12 September 2008

The South African Revenue Service
Private Bag X923
PRETORIA
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BY E-MAIL: klouw@sars.gov.za

Dear Sir

SECTION 79: EMPLOYEES TAX PRESCRIPTION PERIOD

Set out below please find the SAICA National Tax Committee’s submission on employees tax prescription period.

In terms of section 79 of the Income Tax Act, No. 58 of 1962 (the Act):

“If at any time the Commissioner is satisfied---

a) that any amount which was subject to tax and should have been assessed to tax under this Act has not been assessed to tax; or

b) that any amount of tax which was chargeable and should have been assessed under this Act has not been assessed; or

c) that, as respects any tax which is chargeable and has become payable under this Act otherwise than under an assessment, such tax has not been paid in respect of any amount upon which such tax is chargeable or an amount is owing in respect of such tax,

he shall raise an assessment or assessments in respect of the said amount or amounts…”

It is our belief that section 79 applies to employees tax as well, being a tax subject to self-assessment as contemplated in section 79(1)(c). Accordingly, SARS is subject to the parameters set in proviso (ii) to section 79(1), as regards the years of assessment that SARS may raise assessments against. SARS would therefore have to prove fraud, misrepresentation or non-disclosure of material facts to go beyond three years or obtain the agreement of the taxpayer to go beyond three years.

We request that SARS clarify the following with regard to the 3 year prescription period:
a) What SARS considers to be the ‘assessment date’ for PAYE purposes?
b) From when does the 3 year prescription rule apply? Is it:
   • retrospectively applied from the first day of a SARS audit; or
   • from the date of submission of the PAYE return (EMP201)

We are aware of various employees tax assessments raised by SARS, after audit, covering years of assessment going back more than five years. It is therefore imperative that we clarify the prescription policy regarding PAYE.

Please do not hesitate to contact me should you wish to discuss the above.

Yours faithfully

M Hassan CA(SA)

PROJECT DIRECTOR: TAX

The South African Institute of Chartered Accountants