Dear Sir / Madam

CALL FOR COMMENT: DRAFT GUIDE FOR MICRO BUSINESS

We refer to the call for comment on the above-mentioned document. Set out below please find the SAICA National Tax Committee’s submission regarding the draft guide.

General comment

SAICA’s NTC is concerned that specific mention is made that the guide is not a binding ruling. We would beg to differ. The guide is a representation by SARS to taxpayers. In the event that there are errors in the guide, SARS should be bound by any misrepresentations that mislead taxpayers. Therefore if there are any errors then taxpayers should not be prejudiced.

Specific comments

1. The definition of Capital Gains Tax (“CGT”) is incorrect. It is suggested that SARS either delete the word “original” or change “original cost” to “base cost”.

2. The definition of Income Tax is incorrect. The word "net income" should be replaced by the word "taxable income".

3. Why does the definition of "Investment Income" include "trading income"?

4. In the definition of "Receipt or accrual of a capital nature" the words "that is fully taxable" should be deleted. This statement is not always true as there are exemptions contained in the Eighth Schedule.

5. In paragraph 2.5, the statement that micro businesses will be exempt from CGT is untrue as the proceeds of capital sales will be taxed.

6. The guide fails to address the following conundrum which is likely to arise in practice. If a micro-business does not have to keep records but its turnover exceeds R1 million it is compelled to register for VAT and is thus allowed to claim an input tax credit.
once registered. However, SARS has made a representation that they do not need to keep records. How will the micro-business then be able to prove the input tax credit without records?

Is the R100,000 VAT input tax exemption meant to ensure that this problem will therefore not arise?

7. The turnover tax on micro enterprises is considered unfair in relation to the sale of property e.g. if a micro enterprise buys a property for R300,000 and sells it for R250,000 it will be taxed on 50% of the R250,000.

8. The logic in the second paragraph of paragraph 3.2 is flawed. If a business has a turnover of R700,000 i.e. below the R750,000 threshold and they open a new branch then they can easily exceed the R1,000,000 limit (between the 2 branches). This type of growth is not gradual. The micro-business structure must be redesigned to cope with this type of normal business activity as a matter of urgency. Such businesses should be treated leniently in terms of the application of the law.

9. In paragraph 2.10 there is no guidance given on the time that the Commissioner may take in deregistering a micro-business from the turnover tax regime. The guide and the legislation refers to the fact that SARS must consult with the micro-business before deregistering. There should be some time limits regarding deregistration. Indeed the objection by the taxpayer is part of the normal objection process and therefore has the protection of the time period built into the legislation.

10. The effective tax rate is significantly more that the current rate afforded to companies and although this is designed to encourage migration to the company tax regime one suggestion could be to limit the effective rate of tax to 30% so as to still encourage migration to a corporate regime without excessive taxation rates applying in the interim. The rate as it stands translates to a 30% effective tax rate at a level of R800 000 taxable income as opposed to 28%.

11. It is also unfortunate that exclusion exists for a partnership (i.e. two partners) where one of the partners is not an individual.

Conclusion

Micro businesses are a type of small business therefore such a guide must overrule the general guide for small business if there are any conflicts. This guide should clarify this position.

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