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Submission File

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

Dear SARS

COMMENTS ON THE DRAFT INTERPRETATION NOTE – TAXATION OF AMOUNTS RECEIVED BY OR ACCRUED TO MISSIONARIES

1. We herewith take an opportunity to present our comments on behalf of the South African Institute of Chartered Accountants (SAICA) on the draft Interpretation Note (IN) providing clarity on the tax treatment of amounts received by or accrued to missionaries who are performing religious or related activities in South Africa.

COMMENTS

Purpose of draft IN and source of services rendered

2. The draft IN states the following as its purpose:

“This Note provides clarity on the tax treatment of amounts received by or accrued to missionaries who are performing religious or related activities in South Africa.”

3. The purpose of the draft IN makes it clear that it will deal only with the receipts and accruals of missionaries who are performing religious or related activities in South Africa.
4. It is uncertain why this is the case, as the word ‘mission’, means “vocation or calling of a religious organization, especially a Christian one, to go out into the world and spread its faith” – (<https://www.lexico.com/definition/mission>).
5. Furthermore, a ‘missionary’, is defined as a “person sent on a religious mission, especially one sent to promote Christianity in a foreign country” – (<https://www.lexico.com/definition/missionary>).
6. The basic principles would be the same if the activities are performed in South Africa, in Africa or abroad.
7. The draft IN also states:



“If the missionary services are rendered in South Africa, the source of any income that arises from those services will therefore be South African, even though the donations may be made in a foreign jurisdiction.”

8. If the individual is a resident of South Africa, it is irrelevant where the services, in respect of which an amount is received, are rendered. This is therefore only relevant if the services are rendered by an individual, not ordinarily resident in, or exclusively deemed to be a resident of, South Africa.

9. Submission: The draft IN should deal with activities carried on by a missionary outside South Africa. It should also explain the tax implications if:
 10. The missionary is a South African resident or not; and
 11. If the services are rendered outside South Africa. That is, if the amounts are received by a missionary (as an employee), in respect of services rendered outside South Africa, section 10(1)(o)(ii) may be available.
 12. Examples of the above scenarios should be included in the draft IN. With regard to the application of section 10(1)(o)(ii), reference should also be made to Interpretation Note 16: Exemption from income tax: Foreign employment income.

Missionary organisation

13. SARS, in the draft IN, uses the term “missionary organisation” and defines it as follows:

“missionary organisation” includes a missionary society, agency, association, fellowship or similar organisation;

14. The term “missionary organisation” is not found in the dictionary.

15. Submission: We suggest that the term either be comprehensively defined or changed to ‘missionary society’ or ‘religious organisation’ that are defined in the dictionary.
16. The term ‘religious congregation’ or ‘religious organisation’ could be added to the definition in the draft Note.

17. Facts and circumstances

18. The draft IN fails to take into consideration the varying sources from and circumstances in which amounts could be received by missionaries.
19. Sources from which the amount received by missionaries could include:
 - The missionary organisation makes the contribution. These organisations would typically obtain the funds to do so from fund raising activities. In this instance it is typically made by way of a regular, monthly contribution, and the payment is more likely to be in respect of services rendered or to be rendered.



- The members of a religious congregation or missionary organisation. This can be made directly to the missionary or, the members of the organisation contribute to the organisation who in turn pays the missionaries. The draft IN states that “the missionary organisation simply acts as a conduit for the amounts received” and this is quite common in practice. These contributions are of course not only received from members of the organisation, but often from the public at large.
 - Family members and friends of the missionary contribute to the missionary and this in the main is to assist the missionary with “expenditure of a personal nature”.
 - Persons to whom the missionary ‘spread(s) the faith’.
20. Various other factors and circumstances, relating to the receipt of amounts by a missionary, that should be taken into consideration in the draft IN include:
- (a) how, in what capacity, and for what reason the recipient received the amount;
 - (b) whether the amount received is of a kind which is a common incident of the recipient's calling or occupation;
 - (c) whether the amount received is made voluntarily;
 - (d) whether the amount received is solicited;
 - (e) if the amount received can be traced to a gratitude engendered by some service rendered by the recipient to the donor,
 - (f) whether the recipient had already been remunerated fully for that service;
 - (g) the motive of the donor (but this is seldom, if ever, decisive); and
 - (h) whether the recipient relies on the amount received for regular maintenance of himself or herself and any dependants.
21. These varying circumstances will determine whether an amount received by a missionary should be included in gross income or not.
22. The draft IN does not provide any clarity on the above nor does it provide any examples providing context to the above circumstances to assist a missionary in deciding whether an amount would be taxable or not.
23. Furthermore, the draft IN states the following:
- “For these reasons, donations or gifts made to missionaries constitute “voluntary awards” to those missionaries. Whilst it might be that the payment is validly a donation in the hands of the payer, it will nevertheless be included in paragraph (c) of “gross income” in the hands of the missionary if it is closely connected to the missionary services rendered”.*
24. The draft IN uses the word ‘donation’ as well as the word ‘voluntarily’. It is not disputed that, where an amount is voluntarily given in respect of services rendered, or to be rendered, it would be included in the gross income of the recipient.
25. It is our view that such an amount voluntarily given in respect of services to be rendered cannot be a donation. The ordinary meaning of the word ‘voluntarily’ is “of one's own free will” (<https://www.lexico.com/definition/voluntarily>). Whilst a donation is made of one's own free will, it is more important that it be done gratuitously.
26. The principle relevant to the meaning of the word ‘donation’ is of course, as was explained by Judge Marais (in Estate RF Welch v CSARS) that “the disposition must have been

motivated by 'pure liberality' or 'disinterested benevolence'..." and not "... in expectation of any *quid pro quo* of whatever kind". But, as was said in *Avis v Verseput*, this means "a donation in which the donor's motive ... is liberality, that liberality is the reason which influences him to make the gift."

27. Where services are to be rendered, by the missionary, there is a *quid pro quo* and it will not be a donation.

28. Judge MM Jansen, in *Malema v Commissioner for the South African Revenue Service* (76306/2015) [2016] ZAGPPHC 263 (29 April 2016), states that the "dispute between the applicant and SARS seems to be purely factual - were the monies indeed donations and/or dividends. That politicians routinely do receive donations cannot be denied." A dividend is therefore not a donation and equally, remuneration (or a payment for services rendered), is also not a donation.

29. The cases of *Stander v CIR* and *CSARS v Kotze* are relevant – in them, the judges discussed the nature of a testimonial or accolade receipt. In the *Kotze* case, Judge Foxcroft said:

"The payment on the present facts is clearly not one of the nature of a testimonial or accolade, but is, as was said in Moore v Griffiths, one which has 'the quality of remuneration for services rendered'. It is trite that 'services need not be rendered by virtue of any contract, nor need the amount received or accrued be by reason of any contract or obligation: it can be a purely voluntary payment'". The draft Note also refers to this.

30. Judge Foxcroft also said the "more important question is the proximate or direct cause of the payment, or as expressed in Latin, *causa causans*."

31. In our experience, whilst these contributions are often given to enable the person to do the missionary work, the intention of the 'giver' is more often than not that it is given to enable the missionary to meet his or her private expenses or the cost incurred in the maintenance of the missionary or his family or establishment. The proximate or direct cause of the payment is therefore not in respect of the services that the missionary will render (or rendered). It recognises that the individual is not in employment, or paid for the rendering of these services; or that the payment for services rendered is not sufficient to meet the individual's living expenses.

32. As such, these contributions, or donations, cannot be in respect of services rendered and must not be included in gross income.

33. Submission: We recommend that the draft IN be expanded by including the varying circumstances under which amounts could be received by missionaries. This will provide context as to whether the amounts received by the missionaries would be taxable or not.

34. Examples of amounts that would be considered as taxable as well as those that would not, should also be included in the draft IN. The Australian Tax Office's Taxation Ruling "IT2674: *Income tax: gifts to missionaries, ministers of religion and other church workers – are the gifts income?*" provides such examples and could guide SARS in expanding the draft IN.

35. The Ruling mentioned above is included below for ease of reference:



ATO Ruling on
income received by m

36.

Donations tax exemption

37. The draft IN stipulates that an amount may be a donation in the hands of the payer, but nevertheless be included in paragraph (c) of “gross income” in the hands of the recipient. Section 56(1)(k)(i) exempts from donations tax –

“...any property which is disposed of under a donation as a voluntary award ... the value of which is required to be included in the gross income of the donee in terms of paragraph (c) of the definition of “gross income” in section 1”.

38. It may be difficult for a donor to know whether or not the amount is required to be included in the gross income of the donee (missionary) in terms of paragraph (c) of the definition of “gross income”.

39. Submission: The inclusion in the draft IN of the varying circumstances under which amounts received by missionaries would be regarded as gross income, as recommended above, might assist donors in determining whether the amount is a donation that is exempt from donations tax or not.

40. The steps that need to be followed by a donor, to correct any donations tax incorrectly paid in respect of a ‘donation’ to a missionary, should be clearly stipulated in the draft IN.

The conclusion of the draft IN

41. The conclusion of the draft IN states the following:

“Amounts received by or accrued to missionaries for missionary services rendered in South Africa must be included in the missionary’s “gross income”.”

42. This may not always be the case as has been explained in the previous paragraphs.

43. Submission: The conclusion could be worded as follows:

“Amounts received by, or that accrued to, missionaries in respect of services rendered must be included in the missionary’s “gross income” – in terms of paragraph (c) of the definition of gross income in section 1(1) of the Act”.

44. The intention is to leave the necessary implication, where it is not given in respect of services rendered or to be rendered, that it is then not included in gross income.



Should you wish to clarify any of the above matters please do not hesitate to contact us.

Yours sincerely

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The South African Institute of Chartered Accountants