Ref: # 288123  
Submission File

09 October 2009

South African Revenue Service  
Private Bag X923  
PRETORIA  
0001

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

Dear Sir/Madam


We refer to the abovementioned call for comment. Enclosed is the SAICA National Tax Committee’s submission.

1. **Paragraph 4.1.3. – User requirement**
   We recommend that the Interpretation Note clarifies what is meant by *used* the asset. More specifically whether the asset is being *used* by the taxpayer in the following example i.e. in the construction of a capital asset. Silke at 8.117 makes the following comment:

   ”When a taxpayer uses his existing machinery to build or construct new machinery for use in his business it is submitted that the existing machinery is used for the purposes of his trade even though it is creating new capital assets, and wear and tear is allowable on such plant.”

2. **Paragraph 4.2.6. – Leased assets**
   Previously lessors would have included in gross income the full lease income (inclusive of VAT). Practice Note 15 allowed the output VAT charged in respect of the transaction to be added to the cost of the lessor's asset for wear-and-tear purposes. While the cost for write off is set out clearly in paragraph 4.2.6, no guidance is given in relation to the treatment of gross income. Does one reduce the lease income by the same amount of VAT that is adjusted for by the lessee? That is \( \frac{\text{number of instalments}}{\text{total instalments}} \times \text{VAT} \). This should be addressed in the Interpretation Note.
3. **Paragraph 4.2.8. – Repaired assets**
   The relaxation in this paragraph is welcomed. In Issue 1 it was clear that “the Commissioner must” increase the write-off period if section 11(d) repairs have been effected. In terms of Issue 2 of the Interpretation Note, it is clearly indicated that the Commissioner “may” extend the write-off period. Although, the relaxation is welcomed, it is still doubtful if it is correct that the original write-off period determined at acquisition of the asset should be influenced as a result of subsequent repairs undertaken. Such revision of the write-off period could also result in significant practical problems for the taxpayer and it is doubtful if the change in most cases would be material.

4. **Paragraph 4.3.2. - Methods for determining the allowance**
   Factors to take into account in relation to the write-off period of assets not included in the schedule: We are of the opinion that accounting write off periods should also be taken into account.

5. **Paragraph 4.3.5. – “Small items”**
   The revised paragraph now clearly states that the R7 000 “small asset” 100% write-off will not apply to assets acquired by lessors for the purpose of letting. Although this appears to be in line with the “old” Practice Note 15, there must be a “small asset” rule for assets being let out by lessors? If the R7 000 is not acceptable to SARS, it is suggested that a revised limit be set for assets of lessors.

6. **Paragraph 4.3.6. - Assets previously used to produce amounts that were not included in the taxpayer’s income**
   In this paragraph and in Example 3, it is stated that when an asset was previously used to produce amounts not included in the taxpayer’s taxable income, and the asset is subsequently introduced in the taxpayer’s trade to produce taxable income, the write-off should be based on the original cost of the asset, reduced with the number of years that the taxpayer used the asset to produce non-taxable income.

   In practice, most SARS offices allowed a taxpayer to value such an asset when it is introduced for trade/taxable purposes, and then began writing-off such an asset based on the total write-off period (for example 6 years for furniture). The amount qualifying for a deduction is still reduced by the “non-taxable” use as the asset is of value. This treatment also appears to be in line with section 11(e) allowing for the write-off to be based on the “value: of the asset”. This is also in line with the treatment followed when a second-hand asset is acquired or an asset is inherited.

   It is therefore recommended that this treatment be allowed in terms of the Interpretation Note as an alternative to the treatment suggested in Example 3.
7. **Paragraph 4.3.9. - Assets not yet brought into use for purposes of trade**
   It will be helpful if the Interpretation Note dealt with assets used, then mothballed and then brought into use again.

8. **Annexure A – Schedule of write-off periods acceptable to SARS**
   The word “tank” has been inserted after the word “Containers” to clarify that the reference is to the large containers used for transporting freight.

   The insertion of the word “tank” may lead to different interpretations of the word, and thus tanks or containers used other than for transporting freight may arise.

   Annexure A provides write off periods for personal computers and mainframes. It is recommended that the write-off period for servers be clarified.

Please do not hesitate to contact me should you wish to discuss the above.

Yours faithfully

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