06 July 2015

South African Revenue Service
Private Bag X923
PRETORIA
0001

BY E-MAIL: acollins@sars.gov.za

Dear Ms Collins

SUBMISSION: DRAFT NOTICE ON REPORTABLE ARRANGEMENTS FOR SERVICES

1. Thank you for providing SAICA the opportunity to participate in the legislative process.

2. Please find SAICA Tax Administration sub-committee’s (a sub-committee of the SAICA National Tax Committee) response to the request for comments on the draft notice on reportable arrangements for services issued in terms of section 35(2) of the Tax Administration Act 28 of 2011 (TAA).

General – Proposal misplaced

3. The discussions with National Treasury and SARS on 26 March 2015 were encouraging as to government engaging on a major proposal, especially where the fundamentals as to why the original withholding tax on service was introduced were lacking and misplaced.

4. However, notwithstanding that after exhaustive discussion all parties agreed that if a reporting regime would be implemented to replace the tax inserted for this purpose, the reportable arrangements regime would be inappropriate; this draft notice was still issued.

5. It remains our view that the reportable arrangement regime is inappropriate for the purposes of SARS merely wanting to identify permanent establishments due to the non-compliance by foreign taxpayers to register for tax in South Africa.

6. Furthermore this proposal has been driven by SARS and on the basis that information already reported to the Reserve Bank is not made timeously available to
SARS. The proposal therefore indirectly represents penance to SA businesses for inefficiency in the public sector.

7. The reportable arrangements regime was created to address certain complex tax avoidance arrangements which the procurement of foreign services is not.

8. This regime is totally inappropriate to essentially address tax evasion by non-residents.

9. It seems counterproductive that SARS seeks to penalise SA residents for the tax evasion practices of non-residents.

Administrative burden

10. This reporting regime unfortunately represents another administrative function deferred from SARS to the taxpayer at the taxpayers cost.

11. Appointing SA residents as “SARS tax evasion monitors” with the threat of financial penalties seems inappropriate and unjust.

12. To avoid these penalties and the reputational risks of them being imposed, SA residents would have to spend exhorbant amounts on staff and systems just to ensure that SARS increases it chances of catching foreign tax evaders.

13. This seems to be a totally inappropriate cost burden on SA businesses, especially in a period of economic down turn and weak growth.

Promoter or participant

14. It is unclear who the participant is as the acquisition of services from a non-resident does not lead to a financial benefit to anyone involved and the SA resident receives no “tax benefit” either?

15. It is also unclear who the “promotor” of the procurement “arrangement” is as the SA resident is the procurer not seller of the “arrangement” and would not be managing or designing the services procured from the foreign resident.

16. Clarity would have to be provided on how and when the SA resident becomes liable to report per section 37 TAA.

Penalty regime - Quantum

17. It is administratively unjust to penalise the SA resident as harshly in accordance with section 212 TAA which could theoretically be R3,6 million, for what constitutes at most a minor administrative matter in relation to the SA resident.
18. Furthermore, as the section 212(2) penalty is based on the “tax benefit” as defined in section 35 TAA, yet the SA resident receives no tax or financial benefit but is exposed to the penalty based on the value of the services rendered to it by the non-resident if the latter evades tax in SA.

19. As discussed at the consultation session, a penalty akin to the fixed amount administrative penalty should have been considered which recognises the minor reporting transgression by the SA resident.

Penalty regime - threshold

20. The proposed transaction threshold is also inappropriately low at R10 million, as most of these expenses are incurred in foreign currency.

21. Furthermore, where a single transaction has multiple foreign services providers, e.g. advice on a dual listing or corporate reorganisation, is this single transaction with multiple participants or is the services acquired individually to be dealt with individually for disclosure purposes?

Conclusion

22. It is submitted that this proposal is misplaced and should be withdrawn.

23. Should National Treasury and SARS persist that they intend to burden SA businesses with a reporting regime for this specific matter, it should be done properly by inserting an appropriate provision in the TAA dealing with the matter.

Yours faithfully

Pieter Faber
PROJECT DIRECTOR: Tax
South African Institute of Chartered Accountants