23 January 2009

South African Revenue Service
Private Bag X923
PRETORIA
0001

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

Dear Sir / Madam

CALL FOR COMMENT: DRAFT TAX GUIDE FOR RECREATIONAL CLUBS (“GUIDE”)

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

1. Paragraph 13.4

   1.1 The second bullet point under paragraph 13.4, describing the various constitutions of Public Benefit Organisations (“PBOs”) to which recreational clubs should transfer their assets upon dissolution, should in our opinion include “…a branch established in the Republic by a foreign charitable organisation which is exempt from income tax in its country of origin”, as is provided for in the definition of “public benefit organisation” in the Income Tax Act No. 58 of 1962 (“the Act”). This inclusion will incorporate the latest amendments to PBOs.

2. Paragraph 17.2.2

   2.1 We recommend that SARS make specific mention in the Guide that it will provide detailed reasons in the event of taxing business undertakings or trading activities which has been reflected as income qualifying for exemption from income tax as provided in terms of point 17.2.2 in terms of an income tax return submitted by the taxpayer.

   2.2 The criteria in terms of which SARS will be exercising its discretion in this regard is, in some instances open to incorrect and subjective interpretation by SARS (especially in terms of point c “Unfair competition”). A taxpayer should be able to provide evidence to the contrary and object from an informed position in this regard.
2.3 We suggest that a distinction be made between rental income from activities directly related and rental income not directly related.

In example 12 of the Guide Kitty Bowling Club earns rental income from renting of land for a cell phone mast. This is not related and should be taxable. Sail Away Yacht Club earns rental income from its restaurant and bar facilities. This activity is directly related. If the club operated the restaurant and bar itself it could qualify for exemption. There should not be a distinction on whether the related activity is self operated or contracted out (in which case a rental income is earned).

2.4 A good example of this is a Pro Shop at a Golf Course. The Club cannot operate without the Pro Shop and does not have the know how to operate the Pro Shop and is therefore contracted out and earns a rental income for the shop space. A Club is not always in a position to render the related activities itself and activities such as restaurant, bar, tuck shop, pro shop, driving range etc is normally contracted out. The rental income is used directly to cover the costs of the club. The club should not be penalized on the decision to contract out instead of operating itself.

2.5 There appears to be uncertainty regarding the requirement, ‘substantially on a cost-recovery basis’. The uncertainty relates to the question of whether or not costs of the club as a whole could be recovered by the trading activity, or if it is only limited to the recovery of the costs of the specific trading activity.

3. Paragraph 17.4

3.1 Paragraph 17.4 deals with the basic exemption. Section 10(1)(cO)(iv) of the Act reads as follow:

“from any other source and do not in total exceed the greater of
(aa) five per cent of the total membership fees and subscriptions due and payable by its members during the relevant year of assessment; or
(bb) R100 000;”

Due to the use of the wording “…do not in total exceed…” certain SARS offices have indicated that if the receipts and accruals from business and trading activities in total exceed R100 000 none of it would be exempt in terms of the ‘basic exemption.

For example if the receipts and accruals from business and trading activities is R120 000 for a year in total, none of it would be exempt due to it being in excess of R100 000, while if the receipts and accruals from business and trading activities is only R99 000 all of it would be exempt, due to it being less then R100 000.

3.2. This clearly could not have been the intended result of the section 10(1)(cO)(iv) basic exemption. It is therefore requested that a paragraph and example be added to paragraph 17.4 of the Guide to explain and illustrate that if the receipts and accruals from business and trading activities are in excess of the monetary limit of R100 000 for example R120 000 for a year of assessment, the first R100 000 of
the R120 000 would be exempt from normal tax (this is assuming that 5% of total membership fees and subscriptions are less than R100 000 in this example).

3.3 Section 17.4 should be updated to reflect the increase in the basic exemption amount to R100 000 as provided for in terms of the Taxation Laws Amendment Act No. 3 of 2008.

4. Paragraph 19 and 23

4.1 From the wording in the Guide in paragraphs 19 and 23 it is not clear if clubs that have been in existence when the revised legislation (sections 10(1)(cO) and 30A) was introduced and therefore were exempt from normal tax under previous provisions in the Act should ‘re-apply’ for exemption under the new sections section’s 10(1)(cO) and 30A, or not.

We request that it should be clearly indicated if such clubs should re-apply for exemption.

4.2 Depending on the outcome of the issue raised in the previous paragraph, it is respectfully requested that SARS remove the deadline of 31 March 2009 for submission of applications for retrospective exemption applications. Established recreational clubs might not be aware of the income tax exemption application available to them. It would take a while to consider whether they qualify for exemption, finalise the application and submit their applications on time.

5. General

5.1 It is appreciated that no distinction is made in exempting a club’s receipts and accruals for trading or business activities integral and directly related to the provision of social or recreational amenities or facilities for its members and non-members.

5.2 SARS is to be commended on the Guide, which is generally well-written and provides a useful aid to taxpayers and practitioners, especially with regard to the case law from both a South African and international perspective. To maintain its usefulness to taxpayers we propose that the Guide be regularly updated in the future to reflect the latest tax amendments.

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

Yours faithfully

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