Ramaphosa announced that South Africa would be going into a 3-week national lockdown to address the national disaster of COVID 19. This lock down has subsequently been extended by 2 weeks.
16. Only services that were “essential services” as defined in the directive would be allowed to continue. The list of “essential services” promulgated on 25 March 2020 included such essential South African Revenue Services (SARS) services as determined by the Commissioner of SARS.
17. SARS on 25 March 2020 confirmed to SAICA that all tax compliance and tax payment obligations would continue as normal with no deferrals and that where SARS Branch visits were required by taxpayers or tax practitioners, SARS would by an appointment being made by the taxpayer/tax practitioner, issue a letter authorising such travel as essential service travel.
18. To date the legal basis for this approach by SARS remains unclear as the SARS only has a mandate to determine what is a SARS essential service in respect of *SARS officials and SARS Services*.



19. Subsequently, many other regulators including the CIPC have followed a more pragmatic approach and have deferred compliance obligations due to the lockdown in respect of tax compliance and obligations, only certain customs and excise compliance obligations as well as tax dispute processes, have been deferred.
20. It should be noted that in the OECD Revenue Services guidelines and in most other countries tax compliance has been deferred with same period as the lockdown.
21. In the amended regulations of 6 April 2020, payroll processing services were specifically added though it remains unclear if this includes the related tax compliance elements as well which are not payroll processing services per se as the former is merely determining who needs to be paid and what amount in terms of contractual obligations and labour law.
22. It also remains unclear how government will partially release the lockdown in the coming weeks.
23. In relation to tax, the following tax compliance as a minimum need to occur though there is substantially more including for Customs & Excise and Carbon Tax and well as processing payments for these:
 - 23.1 March 2020 payrolls due 7 April may still require processing and submission to SARS
 - 23.2 April 2020 payrolls will require processing and submission by 7 May 2020
 - 23.3 Employers Annual PAYE Reconciliations are due 30 May 2020
 - 23.4 VAT returns for March 2020 periods are due for submission 25/30 April 2020
 - 23.5 Annual Corporate Income Tax returns for April and May 2019 year - ends are due end April and May 2020
 - 23.6 Annual mining royalty returns for December 2019 are due end June 2020
 - 23.7 Annual deemed donations for section 7C Trusts were due 30 March 2020 and these were historically manually submitted to SARS branches as there was no e-filing functionality for Donations Tax
 - 23.8 Carbon Tax registrations must be completed and have been delayed due to SARS not being ready to proceed, with first submissions due July 2020.
24. In respect of all of the above significant financial record capturing, adjustments for tax purposes and review of accuracy have to be done which in some instances include records for a full financial year. It should be recognised that tax compliance has no materiality and even immaterial non-compliance can result in penalties and interest, costly disputes and/or being unable to obtain a Tax Compliance Certificate which enables trade.
25. Most worrying is that SARS even have continued requesting relevant information and conducting audits and verifications during the lockdown with no time extensions to comply.

26. Furthermore, many rural taxpayers such as farmers and small businesses rely on their tax practitioners and accountants to collect original documents to capture, record and process. This has not been possible during lockdown. In many of these areas there is no internet signal or high volume scanning available.
27. This has a further compounding effect that these professional services firms which would have had more than a month to spread the work will have to do 5 weeks of work in a few days which not deemed possible, resulting in inevitable non-compliance.
28. This has a severe knock on effect as all the disaster incentives, especially the small business compliance deferrals, which are only accessible if tax compliance has been (from 1 April 2020) and is maintained.
29. The current approach by SARS is clearly unreasonable and seems to be informed by the misconception that taxpayers, tax practitioners and accountants are able to process all these financial records remotely to the relevant accounting and tax systems and have access to the physical records required to be captured.
30. In this regard it would seem that government has to either choose to defer tax compliance and payment for the lockdown period as other regulators have done to allow for processing and submission **or** alternatively allow these tax and accounting practices to become “essential services” and contribute towards fiscal compliance and collections.
31. Given the already constrained fiscus, we believe that the best approach would be to allow tax compliance and financial accounting functions to immediately resume to ensure that fiscal collections are not interrupted.
32. We believe that these services do not require large numbers of people to congregate as it relies on a few number of professionals and that social distancing could be easily applied by the relevant employers and service providers to ensure the safety of staff and business owners.

33. Submission: It is submitted and applied for that the following “essential service be urgently added:

“Tax compliance and relevant accounting services provided to or required to be done by taxpayers, tax practitioners and accountants to ensure tax compliance and tax payments to the South African Revenue Service in respect of any Tax Act administered by SARS”

Should you wish to clarify any of the above matters please do not hesitate to contact us.

Yours sincerely



Freeman Nomvalo
Chief Executive Officer

The South African Institute of Chartered Accountants