Dear Sir / Madam

CALL FOR COMMENT: TAX GUIDE FOR SHARE OWNERS

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.

Page 4 Para 3.4.6 - Low or Nil return

The last sentence of this paragraph states, “The sale of future contracts is likely to be on revenue account, even if used as a hedge against losses on underlying shares held as capital assets (ITC 1756 (1996) and (1997) 65 SATC 375 (C))”. We respectfully disagree.

The case referred to did not decide this matter. In particular see page 386 of the judgement which states “The evidence led in this matter as also the argument presented did not adequately place the court in a position to decide whether or not the gains in question resulted from a scheme of profit-making. Had the court been required to answer the question on its merits the court would have had no option but to find that the appellant had failed to discharge the onus which rests upon it of proving that the respondent was wrong in including the amount of R537 085 as part of appellant’s taxable income. The question does not, however, have to be answered on its merits”.

It is clear from the above extract that the court did not decide this in this matter the capital or revenue nature of a hedge. It is further submitted that if an asset is held as a capital asset and the capital value is hedged through a derivative that the hedge is also of a capital nature. This is entirely consistent with the holding of the share for purposes of earning dividend income.
Page 8 Para 4.3 – Taxation of dividend income

The second bullet refers to the exemption of dividends received from a controlled foreign company (CFC). This bullet requires a sub-bullet to clarify that this exemption will only be of application if the taxpayer holds at least 10% of the CFC. For example, three SA shareholders hold 31% of a foreign company and the taxpayer holds 7%. Although the company is a CFC the taxpayer (who holds 7%) will not be exempt on his dividend. This should be stated for purposes of clarity.

Page 10 Para 5.2.2 – The three-year rule

It is recommended that an example of Section 9C should be added. The example should cover the situation of a share trader who has held the trading stock for more than 3 years. There are many people who find themselves in this situation and are unaware of how to deal with the opening stock.

General

The guide is easy to understand and well set out. It does not go into too much depth on complicated issues.

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