Dear Sir / Madam

CALL FOR COMMENT: GUIDE ON THE TAXATION OF ARTISTS / MODELS / CREW IN THE FILM INDUSTRY

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.

- The Guide is useful as SARS has clarified the position regarding who is responsible for withholding employees’ tax (if required) on payments to artists, models and crew in the film industry, i.e. either the agency or the production company. Previously there was confusion, especially in the modelling industry, on this point and the agents and production companies went so far as to assert that it was their clients (e.g. companies in the retail industry) that were required to withhold employees’ tax.

- A point requiring clarification relates to the definition of “remuneration” where it states that an employee may be considered to be independent, and hence payment received by him or her would not constitute remuneration as defined, if his services are not rendered mainly at the premises of the employer. In the modelling and film industry, the shoots often occur in public places (e.g. beaches, streets, etc) would those places be viewed by SARS as constituting the employer’s premises? This aspect is not clarified in the guide.

- The guide has wider application than only the film industry. It also applies to photo shoots arranged by clients for their promotional brochures/catalogues. The guide should confirm application to possibly even fashion shoots for magazines.

- There are situations where the agent is in fact a labour broker, i.e. the agent provides the persons and there is no agreement between the person provided and the client. The guide suggests that this situation does not occur in the film industry. It does however occur in other similar industries such as fashion shoots for promotional brochures/catalogues.
There is a grammatical error in the first bullet point under 2.3.1. The word "renders" should be "render".

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