9 February 2007

South African Revenue Service
Legal and Policy Division
Private Bag X923
PRETORIA
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BY E-MAIL: acollins@sars.gov.za

Dear Sirs

CALL FOR COMMENT: DRAFT REGULATIONS ISSUED UNDER SECTION 13 OF THE SMALL BUSINESS TAX AMNESTY AND AMENDMENT OF TAXATION LAWS ACT, 2006

We refer to your call for comment on the above-mentioned document, which was placed on your website on 24 January 2007. Set out below please find comments from SAICA’s National Tax Committee.

1. General

We welcome the publication of the draft regulations but urge the Minister of Finance and the Commissioner to finalise these as a matter of urgency given that the deadline for application for amnesty is only a little more than 3 months away.

2. Definitions

The definition of ‘waive’ in section 1 of the Schedule refers in brackets to “or a portion thereof”. We cannot see why the Commissioner should be allowed to waive only a portion of the business tax debt given that the definition of ‘business tax debt’ specifically covers only those tax liabilities incurred during the ‘qualifying period’. In our view, the Commissioner should waive the full business tax debt if all other requirements have been met. Any introduction of discretion, in our view, runs contrary to the intention of the Small Business Tax Amnesty Act (SBTA).

3. Regulation 8 – Amount to be waived

Regulation 8(1) states that the business tax debt that must be waived is the outstanding amount on 31 July 2006. However, it is silent as to the effective date of this waiver, which means that if the business tax debt is waived on say, 10 May 2007, but for the amount
owing at 31 July 2006, will the taxpayer still be liable for the interest between 31 July 2006 and 10 May 2007. We believe that it is not the intention of the legislation to hold the taxpayer liable for interest after 31 July 2006 where the business tax debt has been waived in full and this should be clarified.

4. Regulation 9 – amounts that may not be waived

4.1. In particular, we experienced difficulty in interpreting this regulation. It states that the Commissioner may not waive a business tax debt to the extent that:

“(a) The business tax debt exceeds an amount of R1 million; or

(b) An amount paid after the close of business on 31 July 2006 in respect of business tax debt or other debt outstanding on that date exceeds the amount of other tax debt outstanding on that date.”

4.2. Regulation 9(a) prohibits the Commissioner from waiving a business tax debt to the extent it exceeds R1 million. The business tax debt is defined to include additional tax, interest and penalties and it is very conceivable that the total amount including additional tax, penalties and interest could exceed R1 million whereas the original tax debt was less than R1 million. We strongly suggest that the R1 million limitation refer to actual taxes excluding any additional tax, interest and penalty so that businesses could still benefit from the waiver as a result of the amnesty being more far reaching. This again we believe to be in the spirit of the SBTA.

4.3. Regulation 9(b) states that the Commissioner may not waive a business tax debt where the amount paid after 31 July 2006 exceeds the amount actually outstanding on that date. In other words, where the taxpayer has overpaid tax, the Commissioner may not waive the business tax debt. It is clear, firstly, that the Commissioner may not waive any business tax debt that is paid prior to the submission of the application by the taxpayer. This means that section 9(b) applies only to instances where the taxpayer has paid the business tax debt after date of submission of an application and we cannot see any reason why the Commissioner should not be allowed to waive the business tax debt where the taxpayer overpays the taxes owing. In our view, the Commissioner should be required to waive the business tax debt that was outstanding at 31 July 2006 which has not been paid prior to submission of the application regardless of whether under or overpaid subsequent to submission of the application.

4.4. In our view, Regulation 9 needs to be reworded in order to clarify its meaning.

Please do not hesitate to contact me should further information be required.

Yours faithfully

M Kendall (Mrs) CA(SA)
TECHNICAL ASSISTANT: TAX
The South African Institute of Chartered Accountants