Attention: Andrea Vink

By email: Andrea@logistastbco.za

Dear Andrea

REQUEST FOR A NON-BINDING OPINION

I refer to your email dated 01 June 2010 wherein you requested a non-binding opinion relating to the new amendments of section 12H of the Income Tax 58 of 1962.

The issue at hand is whether the new amendments are applicable to apprenticeship that commenced in the years 1 January 2007/8/9 and ended 31 December 2009?

LAW AND APPLICATION OF THE LAW

The effective date of the amended section 12H is the 1 of January 2010. Therefore, the amendments are only applicable to learnership agreements that have been concluded at the beginning of January 2010. The effective date is the date the amended section becomes applicable. Section 12H cannot be applied to contracts that where concluded before the effective date as is does not find relevance.

Thus far, Interpretation Note 20 has not yet been revised to give effect of the latest changes in section 12H and there is no provision in the Act provided by the legislature to give a retrospective effect of this section.

In addition, the explanatory memorandum only makes examples containing contracts that where signed at the beginning of January 2010 (after the effective date). This serves as an indication that the section is not meant to be applied retrospectively.
CONCLUSION

In ending, the amended section 12H cannot find application to contracts that where concluded in the years 2007/8/9.

Disclaimer

In conclusion, it should be noted that the views, as elaborated above, merely express our view on a given set of facts and may be considered to be a non-binding ruling. Should at any stage in the future be discovered that the facts as represented to us, for the purpose of obtaining this ruling/ opinion are inaccurate; S.A.R.S. retains the right to withdraw this ruling/ opinion retrospectively. In so much as this letter merely expresses our view on the issue under discussion, it is issued without prejudice to any other party or ourselves.

Yours faithfully,

CAROL NKUMANDA
LEGAL ADVISOR

DAVID LOMBAARD
LEGAL MANAGER