11 March 2008

South African Revenue Service
Private Bag X923
PRETORIA
0001

By e-mail: mkingon@sars.gov.za / klouw@sars.gov.za

Dear Sirs

INTERPRETATION ISSUES

1. VAT INTER-COMPANY TRANSACTIONS

Certain SARS offices are insisting that a VAT vendor go back five years and issue (inter-company) invoices to regularise transactions that occurred during this period, even though there is no loss to the fiscus as the vendor who incurred the expense would have claimed back the VAT. This is proving to be onerous to vendors.

We seek clarity on what the official view is at SARS head office in relation to such transactions.

2. SECTION 11(e) AND 8(5)(bA)

In terms of section 11(e) one has to be the owner of the asset in order to claim capital allowances, for tax purposes. On audit, the experience of our members has been that certain SARS offices raise the contention that section 11(e) capital allowances may not be claimed in respect of assets that were deemed to be acquired by the taxpayer on termination of leases, on the basis that the taxpayer is not the registered ‘owner’ of the asset, as contemplated (having been subject to section 8(5)(bA), deemed recoupments on the asset).

In our opinion this could not have been the intention of the legislator. We seek clarity on this interpretation.

3. SECTION 24C

Section 24C allowances are as a matter of course, being disallowed if a taxpayer is not operating in the construction industry, with no regard being had to the merits of any claims. In our opinion SARS does not have the authority to limit the ambit of section 24C in this manner.
We seek SARS head office view in this regard.

4. PARAGRAPH 76A OF THE EIGHTH SCHEDULE

The application of Paragraph 76A of the 8th Schedule is proving problematic. One is deemed to have disposed of part of a share on 01 July 2011 if a capital distribution (per Paragraph 76(1)(b)) is received. Where one uses the 'time-apportioned base cost’ method to determine 'base cost’, this adds years post-01 October 2001 resulting in a higher (taxable) capital gain on 01 July 2011, than would have been the case had the date of the capital distribution been applied, to determine the time-apportioned base cost.

In the interest of equity, we request that SARS gives consideration to amending the legislation to allow for this.

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