

6 September 2019

The Standing and Select Committees on Finance

The Committee Secretaries

Mr Arico Kotze and Mr Allen Wicomb

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Dear Mr Kotze and Mr Wicomb

**SUBMISSIONS AND HEARINGS ON THE INDIRECT TAX PROPOSALS CONTAINED IN THE 2019 DRAFT
TAXATION LAWS AMENDMENT BILL, (DTLAB)**

The media statement inviting stakeholders to make written submissions and attend hearings on the DTLAB refers.

The BASA Indirect Tax Committee (BASA) hereby makes the following written submission regarding the proposed review of section 72 of the VAT Act and accepts the opportunity to make an oral presentation on 10 September 2019.

DTLAB: 71.(1) Amendment of section 72 of Act 89 of 1991

Whilst BASA welcomes amendments which align legislation to the Constitution and aid the combating of fraud and VAT evasion, it submits that these proposed amendments will render section 72 obsolete and thereby impede the Commissioner's ability to administer VAT fairly.

Section 72 is as relevant and necessary today as in 1991, notwithstanding the Constitution coming into effect in 1996. Transactions, activities or situations will always arise which have not been catered for in other provisions. Furthermore, specific provisions take time to legislate or are not necessarily justified due to the infrequency or uniqueness of circumstances. BASA is of the view that an ineffective section 72 will frustrate tax administration and stifle potentially vital economic activity.

1. The insertion of "and similar difficulties, anomalies or incongruities have arisen or may arise for any other vendor or class of vendors of the same kind or who make similar supplies of goods or services" creates practical difficulties. Firstly, unique vendors may have unique difficulties which require solutions and secondly, vendors (or SARS) may simply not be aware of similar difficulties experienced by other vendors.
2. Deleting the word "**an arrangement**", limits the application of the provision. Difficulties or anomalies may arise that cannot be resolved by way of a binary decision. Such a decision would presumably have to be based on existing provisions which would have proven to be inadequate, causing the difficulty, anomaly on incongruity in the first place.
3. Deleting "**the application of any rate of zero percent or any exemption from tax**", makes the provision too restrictive. Situations arise where zero rating a supply not catered for in section 11 is the logical

solution to overcoming difficulties, anomalies or incongruities. One example is when SARS permitted the status quo of zero rating all classes of brown bread to continue as an interim measure while legislation was being amended.

4. Deleting “**substantially**” and “**ultimate**” from the proviso makes the provision even more restrictive. It places an unreasonable onus on the taxpayer to prove that a decision (or arrangement) will result in exactly the same tax being paid. It is furthermore feasible that addressing difficulties, anomalies or incongruities by making a decision (or an arrangement) may increase supplies and thereby increase (change) tax collected. Conversely, not addressing difficulties, anomalies or incongruities (e.g. because the provisions of section 72 are too restrictive) may reduce (change) the tax collected.

5. The insertion of a second proviso disqualifying the application of section 72 if a decision would “be contrary to the construct and policy intent of this Act as a whole or any specific provision of this Act” creates further problems. Firstly, the ‘policy intent’ concept originates from court judgements and indicates how law should be interpreted, but it is questionable whether the phrase is at home within actual legislation. More importantly, it is precisely because other specific provisions are inadequate that section 72 relief is required. By design a section 72 decision would often be contrary to other specific provisions.

BASA recommends that discretionary powers conferred on the Commissioner by section 72 be kept intact but always used in the spirit of the Act and the Constitution. Alternative mechanisms should be explored to combat abuse of this important and necessary provision.

We appreciate the opportunity to comment.

Yours faithfully,



Ian Cloete

Chairman: BASA Indirect Tax Committee

