

## **BRIEFING NOTE**

### **Tax Avoidance and Section 103: An Interim Response**

SARS has released an Interim Response to the comments that have been made in the media and directly to SARS in response to the Discussion Paper on Tax Avoidance and Section 103 of the Income Tax Act.

An important goal of the Discussion Paper was to spark a healthy and vigorous debate over this important and often emotionally charged topic. The response to date has certainly been encouraging. The dialogue that has begun has generally been open and constructive – even when critical of the proposed changes.

In addition to general comments about the initiative, specific comments have focused upon the following areas –

- the distinctions drawn between evasion, impermissible avoidance and tax planning;
- the introduction of objective factors under the Abnormality Requirement, together with a new presumption of abnormality;
- the proposed changes to the Purpose Requirement;
- the application of section 103 to steps within a larger transaction;
- the use of the section “in the alternative”, together with related administrative concerns;
- the need to coordinate the introduction of a stronger GAAR with the phase-in of the new Advance Tax Ruling System (ATR System);
- the need for broader income tax reform;
- the use of additional specific anti-avoidance rules in lieu of a stronger section 103;
- a basic question as to whether change is really needed; and
- the proposed penalties for promoters and for the substantial understatement of income by taxpayers.

In the interests of continuing and promoting this dialogue, the Interim Response provides a summary of these comments as well as an initial response to them. In many instances, it seeks to clarify questions that have arisen in connection with the scope or potential application of various proposed amendments and to solicit suggestions in respect of how perceived problems and issues might be best resolved.

Interested parties are invited to send comments regarding the Interim Response to [policycomments@sars.gov.za](mailto:policycomments@sars.gov.za) on or before 13 April 2006 or for the attention of:

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