31 January 2011

Legal & Policy Division
SARS
PO Box 402
Pretoria
0001

BY E-MAIL: policycomments@sars.gov.za

Dear Sir/Madam

COMMENTS: DRAFT GUIDE ON THE TAXATION OF PROFESSIONAL SPORTS CLUBS AND PLAYERS

We thank you for the opportunity to provide input on the draft guide on the taxation of professional sports clubs and players. We set out below our submission comments. We note generally a lack of clear references to the relevant sections and paragraphs of the Schedules to the Income Tax Act and VAT Act, and that the format of the guide also lacks consistency. We therefore recommend the following proposed changes:

Page 1: The concept of a “club” should be clarified in the section entitled “General principles”.

Page 1: Gross income, second line: ‘The definition of “gross income” in section 1 of the Act includes ....’

Page 1: Gross income, second paragraph, last sentence: ‘The value of exchanged .... provided that what is received or accrued has an .....’

Page 2: “Trade” is defined in section 1 of the Act as including -

Page 2: Allowance and taxable benefits, third sentence: ‘In terms of section 8(1) of the Act the portion of the allowance .....’

Page 2: Allowance and taxable benefits, fifth sentence: ‘Taxable benefits in terms of the Seventh Schedule (also referred to as fringe benefits) ... ’

Page 2: Allowance and taxable benefits, last sentence: ‘An example of a fringe benefit is the right of use of a company car.’ ‘The cash equivalent of the taxable benefit is included in gross income (paragraph (i)).’
Page 2: CGT, third sentence: 'In terms of the Eighth Schedule CGT is a tax levied ...'

Page 2: last bullet, second sentence: 'The term “juristic person” ..... (like entering into contracts) as if it were a natural person.'

Page 3: “Provisional tax” is paid in terms of Part III of the Fourth Schedule by taxpayers earning....'

Page 3: ‘VAT is an abbreviation for the term value-added tax, which is an indirect tax levied on the taxable supply of goods or services by any vendor in the course or furtherance of any enterprise carried on by him; as well as on the importation of goods by any person into South Africa, and on the supply of any imported services by any person.'

Page 3: ‘The essential characteristics of a VAT-type tax are as follows:

- The tax (output tax) applies generally.....
- The supply must be in the course or furtherance of an enterprise carried on by any person who is required to under the VAT Act (vendor)
- It is proportional to the price charged for the goods and services
- The taxable person (vendor) may deduct the tax (input tax) paid (if on the payments basis) or incurred (if on the invoice basis) during the preceding stages if he is in possession of a tax invoice (that is, the burden of the tax is on the final consumer)."

Page 3: End of second last paragraph under VAT: ‘Taxable supplies include supplies for which VAT is charged at either the standard rate or zero rates. Input tax can only be deducted in respect of taxable supplies. However, notional input tax can be deducted in respect of second-hand goods in terms of the definition of input tax in section 1 of the VAT Act, read with section 16(3) of the VAT Act.’

Page 3: ‘An “employee” is defined in paragraph 1 of the Fourth Schedule and is a person who receives remuneration or to whom remuneration accrues. In terms of the exclusionary subparagraph (ii) of the definition of remuneration in paragraph 1 of the Fourth Schedule a person who receives remuneration is deemed to be an employee .....’

Page 5: 4.1.2 Income tax implications

Make a clear distinction between when the sports club pays the transfer fees for another sports club (capital asset) or the sportsperson (remuneration) or the independent contractor (capital asset).

Par 4.1.2 is incorrect in stating that the definition of "asset" in the 8th Schedule excludes trading stock. It does not exclude trading stock.
Par 4.2.2: Clarification is required as to why the deduction of the signing fee is to be spread over the period of the contract, presumably in terms of section 23H as section 11(cA) will not apply since the guide makes it clear that the signing fee is not a restraint of trade. Arguably the benefit derived from the signing fee is the fact that the sport person signs the contract. The benefit is derived immediately and not over the period of the contract. The compensation for continuing to play for the club will be remuneration and not the signing fee.

Insert after the first sentence: ‘If a contract with a club is ended or transferred before the original expiry date, the balance of the signing-on fees will be deductible during the period when the contract is ended or transferred. The income tax implications of the signing-on fees received by the sportspersons are discussed in 5.2.2.’

Page 8: 4.3.3 Income tax implications for the recipient of the sponsorship
Illustrate by means of an example if a cool-drink company sponsors free of charge cool-drinks for the spectators and clothes for the sports team for a specific sports meeting of the sports club.

Page 11: The VAT implications in respect of prize money for clubs should be discussed under the heading: 4.4.3 VAT implications and not under the VAT implications (5.5.3) for sportspersons.

Page 12: 4.6.2 Income tax implications, Second paragraph
Elaborate on the income tax effect for the club when tickets are given to holders who are entitled to it.

Page 13: 4.7 Insurance premiums paid by clubs
This paragraph deals only with loss of income insurance. What are the tax implications in the hands of both the club and the sports person of capital nature payments for permanent disability in addition to loss of income? The same comment applies to par 5.6.2.

Page 18: 5.6.3 VAT implications
Also discuss the VAT implications of the insurer and link it the independent sportsperson who receives the indemnification.

Page 19: 5.8.1 Introduction, a) Income tax implications
Third paragraph, first sentence: ‘All allowances and advances are included in a taxpayer’s taxable income in terms of section 8(1), unless the money .....’

Fourth paragraph, fifth sentence: ‘For example, uniform allowances (section 10(1)(nA) and relocation cost allowances (section 10(1)(nB) are exempt from income tax, .....’

Page 20: b) VAT implications
Second sentence: ‘The club may, however, in terms of section 17(2)(a), proviso (ii) deduct input tax .....’

Page 20: **5.8.2 Travelling allowance**
Par 5.8.2: To ensure that the guide is current, we suggest that 80% is used in the body of the document and the 60% inclusion applicable in the past is included as a footnote.

Page 20: **5.8.3 Reimbursements for business travelling using private transport**
Par 5.8.3: The wording creates the impression that the reimbursement will not be subject to PAYE only of the R 2.92 and R 8,000 limits are not exceeded, which is not the case. Even if the limits are exceeded, the reimbursement will not be subject to PAYE but will be taxable on assessment.

Page 23: **b) VAT implications**
First paragraph: ‘....for any fringe benefit provided to an employee in terms of section 18(3).’

Second paragraph: First sentence: ‘The VAT treatment of fringe benefits generally follows the timing (section 9(7)) and valuation (section 10(13)) rules as set .....’

Page 24: Insert a comment after the first paragraph on page 24 on the VAT implications that it is an exempt supply (section 12(c)).

Page 24: **5.9.3(b) Right of use of a motor vehicle**
Par 5.9.3(b): We suggest that this paragraph is updated with current legislation before finalising the draft.

Pages 25 & 26: **Comment on the VAT implications with regards to the employer and employee in respect of the following:**

5.9.4 Personal use of business cellular phones and computers
5.9.5 Free or cheap communication services
5.9.6 Payment of the income protection policy premium by the club
5.9.7 Relocation/transfer costs of an employee
5.9.8 Uniforms

Page 27: **b) VAT**
Second paragraph; first sentence: ‘... fringe benefit provided to the player, but a nil value applies in terms of paragraph 12B of the Seventh Schedule.’

Third paragraph; last sentence: ‘... meals at their place of work as this is specifically denied in terms of section 17(2)(a) of the VAT Act.’
5.10.2 Medical Fund Contributions a) Persons below the age of 65
First paragraph: ‘Allowable deduction for persons below the age of 65 in terms of section 18.’

5.10.4 Retirement annuity fund (RAF) contributions
Also discuss the effect of employer contributions in respect of pension and retirement annuity fund contributions.

Page 31: The section entitled “Donations received by clubs and players” should expand on the potential donations tax implications of donations made to recreational clubs by professional sport clubs.

Please do not hesitate to contact us, should you have any questions regarding the above.

Yours faithfully

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