Dear Sir

DEFINITION OF GROUP OF COMPANIES: REQUEST FOR INTERPRETATION NOTE

The SAICA National Tax Committee request that SARS provide taxpayers with an Interpretation Note setting out the interaction of section 1 definition of group of companies with that contained in section 41 when applying the provisions of section 41 to 47. A practical example would be (as is the case in the latter) a foreign parent company (FC) that holds 100% directly of a SA company (A) and also holds directly 100% of another SA company (B) i.e. a pyramid holding structure.

The clarification required is as follows:

- In terms of section 1 definition of group of companies, FC, A and B form a group.
- In terms of section 41 definition, FC does not form part of the group. So, does this mean that (a) A and B do not form part of a group or alternatively (b) that A and B do form part of a group for purposes of section 41 of the Income Tax Act and that any transactions between the two would qualify for roll over relief in terms of section 41 but that transactions between either A and FC or B and FC would not qualify for roll over relief. This latter aspect i.e. alternatives (a) and (b) is what we seek clarity on. The (b) alternative suggests that the purpose and effect of section 41 is merely to exclude certain companies from participating in roll over relief transactions as opposed to determining whether a group exists at the outset as this is the purpose of section 1 definition.

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

Yours faithfully