9 May 2008

South African Revenue Service
Private Bag X923
PRETORIA
0001

By e-mail: policycomments@sars.gov.za

Dear Sir / Madam

CALL FOR COMMENT: DRAFT INTERPRETATION NOTE NO. 16 (ISSUE 2) EXEMPTION FROM INCOME TAX: FOREIGN EMPLOYMENT INCOME

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.

Annexure B, example 1 paragraph (c) states that the section 10(1)(o)(ii) exempt income must be declared in the income tax return in the relevant section that deals with “income not considered to be taxable”. The 2007 IT 12S and IT 12C tax returns did not have such a section to declare this exempt income and it is therefore suggested that this requirement be removed from the Interpretation Note. Alternatively the IT 12S and IT 12C tax returns must be amended accordingly.

The section 10(1)(o)(ii) 183 days requirement refers to any 12 months not a calendar year or tax year. In practice, however, there appears to be uncertainty among taxpayers where the taxpayer at 28 February (the end of the tax year) has not satisfied the 183 days requirement, and has only done so after the tax year-end. It is suggested that an additional example be included in the Interpretation Note to explain that in such a case the income will still be exempt even though the 183 days requirement has only been satisfied after year-end.

The amended section simply refers to any period of 12 months. On page 3 of the guide, the interpretation of the wording “during any period of 12 months” - the remuneration accrued in the 2005 year of assessment will be exempt provided he met the stipulated days in any period of 12 months in the 2002 year of assessment.
Annexure A must also be updated as it still refers to the following:

*Was the taxpayer outside South Africa for a period or periods exceeding 183 days in total during any period of 12 months that commenced or ended during the abovementioned year of assessment?*

The examples in Annexure B in 1, 2 and 3 must also be updated as it also still refers to any period of 12 months that commenced or ended during the abovementioned year of assessment.

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*