Dear Sir / Madam

CALL FOR COMMENT: DRAFT INTERPRETATION NOTE SECTION 10(1)(q) SCHOLARSHIPS OR BURSARIES

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.

General

The note does not contain any statement regarding its binding effect or otherwise. We believe that some of the statements in the document should have binding effect (as a general binding ruling).

Specific

Paragraph 4.1

The words "...will include the cost of..." does imply that the list is not exhaustive, but it would be better if the list referred to other items as well. The problem is that it may be implied that a bursary should in some way be linked to expenses. This would create problems for persons who rely on a bursary to allow them time of from work to be able to do the studies. This is particularly relevant to post graduate study.

Paragraph 4.2

It is not clear why research undertaken for the benefit of a person is not seen as a bona fide bursary. In most post graduate research, Master and post-Masters, instances this may apply. This is viewed as having a dual purpose - one to allow the person to study at a University and second to benefit the sponsor. One of the problems of research is that a student may complete...
the research with no benefit to the sponsor. We propose that an allocation of the tax free and taxable benefit should be made. We believe it is problematic for the sponsor to deduct employees' tax if the student is not an employee.

Paragraph 4.3

The monetary amounts should be adjusted as it is already in the PAYE documentation and the Bill.

We are not convinced that an allowance (referred to the travel allowance) is remuneration. Clearly, if the allowance to compensate for business expenses, it should not be seen as "remuneration". The item does not refer to the Fourth Schedule.

Paragraph 5.2

The monetary amounts should be adjusted as it is already in the PAYE documentation and the Bill.

A fringe benefit will only arise if the payment is made to a third party (person). So the statement "... will be regarded as payment of the employees' debt..." in the last paragraph is not true in general.

Paragraph 5.4

Refer to the comments under 4.2

The paragraph should refer to persons other than companies, trusts and close corporations that are not personal service companies or trusts.

Paragraph 5.6.1

The paragraph does not deal with the interest free loan to a person who is not an employee. No taxable benefit should arise as this (the benefit of not paying interest) would be financial assistance and therefore a bona fide bursary. We see no reason why this should not include relatives of an employee.

Paragraph 5.6.2

There is a typing error in the sentence after the second bullet. "thr" should be "the".

Paragraph 5.6.3

We cannot comprehend how the non-compliance can change the bursary into a loan. The original intention was to enable the person to study. We would accept that it applies from the moment that a liability to refund comes into existence.

The benefit of an employee having an interest free loan to assist him or her to study should qualify for exemption under section 10(1)(q) and the Seventh Schedule should not also treat this as a benefit.
Paragraph 5.6.4

Paragraph 2(h) would also apply where the employee undertook to reimburse if he or she fails to complete.

Paragraph 5.7

A reimbursement of expenses should be dealt with under section 8(1).

Paragraph 5.8

The third sentence: replace employee with employer.

Paragraph 5.9.1

Expected that CPD should be listed here and it is not clear why only some institutions are listed in paragraph (h).

Other

The interpretation note does not deal with situations where a bursary is awarded in terms of an open bursary scheme, i.e. Scholarships or bursaries which are competed for by, or awarded on merit to anyone applying therefore and are not to any extent confined to the employees or relatives of employees of a particular employer. In such cases we are of the view that such bursaries should not constitute a taxable benefit as the employer will not always know if a relative of an employee is awarded such bursary, i.e. such bursary or scholarship has not been granted by an employer to an employee’s relative specifically.

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