29 July 2008

Attention: Minister Trevor Manuel
National Treasury
Private Bag X115
Pretoria
0001

By e-mail: patti.smith@treasury.gov.za

Dear Sir

SUPPORTING DOCUMENTATION TO TAX RETURNS

The following comments have been provided by a special task team set up by SAICA’s National Tax Committee to provide comments on the regime change from secondary tax on companies to the new shareholders dividend tax.

While welcoming the greater efficiency and use of technology in relation to the submission of tax returns (particularly e-filing) we are very concerned about a significant legal disadvantage at which taxpayers have now been placed in the absence of proper legislative support for what is not merely an administrative change.

Section 76 of the Income Tax Act results in a penalty of up to 200% of the underpayment of tax in certain circumstances, including if the taxpayer has made an incorrect statement in his or her return.

In the past, where issues were not crystal clear (such as whether a profit on disposal of, say, shares was a capital or revenue profit) the taxpayer could take a view that it was, say, capital, and then make full disclosure to the SARS in an annexure explaining all the facts and circumstances and why he or she believes that the profit was on capital account. In such circumstances, if the SARS took a contrary view and sought to tax the profit as trading, the SARS could never allege that the taxpayer sought to mislead the SARS or had made a false statement.

With the new requirement where a tax return without supporting schedules is submitted, and the tax return does not make provision for an explanation, it is open to the SARS to impose the 200% penalty on the grounds of an incorrect statement or default in the return. The
taxpayer could be accused of making an incorrect statement, but would have been denied the ability to do otherwise.

We acknowledge that section 76 of the Act is in the course of being reformulated, but this does not in and of itself resolve the problem. Submitting a return without supporting schedules or explanations is a feature of a self assessment system. But the latter is usually supported by a whole series of checks and balances, which our present system does not have. What we have is a case where, *de jure*, the taxpayer is assessed by the SARS, but *de facto* there is a self assessment system. The advantages of the former (such as described) are now effectively being withheld, and nothing has been put in its place; nor has the law been amended to give *de jure* recognition to the *de facto* situation.

Please do not hesitate to contact me should you require further information.

Yours faithfully,

M Hassan CA(SA)
**PROJECT DIRECTOR: TAX**
*The South African Institute of Chartered Accountants*