Dear Adele

**COMMENTS ON THE DRAFT CHAPTER 16 COMPREHENSIVE GUIDE TO CAPITAL GAINS TAX**

1. We herewith present our comments on behalf of the South African Institute of Chartered Accounts (SAICA) National Tax Committee on Chapter 16 of the Capital Gains Tax Guide (the CGT guide) released by the South African Revenue Service (SARS) and apologise for the delay in getting this to you.

2. We have deliberately tried to keep our submission as concise as possible, which means that you might require further clarification, in which case we request that you contact us.

**Deceased estate treated as a natural person (Section 16.3.4)**

3. The guide indicates that the deceased estate will be taxed as a natural person and therefore qualifies for the interest exemption of R23 800 under section 10(1)(i). There is, however, no indication as to whether the deceased estate will be entitled to an exemption of R34 500 under section 10(1)(i) in the event that the deceased person would have been 65 years or older on the last day of the year of assessment. Although the guide states that a deceased person and the deceased estate are separate persons, section 25(1)(b) stipulates that an amount received by or accrued to a person in his or her capacity as an executor of the estate must be regarded as income of the deceased estate if it “…would have been income [thus, gross income less exempt income] in the hands of that deceased person had that amount been received by or accrued to or in favour of that deceased person during his or her lifetime”.

4. We are of the view that a deceased estate will be entitled to an exemption of R34 500 if the deceased person would have been 65 years or older at the end of the year of assessment in which he or she died. If that person had still been alive, interest from a South African source would have only been included in his or her income (as referred to in section 25(1)(b)) to the extent that it exceeded R34 500.

5. **Submission:** We request that SARS provides further clarity in this regard.
6. We would appreciate clarity on SARS’s view is required in respect of the interaction between section 9HA and paragraph 67 of the Eighth Schedule to the ITA in a situation where a spouse who is a non-resident inherits property contemplated in paragraph 2(1)(b) of the Eighth Schedule of the Act from a deceased spouse who was also a non-resident. In its current form, section 9HA(1) triggers a disposal in the hands of a deceased in respect of all assets other than those disposed of to a surviving spouse as contemplated in paragraph 9HA(2). However, section 9HA(2) only applies in respect of a disposal to a spouse that is a resident. Therefore, a bequest of immovable property situated in South Africa will trigger capital gains tax consequences for the deceased if it is made to a surviving spouse who is a non-resident. It is unclear whether the deceased may disregard any capital gain or loss that results from such a disposal under paragraph 67 of the Eighth Schedule since section 9HA(1) merely triggers a deemed disposal and not a deemed disposal to the surviving spouse.

7. Submission: We submit that the technically correct position is that, following on from the deemed disposal triggered by section 9HA(1) at market value there is a subsequent actual disposal of the immovable property to the surviving spouse in terms of the Will. The subsequent disposal to the surviving spouse results in no capital gain or loss in terms of paragraph 67 but the deemed disposal results in a capital gain or loss in terms of section 9HA(1).

Example 1 – Redistribution agreement not involving a surviving spouse – page 617

8. There appears to be a typo under the heading “Result: Bob”. The capital gain is not R800 00 but should be R800,000.

9. Submission: We request that the example is corrected.

CONCLUSION

10. We would like to thank SARS for the opportunity to provide our comments to the CGT Guide.

Yours sincerely

Christel van Wyk

PROJECT DIRECTOR: TAX

The South African Institute of Chartered Accountants