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Submission File

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South African Revenue Service
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BY E-MAIL: krsmit@sars.gov.za

Dear Karin

SAICA COMMENTS ON SARS DRAFT BUSINESS REQUIREMENTS SPECIFICATIONS (BRS) DOCUMENTS FOR TRUSTS (IT3(t)) AND DONATIONS (IT3(d))

We herewith take an opportunity to present the comments of the South African Institute of Chartered Accountants' (SAICA) Tax Technology Subcommittee, on the draft BRS documents in respect of Trust Income Distributions (IT3(t)) and Section 18A Donations (IT3(d)).

We set out below our general observations with respect to the proposed reporting requirements, as well as specific comments on the proposed BRS.

GENERAL OBSERVATIONS

1. With respect to the time and cost implications of the new reporting requirements, there is a concern that the administrative burden for small family or business trusts and Public Benefit Organisations (PBOs) could be unwarranted.

2. SARS is proposing a near real-time reporting system which would imply that these taxpayers would need to prepare monthly financial accounts to comply with SARS' reporting proposal. Most of these smaller trusts and PBOs only prepare financial accounts on an annual basis.

3. Furthermore, many of these taxpayers may not have the funds to develop the systems or employ tax practitioners to enable these kind of data submission events.

4. Problems with eFiling declarations take time to resolve and often the SARS contact centre is not able to resolve these discrepancies on the first call, requiring additional time and resources to resolve such issues.

5. Furthermore, the cost of implementing an Application Programme Interface (API) – which is still to be defined –would also be unduly burdensome for some of these taxpayers.

6. Submission: We propose that SARS consider implementing the reporting responsibility for taxpayers above certain thresholds in addition to gradually phasing in the reporting responsibility over a number of years.

7. There is also a need for SARS to provide coherent and easily accessible training to PBOs and trust registered representatives to enable these taxpayers to build and facilitate these data submissions, as the third-party data submission mechanism may not be as easily available to these taxpayers. SAICA would be happy to be involved in the proposed education and communication initiatives, as required. A contact point for 'problem' declarations needs to be established as some filers will not be familiar with the problem resolution process that SARS employs for eFiling and data submission issues.

8. Further to the above, adequate notice would need to be provided by SARS for the implementation of the amended BRS. We would therefore recommend that any changes to the BRS and relevant Government Notice be published for comment before finalisation.

9. In both the BRS draft documents, reference is made to an API. However, no specific details are provided as to what this will entail and therefore the potential cost involved and time to implement cannot be readily determined.

10. This would affect both the small and larger taxpayers who may have funds to implement but would need to follow certain processes to facilitate this.

11. Submission: The API specifications would need to be made available as soon as possible, in order to evaluate the extent of development that would need to be implemented by affected taxpayers.

TRUST BRS – (IT3(t))

Scope

12. The current proposal of the scope of the IT3(t) submissions, is to exclude the following taxpayers:

    a. Non-resident trusts;
    b. Collective Investment Schemes (CIS) (because their reporting is under IT3(b), (c) or (e) or Dividends Tax);
    c. Employee Share Incentive Scheme (ESIS) (reporting is under IRP5 and IT3(a)); and
    d. Real Estate Investment Trust (REIT) is defined as a company in the Income Tax Act.

13. The exclusion for the "Employee Share Incentive Scheme (ESIS) (reporting is under IRP5 and IT3(a))" is arguably too narrow. There are trusts which, for example, hold employer's shares and through dividends earned, fund bursaries or medical expenses of employees or their families that experience hardship. It may be debatable if such a scheme would be an ESIS *per se*.

14. Submission: We propose that the exclusion of ESIS be expanded to include any trust where all distributions made by said trust are reflected on an employer IRP5 or IT3(a).

15. We note that PBOs in general, are not excluded. In many cases, a PBO is constituted as a discretionary trust. PBOs are exempt from tax and also any distributions made by PBOs are not subject to tax in the hands of the beneficiary.

16. Submission: In light of the above, we recommend that trust PBOs should be excluded from the scope.

17. Furthermore, there are some trusts which only make distributions to PBOs. As such, these distributions would generally not be subject to tax in the hands of such PBO.

18. Submission: We propose an exemption be granted for when all distributions are made to PBOs to avoid said trusts unnecessarily having to put the necessary processes in place to report on information of no consequence to SARS. This is particularly relevant where the trust only vests current year income in the beneficiary (PBO).

Timing of data submission

19. The tax certificates currently produced by banks, asset managers and other institutions are easily systemised as they reflect transactions (income or capital gains) that have been paid out / generated in respect of specific assets.

20. The income earned by trusts is generally made up of income from a number of different sources and historically the IT3's / tax certificates in respect of the various assets are only made available by the various institutions in April/May. Some tax certificates, particularly in respect of capital gains, are only received in May/June.

21. The financial statements of trusts are very seldom produced by a "live system" and in practice many, if not most, are produced by accountants based on information provided to them by trustees/administrators.

22. Given that most of the information used to produce the financial statements is only available in April/May, it will be practically impossible for the financial statements, which are needed to establish the distribution information, to be finalised before 31 May.

23. A further issue is that fees charged are part of the net income calculation, which leads to the distribution calculation and these fees are often only quantified when the financial statements are produced.

24. An additional complication is that trust income is often earned in respect of other assets, for example, loan accounts in private companies, and this information is only available once the underlying company's financial statements have been finalised, which in practice is sometime between the February year-end and the following January (tax submission deadline).

25. In light of the above, it is our view that the date of 31 May would be achievable for only a very small volume of trusts or one's own personal trust, but impossible to achieve on a scale basis.

26. Submission: We propose that SARS reconsider additional transitional measures to phase-in reporting for those taxpayers who may struggle to meet this deadline.

Section 26 Notice

27. Trusts, or the trustees, would be a "*person who receives amounts on behalf of … or has control over assets of another person*".

28. We accept that a notice in terms of section 26 of the Tax Administration Act, 2011, will be issued that will require that trusts must submit returns for years of assessment, by the dates similar to that in Government Notice 241 of Government Gazette 41512 of 23 March 2018. It may be in a separate notice or Notice 241 will be expanded to include this.

29. The trustees of most trusts, the typical family trust for instance, have not in the past had an obligation to submit returns as a third party and would need time to prepare for this.

30. Submission: it is suggested that the effective date of requiring trusts to submit these returns, should be 2024. In other words, it must only be effective for the reporting period/ year of assessment that commences on/after 1 March 2023.

31. The notice must require the trustees to report, in the first year of reporting at least, once only and at the earliest by the same date as required by the current Notice (31 May) or an extended timeline in light of the earlier comments regarding timing.

32. Only thereafter, should they be required to report bi-annually, in line with the current Notice 241.

Review of BRS structure

33. From a technical specification and data format perspective it is noted in respect of row 507 of the BRS, "Amount Subject to Tax", that it is unclear whether the amount to be reported should include only the gross income amount or whether it should include the taxable income amount after taking into account any expenditure attributable to the said gross income.

34. Submission: SARS to clarify this aspect in the final BRS document.

35. The BRS build is designed for one reporting entity per submitting entity. However, the structure summary indicates that the build is suitable for multiple reporting entities. This is problematic as the data will not link to the respective entities correctly, using the current design.

36. Terminology relating to loans needs to be clarified to refer to the accrual event and its timing. The use of a start and end date is not suitable when describing this event and

opens one up to tracking the loan movement which, in our view, cannot be the intention of the BRS.

37. Regulator information for trusts is an unusual requirement. If this is not relevant, we believe that it should be removed.

38. Submission: SARS to take the above comments into account when finalising the BRS document.

Review of BRS information requested

39. A list of required fields was shared with parties that manage trusts, to determine if they can locate the required information.

40. The feedback received is that the information requested is on record in multiple locations which are not freely accessible.

41. In addition to this, we understand that to be able to supply this information on demand, a record of the required data fields will need to be maintained a year from the start of the data submission event.

42. Regarding whether or not the required information could be converted into a form of data storage for data collection and file build on demand, it was determined that this requirement will require budget, resourcing and capacity within information technology (IT), finance and development teams. Bringing a new data submission proposal to the table for 2022/2023 may be too late as budget planning activities have been initiated and this data submission has not been factored into the budget allocations of Corporate Trust entities.

43. With respect to larger taxpayers, we understand that they are actively working towards a fully automated SARS reporting function. To achieve this delivery, the reporting function will need to be automated and integrated into the Board of Directors or Shareholders meeting.

44. Where the Corporate Trust incurs a few distributions and has 1 or 2 beneficiaries, the eFiling option may be a real solution as the details can be captured one by one for no more than 20 investors at a time. However, where the number is greater, the ConnectDirect solution will need to be investigated.

45. All data within physical or electronic file storage must be secured, and this requirement will require budget, resourcing and capacity within IT, finance and development teams.

46. With respect to trust registration details, full registration details are not stored and will require development to enable the submitter to track.

47. In terms of the IT3(t) File Structure, there is a list of information which is considered standard Data Submission details expected to be known by the business area. Based on input from business, these are not necessarily standard Data Submission details and will need to be recorded for retrieval at file build or eFiling capture stage.

48. Affected parties have indicated that that this will be an implementation obstacle as new systems need to be created to collect, validate and store the information in the required format. The appropriate budget will need to be set aside for this and will need to go through the approval process.

49. Submission: In light of the additional work that needs to be performed and internal processes to be finalised in order to implement the proposed data reporting, we believe that additional time is required to allow for proper planning and implementation.

SECTION 18A DONATIONS (IT3(d))

50. With respect to the IT3(d) reporting in particular, a list of required fields was shared with parties that manage donations. These parties were asked if they can locate the required information and it was determined that the information requested is on record in multiple locations which are not freely accessible.

51. To be able to supply this information on demand, a record of the required data fields will need to be maintained a year from the start of the data submission event.

52. To convert the required information into a form suitable for data storage for data collection and file build on demand, budget, resourcing and capacity within IT, finance and development teams will be required.

53. Bringing a new data submission proposal to the table for 2022/2023 may be too late as budget planning activities have already been initiated and this data submission has not been factored into the budget allocations of corporate entities.

54. With regards to whether or not a limited form of this reporting could be positioned within the taxpayer's business, as an interim option with phased implementation/application, it is noted that some institutions are actively working towards a fully automated SARS reporting function. To achieve this delivery, the reporting function will need to be automated and integrated into the PBO daily activities or record-keeping processes.

55. The eFiling option may be a real solution for PBOs who received a handful of donations a year, but where the donations are connected to staff donations schemes, the ConnectDirect method will need to be employed.

56. All data within physical or electronic file storage must be secured. Such requirement will require budget, resourcing and capacity within IT, finance and development teams.

57. With respect to PBO donation activities, donation details (outside of the financial contribution for certificate issue) are not stored and this will require development to enable the submitter to track and to ensure that the required details are adequately recorded and stored in an accessible, but secured, space.

58. Where current business processes are insufficient to meet SARS' data requirements, new processes will need to be established.

59. In terms of the IT3(d) File Structure, there is a list of information which is considered standard Data Submission details expected to be known by the business area. Based on input from business, these are not necessarily standard Data Submission details and will need to be recorded for retrieval at file build or eFiling capture stage.

60. Affected parties have indicated that that this will be an implementation obstacle as new systems need to be created to collect, validate and store the information in the required format. The appropriate budget will need to be set aside for this and will need to go through the approval process.

61. Submission: In light of the additional work that needs to be performed and internal processes to be finalised in order to implement the proposed data reporting, we believe that additional time will be required to allow for proper planning and implementation.

Conclusion

62. We thank SARS for the ongoing opportunity to provide constructive comments and suggestions in respect of SARS' Vision 2024.

63. Given the technical nature of many of the above comments, we believe that ongoing engagement is required to adequately address concerns by various taxpayers impacted by the proposed changes.

64. To facilitate this, we believe that it would be useful to co-ordinate regular engagements between SARS and SAICA's Tax Technology subcommittee and other stakeholders.

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

Yours sincerely

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The South African Institute of Chartered Accountants