Dear Madam

CALL FOR COMMENT: 2007 TAX RETURNS

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.

As requested, we set out below our comments relating to the individual (IT 12S and IT 12C) income tax returns for the 2007 tax year:

- The space in which to write the taxpayer’s name, telephone number (especially if it is not a local South African number) and email address is insufficient;

- In respect of married non-resident individuals, it must be indicated whether they are married in or out of community of property, even though these marital regimes may not be applicable to such individuals;

- Uncertainty exists amongst taxpayers in respect of marriages in community of property. When must passive income such as interest income be 100% included in both spouses returns and when must only 50% be reflected in each spouse tax return? This should be clarified on the form;

- With reference to marriages in community of property, some assets that have been inherited are excluded from the joint estate, and the proceeds from such assets are only taxed in the hands of one of the spouses. The current form does not make provision for this;

- Provision should be made to note joint bank accounts;

- Foreign banking details are not recognised as valid and in many instances expatriate employees do not have SA bank accounts or are subject to tax equalisation and thus any
refunds should not be refunded to the taxpayer. It is therefore preferential that the compulsory disclosure of SA bank accounts is no longer required;

- The form does not make provision for taxpayers that only have credit card accounts;

- Provision must be made for some other form of payment of tax refunds as not all taxpayers have bank accounts in their own names;

- Where a taxpayer claims travelling expenses, the form should be designed to contain an indication by the taxpayer whether the travelling expenses are claimed against a travel allowance or in terms of section 11(a) of the Income Tax Act No.58 of 1962 (the “Act”) and also to allow the taxpayer to indicate whether the mileage to be used is the deemed or actual mileage as supported by a logbook.

- There appears to be a problem with commission earners who claim travel expenses. It appears that one must not fill in the mileage and details of the car under travel claim on page two as the system then expects to see a travel allowance which there is not as is the taxpayer is a commission only earner;

- Some returns have been rejected by SARS on the basis that code 4005 (taxpayers own medical fund contributions) was not completed but code 4020 (medical expenses not recovered from the medical fund) was completed. Not all individual taxpayers are members of medical aid funds but simply pay for medical expenditure on a cash basis. It is recommended that the return is amended to specifically address the question whether the taxpayer is a member of a medical aid fund;

- The income tax returns do not request whether the taxpayer is a resident for South African income tax purposes or not and, accordingly, there is no place on the return to indicate the number of days a non-resident taxpayer has been physically present in South Africa;

- In respect of expatriates working in South Africa, who are not residents for income tax purposes, and are, therefore, only liable to South African income tax on South African sourced income, there is no place on the income tax return to indicate non-South African sourced employment income. The problem here is that, for example, the expatriate may have R100,000 employment income indicated on an IRP5 tax certificate, but may have spent 100 days working outside of South Africa during the tax year. This means that R27,397.26 of that R100,000 should not have been subject to employees’ tax. In prior year income tax returns the full R100,000 would have been indicated under employment income and the 265 days spent working in South Africa would have been indicated, with the result that SARS would have known that R27,397.26 should not have been subject to employees’ tax and would have refunded the expatriate with the employees’ tax relating to that income. In the 2007 income tax return there is no way to indicate this. The result is that practitioners have declared the employment income less the non-South African sourced employment income. However, this means that the amount indicated as employment income will not correspond with the amount stipulated on the IRP5 tax certificate. This may lead to queries from SARS and, therefore, also to additional expenses for these taxpayers;

- The 2007 returns only provide for foreign tax to be claimed under codes 4111, 4112 and 4113. A further “miscellaneous” code should be included to allow for a foreign tax credit to be claimed against income reflected on the IRP5 tax certificate. As an example a SA tax
resident individual goes on assignment to a foreign country for a 5 month period (and thus
does not meet the section 10(1)(o)(ii) exemption requirements). During this time the
employee continues to remain on the local SA payroll and at year-end the IRP5 reflects his
full taxable income for the year. There is no remuneration paid to the individual from
abroad. The individual suffers host tax liabilities in respect of their assignment under the
domestic tax rules of that country (e.g. if on assignment to a non-treaty country or, if to a
treaty country, the conditions of treaty exemption in the host location are not met). As the
individual has suffered double taxation on their employment income they are entitled to
claim a credit for foreign taxes paid. The problem with the current form is that in order for
a foreign tax credit figure to be reflected in the IT12C form (page 3 under code 4111) it is
necessary to reflect a foreign income under the "taxable foreign income section". As the
individual has not received any "foreign income" and all income has been reflected in the
IRP5 (either under local or foreign service codes) it will not allow a credit to be reflected
against just the IRP5 income. The alternative of reflecting IRP5 income under the foreign
income section (e.g. code 4228) would result in SARS assessment errors in reconciling the
figures in the IRP5 or the double counting of income;

- The income tax return also does not contain any place to indicate income that is exempt
  from tax, for example, dividend income or income received which is exempt in terms of
  the provisions of section 10(1)(o) of the Act. This may lead to queries from SARS
  regarding why income has been disclosed in a prior year and no income has been
disclosed in the current tax year, again leading to additional expenses for taxpayers in
  resolving such queries. Furthermore, the lack of a space for exempt income means that the
  statement of assets and liabilities will not reconcile to the form. As such the form must
  make provision for non-taxable receipts including inheritances;

- In respect of employees who do not work for a South African employer and where there is
  no representative employer in South Africa, it has not been possible to withhold
  employees’ tax in respect of their salaries during the tax year. There is no provision for
  declaring such income in the income tax return, except as “foreign taxable income –
  other”. This is not technically correct, as the income is South African sourced and not
  foreign sourced;

- The section dealing with capital gains has no place to indicate whether the disposal is in
  respect of a primary residence;

- There is also no place to declare sundry income received (e.g. occupational rental) and
  there is also no source code for such income;

- In respect of the questions asked in the tax return, certain of these may not be applicable to
  a taxpayer, but no provision is made for this as a ‘yes’ or ‘no’ answer must be given. It
  would be useful if a taxpayer could indicate that a question is not applicable;

- The electronic income tax forms are not clear in certain respects with regard to how the
  income should be disclosed and how this income will be dealt with by SARS. For
  example, in respect of capital gains tax it is quite confusing that the taxpayer must declare
  a capital gain in respect of a primary residence and must deduct the primary residence
  exclusion himself, but that SARS will deduct the annual exclusion. In addition, in respect
  of a person married in community of property, it is not clear how the interest income
  relating to a foreign trading account must be declared. If this amount is declared as foreign
  interest income, 50% will be attributable to the taxpayer and 50% to the taxpayer’s
spouse. However, as the account is a trading account the full interest income must be attributed to the taxpayer. Furthermore, if this interest income is declared as business profits, the annual foreign interest exclusion will not be deducted from that amount by SARS;

- Under "Income Received" on the IT 12S, page 2 reads "Complete below the sum of all your income". We suggest that this is not prominent enough. Suggestion: After words "Amount (Rands only)" insert words "Sum per Source Code";

- The form does not allow for the disclosure of trust income awards;

- The form does not make provision to reflect provident fund contributions by employees;

- The IT 12C does not make provision for different percentage allocations for income and expenditure in relation to partnerships (only one partners percentage can be provided). Many professional partnerships have different ratios for the sharing of income and expenses;

- The 2007 income tax returns require the statement of assets and liabilities to be completed for taxpayers in receipt of rental income. It is recommended that the obligation to complete the statement is no longer required for rental income but remains compulsory for the other remaining requirements (e.g. directors of companies, own trade etc). The foreign assets and liabilities are a one line item. The recommendation is that foreign assets and liabilities be completed in the same detail as local assets and liabilities in the foreign currency concerned to prevent unrealistic gains or losses due to exchange rate fluctuations;

- As a general point, SARS has requested that no supporting documentation be submitted with the income tax returns. However, in order to clarify the manner in which tax practitioners have disclosed certain income (due to the aforementioned shortcomings of the income tax returns), practitioners have submitted cover letters with the income tax returns. This has been done in an attempt to prevent queries from SARS. Despite this, SARS has returned cover letters as constituting supporting documentation and has clearly not read the information contained therein. In addition, in certain cases SARS has returned the cover letters along with returns and has requested practitioners to remove the cover letter from the income tax return and thereafter to re-submit the income tax return to SARS. The income tax return is indicated on SARS’ system as remaining un-submitted during this time. Surely SARS could detach and return the cover letter without the tax return still attached, and treat the return as submitted.

Please also find at this stage some comments on the 2007 (IT 14 and IT 12TR) company and trust returns:

- IT 14’s cannot be completed on a piecemeal basis. The form only saves if it has been completed in its entirety. This leads to extreme frustration as missing bits of information result in the form not being saved and having to be recaptured in its entirety. The form must allow to be saved (as with the IT 12’s) as a work in progress as information is populated.

- Uncertainty exists as to how one should disclose trust losses carried forward on the trust returns;
• There is a problem reading the IT 14 and IT 12TR returns on screen. The print is too small and when one enlarges the screen to 100% it does not fit on the screen resulting in one having to move back and forth all the time;

• It is suggested that control totals be provided when completing the IT 14 returns;

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