Dear Sir / Madam

CALL FOR COMMENT: DRAFT INTERPRETATION NOTE SECTION 11(e) DETERMINATION OF THE AMOUNT OF THE DEDUCTIONS ALLOWABLE

We refer to your call for comment regarding the above-mentioned. Set out below please find SAICA’s comments, which have been provided by members of our National Tax Committee.

The comments in the first paragraph of 3.2.5 do not seem to be supported by any legislation in the Income Tax Act.

Paragraph 3.2.8 does not appear to be in line with current legislation. The first sentence of this paragraph states that when the assets are “damaged or destroyed” s 8(4)(e) permits the taxpayer to elect that any recoupment of capital allowances arising under s 8(4)(a) and then it gives the example “insurance proceeds” to be excluded if certain conditions are satisfied. This appears to be how s 8(4)(e) read before the 2003 amendments. In its current version section 8(4)(e) allows for the recoupment not to be included if the taxpayer has elected that either paragraph 65 or 66 of the Eighth Schedule applies. While paragraph 65 applies to involuntary disposals, paragraph 66 applies to “Reinvestment in replacement assets” and there is no condition that the assets sold and replaced must have been damaged or destroyed. It is therefore requested that the wording in par 3.2.8 of the draft Interpretation Note be corrected to state that s 8(4)(e) also includes “reinvestment in replacement assets” as a result of a normal disposal not only “involuntary disposals”.

In paragraph 3.2.8 of the draft interpretation note the quid pro quo for not including the recoupment is that the value of the replacement assets must be reduced with the recoupment elected not to be included. Although in line with section 11(e)(iv) this is not in line with the prescribed treatment in section 8(4)(eB) which reads as follows:
“Where a replacement asset in relation to an asset of a person as contemplated in paragraph (e) constitutes a depreciable asset, that person shall be deemed to have recovered or recouped in a year of assessment so much of the amount contemplated in paragraph (e) apportioned to that asset as contemplated in paragraph (eA) as bears to the total amount of the recovery or recoupment contemplated in paragraph (e) the same ratio as the amount of any deduction or allowance allowed in that year of assessment in respect of that replacement asset bears to the total amount of the deduction or allowance (determined with reference to the cost or value of that asset at the time of acquisition thereof) allowable for all years of assessment in respect of that replacement asset.

[Paragraph (eB) inserted by s. 18 (1) (b) of Act No. 45 of 2003 and substituted by s. 9 of the Revenue Laws Amendment Act, 2007.]

When the section 8(4)(e) and s 8(4)eB) amendment was done in 2003, the wording in s11(e)(iv) was not brought into line. These sections, both stating how the “deferred recoupment” in s 8(4)(e) should be treated therefore contradict each other. It is therefore suggested that the wording in s 11(e)(iv) be brought into line with the wording in s 8(4)(eB) (which is similar to the wording in paragraph 66 of the Eighth Schedule) and that the wording in the interpretation note be amended accordingly.

We recommend paragraph 3.3.3 (a) be clarified by mentioning that the existing practice notes will apply in respect of assets acquired on/before 31/12/2008 as the new interpretation note only applies to assets acquired on/after 1 January 2009.

We recommend that the limit for small items (paragraph 3.3.5) be increased to R10 000 from R5000 to account for inflation since the last increment.

The suggested rate for portable generators on page 17 of the draft interpretation note is 5 years. Seen in light of the current electricity crisis and the effect on small business there is a strong case to be made for an accelerated depreciation rate (for example 3 years) for portable generators as a lot of businesses will not be able to survive without them.

Annexure: Cell phone Masts / Antennas: Should only refer to Cell Phone Masts. The cell phone antennas are attached to the Cell Phone Masts. The Antennas useful live is similar to other radio or communication equipment, i.e. 5 years.

We have noted that the useful live of containers has been changed from 5 years to 10 years. In the Cell phone Industry Community Operator containers are written off over 5 years for tax purposes.

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