

10 April 2014

Ms. A. Collins  
Legal & Policy  
The South African Revenue Service  
Lehae La SARS  
**PRETORIA**  
8000

**BY E-MAIL:** [acollins@sars.gov.za](mailto:acollins@sars.gov.za)

Dear Ms. Collins

**RE: CALL FOR COMMENT: DRAFT NOTICE LISTING ADDITIONAL REPORTABLE ARRANGEMENTS**

We note our appreciation for the opportunity to contribute to and provide commentary on the draft public notice listing arrangements for purposes of section 35(2) of the Tax Administration Act, 2011 ('TAA') for public comment.

Set out below, please find the consolidated commentary developed from both an internal review of the provisions as well as from consultations with stakeholders and industry. The commentary reflects the collective view of stakeholders and industry role players consulted with.

**1 Fee of R5 million not linked to a time period**

Problem statement:

Any arrangement in terms of which fees in excess of R5 million are or may become payable by a person who is a resident to a person who is not a resident with regard to technical, managerial and consultancy services rendered to that resident is, in terms of this draft notice, identified to have certain characteristics that may lead to an undue tax benefit. This will be the case if the person who is a not a resident has an office in South Africa, or has a physical address in South Africa or has established or maintains a bank account in South Africa or is registered as an external company in terms of the Companies Act, 2008.

The concern is that there is no time period linked to the R5 million threshold. This could result in some service arrangements that are open ended with fees being charged on an ongoing basis over a period of time (this could be lengthy) being regarded as a reportable arrangement.

Proposed solution / recommendation:

Should it be the intention that such arrangements are to be regarded as reportable arrangements, then it is proposed that such an arrangement becomes reportable when the R5 million threshold is met.

## 2 Clarity on certain terms contained in the draft notice

### Problem statement:

It is unclear whether the terms “office in South Africa” and “physical address in South Africa” mentioned in point 1 above include instances where an office or space is leased by the non-resident or instances where the non-resident uses a space in another person’s office.

### Proposed solution / recommendation:

Clarity is required with regard to the terms “office in South Africa” and “physical address in South Africa”.

## 3 Exclusion for certain non-residents

### Problem statement:

Non-residents are subject to taxation in South Africa on their income from a South African source. Currently, no exclusion exists should the non-resident in the scenario mentioned in point 1 above be required to include the fee received in their South African taxable income.

### Proposed solution / recommendation:

An exclusion should be provided for fees paid to non-residents that are South African taxpayers where the fee is included in the non-resident’s taxable income.

Yours sincerely,

**Prof Sharon Smulders**

**Head: Tax Technical Policy & Research**

Cc: [Ismail.momoniat@treasury.gov.za](mailto:Ismail.momoniat@treasury.gov.za)

[cecil.morden@treasury.gov.za](mailto:cecil.morden@treasury.gov.za)