	**Comment Sheet**
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		It is noted in the Explanatory Note that these proposals are the result of the 2017 discussion paper and 2018 consultations. SAICA notes the following from the 2018 consultations (minutes & notes are ours): *"NT and SARS had numerous consultative workshops with taxpayers, in general and specific industries. The discussion remarks will be incorporated into the comprehensive review of the Diesel Rebate system.* ***A new draft Diesel Rebate reform design*** *will thereafter be introduced during the 2019 legislative cycle for public comment in the Tax Administrations Law Amendment Bills and the schedules thereto."* It is noted that the new policy document where previous public comments were incorporated was never issued and was not issued with the current amendment proposals either. Given that NT and SARS expressed views that from a policy perspective Carbon Taxes were the future and that inefficient fossil fuel subsidies (IFFS) should be phased out (NT believes the diesel rebate to be such a subsidy), it remains unclear what the government official policy intent is.	The lack of policy certainty in South Africa remains the number one business challenge to our economy as acknowledged by the Minister in Budget 2020. The current amendment proposals should have been issued together with a final Policy document on Diesel Reform Design as NT had undertaken to do in 2018. It is recommended that the current amendments be postponed until such a policy document has been issued so that the legislation's alignment to policy can be determined.
		At the 2018 public engagement it was noted that the Diesel Rebate Scheme had drastically reduced from estimated R8bn to R2bn in tax expenditure. Budget 2020 indicates an estimated decline from R9bn	There should be closer alignment to National Treasury's policy review process and fundamental changes should be deferred until finalisation of that process.

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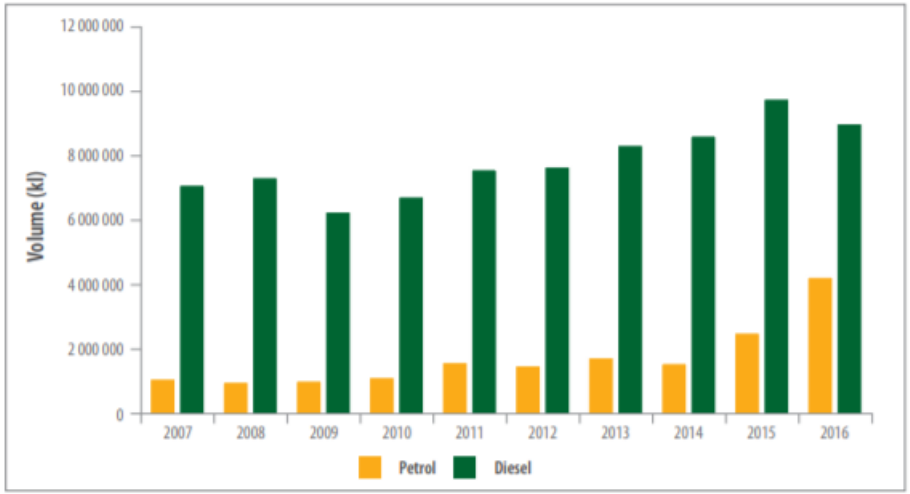
		(2016) to R3bn (2018) in 3 years. Diesel usage growth (outside Eskom) has remained stagnant since 2016 but has not drastically reduced as the tax expenditure decreases indicate. Figure 7: Petrol and diesel sales volumes in the commercial sector, 2007–2016  Source: DoE Although the incentive is important as many industries rely on it, its impact is declining as is evidenced by the extent of the tax spend on the incentive. An incentive should efficient and effective, yet many businesses are stating that the exclusions from the incentive and administrative matters underpinning the rebate are hampering their ability to claim this incentive. It remains unclear why NT and SARS have	Furthermore, given all the stated public consultations, it would be prudent for NT and SARS to provide clarity on the success of the diesel rebate scheme, why it needed change and why the proposed amendments would assist, especially given the concerns expressed regarding the importance of the incentive to various industries and the decline in the tax spend.

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		not set out a view in this regard, especially if the administration of the diesel refund scheme may be a primary contributor to this decline. To give context to this, if there are 24 000 registered users (per SARS / NT 2018) then at R3bn that is less than R125 000 per annum subsidy per user or the equivalent of the salary of appointing a half day administrator to manage compliance with the scheme. Compare that to MIDP where the incentive is R47 800 per vehicle (R28,7bn / 600 000 vehicles).	
		Notwithstanding significant additions to disclosures and administration for rebate users, no concomitant efficiency amendments are proposed for SARS as to processing of refunds etc. As noted, the burdensome administration and cost inefficiency of this scheme has undermined its value as an incentive.	It is recommended that efficiency criteria and time periods be introduced for SARS for audits and refunds.
		During the 2018 consultation, the following was raised by stakeholders: *"Concerns remain how the list will be interpreted and how such list may impact and hamper new beneficiaries/users. If the focus is on activities, it will be open for interpretation which means everyone may try to become a beneficiary/user. It may also complicate matters with dual use equipment.* *Taxpayers ultimately would like to have certainty. An alternative proposal was therefore made to rather focus on equipment instead of activities. Single use equipment will have less stringent administration requirements, while dual use equipment will be more closely monitored with stringent administration requirements."*	This concern does not seem to have been addressed at all. It again raises the question why no final policy document was issued, in which NT/SARS indicate that they have considered stakeholders' input, why certain proposals were rejected or how concerns will be addressed.

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		This point also overlaps with the documentation requirements. In the 2018 meeting it was stated: *"SARS noted that proof is required to substantiate the diesel usage of equipment and vehicles, so logbooks may not be the only document that is required. It was noted that the minimum requirements will have to be specified for each industry during the diesel rebate system reform."* Minimum requirements are stated but only in general terms i.e. not industry-specific.	
		At the 2018 consultation it was noted that there was no interest accrual provision for cases when audits took considerable time (i.e. beyond 21 days) which meant that it incentivised SARS officials to delay audits.	Interest should become payable from 21 days after the refund is payable unless SARS can prove that the user delayed providing it with documentation.
		At the 2018 consultations it was stated: *"It was noted that the reform will be introduced and implemented as smoothly as possible, either by a phased approach or a dummy run".*	There do not seem to be plans to do this.
2	75A.01(d)	The "**diesel refund**" definition refers to "*a refund and includes any diesel refund amount that is debt equalised against outstanding tax liabilities*". We welcome SARS separating the Diesel Refund from VAT and acknowledge that no refund will actually be made if there is a tax debt	We agree with this principle contained in section 191 of the Tax Administration Act that taxes can be set-off against each other, but due to incorrect statements of account issued by SARS showing debts due by

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		owed to SARS as the refund will be set-off against the tax debt. Taking into account the concerns raised by our members with regard to the statements of account that are not always understandable or correct in many instances, valid diesel refunds may remain unpaid whilst account issues are being sorted out with SARS.	taxpayers, this can result in valid diesel refunds not being paid to taxpayers. We thus urge SARS to ensure that this set-off only takes place where there are valid debts between persons who have reciprocal debts, which are both due and payable (see *Top Watch (Pty) Ltd v The Commissioner of the South African Revenue Service* (Johannesburg Case No: 2017/4557 and Pretoria Case No: 2016/90099) (judgment delivered on 12 June 2018)). Furthermore, we believe that legally a concomitant amendment has to made to section 2 of Act 21 of 2012 to expand the application of the set off provision in section 191 TAA to include Customs and Excise refunds against other tax debts as the Customs legislation cannot itself override the TAA where it is the TAA that empowers the "outstanding tax debt" set-off of the customs refund. The 2019 amendments to s191 TAA also only allow set-off of a tax refund against

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			a customs liability **and not** a customs refund against a tax liability.
3	75A.02(c)	It appears that every user who is already registered under the existing system, must now re-reregister. Although this is understandable, it must be noted this will increase the taxpayers' cost of compliance.	It is recommended that where possible, data that is already on the system be transferred to the new system so that mere verification needs to take place rather than a reinsertion of existing information. This will reduce the time taken and costs incurred by a taxpayer in order to be compliant.
3	75A.03(a)	Every user who is required to register must create a diesel refund user registration profile electronically through a communication system indicated on the SARS website.	It is hoped that the system has been thoroughly tested and will be ready for users to input their details before or at least by the time the legislation becomes effective. It is also hoped that communication to taxpayers on these new requirements will take place well in advance of them having to comply and that adequate user guides have been prepared for this.
3	75A.03(b)(vi) + definition of "**eligible purchases**"	"**Eligible purchases**" is defined as purchases of distillate fuel by the user – (aa) from wholesalers of petroleum products who are licensed as such in terms of the *Petroleum Products*	Not every end user company will be buying directly from the wholesaler and the legislation must allow for the situation where the vessel buys from an "approved" retailer.

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	and "**non-eligible purchases**" in Schedule No. 6, Part 3, Note 6(a)(ii)(bb)(A) + 6(a)(iv)(aa)	*Act*, 1977 (Act No. 120 of 1977); and (bb) which are – (A) Delivered to and stored in storage facilities of the user; and (B) Dispensed by the user for use and used by the user as prescribed in this Note. Section 6(a)(iv)(aa) reiterates that purchases other than from a wholesaler are "**non-eligible**" purchases. Most fishing companies have no storage facilities for diesel. The diesel is bought by a harbour association and put into the vessel's tank on board by the harbour association. An example is provided to contextualise the concerns regarding the above section: (aa) Vessels based in one of the smaller harbours in the country buy their diesel from the Harbour Association NPC (HA) of which all the companies owning these vessels are members. The HA buys all its fuel from a bulk supplier of diesel but is not itself registered as it only supplies its members. So is not required to register and it is not a wholesaler but effectively a bulk retailer.	It would also reduce costs for businesses if fuel purchased from the Fleet Management providers could be "eligible purchases" in terms of sub-paragraph (aa) as they then provide a complete service – procurement of fuel, delivery of fuel and fleet management services. The requirement that a rebate could only be claimed in respect of diesel delivered to, stored and dispensed from storage tanks situated on the diesel refund user's premises (as also contained in the Langholm judgement) indicates a shift from the "eligible use" linked to "qualifying activities" criteria to an on-site self-storage and use requirement. This appears to go against what was is currently happening in practice and being applied by SARS in certain instances. This requirement also seems impractical. For example, if a farmer takes his diesel tank to

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		The HA has storage tanks in the harbour and supplies diesel direct into the vessels tanks. (bb) (A) The fuel, as is the case in the small harbour in question, is not "*delivered to and stored in storage facilities of the user*". The fuel is delivered to the HA by the wholesaler and stored in the tanks of the HA (bulk retailer to its members). (B) The diesel is then dispensed by the HA (not by the user).	be refilled at a wholesaler then under the new rules its seems that it would not qualify as it was not "<u>delivered to</u>" the user by the wholesaler. Not allowing industry, including the shipping industry, to utilise these rebates in these circumstances does not appear to be equitable and should be reconsidered. Clarity on what evidence will be required by SARS to prove on-site self-storage is required as the invoice received will not necessarily indicate self-storage nor delivery to site.
3	75A.03(b)(vi) + definition of "**eligible purchases**" and "**non-eligible**	The impact of the Langholm judgement as to the meaning of s75 does not seem to be addressed properly. The current law has now been clarified but may not fully align to rule 75A eligible purchases policy and requirements. Section 75(1C)(a)(iii) reads as follows: *'Notwithstanding the provision of subsection (1A), the <u>Commissioner</u>*	It is recommended that section 75(1C) and particularly section 75(1C)((a)(iii), the main purpose of which was to allow the SARS to investigate compliance, be amended to delete the "eligible usage" requirements as affirmed in the Langholm judgement and

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	purchases" in Schedule No. 6, Part 3, Note 6(a)(ii)(bb)(A) + 6(a)(iv)(aa)	***may investigate*** *any application for a refund of such levies on distillate fuel to establish whether the fuel has been- (i)- (ii) . . . (iii) delivered to the premises of the user and is being stored and used or has been used in accordance with the purpose declared on the application for registration and the said item of Schedule No* 6.'	rather refer to the "eligible use" requirements in rule 75A, otherwise there will be an overlap of the same criteria, creating possible interpretive conflicts between section 75 and rule 75A.
3	75A.03 (c)	This section requires users to update their registration profile details within 14 days of any changes on the efiling system. In the fishing industry with fishing permits, a lot changes regularly, so updating every 14 days is not practical.	Consideration should be given to rather updating the information monthly.
5	75A.06(b)(i)	In terms of this section, diesel refund applications are restricted to eligible purchases and qualifying activities which are supported by the necessary information when such diesel was **purchased and used**. In the fishing industry, there is a lot of uncertainty in practice as to exactly when the diesel being claimed had been used. Where diesel is put directly into the vessels' tanks, this is diesel that was used to replenish that used on the previous trip. It is not the diesel to be used on the next trip. When the tanks on the vessel have been filled the first time, that rebate cannot be claimed as it is effectively stock and has not yet been used.	Clarity must be provided with regard to fishing vessels where there is no land-based storage, as to when the diesel purchased has been used.

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		Thereafter any diesel bought is what was used on the trip just ended, if it was a qualifying trip.	
8	Schedule No. 6, Part 3, Note 6(c)(i)(ee)	This section defines "**fishing harbour**" as a declared fishing harbour as contemplated in the Marine Living Resources Act, 1998 (Act No.18 of 1998) (MLRA). Fish, mainly squid, line fish and pilchards, are offloaded in one of the smaller harbours in South Africa under the supervision of Department of Environment, Forestry and Fisheries (DEFF). So it is evident that this smaller harbour is a fishing harbour. However, this harbour (which houses over 70 fishing vessels) has never been officially declared a "fishing harbour" in terms of the Marine Living Resources Act, 1998 (Act No.18 of 1998).	Having numerous undeclared small fishing harbours not participating in the diesel rebates does not seem equitable taking into account their importance in providing sustainable livelihoods to many individuals. It is suggested that the declaration of small fishing harbours as "fishing harbours" as defined (as contemplated in terms the Marine Living Resources Act) be accelerated to ensure that these small harbours are on a level playing field compared to the other larger harbours.
8	Schedule No. 6, Part 3, Note 6(c)(i)(ff)	This section defines "**fishing vessel**" and it refers to vessels with inboard motors only. The new "small scale" fisheries pushed by the DEFF could incorporate ski boats using outboard petrol or diesel engines.	It seems that the small scale fishermen will be penalised when compared to their larger counterparts. This does not appear to be equitable and should be reconsidered.

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10	Schedule No. 6, Part 3, Note 6(c)(iii)(ii)	In terms of the existing legislation and the MLRA (section 1(xviii)) any operation in support or in preparation of any fishing activity is considered fishing. In terms of the new proposals a "trip connected with the maintenance, repair or refit of a vessel" is now specifically excluded from the definition of qualifying fishing activities. An example is provided to contextualise the concern with this change. In the fishing industry, fishing vessels have to be "bottom" surveyed every 2 years in terms of the various Acts and Merchant Shipping (National Small Vessel Safety) Regulations. This means the vessel must be taken out of the water and placed onto a slipway. A vessel, due to its size or availability of slip time, often has to sail from its home harbour to another harbour to go on the slip. This trip to and from the slip harbour will now be excluded but in terms of the MLRA it is regarded as a fishing activity.	The South African Maritime Safety Authority places the onus on the owner and in some cases the master as well, to ensure that the vessel and the crew comply with the requirements of the regulations at all times. It is therefore recommended that trips connected with the maintenance, repair or refit of a vessel be regarded as a qualifying activity to align with the MLRA and the safety requirements imposed in respect of fishing vessels.
7	Schedule No. 6, Part 3, Note 6(b)(x)	This note provides as follows: "Forestry producers with an average production of less than R1 million turnover each per year who fail to keep the logbook information prescribed in paragraph (j) must reduce their eligible distillate fuel purchases by 20 per cent to exclude potential non-eligible purchases. The timber mills to which the forestry products of these producers are delivered must process the refund applications of these producers as agents on behalf of such producers in consultation with Forestry South	Clarity should be given on: • exactly what the underlined section means – would the timber mill include the amount in their VAT return as a diesel rebate or will there be some other mechanism provided

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		Africa (FSA)". In order to contextualise the concerns with regard to this new section, a current group structure is provided for illustrative purposes. A group consists of an agricultural Co-operative and subsidiary companies. The Co-operative markets timber on behalf of its members (growers) and also owns farms and mills. It has various mills in the group to which growers deliver timber and it also manages the process of members delivering timber to various other timber mills. Roughly 50% of its members (approximately 900) are not VAT vendors. In terms of the new rules, the administration of processing refund applications on behalf of these the producers (growers) will be immense due to the volume of suppliers (for relatively small amounts of refund). The cost to the timber mills to implement controls, checks and refund mechanism has not been considered in the draft legislation.	by SARS? • the wording indicates that timber mills "must" process the application – does this therefore mean that they will not have the option to refuse? • what does "in consultation with FSA" mean? • what will be the timing of the refund to timber mills and the required timing to pass the refund back to growers? In the example provided, the co-operative has numerous small growers who do not supply timber monthly or even regularly. This could potentially require single payments of a few Rand if the rebates cannot be accumulated and added to the next supply payment. Allowing accumulation of small rebates should be considered.

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5	Schedule No. 6, Part 3, Note 6(b)(iii)(kk)	This section excludes from the definition of “qualifying activity” the returning of any vehicle to the agricultural property after the delivery of agricultural products.	Although the return leg is not directly related to agricultural activities it is critical to these activities as the vehicle has to return to the farm in order to conduct more agricultural activities. This exclusion should be reconsidered as, for instance, a fishing vessel returning to the harbour, is regarded as a qualifying activity.
7	Schedule No. 6, Part 3, Note 6(b)(viii)	This section proposes a list of “dedicated equipment and vehicles” used in agriculture for which usage logbooks are not required (only storage logbooks are required). This change is commended as it reduces the administration burden on the users of the fuel.	One suggestion would be to allow businesses (users) to apply for specific equipment and vehicles to be dedicated vehicles based on their business model and that are not catered for in the list currently provided. This will reduce the administrative burden on the user as they only then need to keep the storage logbook and substantiate the dispensing of the fuel into the equipment and vehicle.
General Comments:			
See comments above.			