15 February 2008

South African Revenue Service
Private Bag X923
PRETORIA
0001

By e-mail: tsnyckers@sars.gov.za
CC: tmarx@sars.gov.za

Dear Madam

**JOINT SUBMISSION BY SAICA / SAIPA: USE OF NAME - SOUTH AFRICAN INSTITUTE OF TAX PRACTITIONERS**

1. We refer to the above and would like to advise that the South African Institute of Chartered Accountants (SAICA) and the South African Institute of Professional Accountants (SAIPA) has noted several concerns regarding the above-mentioned Institute name and the inhibiting effect it has, not only on our members, but more importantly, the public. Upon the establishment of the ‘South African Institute of Tax Practitioners’ (Hereinafter referred to as ‘SAIT’), it has come to our notice that such name may be inappropriate especially in light of the introduction and release of the Regulation of Tax Practitioners Bill administered by the Commissioner of SARS. Furthermore we have come to question the legality of the new name
which may be regarded not only as unlawful and inappropriate but also deceiving and misleading to the public. We therefore wish to bring our concerns to your attention for comment and review.

2. We respectfully submit that in order to maintain professional standards of fairness and equality in keeping with the historic development within the Accounting Profession and the newly created Tax Profession in South Africa, we must unite and support every effort that enhances and authenticates our economic advancement. We now refer to specific legislation in support of our views:

2.1 The Draft Regulation of Tax Practitioner Bill
- As you are aware, the purpose of the Bill is to regulate the Tax Practitioner Profession, to ensure that tax practitioners are appropriately qualified, adhere to ethical practices and are held accountable for their professional conduct and to make provision for an Independent Regulatory Board for Tax Practitioners.
- The term ‘Accredited Tax Practitioner’ has a specific meaning within the context of the Regulation of Tax Practitioners Bill i.e. ‘an individual registered as such with the Board in terms of Section 27’.
- The list of objectives of the Bill is clearly defined in Section 5. We specifically refer you to S5 (a) which refers to the protection of the public interest in the republic through the regulation of the tax practitioner profession.
- The Bill calls upon every natural person who provides advice in terms of any act administered by the Commissioner and who is involved in the completing of any document required by the Commissioner, to register with the Tax Practitioner Board in order to be recognized as an accredited Tax Practitioner and failure to register will constitute an offence.
- In the 2002 Budget the Minister of Finance announced that “In order to promote better compliance and ensure that taxpayers receive advice consistent with tax legislation,
SARS will initiate discussions on the regulation of tax consultants and advisors in South Africa, with appropriate sanctions in the event of noncompliance with tax legislation”. SARS has effectively enforced this Bill which constitutes such legislation.

- According to SARS Briefing Note Release in 2006, the first phase of this project realized over 17,000 existing tax practitioners country wide who have already registered with SARS. The second phase envisages the establishment of the Independent Regulatory Board.

- It is our understanding that the Board’s function will be to prescribe the standards of qualification and experience of tax practitioners, to maintain the registration system, to implement a code of professional conduct and to take disciplinary action where necessary.

2.2 The Business Names Act & the Consumer Affairs Act:

- In terms of Section 5 (1) of the Business Names Act which empowers the Registrar of Companies to prohibit the use of certain business names, we will be able to lodge a formal complaint to the Registrar in our attempt to prohibit the use of the SAIT name.

- Furthermore the use of such name constitutes unfair business practice as defined by the Consumer Affairs Act 71 of 1988, with specific regard to any business practice that may unreasonably prejudice any consumer or deceive any consumer.

3.  MOTIVATION:

3.1 Notwithstanding the above, the new name ‘SAIT’ may create the notion that only members of this Professional Body are accredited Tax Practitioners, which seems to be a direct contravention of the Regulation of Tax Practitioners Bill and is accordingly misleading and likely to create confusion in the minds of the public.

3.2 It also creates the impression to the public, that SAIT represents the South African Regulatory Board for tax practitioners.
3.3 As a point of reference, the Independent Regulatory Board of Auditors which regulates the Auditing Profession in South Africa, is a Statutory Body created by the Auditing Profession Act 26 of 2005 which lawfully prohibits the use of the words ‘Auditor’ or ‘Public Accountant’ in any business name or company constitution in South Africa. In the same light, with the formulation of the new Regulatory Board of Tax Practitioners together with legislation, no Institute or Professional Body should be lawfully permitted to use the words ‘Tax Practitioner’, unless such Institute is established by the Commissioner or the Act itself.

4. RELIEF:

We kindly request SARS views relating to the following:

4.1 The lawfulness and fairness of the new name SOUTH AFRICAN INSTITUTE OF TAX PRACTITIONERS.

4.2 The perceived endorsement of the SAIT.

4.3 The effect of such name on other existing Professional Bodies, their members and the Accounting Profession in general.

4.4 The exclusive right of the impending Regulatory Board for Tax Practitioners to the use of the words ‘Tax Practitioners’.

5. It is our contention that this prevalent aspect must be investigated seriously by this commission, who should then make the necessary recommendations for change. We trust that you will be guided accordingly and we will receive your favorable support in any attempt made to effect change. Should you require any further information or wish to discuss this matter in more detail, kindly contact us. We look forward to your response hereto.
Yours faithfully

M Hassan CA(SA)

**PROJECT DIRECTOR: TAX**

*The South African Institute of Chartered Accountants*


Nicolaas van Wyk Professional Accountant (SA)

**TECHNICAL EXECUTIVE**

*The South African Institute of Professional Accountants*